UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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

VOLUME XIII

TRANSCRIPT OF PROCEEDINGS

October 8, 2015

Myra A. Pish, CRS No. 11613
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UNITED STATES DEPARTMENT OF AGRICULTURE

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

Thursday, October 8, 2015

9:01 a.m.

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

TRANSCRIPT OF PROCEEDINGS

VOLUME 13

Reported by:

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2589
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THURSDAY, OCTOBER 8, 2015 - MORNING SESSION

JUDGE CLIFTON: We are back on record. It is October 8th, 2015, it's a Thursday, we're in Clovis, California, it's 9:01 in the morning. My name is Jill Clifton. I'm the United States Administrative Law Judge who is assigned to receive evidence for this milk hearing. There are two types of evidence, testimony and exhibits, and my function ends when I certify the record stating what testimony and what exhibits were taken in at this hearing. If, by chance, when I do that, there are any briefs filed, I will also itemize those briefs received, but I anticipate the timeline here will perhaps have the briefs come after I certify the record.

All right. I would like for the participants to identify themselves by coming to the podium. I'm going to begin with fellow United States Department of Agriculture employees.

MR. FRANCIS: Good morning, William Francis, F-R-A-N-C-I-S, United States Department of Agriculture, Agricultural Marketing Service, I'm a Dairy Marketing Specialist.

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


MS. FRISIUS: Good morning, Meredith Frisius, M-E-R-E-D-I-T-H, F-R-I-S-I-U-S, I'm a Dairy Products Marketing


JUDGE CLIFTON: Now I would like teams who are part of a proponent or opponent group with regard to the proposals.


MS. OLIVER THOMPSON: Good morning, Megan Oliver Thompson. Megan is M-E-G-A-N. I'm also with the law firm of Hanson Bridgett, co-counsel for the proponents of Proposal Number 1.

MR. SCHAD: Good morning, Dennis Schad, S-C-H-A-D. I work

DR. ERBA: Good morning, Eric Erba, E-R-I-C, E-R-B-A, California Dairies, Inc.

MR. ENGLISH: Good morning, your Honor, my name is Chip English, C-H-I-P, E-N-G-L-I-S-H, I'm an attorney with the law firm of Davis, Wright, Tremaine, my office is in Washington DC, and I'm here on behalf of the Dairy Institute of California.


MR. BLAUFUSS: Good morning, Rob Blaufuss, B-L-A-U-F-U-S-S, Dean Foods Company.

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


JUDGE CLIFTON: Now I would like other participants who may not be associated with a particular proposal to come forward.

MS. REED: Good morning, Kristine Reed, K-R-I-S-T-I-N-E, R-E-E-D, I'm an attorney with the Miltner law firm, M-I-L-T-N-E-R, in Ohio, and we represent Select Milk Producers.

MR. ESTES: I'm Richard Estes, staff counsel, California Department of Food and Agriculture, Richard, last name E-S-T-E-S. And again, I'm staff counsel with California Department of Food and Agriculture. I'm here today for the purpose of providing a witness that can introduce some informational data into the record.

MR. SHIPPELHOUTE: Good morning, I'm Donald Shippelhoute, from the California Department of Food and Agriculture, last name is spelled, S-H-I-P-P-E-L-H-O-U-T-E.

JUDGE CLIFTON: That ends with T like Tom, E?

MR. SHIPPELHOUTE: T as in Tom, E.

JUDGE CLIFTON: And you pronounce it "Shippelhoute?" Thank
you.


JUDGE CLIFTON: Is there anyone else here who would like to testify today who has not come to the podium? No one else at this point. All right.

I would like now to take announcements and preliminary matters, beginning with the USDA, please.

MS. MAY: Laurel May. Good morning and welcome to the hearing. We're glad everybody could come this morning to be with us, and we look forward to hearing from those who will testify in this hearing. If you would like to testify, you may contact Meredith, who is over here in the front, and she will put you on a list and let the Judge know that you would like to speak.

USDA's role in this hearing is to collect evidence and testimony regarding proposed Marketing Order for milk in California, and so we take no position on the proposals, but we welcome any information that you are willing to provide to us.

The audience may question any witness, and if you would like to ask questions, you may approach the podium and the Judge will acknowledge you.

We are broadcasting this session of the hearing via live audio feed. We are not recording it, but if anybody would like to tune into it, they may, at tinyurl.com/camilkhearing.
The court reporter is recording official transcripts of the hearing, which will be available approximately two weeks after the end of each hearing week. Exhibits that are offered and admitted are numbered in the order of presentation. Copies are available in the files, or on the table in the back of the room over there, if you would like to pick some up. We also have refreshments on that side of the room, and you are welcome to help yourself to those also.

Yesterday we ended with the cross-examination of Mr. Paul Christ. This morning we plan to begin with Mr. Donald Shippelhoute from CDFA. And once his testimony is complete, then we believe that Mr. Elvin Hollon will be returning to the stand as a witness.

JUDGE CLIFTON: Thank you. I would like Mr. Brian Hill to read into the record the statement from the Colorado Department of Food and Agriculture that we have read into the record a number of times before.

MR. ENGLISH: Colorado?

JUDGE CLIFTON: Pardon?

MR. VLAHOS: California.

JUDGE CLIFTON: Oh, thank you. California Department of Food and Agriculture. Thank you. Isn't this an astute audience? They also help me to remember to swear in witnesses.

All right. I just want that official statement to be read into the record one more time, if you would, Mr. Hill.
MR. HILL: Brian Hill.

CDFA will be present on October 8th for the limited purpose of entering reports into the record, hearing record, developed in response to requests from interested parties. CDFA will only answer questions regarding the compilation of the data contained in these reports in order to remain neutral and avoid being associated with a particular proposal.

JUDGE CLIFTON: Thank you. And we ask that anyone speaking identify them self first.

MR. ESTES: Yes, I'm Richard Estes, Staff Counsel, California Department of Food and Agriculture, I would like to call Don Shippelhoute to testify in relation to authenticating the documents that we would like to have introduced into the record today.

JUDGE CLIFTON: Thank you. I would ask that he be seated in the witness stand. I swear witnesses in in a seated position. So please make yourself comfortable.

MR. ESTES: And for the rest of the you in the audience, I believe the exhibits are in the process of being passed out or have already been delivered to you.

JUDGE CLIFTON: All right. We will need to determine how to mark them, what number to give them, and so we'll be doing that. And so I would ask that Mr. Shippelhoute make himself comfortable. We will do that as a preliminary matter.

Let me determine the number and so on first, if you
don't mind. All right. Let me ask, Mr. Estes, we would
anticipate this entire document having one number. Is that
acceptable?

MR. ESTES: Yes, that would be our preference.

JUDGE CLIFTON: Good. Then this exhibit will be
Exhibit 61 -- that's 61. Exhibit 61. It's a good
three-quarters of an inch thick of documents.

(Thereafter, Exhibit Number 61 was marked
for identification.)

JUDGE CLIFTON: We may have another exhibit, Mr. Francis is
tracking it down, the copies have already been made. So it is
a one page front and back.

MR. ESTES: Your Honor, we may have a second exhibit which
is a small chart that's been prepared in association of USDA,
that was not included with the original material. So I think
we'll probably just attempt to proceed and introduce that as an
exhibit of ours, provide it to you as a second exhibit,
although it is just a one-page document.

JUDGE CLIFTON: Mr. Francis, it was under Mr. Hill's
laptop. I'm marking my copy as Exhibit 62, and I invite the
rest of you to do the same with yours.

(Thereafter, Exhibit Number 62 was marked
for identification.)

JUDGE CLIFTON: There are additional copies of Exhibit 62
for those of you who would like. Excellent. Now, before we go
any further, I'm going to swear in the witness.

Would you raise your right hand, please? Do you
solemnly swear for affirm under penalty of perjury that the
evidence you will present will be the truth?

MR. SHIPPELHOUTE: I do.

JUDGE CLIFTON: Please state and spell your name.

MR. SHIPPELHOUTE: My name is Donald Shippelhoute, my last
name is spelled S-H-I-P-P-E-L-H-O-U-T-E.

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

DIRECT EXAMINATION

BY MR. ESTES:

Q. Good morning, Mr. Shippelhoute.

A. Good morning.

Q. I understand you have a brief statement you would like
to read into the record today?

A. I do. My name is Donald Shippelhoute, Branch Chief of
Dairy Marketing Branch of California Department of Food and
Agriculture. The Dairy Marketing Branch administers minimum
class prices, conducts cost analysis of farms and processing
plants, enforces unlawful trade practices, and collects and
disseminates statistical information relative to the dairy
industry.

I'm here today at the request of the USDA. I have been
authorized by the Secretary to submit CDFA data into the
hearing record today. I will limit my testimony to the data
set that we have compiled at the request of various parties in their preparation for the hearing. I will not be entering regularly prepared locations and data sets into the record.

I started in the dairy industry during high school as a relief milker. After which I attended CSU Chico, where I received a Bachelor of Science degree in Agriculture Business. I have been employed with the CDFA Dairy Programs for over 25 years. I started as a Milk Production Cost Analyst in the Dairy Marketing Branch, a job I held for four years before transferring to the Milk Pooling Branch.

In the Milk Pooling Branch I have worked in the operations of the Unit 4 over 20 years, serving as Supervisor for 13 of those years. The Milk Pooling Branch performs three separate functions; administers the Producer Settlement Fund and Quota Program; conducts compliance audits of handlers; maintains records of quota ownership in California; and enforces producer payments and manages producer's dairy trust funds.

In my role I have overseen the collection of analysis data needed to administer the Producer Settlement Fund and the Quota Program. This includes the computation of monthly pool prices, processing of quota transfers, and competing and collecting program assessments.

CDFA has no position relative to the outcome of this hearing. Accordingly, I will limit my comments to the
compilation of the data contained in these reports in order to remain neutral and avoid having CDFA associated with any particular position or proposal.

A footnote. In my testimony today, all numbers that I use will be Arabic numbers unless otherwise specified. I have gone through the data sets a number of times and find no Roman numerals.

Q. Mr. Shippelhoute, before I proceed to work through the data sets with you, could you just briefly describe the parties or the organizations that made requests for data from the Department?

A. We had a number of parties that made requests, the Cooperatives collectively and individually have made requests; Ponderosa Dairy made a request; the Producer Handler Association made a request; the Dairy Institute of California also made a request. And those requests either came in directly or via their counsel.

Q. So, let's begin. And before I proceed, I just want to know, I don't always get out of the office very often, so we'll try to work through these as effectively as we can. Let's start with A -- oh, and before I work through A with you, let me just ask you a couple of questions, again, just to reiterate for the record.

   Why are you here today?

   A. I'm here to introduce data sets into the record, data
sets that we have generated at the request of various parties.

Q. And do you have any opinion as to content of any of the
proposals under consideration?

A. I do not.

Q. So let us begin with A. What is item A?

A. Let me start off by stating that this exhibit has
several different data sets in it. Each of those data sets you
will see an identifier at the top right, it will be CDFA-A,
next one CDFA-B, CDFA-C. So references to A, B, C, etcetera
will be references to that identifier on the top right hand
side. And we also, for ease of reference, have individual page
numbers in those data sets.

So data set A has a series of prices, both pool and
class prices, going back for a number of years. The first four
pages of this data set is the Class 1 prices that are
announces, or were announced --

Q. Mr. Shippelhoute, may I just interject for a moment?
You are referencing class prices. Those are California class
prices, correct?

A. That's correct.

Q. Please proceed.

A. The first four pages are referencing class prices. It
has a class prices that were announced for the Southern
California marketing area, as well as the Class 1 prices for
Northern California marketing area.
In California, we announce class prices or prices on Class 1 for three different components; for pounds of fat, price per pound of solids, and price per pound of fluid carrier. You will also see in this document a price per pound of hundredweight, which is not to be confused with the blend price payment in the Federal Order. For California, that blend price is more of a reference number. Handlers actually pay based on pound of fat, solids not fat, and fluid carrier.

The pages 5 through 8 of this document are the Class 2 prices. Class 2 prices announced from January of 1995 through September of '15. Class 2 prices are announced for Northern California and Southern California as well.

The pages 9 through 13 are Class 3 prices. Again, for a period of time, there was a separate Class 3 price for Northern California and Southern California. At some point, if you will notice, that there is only one Class 3 price for all of California and that starts in January of 2009.

Classes, excuse me, pages 15 through 18 of this document have the Class 4a prices announced for California from January of '95 through August of 2015. One uniform Class 4a price for the entire state.

Pages 19 through 22 have the Class 4b prices that were announced from January '95 through August of 2015, and one uniform 4b price for the entire state.

And finally, pages 23 through 29 have the pool prices.
that were announced beginning with July 1969, carrying forward through July of 2015.

And there's three different pool prices that are announced. There is a quota price announced on the price per pound of fat, price per pound of solids, and then a hundredweight price base fat for, excuse me base price for fat, solids not fat, and fluid carrier, and overbase price for fat, solids not fat and fluid carrier.

Q. Now, Mr. Shippelhoute, before I ask you some follow up questions about data set A, could you sort of briefly summarize that the classes of milk that are referenced in the exhibit, for the record?

A. Generally speaking, the Class 1 is fluid milk products. Milk put in a bottle for consumption in a glass, or on your breakfast cereal.

Class 2, heavy cream, whipping cream, yogurt. Yogurt has not always been Class 2. I believe that change happened in July of, or excuse me, January of 1994.

Class 3 is frozen products.

Class 4b is hard cheeses.

And Class 4a is milk used to make butter and powdered milk.

Q. Now, in regard to this document, or this data set, did you compile or supervise the development of this data?

A. I did. As a Dairy Marketing Branch Chief, I supervise
the Statistics Unit and we compile that, this document, part of that unit. The only thing that we did different for compilation of this data set for this hearing, was that we extended the pool prices back to 1969, whereas this data set that has been on our website for a number of years did not go back to 1969.

Q. And so based on your work in developing the table, you expect this to be an accurate representation of the information presented in it?

A. I do.

Q. Before I move on to the next exhibit, I would like to turn it over to Brian Hill, counsel for USDA.

MR. HILL: Brian Hill. Yes, your Honor, we want to point out for the record and for people listening that this information is on the CDFA website. All of the information requested that we have, will be, are on the website, on CDFA's website right now and in order. So if you go to kind of read the site: http://www.cdfa.ca.gov/dairy/fmmo.html.

You can find all of this information in order, so at the top of the page you will have requested data and start with Class 1 Milk, Fat, SNF, which is what they just did. Table B, which would be the next one, will be monthly quota premiums and regional quota adjusters, January 2009 to July 2015, and so on. So just for the record, people listening, they can go to CDFA's website and follow these exhibits, this exhibit in order.
JUDGE CLIFTON: When were these documents placed on that website?

MR. ESTES: I believe they were posted to the website as soon as the Dairy Marketing Branch responded to the request, so they have been available for quite some time.

MR. SHIPPELHOUTE: I would make one correction, Mr. Hill, the posting on our website is not in the order in which they are going to be presented.

MR. HILL: Okay. But they are all on there.

MR. SHIPPELHOUTE: They are all on there, that's correct.

JUDGE CLIFTON: Good, that's excellent.

BY MR. ESTES:

Q. So, Mr. Shippelhoute, let's move to data set B.

A. Data set B is --

Q. So please characterize, please describe data set B.

A. Data set B provides the commodity prices that were used in determining the class prices. These commodity prices are fed into an economic formula to determine those prices. The numbers presented here, to begin with January of 2000 and go through June of 2015. You see across the top the headings CME butter, is reference to the Chicago Mercantile Exchange price announced for Grade Double A butter based on the announced, the price of announced, the 25th, excuse me, the 26th of the month prior to the 25th of the month. For example, January 2000, the price of 0.9011 shown there would have been the average butter

The prices for the 26th through the 25th are used in the 4a and 4b formula, whereas the price for the 26th through the 10th, which you will see in the next column, are used for the Class 1 formula.

So the CME butter is weighed there for the 26th through the 10th; the next column over has the nonfat dry milk price for the 26th through the 25th; the next column over has the, again, nonfat dry milk price for the 26th through the 10th; the next column over has the CME 40-pound block cheddar price for the 26th through the 25th; the next column over has the CME block cheddar, 40-pound cheddar price, for the 26th through the 10th; and the last two columns are Dairy Market News Western Whey price, these prices are the average of the most whey price that is published. And the, again, same format, the 26th through the 25th, followed by the column for the price of now 26th through the 10th.

Q. And Mr. Shippelhoute, what, I don't know if we can accurately say it is a title for the document, but there is a heading for the data set B. Could you read that into the record?

A. Commodity Prices Used in California Class Price Formulas.

Q. And did you -- did you compile or supervise the
development of this data?

   A. I do supervise the Statistics Unit, which is the unit that updates this.

   Q. And based upon your review of the data that's been provided in this data set, data set B, do you consider it to be an accurate representation of this data?

   A. I do.

   Q. Data set C. Mr. Shippelhoute, could you read the heading on this document and then provide a more detailed description of it?

   A. The heading on this document reads: Blend Prices by Month, Based on Regulated Minimum Prices, January 2000 through June of 2015.

   Q. And do you have any further elaboration on the data that's presented in the three pages of this document?

   A. I do. This document shows the average component test for fat and solids not fat that were in, they were pooled for the month given. It shows the blend price at the actual, based on the actual test of the milk that was in the pool that month, followed by a theoretical blend price, if you, will based on 3.5 percent fat and 8.7 percent solids not fat.

   Q. And did you -- did you compile or supervise the creation of this data?

   A. I did compile this.

   Q. Okay. So I guess we can fairly assume you consider it
to be accurate?

A. I do. I consider it accurate whether you want to assume it or not, whatever.

Q. Data set D. Mr. Shippelhoute, there is a heading to this data set that is in very small print. Could you please read it into the record?

A. Summary of Pool Pounds, Component Pounds, Producer Handler Exempt Class 1 (All in Pounds.)

Q. And could you elaborate upon the data presented in this document?

A. In this document, essentially there's three parts to this document.

Q. Let me back up for a moment before I ask you about -- apologize for the interruption. Let me ask you. It says, Summary of Pool Pounds, Compound Pounds, Producer-Handler Exempt Class 1. As best you can, could you, just since we're making reference to the pool in this document, could you describe the pool?

A. The pool is a revenue pool. It's a sharing, if you will, of producer revenues that are generated based on the AMS class prices, so we look at the announced class prices that are announced by the Dairy Marketing Branch. We'll supply those times the usage in the pool every month. And by usage, I mean how many pounds of fat, solids not fat, in the Class 1 fluid carrier were used by pool plants, and to determine a revenue,
and then those revenues are allocated between quota base and
overbase, and getting us the three separate announced pool
prices.

Q. And so in relation to this data set, what information
does it convey?

A. Again, this document is in three separate parts. The
first four pages show pounds of milk, pounds of milk, total
pounds of milk in the pool, the pounds of milk that was used in
Class 1 by producer-handlers that are exempt from the pool, and
then also the pounds of components that were pooled by class of
fat, solids not fat, and Class 1 for fluid carrier. And that
is the first four pages of this document, and that is for years
2000 through 2014, as are the other three sections.

Pages 5 through 8 show revenues generated by class, by
component. So it shows the revenue generated Class 1-fat,
2-fat, 3-fat, etcetera. Class 1 fluid carrier, and then Class
1, 2, 3, for FOB, solids not fat. Again, that's pages 5
through 8.

Pages 9 through 12 show the pounds in dollars for
fortification purposes. And for fortification in California
part of the pool computation is the handlers that use either
powder or condensed skim milk to bring their Class 1 products
up to California standards are given an allowance out of the
pool to use those products, and this section shows how many
pounds of solids not fat were used in the form of powder, and

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the dollars associated with the credit received for that
product. And it also shows the pounds of solids not fat in the
condensed skim, and the dollars in allowances for using the
condensed skim. And then another component of the pool is
transportation allowance, which I know has been referenced
prior in this hearing. This shows the dollars paid out via
that transportation allowance system for milk moved into
Northern California and Southern California.

Q. Mr. Shippelhoute, I understand it's been addressed in
earlier stages of the hearing, could you briefly describe,
however, or briefly define the transportation allowance as it
relates to the pool?

A. So one of the -- when you have a pooling system in
place, you want to eliminate some of the incentive to producers
to ship milk to a higher value usage and to encourage
procedures, or at least make them indifferent as to whether or
not they ship their milk to a distant bottling plant versus a
local manufacturing plant. The pool allows transportation for,
provides transportation allowance dollars that are incentives
to move milk to those more distant plants.

Q. Now, in relation to this data set, data set D, did you
compile the data or supervise the people who did so?

A. I did.

Q. Which did you do, did you compile it or supervise?

A. This one I compiled.
Q. All right. And so based upon your expertise as explained in your opening statement, you would consider it to be an accurate presentation of the data?

A. I would. And I misspoke, by the way, there is a fourth portion of this document as well. And it shows the pool usage percentages for components. It shows what percent of the pool was made up of Class 1, 2, 3, 4a and 4b, fat and solids not fat.

Q. And would you state for the record which pages of the data set?

A. Yes, that is pages 13 through 15.

Q. Thank you. Data set E. Again, there is a heading for this data set in small font, in a small font type. Could you read that into the record?

A. I could if I had E in front of me. Thank you.

Data set E. The heading reads, Pool Usage by Class as Reported to CDFA by California Milk Handlers by Area, January 2010 through January of 2015.

Q. Now, for the purposes of this data set, what do you consider to be a handler?

A. For the purpose of this data set, a handler is anybody that reported receiving bulk milk and processing it into a finished product.

Q. So that would be all the classes that you described earlier?
A. That's correct.

Q. Okay. Could you elaborate in more detail upon the information presented in this data set?

A. So the request for this data set asked for us to break down the plans by area more than we ordinarily do. They asked that we use the areas that are used in our hauling survey. And on the last page of this document, page 5 in the footnotes there is a reference to our web page where you can find the map of that, of those areas. Those areas do not follow a county line so it gets a little fuzzy to define them real clearly based on the city of the plant and/or farm. And so for the purpose of confidentiality I had to consolidate some of those areas.

And, again, in the footnotes you will see that I consolidated Bay Area on this document, will not correspond exactly to what you would see in that map. The Bay Area for this document includes North Bay, South Bay, and Humboldt-Del Norte. Those are the areas that we see in the hauling survey map.

Q. And now I read where it says Humboldt, Del Norte, minus Humboldt Creamery?

A. So again, the Bay Area, for the purposes of this document I had to consolidate some areas. I consolidated the North Bay, the South Bay, and Humboldt-Del Norte. However, I did have to move the volume from Humboldt Creamery out of this
area and put it into the North Valley area.

Q. And why is, what is the reason for having to do that?

A. To protect the proprietary information of Humboldt Creamery. You will also notice the same thing for South Valley. In this document, South Valley includes the South San Joaquin area and Barstow areas, it does not include the production for Producers Dairy. Producers Dairy, production was moved into North Valley as well.

Q. And there was no such issue with the South Bay from my reading of the document?

A. Well, the South Bay was lumped into the Bay Area. Southern California?

Q. Excuse me, there's Southern California here.

A. Southern California there was no such issue.

Q. All right. Is there anything else that you would like to state about the content of this data?

A. No, there's not.

Q. Okay. Did you compile this data?

A. I did.

Q. And based upon your experience, do you consider it to be an accurate compilation of the data?

A. I do.

Q. Data set F. Could you read the heading of this data set into the record?

A. As printed on here, it's says, Annual California Milk
Pool Production: Quota Fat and Solids Not Fat As a Percentage by Month.

Q. Okay. At the risk in asking an impossible question, could you sort of briefly summarize quota in relation to this data set?

A. Producers in California can own quota. The quota that they own is held on a daily basis. And when we compute the pool, we convert that daily quota volume into a monthly figure. The quota fat in this document is a total pounds of milk that were allocated to quota for the given month, followed by the pounds of fat is allocated to the base fat pool, and then the overbase fat pool, followed by the total pounds of fat in the pool for each of the given months.

Q. Now, as part of your summarization of the data and additional summarization of the data in the document, could you also describe the period for which the data was developed?

A. This information runs from January of 2000 to May of 2015.

Q. I see. And is there anything further you would like to state about the content of this data set?

A. The only piece I did not touch on is that, computed in here is the percent of quota used in the pool or percent of the pool that was quota, both in the fat side as well as the solids not fat pool.

Q. Did you compile this data?
A. I supervised, I oversaw the compiling of this one.

Q. And you have reviewed this data set after it was compiled by another staff person?

A. I did.

Q. And what was your conclusion?

A. That it is an accurate document.

Q. Data set G. Could you read the heading of this data set into the record?

A. Annual California Milk Pool Production: Quota Fat and Solids not Fat as a Percentage by Year.

Q. And what is the time period for which it applies?

A. This covers -- the request that came in requested this data from 1969 through 2014. We weren't able to compile 1969 to 1974, so where the data has been provided is from 1975 through 2014.

Q. And can you elaborate upon the data beyond what you have already described?

A. I can.

Q. The data presented shows on an annual basis, the pounds of product that were pooled -- and by product, a total pounds of milk -- the total pounds of fat included in the pool, the sub pounds of solids not fat in the pool, the average pounds of daily quota for the year, the average pounds of daily quota pounds not fat, the total pounds of quota fat for the month, or excuse me, for the year, the total pounds of quota solids not
fat for the year. And then the bottom two percentages would be
the percent of the pool that was covered by quota in fat and
solids not fat.

Did you compile this data?
A. I reviewed it the day after it was compiled.

Q. All right. And what was your conclusion?
A. That this information is accurate.

Q. There is a, I guess an asterisk; is that correct? An
asterisk at the bottom of the data set? Could you read that
and describe the significance of it?
A. It includes plant gain "overage" and will not match a
total from the monthly tab. So when this was prepared it was
part of the a multi-tab spreadsheet, and I believe CDFA-F was
another tab in that spreadsheet, and so that footnote was to
acknowledge that the monthly totals on CDFA-G, not necessarily,
or excuse me, annual totals on CDFA-G would not necessarily
match the totals if one were to sum up the numbers on CDFA-F.
The difference is due to plants being charged for what we call
plant gain, others refer to as overage. Handlers pay into the
pool for that overage, but it is not paid out to producers
directly because there's not any producer milk to associate
that revenue with.

Q. Data set H. Could you please read the heading into the
record?
A. Summary of Transportation Allowances and Credits for
January 2000 through June of 2015.

Q. As you have already described the transportation allowance, I won't ask about that again since we have already explained it for the record, but could you elaborate on the data presented in that data set?

A. Well, I will elaborate on the transportation credit, since we have not described that yet. This document does show the dollars paid out of the pool for both transportation allowances and credits. I described the transportation allowance which encouraged milk to move from a branch to a plant. The transportation credit similarly encourages movement of milk into processing plants with higher usage, but it moves milk from plant to plant.

The document shows the transportation allowance dollars paid out for milk moving into Northern California as well as Southern California, followed by transportation credit section which shows the amount of money paid out of the pool to move fat and solids not fat into Class 1 usage.

Q. All right. So higher usage for the purposes of transportation credit is considered to be a higher usage that moves it toward Class 1 utilization?

A. Transportation allowances are paid out for milk that is moved into plants that have more than half of their production Class 1, 2, and 3, and so all milk moving into a plant, even if it has, say 51 percent Class 1 usage and 49 percent Class 4b
usage, you are not going to find that mix, but hypothetically, all the milk moving branch to plant would qualify for transportation allowance. The reason I state that, is because on transportation credit, we only pay the credit on a portion of the milk moving branch to plant, or excuse me, plant to plant, that is Class 1. And so if milk moves plant to plant under the transportation credit system into that same plant with 51 percent Class 1 usage, it would only receive transportation credit on 51 percent of that milk.

Q. Is there anything in addition to what you have -- oh, Candace has drawn my attention to the a footnote at the bottom of the document, some notes. The bottom of page 3, could you explain the, explain the note and its purpose.

A. I believe this footnote was probably cut and pasted because this document does not show pounds, this only shows dollars. Again, this was part of a multi-tab spreadsheet at one point.

Q. All right.

A. So that the bottom part of that footnote is valid where the transportation allowance shows the dollars paid to producers on milk moved to Northern and Southern California.

Q. So then we should strike the first sentence starting with the word fortification, but retain the second one starting with transportation allowances?

A. That's correct.
Q. Thank you. Did you -- did you compile this data?
A. I did.

Q. Do you consider it, on what basis do you consider it to be an accurate representation of the data developed?
A. Based on my experience in pooling and compiling, calculating the pool and paying the credits out of the pool.

Q. Data set I. Could you read the heading of this data set into the record?
A. Monthly Quota Premiums and Regional Quota Adjusters, January of 2009 to July of 2015.

Q. What is a quota premium?
A. The quota premium -- let me back up a second.

We touched briefly on what quota is. Milk in the pool is allocated quota base and overbase. Quota milk is entitled to a higher revenue than other milk. The premium is based on pound to solids not fat. Quota solids receive 19 and a half cents per pound more out of the pool than non-quota solids. This quota premium simply is the amount of money needed to set aside off the top of the pool to finance that additional $1.70, or 19 and a half cents per pound of solids not fat paid on quota milk.

While that is a premium that is announced, not all of that money actually makes it to the producers. There is a regional quota adjuster that adjusts the value of quota milk based on the location of the farm where it's produced, and so
adjusters are deducted off of the payment or the credit out of the pool to the producers. So while we initially need to set aside $13 million using July, January 2009 for an example, $1.1 million of that would have been withheld from producers and so the full $13 million didn't have to come off the top of the pool.

Q. All right. In terms of the data presented in this data set, in terms of the information in this data set, is there any additional elaboration that you would like to provide?

A. No.

Q. Did you compile this data?

A. I did.

Q. And on what basis do you consider it to be an accurate representation of the data?

A. Again, based on my history in the milk pooling and working with these numbers for 20-plus years.

Q. Data set J. Could you read the title of the data set or the heading?

A. There's a heading, this document or data set is simply a PDF. I made PDF's of tables, various tables, all of them look like Table 6, out of the California Dairy Statistics Annual, so each page summaries, or excuse me, titles can be similar. The title reads: Table 6. Commercial Production of Milk and Milk Fat by Counties and District, California, 1980.

Q. So that if you could just pause for a moment. That's
Q. Let's read through these in sequence. Page 2?
A. Page 2, Table 6. Commercial Production of Milk and Milk Fat in Average Milk Fat Test in California by Counties and District, 1985.

Q. Page 3?
A. Page 3, Table 6. Commercial Production of Milk, Milk Fat and Average Milk Fat Test in California by Counties and Districts, 1990.

Q. Page 4?
A. Table 6. Commercial Production of Milk, Milk Fat, and Average Milk Fat Test in California by Counties and District, 1995.

Q. Page 5?
A. California Milk Production by County, Table 6. Commercial Production of Bulk Milk, Average Milk Fat, and Solids not Fat Test in California by County and Region, 2000.

Q. Page 6?
A. Commercial Production of Bulk Milk by County, Commercial Production of Bulk Milk, Average Milk Fat, and Solids Not Fat Test in California by County and Region, 2005.

Q. Page 7?
A. Commercial Production of Bulk Milk by County, Commercial Production of Bulk Milk, Average Milk Fat, and
Solids Not Fat Test in California by County and Region, 2010.

Q. So let's go through this document a little bit. In the 1980 document, could you describe the Table 6 for 1980, could you describe the data that's included in this document?

A. Included in this document is the total pounds of milk in thousand pounds, and it is separated into market milk, also known as Grade A milk, or manufacturing milk, known as Grade B milk, and the total milk.

The next three columns would be the milk fat in thousand pounds. Again, broken down between market milk and manufacturing milk.

And the final three columns, milk fat -- that should be solids not fat. And I'm sorry, no, fat is right. That showed, does not show the pounds, this shows the percentage. So it shows milk fat percentage by area for market milk and manufacturing milk.

Q. And so is that summarization accurate through the years of page 2 for the Table 6 for 1985, and page 3, Table 6, for 1990?

A. It is.

Q. Now, page 4, the Table 6 for page 4, is that also likewise the same, or is there any difference?

A. The only difference is that the, in the percentage column, the heading indicates pounds, but it's not, it's percentage.
Q. Now, on page 5 we have solids not fat starting in the year 2000. So is the table, is this Table 6 based on the same principles as the earlier table, except for the additions of solids not fat, or are there other changes that should be noted?

A. I would note that we eliminated the fat pounds in 2000, and simply put the fat test. And then the final three columns, rather than being fat test, are now solids not fat test.

Q. And so this would be true for the 2005 and 2010 tables as well?

A. That's correct.

Q. I believe, is there also a state rank added in these tables starting in 2000?

A. There is.

Q. And what is the state rank?

A. It shows where that county ranks in milk production. So number 1 would be the county that produces the most milk in that year. Number 2, the second, and so on.

Q. So again, is there any additional elaboration that you would like to provide beyond what we have already discussed?

A. No.

Q. And you did not compile or develop this -- well, let me back up for a moment. What is the source of this information?

A. So the source of this information is the monthly reports submitted to the Department. Most of this comes
through the Milk Pooling Branch where handlers report to us each month or pooling each month, how many pounds of milk were produced by farm, both for Grade A farms and Grade B. That information is compiled and then provided to the Dairy Marketing Branch, who uses it to generate the California Dairy Statistics Annual, which is the publication that these were PDF'd out of.

Q. And just generally speaking, how long has the Statistics Annual been published by the branch?

A. I believe going back into the 1950's, 1930's? I stand corrected. It is a very long history.

Q. Do you consider this information to be an accurate representation of the data?

A. I do.

Q. And on what basis?

A. Based on my time in Milk Pooling providing this information to dairy marketing. Publication in the annual.

Q. Data set K.

A. Data set K also has been pulled out of historic California Dairy Statistics Annual. It is from 2000 to 2014, and it shows commercial production all milk in California by county, by month, in pounds. The first two pages are for the year 2000; followed by pages 3 and 4, which are for 2001; pages 5 and 6 being for year 2002; 7 and 8 for 2003; 9 and 10 for 2004; 11 and 12 for 2005; 13 and 14 for 2006; 15 and 16 for 2007.

JUDGE CLIFTON: I'm sorry, I got to stop you. I don't know if everybody else's sets might be missing a page. I go from 16, 17, 20 in my set. Am I the only one?

MR. ESTES: Your Honor, I have a complete set, I can't speak for others.

JUDGE CLIFTON: You keep yours, Mr. Estes. We can do this later, but let's come back and -- so, okay. I'm in K and I, and I am missing 18 and 19. And when Mr. Estes has moved on from this, he can give you a page to copy if you don't have one to copy.

MR. ESTES: I believe Candace Gates from the Department will proceed to do that.

JUDGE CLIFTON: All right. Very good. Thank you, Mr. Estes, we'll continue on, then.

MR. SHIPPELHOUTE: And where would you like me to continue from?

JUDGE CLIFTON: Let's see, tell me a little more about what 18 and 19 were, since I wasn't paying close attention while I was looking for them.

MR. SHIPPELHOUTE: Sure. Page 18 is the second half of the year 2008. Page 19 is the first half of the year 2009. Page 20, then, would be the second half of the year 2009. 21 and 22 would be for the year 2010; 23 and 24 would be 2011; 25 and 26
would be for the year 2012; 27 and 28 would be for 2013; and 29 and 30 would be for 2014.

I would note that some counties, because of their limited number of producers, there is not an individual county number listed. However, the volume in those counties is included in the regional totals and the statewide totals.

BY MR. ESTES:

Q. And what is the basis for that omission?

A. Again, limited number of producers, to protect proprietary information, confidentiality, and not publish those numbers.

Q. And again, please state where you obtained the information?

A. This information comes from monthly reports that are submitted to the Department by milk handlers, processors in the state, and they detail to us how much milk they purchase from each individual dairy farm and where they sent it to.

Q. Are these published statistics in the annual as well?

A. These documents are directly from the California Dairy Statistic Annual.

Q. And do you consider these, do you consider this data to be an accurate representation --

A. I do.

Q. -- of what's contained in the annual? And why is that?

A. Again, based on my time in Milk Pooling compiling this
information and providing it to Dairy Marketing for publication in this data set.

Q. Data set L. Please read the heading of this data set.

A. California Milk Production Fat, Solids not Fat by County, by Month, January 2000 through December of 2014, in pounds.

Q. And could you elaborate upon the information contained in this data set?

A. The information contained in this data set shows the same or similar information to what we had just gone through, where we break down the pounds of milk produced in each county by month. Not only pounds of milk, but also pounds of fat and pounds of solids not fat.

Q. And again we encounter the same issue that some counties are not, do not have a number attributed to them because of trade secret confidentiality?

A. That's correct.

Q. Is there any additional elaboration you would like to make upon the data contained in this document?

A. No, there's not.

Q. And did you compile this data?

A. I supervised the compilation of this.

Q. And what is the source of the data?

A. Again, it's based on information provided to the Department from the processors and handlers in the state,
detailing amount of milk they purchased from each individual
farm every month.

Q. I see. And do you consider this, on what basis do you
consider this to be an accurate representation of this data?
A. Based on my time in Milk Pooling compiling the
information and providing it to Dairy Marketing for
publication.

Q. Data set M. Can you please read the heading of this
data set into the record?
A. Monthly Ranch to Plant Movement by Month, by Market
Area, by Transportation Allowance Status, January 2009 through
December of 2014 (In Pounds of Milk.)

Q. And what is the data conveyed in this document?
A. This shows the amount of milk that moved into the
different marketing areas, and it's further differentiated by
how much of that milk moved into plants where the milk
qualified for transportation allowance, which is shown in the
column headed the term qualifying. And milk that went into
plants where the milk did not qualify for transportation
allowance, those numbers will be in columns headed with the
non-qualifying title.

Q. Is there anything further you would like to state about
the data in this document?
A. There is. If you look at the footnotes, there is
8 to 10 million pounds a month that do not show up in this
report that we know were produced in the state. When I was querying this data to prepare it for this document, it didn't meet the same criteria of all the other milk, and so while I was able to identify the discrepancy between the total milk pounds in this report versus what we knew, what I know to be the total milk produced in the state, I wasn't able to pull that out on a monthly basis. But this would give a very good indication of the percent of milk moving into each area that qualified for transportation allowance versus those that did not qualify for transportation allowance.

Q. The document makes reference to a Northern California plants and Southern California plants. What is the distinction?

A. Northern California plants are plants that are located in the Northern California marketing area as defined in the stabilization of marketing plans. There is two separate plans in the state, one for Northern California and one for Southern California. The two documents read identical except for a few portions where we're talking about Class 1, 2, and 3 prices.

Q. So the Southern California data would be associated with the stabilization plan for Southern California?

A. That's correct.

Q. All right. Did you compile this data?

A. I did.

Q. And you consider it to be an accurate representation of
this data with the exception noted in relation to the
8 to 10 million pounds per month?

A. I do.

Q. And on what basis do you consider it to be reliable?

A. My experience in Milk Pooling compiling this type of
information.

Q. Okay. Data set N. Could you please read the heading
of this document into the record?

A. All right. Right after I get my data set E that just
popped up out of nowhere.

Data set N. Number of California Dairies by Herd Size,
by County, July of 2015, Grouped to Match as Closely as
Possible to Areas from the CDFA Hauling Survey.

Q. And what is -- what does this data represent?

A. This data represents the number of farms broken down by
herd sizes and by area. If you look to the left, there is
titles that show various areas, the first area being
Humboldt-Del Norte, North Bay, South Bay. Next area, Northern
Sacramento Valley. You can read down and get those areas. And
on the right hand side there's further definition of what those
areas are.

The next column shows the number of herds by size. So
for example, at the top left, the number of 453 would indicate
that there 153 farms less than 500 cows in that
Humboldt-Del Norte, North Bay, South Bay Area.
Going across then, you have different herd sizes from 500-999 cows; 1000 to 1999 cows; and over 2000 cows.

Q. Now, there's a note listed beneath the data. Could you describe that note and its purpose?

A. Again, the CDFA hauling survey areas do not follow county lines, and the number of dairies by herd size from this data set is generated by county. As a result, the counties were grouped into the different CDFA hauling survey areas according to their best fit. The counties corresponding to each area are listed above.

And again, I mentioned earlier, if you look on the top right in bold is an area heading, and then underneath that would be a list of counties that fall within that area.

Q. Now, did you compile this data?

A. I did over, I didn't compile it, but I did oversee and I did look at it for, to make sure it was a reasonable number.

Q. And what is the source of the data?

A. The source of this is the CDFA Animal Health and Food Safety Branch. And the reason that we went to them for this information is that as part of Dairy Marketing and Milk Pooling, we don't collect information on herd sizes, we collect volumes of milk produced. And so a better source of this information was the Animal Health Branch. I was able to use the milk pooling information that we generate each month to kind of, to look at the information provided. And based on
assumptions that we can make regarding herd production, this information does appear to be correct.

Q. So you could cross-reference the fact that some areas have larger herds and would, therefore, have larger production amounts?

A. Yes.

Q. And come to a conclusion that the herd size data conforms to type of milk production data that you have been involved in?

A. Yes.

Q. Do you have any additional reasons why you consider it to be reliable?

A. I do not.

Q. Okay. Exhibit O. Could you read the heading of data set O?

A. Grade A Milk Used in Manufacturing Classes not Pooled, January 2000 to June of 2015.

Q. Before I ask you about the data itself, could you briefly describe the concept of the milk not being pooled?

A. So while in California minimum prices do apply to all market milk, not all market milk revenue has to be pooled. If milk is under direct contract with a nonpool plant, while that nonpool plant does have to pay at least the minimum grade, class price for that milk -- again, it doesn't have to be pooled. So this document would show volumes of milk that were
under direct contract with a nonpool plant Grade A milk shipped into the nonpool plants, and therefore, not pooled.

Q. And what are manufacturing classes?

A. Manufacturing classes, primarily Class 4a and 4b, but also Class 3.

Q. And please elaborate on what the data in the five pages of this document represents?

A. So these five pages represent information from, by month, from January of 2010 to June of 2015. It shows the pounds of Grade A milk, Grade A fat, pound of Grade A solids, with a footnote on the solids, we didn't start collecting the solids number until we updated our computer system in 2008. So again, it shows the pounds of Grade A milk that moved into the nonpool plants. That revenue, any revenue generated by those manufacturers is not in the pool.

Q. There's also a double asterisk here about some data being proprietary?

A. There is.

Q. What is that about?

A. For that month, we apparently had so few nonpool plants reporting, that we were not able to publish that number.

Q. And lastly, what is Grade A milk?

A. Grade A milk is milk that meets the definition of market milk as defined in the California Food and Agriculture Code.
Q. Did you compile this data?
A. I supervised the compilation of this.
Q. And did you review it?
A. I did.
Q. And what was your conclusion?
A. It was correct.
Q. And why did you conclude it was correct?
A. Based on my years in pooling, I did have some questions on the data set and went back and reviewed the output with the person that was pulling this together, and verified that the numbers that were, the questions to me that were, in fact, correct.
Q. Data set P. Please read the heading of data set P.
A. Grade B Milk Used in Manufacturing Classes not Pooled, January 2000 through June of 2015.
Q. And what is Grade B milk?
A. Grade B milk, also known as manufacturing milk, is milk that is produced, for the purpose of this report, milk produced in California that did not meet the definition of market milk.
Q. And what is market milk used for primarily in relation to the class utilization?
A. Market milk can be used for any products. It can be used for fluid products, manufacturing products, anything and everything. Whereas Grade B milk is limited to use in manufacturing products. It's primarily used, most of it in
California is used in cheese, but there's also some that goes into butter and powder.

Q. Now, in terms of the data set forth in this document, can you provide some additional elaboration?

A. Again, the same, similar footnote on the solids not fat. Again, we didn't put the solids not fat information on this through the pooling process until 2009. As far as the numbers, they kind of speak for themselves. You see some fluctuations from year to year as producers make selection to either switch from Grade A to Grade B, and those selections have to come on the first of the year, which is why you will see large swings in between December and January of some years.

Q. Did you compile this data?

A. I oversaw the compilation of this.

Q. And did you review it upon completion?

A. I did.

Q. And what was your conclusion?

A. That it is accurate.

Q. And on what basis do you consider it to be accurate?

A. Based on my years in pooling, compiling and providing this type of information.

Q. Data set Q. Please read the heading for data set Q.

A. Pounds of Producer Milk and Quota for the Various Hauling Regions by Month, January 2012 through June of 2015.

Q. And there's a, I believe on number 1 here, a footnote
that appears at the end of the document on page 6. Could you read that footnote and explain it?

A. Again, we made reference to the CDFA Milk Hauling Survey areas. There are some areas that were designated for the purposes of the Milk Hauling Survey that we produce twice a year. Those areas are listed or can be seen on a map that can be viewed at the website that's provided in that footnote.

Q. And just to read it for the benefit of people who may be watching, and all throughout USDA counsel, correct me if I read, use the wrong web language --


I lost my train of thought for a moment, did I ask you to elaborate on the data in this document?

A. My train left with yours.

Q. Hopefully they are both going in the right direction.

I think we started with heading.

JUDGE CLIFTON: I think not, because you wanted to get to the footnote, so now going back.

BY MR. ESTES:

Q. So let's address the data set itself. What — what is contained in the data set?

A. The data set shows the monthly pounds of milk fat and solids not fat produced in each of the areas that are shown in the column headed Hauling Region. It also shows, of that milk, how many pounds of the fat that were produced in that region.
were allocated to quota, and how many pounds of the solids not
fat that were produced in that region were allocated to the
quota solids not fat.
Q. I see. I don't think we addressed this subject
earlier, so just for the purposes of completeness, what is
solids not fat?
A. Milk is made up of many different substances, not just
water. You have fat, you have solids not fat, which include
protein, lactose, ash, quite a number of other molecules in
there.
For pricing purposes in California, we price the milk
based on pounds of fat, and then the milk, excuse me, the
pounds of solids not fat. So any solids that are in the fluid
that are not included in the fat pounds. And then again, for
fluid carrier touched on earlier, we do price the fluid carrier
which is essentially the water in milk that is used in the
Class 1 price.
Q. Is there anything more that we should know about the
data that is contained in this data set?
A. No.
Q. And did you compile this data set?
A. I did.
Q. And why do you consider it to be reliable?
A. Based on the fact that I compiled it, I reviewed it, I
was doing it, and looked at it for reasonableness as I was
done. And based on my years in milk pooling and compiling this type of information.

Q. Data set R. Could you please read the heading for data set R?

A. Average Number of Market Milk Farms by Area with More than 315,000 Pounds of Milk Production Per Month, by Hauling Area, 2012 to 2015.

Q. And what does this data set convey?

A. This conveys the number of farms in each of the regions that are shown in the column on the left that is titled Hauling Area. It shows the number of farms in each of those areas that produces more than 315,000 pounds per month on an average basis for each of the years indicated in the column heading.

Q. And I would just note again that the map for the hauling survey can be provided at the link that I described earlier I believe in relation to the last data set?

A. That's correct.

Q. Did you compile this data?

A. I did.

Q. Why do you -- do you consider it to be an accurate representation?

A. I do.

Q. Of the data? And why do you consider it to be accurate?

A. Again, based on my years of experience in Milk Pooling
and I'm familiar with the information provided regarding the
handler, excuse me, handler and producer location and volumes.

Q. Exhibit S. Please read the heading of Exhibit S.

A. Exhibit S. Bulk Milk from California Cooperatives

Diverted to Out-of-State Plants, January 2000 through June of
2015.

Q. What is bulk milk?

A. Bulk milk is milk that has not been diverted into a

finished product and has not been put into a consumer-sized

package.

Q. And what do you consider to be an out-of-state plant?

A. Any plant that is not located in California.

Q. What is the data presented in this data set?

A. This shows diversions. The term diversions means that
the milk has moved directly from a farm to a plant other than
the company that is contracting with the producer. So in this
document, this is milk that was under contract or members of
the California Cooperative, the milk has been dispatched by a
Cooperative to an out-of-state plant.

Q. And there are a couple of asterisks. There's an
asterisk here that I think explains a lack of data in solids
not fat pounds section. Could you read that footnote?

A. Solids not fat pounds not collected prior to

September of 2008.

Q. And is my assumption correct, does that asterisk
explain the absence of that information?
   A. Yes, it does.
Q. Is there anything that you would like to add in relation to the data contained in this data set S?
   A. No, there is not.
Q. Did you compile this data?
   A. I oversaw the compilation of this one.
Q. And did you review the data?
   A. I did.
Q. And what was your conclusion?
   A. That it was accurate.
Q. And why do you consider it to be accurate?
   A. Based on my years of experience in Milk Pooling and reviewing the reports, compiling the information for dissemination.
Q. Data set T. Please read the heading for this data set.
   A. California Handlers Reporting Production at Least One Month of the Year.
Q. Please describe the data set.
   A. This data set reports handlers by city for the years 2005 and the year 2015. I queried our data set and looked for any handler that reported any production during those two years, and listed the name of anybody who reported production and the city in which their plant was located.
Q. And did you, from what I am hearing you say, you did
this personally?

A. I did.

Q. And do you consider it to be an accurate compilation of the information?

A. I do.

Q. And why do you consider it to be accurate?

A. Again, based on my years of experience in pooling, receiving reports, compiling information and disseminating it.

Q. Is it fair to say that you're probably pretty familiar with many of these handlers and their locations?

A. Yes.

Q. Data set U. Please read the heading.

A. California Class 1 Sales Out-of-State, January 2000 through December 2014 in gallons.

Q. And what is, what does this data set represent?

A. That data set represents the pounds, excuse me, the gallons of milk that processors in California reported as having sold outside of the State of California. And it is by month, beginning with the month of January 2000 through December 2014.

Q. Now, there's a footnote 1 in the heading. Please read the footnote that is set forth on, at the bottom of page 4.

A. Includes all whole, reduced fat, lowfat, and skim market milk product sales.

Q. And why has that footnote been included?
A. This information is provided to the Dairy Marketing Branch Statistical Unit every month when all handlers report to the branch on their monthly statistical report. And when they complete that report, there are various classifications of milk. Included in those classifications is whole milk, reduced fat, lowfat, and skim milk. So this footnote is simply to indicate which products were included in these numbers.

Q. Did you compile this data?
A. I did not. I oversee, supervise the unit that does.

Q. And did you review it?
A. I did review it.

Q. And what did you conclude from your review?
A. It does look accurate.

Q. And why did you reach that conclusion?
A. In my time in Milk Pooling, again, I interacted a lot with the Dairy Marketing Branch providing information, and there have been instances where we, at that time, myself being in Milk Pooling and Dairy Marketing, had to compare milk pooling numbers, dairy marketing numbers, trying to make sure that the numbers on the Class 1 sales as reported to Dairy Marketing, were consistent with what was reported in milk pooling. And so during those reviews, I would, I looked at those MSR's trying to find any discrepancies. And so based on my review of those MSR's during those times, these lock accurate.
Q. Data set V. Please read the heading of data set V.

A. Bulk milk, skim, or cream transferred by Cooperatives to Out-of-State Plants, January 2000 to June of 2015.

Q. Is there anything about skim or cream being included in this data set that we should know?

A. This data, the request came in for bulk milk, skim, and cream or condensed skim transferred. The way California treats condensed skim, we treat it as a finished product at the plant that manufactures that condensed. And so we are able to break that out of its plant makes condensed skim and ships it to an out-of-state plant, we don't know that it left the state. And so the reason for this title was to show that it does not include the condensed skim.

Q. And what is the information conveyed in this data set?

A. This conveys the amount of bulk milk, skim cream as indicated in the title, that cooperative plants transferred to out-of-state plants. That transfer being a movement of product from a plant in California to a plant outside of California. So that term "transfer" differentiates this from the CDFA-S which shows the diversions which would be branch to plant movements of milk.

Q. Now, there are, there's a couple of asterisks at the conclusion of this data set on page 5. One of them we have already addressed, which is the data does not include condensed skim. But there is also this recurrent issue with solids not
fat pounds. Could you read the first asterisk relating to solids not fat pounds?

A. Solids not fat pounds not collected prior to September of 2008.

Q. And that's the explanation for the lack of information in the data set?

A. That's correct.

Q. Where specified?

A. Correct.

Q. Did you compile this data set?

A. I oversaw the compilation of this one.

Q. And did you review it?

A. I did.

Q. And what did you conclude upon your review?

A. I concluded that it was an accurate and correct representation of the data.

Q. And on what did you base your conclusion?

A. Again, based on my years in Milk Pooling, processing reports, compiling information, providing information to the industry.

Q. Okay. Data set W. Please read the heading of data set W.

A. Bulk Proprietary Milk, Skim or Cream, Transferred to an Out-of-State Plant, January 2001 through June of 2015.

Q. Now, an earlier data set referred to bulk milk, and
this one refers to bulk proprietary milk. Is there a
difference?

A. I believe the earlier one referred to bulk milk from
California Cooperatives. This one differs in that it shows the
amount of bulk milk transferred by plants that are not
cooperatively owned, so they are owned by individual
corporations or individuals or partnerships, so we refer to
those at proprietary plants. And it shows the same
information, just the ownership of the shipper is proprietary
as opposed to cooperative.

Q. And what information is conveyed in this data set?

A. This represents the amount of milk skim or cream that
was transferred from a plant that was owned proprietary in
nature, transferred to an out-of-state plant. Again,
out-of-state being a plant outside of California.

Q. Did you compile the information?

A. I oversaw the compilation of this.

Q. And did you review this data set?

A. I did.

Q. And what did you conclude upon reviewing it?

A. That it is accurate. I would add a comment. This is
only for pool plants. If there are some milk skim or cream
that was moved from a nonpool plant to an out-of-state plant,
it is not reflected in this document.

Q. Okay. And why do you consider this compilation to be
accurate?
A. Again, based on my years in milk pooling and working with data.
Q. Data set X. Please read the heading of data set X.
A. Bulk Milk Skim and Cream Received by California Pool Plant, Condensed Skim Reported at Skim Equivalent.
Q. What does this data set represent?
A. This data set, as with CDFA-Y and CDFA-Z, which are to follow, all have to do with bulk milk that was received in California plants sourced from an out-of-state source. It breaks that receipt down by the source state. So for January 1995 -- this data is from January of '95 to June of 2015 -- it breaks it down by month. For example, January 1995 there was a total of 23,250,427 pounds of bulk milk imported into California, and if you follow across on that month, you will see under the individual county, or excuse me, individual states, what state that milk originated from.
Q. Okay. And did you compile this information?
A. I did.
Q. And why do you consider it to be an accurate representation?
A. Based on my years of experience working with this information and pulling it out for this report that we update more regularly than I can remember.
Q. I would just like to note, it's been brought to our
attention in terms of data set W, that it states Bulk
Proprietary Milk, I believe it was the exhibit previous to this
one?

A. Uh-huh.

Q. It states the timeframe of January 2001 to June 2015.
I would just like to note for the record that it should state,
I believe January 2000 to June 2015.

A. Yes, it should have. My error.

Q. Please make note of it. Data set Y. Please read the
heading into the record.

A. Bulk Milk Skim and Cream Received by California Pool
Plants, January of 2000 through June of 2015, Condensed Skim
Reported at Skim Equivalent. This data set is exactly the same
as data set CDFA-X, the only difference is that this data
request or requested from 2000 through 2015, so it has five
less years of information on it than CDFA-X.

Q. Is there any additional elaboration that you would like
to provide about this data set?

A. No, there's not.

Q. Did you compile this data set?

A. I did.

Q. And why do you consider it to be an accurate
representation of the data?

A. Based on my experience in the Milk Pooling, collecting,
processing, disseminating of information.
Q. Data set Z. Please read the heading.

A. Classification of Bulk Milk Skim and Cream Received by California Pool Plants, Condensed Skim Reported as Skim Equivalent.

Q. And what does this -- what information does this data set convey?

A. This data set, as I mentioned earlier, is also, represents the milk it receives in California processing plants from out-of-state source. What I have done here is show of that milk that came into California plants, what class it was allocated to for pool settlement purposes.

Essentially what we do is we credit the plants the same amount that they are charged for that milk, so that there's no pool obligation on this milk coming into California from out-of-state.

Q. And did you compile this data?

A. I did.

Q. And do you consider it to be accurate?

A. I do.

Q. And why do you consider it to be accurate?

A. Again, based on my years in Milk Pooling, collecting processing this information.

Q. Data set AA. Please read the heading.

A. Average Market Price for the Transfer of Quota, August 1969 through September of 2015.
Q. And what information does this data set convey?

A. We talked a little bit about quota earlier. I mentioned that producers own quota, or some producers own quota. Those producers that do own quota, own it based on how many pounds of fat and solids not fat quota they have. That ownership is on a daily basis. If they own quota, they also own production base to go with it. That production base in pool quota can, and is, transferred between producers. Transfers occur every month and have since the beginning of milk pooling.

This document shows the amount of milk, or excuse me, the amount of quota that was transferred each month and the average price for each of those transfers, as well as the number of people that were selling, the number of people that were buying. And of those sales, how many of those occurred at hundred percent.

I would also note that in the sales price, the sales prices are split out between sales with cows and sales without cows. That used to be a bigger issue than it is today. It used to be that because of IRS rules, my understanding is that there was incentive to shift, if somebody were to buy their neighbor's operation and they bought cows, land, and/or quota, IRS rules would encourage them to report more value on depreciable assets, such as the buildings or equipment or cows, and understate the value of their quota. And so that's why we
initially started out reporting these sales differently, as
with cows and without cows.

Somewhere in the mid-'90's, IRS changed the rules so
quota can be amortized so there's not the same incentive today
that there was 30 years ago to move the value from one asset to
the other.

Q. So just to be clear for the record, this is based upon
your recollection, not upon any expertise in terms of IRS
depreciation rules?

A. No, that's correct. I went off on that little rant to
indicate why we ever started reporting sales without cows as
opposed to with cows.

Q. So let me say, you are providing the explanation
without substantiating the underlying basis?

A. Yes. I am not an IRS auditor, I'm not an IRS expert.
I think I said early on it was my understanding based on rumor
mill, not admissible as evidence, I assume.

Q. So now that my interruption is over, is there anything
more that you would like to say about this data set?

A. No.

Q. Did you compile this data set?

A. At certain times I did compile this when I was in Milk
Pooling. More recently, I have not, but I did review it, and
it does appear to be accurate.

Q. And why do you believe that?
A. Based on my experience in Milk Pooling, and my time processing quota transfers and preparing this document during that time period.

Q. Data set AB. Please read the heading.


Q. Other than the changes in processing format that reflect changes from DOS to Windows, is there anything substantively different in this material?

A. No, there's not. And what this document shows is the number of producers in five percent percentage increments, showing how many producers in the -- that have no quota; how many producers have 1 to 5 percent of their production covered by quota; the number of producers producing between 11 and 15 percent of the quota, again, five percent increments going on down to producers who produce 96 to, in some instances we have producers that have more quota than they do production, so we can show the number of producers in each of those categories and the pounds of solids that they produce. And of that solids that they produced, how many pounds of that was allocated to quota.

Q. Now, did you compile this information?

A. This is compiled, it's a report that's generated each month out of our Dairy Accounting system.
Q. And do you consider it to be accurate?
A. I do.
Q. And why is that?
A. I oversaw the building of this report when we converted from DOS, or excuse me, the old Kobalt system to the system we have now, and prior to that I interacted with the programmers that generated the other reports. And from time to time I would verify the numbers that were coming out on this report to make sure that there wasn't anything gone astray on the compilation of it.
Q. I see. So you don't have any reservations about this document?
A. No reservations.
Q. Data set AC?

JUDGE CLIFTON: Before you go there, this is Judge Clifton.
Mr. Shippelhoute, what does the column number and equalization signify? The last column of AB?
MR. SHIPPELHOUTE: So producers again, when they own quota, they also own production base. The production base was based on a historical time period, what the total production that a farm had during that time period, and that was their total production base -- you may need Mr. Schiek up here, we have a wild fly -- so that was their production base.

They were also issued quota which was based on their Class 1 usage. A producer that is equalized is a producer who
has enough quota to cover at least 95 percent of his production base. It a producer doesn't have sufficient quota to cover 95 percent of their production base, they are unequaled. That number is not relevant until such time that we might issue any additional quota, which we have not for about 15 years now. So for pool accounting purposes, that number out on the right hand side numbered equalization, really is not all that important right now.

JUDGE CLIFTON: Thank you.

BY MR. ESTES:

Q. So data set AC. Please read the heading.

A. Class 1 Pool Utilization Milk Fat, Solids not Fat, Other Pool Statistics, August of 2015 and Annual 2014.

Q. And what information is set forth in this data set?

A. So this data request was for information relative to, primarily to producer handlers. In footnote, before I forget to mention this, if anybody has printed this document for August 2015 off of our website prior to yesterday, please go back and print a new version, I found some errors in it yesterday as I was reviewing some information.

Let's go back to the top. This document, the top line, shows the total pounds of milk that the four producer-handlers in the state, their total Class 1 utilization.

The next line down, which is the next two, show the pounds of milk that those four handlers exempted from the pool.
That milk was Class 1 milk and it was exempt because of the producer-handlers quota ownership.

The fourth line down shows the total pooled Class 1 utilization for the pool for the month of August.

And then the next line down, total pool milk for the Month of August. Not only that, we have daily quota pounds for the producer handlers, and then the daily quota pounds for the milk, or excuse me, for quota that was not exempt quota owned by those four producer handlers.

Next line down, daily pounds of pooled milk, pounds of fat, pounds of solids.

The next section down from there simply shows the class prices that were announced for Class 1 for pounds of fat, solids not fat, and fluid carrier, then hundredweight price.

Further down we have January to December of 2014. That shows a number of pooled producers for December of 2014, the number of handlers. Handlers for this reporting purposes were plants that actually processed producer milk or bulk milk into a finished product. Of those plants, there was 124 plants, 35 of those plants reported some Class 1 usage. Of those 35, 14 reported buying some milk from outside of California, and four of those were producer-handlers.

Next down, January to December 2014, total pounds of solids not fat in the pool for the year, of that, excuse me, next line, total pounds of milk produced by Cooperative
members.

Next line down, pounds of producer-handler milk that was exempt from the pool. Again, that would be based on the fact that it was Class 1 usage and covered by exempt pool quota.

And the last line down, bulk non-California milk packaged in California, so that would be bulk milk that came into California and processed in California.

Q. And did you compile this information?

A. I did not. I supervised or oversaw and reviewed it when it was done.

Q. And do you consider it to be accurate?

A. I do.

Q. And why so?

A. I reviewed the information, checked it for accuracy, made a correction, and the rest of the information based on my time in pooling, my experience, I believe it to be true and correct.

Q. Your Honor, with that, I believe we have gone through all of the material presented in Exhibit 61, so we would ask that it be entered into the record.

A. I would like to, before we do that, make one additional comment, I'm sorry, on AC this last document that we were looking at.

Q. Yes.
A. There’s a footnote down here, "Producer-handler, Type 70, shall have its quota milk deducted from Class 1 usage, plus an additional 155 pounds of fat and 375 pounds solids not fat, before accounting to the pool. The exemption is based upon the lesser of either herd production, Class 1 usage, or quota pounds."

I would just point out that additional 150 pounds of fat and 375 pounds of fat that may be claimed, is conditional. If a producer-handler has sold some of their quota since 1978, they do not get to claim that additional 150 pounds or 375 pounds. One producer-handler has sold some quota, and therefore, does not qualify for that additional exemption.

Q. I believe you described the 375 was fat, but it's solids not fat?

A. 375 should be solids not fat. Thank you.

Q. And with that, we would like to proceed to have it introduced into the record.

JUDGE CLIFTON: Does anyone wish to question the witness before determining whether you have any objection to the admission into evidence of Exhibit 61? There is no one. Is there any objection to the admission into evidence of Exhibit 61? There is none. Exhibit 61 is admitted into evidence.

(Thereafter, Exhibit Number 61 was received into evidence.)

MR. ESTES: Your Honor? If I may, we have one additional
item here that was brought to my attention this morning for
introduction into the record that we would like to have
introduced as Exhibit 62. Do you have a copy of it?

JUDGE CLIFTON: I do. I would like to take a 15-minute
break and then address that, if we may. We'll also address the
missing page, and then the witness would be made available for
cross. So let's at this point, rest up. Please be back and
ready to go at 11:15.

(Whereupon, a break was taken.)

JUDGE CLIFTON: We are back on record at 11:20. We resume
direct examination of Mr. Shippelhoute by Mr. Estes.

And Mr. Estes you had just called our attention to
Exhibit 62.

MR. ESTES: Yes, that's correct. I would like to proceed
to ask Mr. Shippelhoute about this document.

JUDGE CLIFTON: You may.

MR. ESTES: Thank you.

BY MR. ESTES:

Q. Mr. Shippelhoute, do you have a document in front of
you that has a title Classification of Dairy Products?

A. I do.

Q. Could you briefly summarize this document? I know
that's a little bit of a challenge, but if you could do that,
would be very help.

A. This document lists a number of dairy products on one
column. The next column shows what classification those dairy products fall into for pricing purposes. For example, acidified Half-and-Half that's listed at the top of the column on the left, would be classified as a Class 1 product, as indicated by the numeral 1 in the classification column.

Under the third column, off to the right, there are a number of text comments relative to the classifications. Those text comments are indications that the products that they are pointing to or referring to, are products that while ordinarily would fall into one classification, if they meet separate criteria, they can fall into a separate classification. So for example, the top footnote if you will, that states, "These products are assigned to Class 2 if packaged in pre-sterilized containers and meet out-of-state requirements and sold outside of California."

There's an arrow coming off of that box, pointing to Half-and-Half. That indicates if Half-and-Half is packaged to meet the standards out-of-state, outside the state of California, and are, in fact, sold outside of the State of California, that Half-and-Half can be claimed as a Class 2 product by the processor, rather than Class 1.

Similarly, if you go on down then, there are four more boxes that indicate when the products indicated on the left column could be reclassified. Again, if there's some that could be reclassified, the rest could be reclassified from
Class 2 down to 4a when they are sold outside of the California
or outside of the 48 contiguous states.

Q. Do you consider this classification of dairy products
document to accurately represent the classification of these
dairy products?

A. I do. One more clarification, I'm sorry. The four
boxes I mentioned were on the first page of that document. If
you flip it over, there is a second page, there are three more
footnote boxes, if you will, on that -- on that second page, as
well as additional products and their classifications.

Q. So do you consider this to be an accurate
classification of products?

A. I do.

Q. And why do you have -- why do you believe that?

A. In my time at Milk Pooling, handlers report -- let me
back up. When handlers report to Milk Pooling, they report not
only the volume of milk that they receive and process, but they
also report what classification of product that they
manufacture in their plant fall into.

Often times handlers have questions relative to the
products they make and where they sold them to and what
classification they would fall into. And so I was a part of
conversations within the branch, in determining when milk could
be classified, or what classification a product would fall
into. And we often referred to this chart and reviewed it and
updated it from time to time as laws changed, so I am familiar with it and it is an accurate description.

Q. Your Honor, we would like to proceed to introduce this document into the record as Exhibit 62?

JUDGE CLIFTON: Is there anyone who would like to question the witness before determining whether you have any objection? There is no one. Are there any objections to the admission into evidence of Exhibit 62? There are none. Exhibit 62 is admitted into evidence.

(Thereafter, Exhibit Number 62 was received into evidence.)

JUDGE CLIFTON: Did you have anything else, Mr. Estes, for this witness?

MR. ESTES: No, I do not.

JUDGE CLIFTON: All right. During the break, the substitute pages or additional pages were passed around for the document that is K. I just want to make sure that the record copies include all of the pages for Exhibit K.

Now, I would like to open proceeding for questions. All of you know what the guidelines are. This is about how the data was compiled or any clarification as to the meaning of the terms as we have had throughout from the witness, which has been very helpful. Who would like to begin?

CROSS-EXAMINATION

BY MR. BESHORE:
Q. Good morning, Mr. Shippelhoute.

A. Good morning.

Q. Marvin Beshore.

First off, I just have a few questions, but I do want to thank you and your colleagues, Mr. Estes and Ms. Gates, Secretary Ross, everybody, for the work represented here and the effort to, the willingness to come down and participate as you have. It's very much appreciated.

Let me ask you a question that's on 62 first, or the concerns 62 and ties to one of the other documents. And that is, how condensed skim is reflected or not reflected in the data sets and with respect to how it's described in the classification document here, 62, one of the foot text notes states that, which goes around condensed here, if I'm reading it right, "products must be assigned to the classification of all usage when utilized in bulk by handlers, but are assigned the 4a when sold to consumers." And if I heard you right when were you describing one of the exhibits relating to shipments out-of-state, you said that condensed skim was not reflected because it's a finished product. So can you help me understand how that all works? Where it's reflected, where it's not here?

A. Sure. The documents that we were referencing earlier were dealing with bulk products. So bulk condensed skim could be condensed skim that, again, is not been put into consumer-sized package, when it is either used within a plant.

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to either four or five Class 1 product, cheese fat, whatever the case maybe, that condensed is reported at the plant that made the condensed, not necessarily the one that took the condensed one step further and put it into a fluid milk model or a cheese fat fortification, whatever the case maybe. The condensing operation reported it based on the receiving plant's usage of that condensed skim.

In this classification chart, this is referring to condensed skim that has been put into consumer-sized package, in little cans, sweetened, whatever the case may be, if you put it in consumer-sized package and sold to the consumer, then it is considered 4a.

Q. Okay. So the condensed skim is recorded by the condenser in terms of how he, to what -- to the customer's use where he delivered it?

A. That's correct.

Q. Okay. So is condensed skim, shipments out-of-state of condensed skim, are they reflected on any of those tables that showed either product either from Cooperative milk, either from Cooperatives or proprietaries that went out-of-state?

A. No, they are not.

Q. So do I understand that basically those transactions are just not tracked in the system, or is it just nobody requests it?

A. They are not tracked in the system. That condensed
skim, if it was processed in a California plant, it is pooled and those pounds are included in the overall pool pounds based on the ultimate usage. But the plant that is making that condensed skim does not show us a detailed item in their report that says here's how much condensed skim that we sent to X, Y, or Z, any plant, whether that plant is in California or outside California.

Q. Okay. Thank you for that. Now I would like to go to CDFA-C, which is the document titled Blend Prices by Month Based on Regulated Minimum Prices.

JUDGE CLIFTON: Mr. Beshore, when you are reading from the document, you go very fast. We're all looking at it, but please remember the court reporter.

MR. BESHORE: I will make an effort to do that.

BY MR. BESHORE:

Q. So my question is, on CDFA-C, where the blend price was calculated, in the footnote somewhere it says based on utilization, I'm sorry. Well, my question is, where you had for Class 1 you have two regions, two Class 1 prices. And for many years at least, there are two prices for Class 2, and also Class 3, I believe. So my question is, in calculating the blend price of CDFA-C, how were the multiple prices in the classes factored in?

A. When I compiled C, I used the pool prices as announced. To get to the pool prices as announced, we calculated or
multiplied the usage reported by plants in Southern California
by the Southern California class price. The usage in Northern
California by the, located in Northern California, by the
Northern California class price. And so we, in calculating
pool or accumulated pool, we accumulate that revenue based on
where it was actually processed. We add that revenue to the
pounds, and so at the end of the pool's calculation we had to
divide revenue by pounds and get a weighted average, if you
will, based on the fact that money going into the pool is based
on the locations of the plant processing it.

Q. Okay. And my understanding, I believe that someone in
our the group that I represent, the Cooperatives, requested the
pounds by region for Class 1, in Northern California or
Southern California, or by other subregions for Class 1, and my
understanding, if that's not published by the CDFA, not
available; is that correct?

A. That's correct. This, again, was based on money into
the pool, money out of the pool.

Q. So we know the weighted average of the class values but
the geographic break down is not something that's available?

A. That's correct. It's not something that is captured
and stored in our system.

Q. Okay. Thank you. Thank you very much for that.

Now, on CDFA-D, and I'm looking at page 9 which has
columns showing pounds and values related to fortification.
My question is, is the -- for condensed skim, is the allowance -- well, how is the allowance calculated -- the allowance column calculated there? Is that simply the per pound allowance times the pounds shown or are there other elements in that calculation?

A. It's simply the pound of solids not fat used, pounds of solids not fat in condensed skim, used to fortify Class 1 products, times the fortification allowance rate.

Q. Which is?

A. I don't have it committed to memory.

Q. 987?

A. 987, if I were, whatever it comes with that it would be close.

Q. Thank you. Turning to CDFA-M. I'm interested in the footnote which says, "excludes 8 million to 10 million pounds per month of pooled producer-handler milk." And I may have missed it, probably did, but I don't quite understand what that may involve.

A. So what does that involve? This report, as I was compiling this information --

JUDGE CLIFTON: I want to make sure I'm on the right one. Which one do you want us on, Mr. Beshore?

MR. BESHORE: CDFA-M.

JUDGE CLIFTON: Okay.

MR. BESHORE: And the footnote on the second, page 2 of
CDFA, that was what I was asking about.

      JUDGE CLIFTON: Thank you.

      MR. SHIPLEHOUTE: So as I was compiling this information and breaking it down into the different areas, and by qualifying versus non-qualifying, I was cross-referencing a total number that I came up with, with the total number on another report, just making sure that I was capturing all of the milk in the pool. I was consistently off by 8 to 10 million pounds. I went digging through the numbers trying to find where it was, and I was able to identify it was some producer-handler milk that was included in the pool, that because of the way it's reported and the way it's processed, I wasn't able to query that and pull that out for inclusion in there. Each month I could go back and see that's where it was coming from, but it was a bit of a challenge to pull that out.

      BY MR. BESHER:

      Q. So are those, like, exempt pounds to which transportation allowance does not apply or is it some other?

      A. No, those are pounds that were pooled and so it would apply.

      Q. But they were delivered to producer-handler plants?

      A. Yes.

      Q. Okay. Thank you. I would like you to go to CDFA-0, please, which is titled Grade A milk. Actually, that's not the one I want, I'm sorry. Yeah it is, actually. Grade A milk and
manufacturing. I'm looking Grade A milk. I'm looking at
Grade A milk not pooled.

A. That is O.

Q. This says Grade A milk for manufacturing. Is there --
is there Grade A milk not pooled that goes, that is produced in
California, that goes to other than manufacturing uses?

A. Well, any plant that manufactures Class 1 or Class 2
products -- footnote, mandatory Class 2 -- would have to be a
pool plant. The only other option would be Class 3, which is
nonpool. Class 3 plants, none of those Class 3 plants buy milk
from independent shippers, and so -- could you read your
question again?

Q. Well, what I'm -- let me just ask what I'm trying to
figure out. There's been reference in the hearing to milk that
is produced in California that's delivered to Class 1 plants
outside of California, particularly potentially a plant in
Arizona. Is that milk reflected on one of these tables or are
transactions of that sort, are they reflected, are they
captured on one of these?

A. No, they are not.

Q. Okay. Okay. So here's -- if we could turn to CDFA-T,
and I'm probably not finding what I was looking for on here. I
thought I might ask. There was a witness yesterday, I think
earlier this week from Organic Pastures. And I see Organic
Pastures listed in 2005, but not on 2015. And I certainly
understood him to be in operation today?

A. They are.

Q. Probably under a different name or something, I guess?

A. It is listed here as McAfee Farms.

Q. In 2015?

A. In 2015.

Q. I see it. Thank you. One other question. This is from CDFA-R, which is titled, Average Number of Market Milk Farms by Area With More Than 315,000 Pounds of Milk Production Per Month by Hauling Area, 2012 and 2015.

Question is, is there some setting, some significance within the CDFA pooling or stabilization program of 315,000 pounds per month?

A. No, that's no significance to us. That was simply the number that was provided to us in the data reports.

Q. And this is, as well as certain other exhibits here, are compiled by hauling area. My understanding is that those -- and you, the hauling area is, of course, are defined in the footnotes are available. Those areas are not identical to marketing in stabilization plant areas; is that correct?

A. They are not.

Q. Are they -- are there any other areas that match up with hauling areas that are defined in the programs?

A. No.

Q. So they are just areas that are identified for purposes
of collecting hauling data, I guess?

A. That's why we created them, that's correct. The reason that we pulled so many of these data sets together using those, is because we were requested to do so.

Q. So the request asked for the data by hauling area?

A. Yes, it did.

Q. Okay. Thank you very much, Mr. Shippelhoute. I don't have any other questions at this time.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Chip English.

And Mr. Shippelhoute, let me start also with a real thank you. This was obviously a large task. We appreciate your work, the work in this case, and the work of Mr. Estes, and we are grateful to have you here today.

A. Thank you.

Q. So thank you.

Let me start with just a couple confidentiality issues. And just, we know how the rule works for Federal, I just want to know what it is with respect to CDFA, so when we're looking at it.

A. An awful lot of our reports -- I'm sorry.

Q. The issue is, at what point is information confidential? And just byway of reference, we know for Federal Order purposes, for instance, if there's fewer than three
handlers, we do not provide, the information is not provided because by definition then somebody could figure that out. So I just want to know what that definition is for your purpose.  

A. Given that a number of our publications are published in partnership with USDA, we generally have just adopted that same definition, and rarely will you see us vary from that.  

Q. Thank you. Let me turn first, and all my questions will be with respect to Exhibit 61, and I note that going through with your comments and your counsel's questions, and Judge Clifton's question about equalization, that I have thrown away ten pieces of paper of questions. I tried hard.  

But if we can turn to Exhibit 61, Table H. And that is the Summary of Transportation Allowance and Credits for January 2000 to June 2015. And I have one question. And that is, all the allowance dollars are positive, and all the credit dollars are negative. Can you explain that?  

A. The transportation allowances are dollars paid out of the pool to producers. That is money that is deducted off the top of the pool or taken out of the pool to finance that transportation allowance system. The credits are actually defined -- the transportation allowances are defined in the pool plan, so those are allowances to producers.  

The credits are defined in the stabilization and marketing plan, they are a credit against a handler's Class 1 price, if you will. And so that's why we show them as a
negative, because they are credited to a handler.

Q. So in essence, the pool will be a little smaller for those credits than it otherwise would be without those credits?
A. That's correct.

Q. Turning now to Table S, which is S as in Sam -- the Bulk Milk from California Cooperatives Diverted to Out-of-State Plants, January 2000 to June 2015.

I appreciate your having provided the definition of diverted. So my first question is, if milk is diverted to an out-of-state plant, is it still included in the California pool?

A. If it is diverted by a California Cooperative, no, it is not.

Q. And a second question is, in some of your materials you discussed a slightly different issue with respect to milk received at nonpool plants. Would the price received at that out-of-state plant be subject to California's minimum pricing?

A. No, it would not.

Q. Now, I note that, and I thought we asked, but if we didn't I'll raise the issue -- there is, of course, you have the bulk milk for California Cooperatives diverted to out-of-state plants, and for transferred milk you have a table for cooperatives and a separate table for proprietaries. There is no table for bulk milk diverted by proprietary handlers, correct?
A. There is not.

Q. Is that because that is subject to confidential data and therefore you couldn't respond, or that proprietary handlers can't divert, or what?

A. Proprietary handlers can divert, and they do divert. But yes, it's because of a proprietary reasons, we just couldn't release that.

JUDGE CLIFTON: Now, that's an interesting use of the word "proprietary" in two different contexts.

BY MR. ENGLISH:

Q. Thank you, your Honor.

So what you meant, that private companies, other than Cooperatives, which you defined as proprietary operators, you could not report that data because of the confidentiality rules that were discussed in the beginning of my examination, correct?

A. Yes.

Q. Thank you?

JUDGE CLIFTON: That are in place for proprietary reasons.

MR. ESTES: Your Honor, if I may?

JUDGE CLIFTON: Yes, Mr. Estes?

MR. ESTES: From a legal standpoint we would consider such information to be release of trade secret information, so under the Public Records Act there is an exemption for the release of information that would involve the disclosure of trade secrets.
MR. ENGLISH: I appreciate that clarification, and we weren't seeking it. I want to be clear, we are just wanting to know why it wasn't included. We're not challenging the fact that it was not included.

MR. ESTES: No, I just want to make sure the record is clear in the sense that I think sometimes confusion can arise between the use of the word proprietary and the legal aspect of disclosure, which is that it must be considered a trade secret.

MR. ENGLISH: And I genuinely appreciate that clarification and I know sometimes we are use shorthand here and it is very helpful to have that, Mr. Estes.

BY MR. ENGLISH:

Q. So turning now to Table V, as in Victor. And that is the bulk milk skim or cream transferred by cooperatives to out-of-state plants.

Going back to my similar question -- well, first, let me ask a predicate, because you said transfer, but I want to get down sort of an enhanced definition. To qualify for transfer, does milk have to be physically received into a California plant? Now, I'm generally asking the question as to Cooperatives or proprietary, has to be physically received or can it simply a truck arrive on the property and then the truck move?

A. No, we don't acknowledge the drive-through. It does have to be offloaded at the plant and relocated.
Q. Thank you. So now having asked that predicate question, I think I know the answer. That since the milk was received at a plant, does that mean that milk is pooled?
A. Yes. Assuming that it arrived and it was received at a pool plant.

Q. Correct. Yes, obviously, it's, but -- but Table V is milk, I think, that's received at a pool plant in order to qualify as transfer?
A. Not necessarily. Some Cooperatives do own some nonpool plants.

Q. Would that volume have been revealed then as milk received at nonpool plants in the earlier, in the earlier table or not?
A. Which earlier table are you referring to?
Q. Well, I was hoping to short cut.
A. Well, I'm not trying to be difficult.
Q. I know you are not. Table O. Would that kind of volume be in Table O or would that be different?
A. There is no coop milk in Table O.

Q. Okay. All right. That answers my question, thank you. And going back to my question, if it's pooled, it must also have been subject to the minimum price then, correct?
A. The milk that is represented on D?
Q. Yes.
A. No.
Q. No. All right. So all right. Thank you. So it's pooled but the price paid by the out-of-state plant is not regulated?
   A. Correct.

Q. What about the Cooperative, when it imports the milk as having been transferred, is it subject to a minimum? Is it subject to a minimum price based on ultimate use?
   A. The Cooperative does account to the pool at the announced minimum price. What they receive for it and what they pay their individual producers is not regulated.

Q. Thank you. And going to Table W?
   A. I -- excuse me, let me footnote on that last comment.

Q. Yes?
   A. They do not have to pay their members minimum. If they are receiving milk from nonmembers, then that would be regulated.

Q. Thank you. Now, on Table W which is bulk proprietary milk, skim or cream, transferred to on out-of-state plant. Is that milk going to be in the pool?
   A. Yes.

Q. Okay. And when that milk is sold to the operation out-of-state, is it subject to a minimum price?
   A. No. Nor do minimum prices apply if a proprietary plant chose an entity into it.

Q. So when a proprietary sells to what kind of entity in
this? So but they are having to pay the minimum price; is that correct?

A. They have -- that's correct. The proprietary plant receiving that milk from producers is obligated to the producer at the minimum price. What they sell that, if they want to sell the bulk milk to anybody, we don't care what price they receive for it.

Q. I may have misunderstood that, so that's an important clarification. Thank you. Let me go to Table AC, if I may. And I want to look at near the bottom under January, December, 2014, but the set above the very bottom where you have listed "number of Class 1 handlers buying non-California milk."

Do you see that?

A. I do.

Q. Would that include handlers purchasing condensed skim from out-of-state?

A. It could, yes. The condensed skim is reported at skim equivalent.

Q. So if all the purchasing is condensed skim, they would be included in that number 14?

A. Yes.

Q. So finally, and this really is just, I couldn't figure it out and I'm sure there is a very good explanation. So I want to look at Table AB, page 2, of 2005, and compare with a comparison valid to CDFA-F, page 2. So for the record,
CDFA-AB, page 2, is the State of California Department of Food and Agriculture Milk Pooling Branch percent of quota and shipment for the month on June 2005. And under quota solids, I, my real question is, is that solids nonfat only or solids nonfat and butterfat for the middle column, which is quota solids?

A. Solids not fat.

Q. Okay. That was my assumption. So the total at the bottom for June 2005, 65,800,125, and back on Table F, page 2, which is Annual California Milk Pool Production Quota Fat and Solids Not Fat as Presented by Month.

If you look for 2005, '06, which is June, under quota fat, I see, under quota S and F, I see 64,557,690. And I was just wondering, is this a rounding issue going on here or am I making invalid comparison between F and AB? I'm genuinely just trying to understand for the record. No other -- just trying to --

A. There could be -- I would have expected those to be closer. There are times when quota solids are owned by a producer and for some reason that producer is in the process of selling their quota, they don't have any production that month, and so that quota would show up on this 120-17 report, but not be included in the pool. So that is a possible explanation there.

Q. Okay. Thank you. That really is all I have, and
again, very much appreciate your participation.

CROSS-EXAMINATION

BY MR. VETNE:

Q. John Vetne, representative for Hilmar Cheese Company.

Mr. Shippelhoute, I join others in their thanks, and I want to add. I want to thank CDFA for having an extraordinarily user-friendly website, where information can be found and tracked. And I have done so for years.

Mr. Beshore asked you some questions about condensed skim sold in bulk out-of-state, and you indicated you do not track it. But nevertheless, it is included in the pool, that volume of milk?

A. That's correct.

Q. Okay. And it's classified by pool values based on what the reporting handler, the Cooperative or proprietary transferring, tells you it is used for at a receiving plant out-of-state?

A. That's correct. And let me -- I said we do not track that. We don't keep -- we don't collect a separate line item detail of that on a monthly basis, and therefore, we don't have it stored in our data base for tracking purposes. But when our audit staff go out and perform a compliance audit at the plant level, they do look at those sales out-of-state, and they will get a certificate of usage for any out-of-state sales, whether it be of condensed skim, bulk milk, cream, whatever the case

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may be, and if the certificate of usage doesn't look
reasonable, we may, by all means, will do whatever we can to
verify the actual usage if it doesn't seem to be an
unreasonable claim by the processor.

Q. Okay. So for verification purposes, you rely on a
representation contained in a document called Certificate of
Usage, by the reporting handler as to the use of that milk at
out-of-state receiving plants?

A. We don't rely solely on that. We look at that
Certificate of Usage. If they say this certificate is what we
are using to claim the classification for this product that we
sent out. An example I can think of, many years ago, there was
a time when the Class 1 fat price was lower than the Class 3 or
Federal Order Class II price, a plant reported to us that they
sent some cream to an out-of-state processing plant to put in
Class 1. Not likely you are going to be putting cream into a
Class 1 plant. Usually Class 1 plants have excess cream. So
the plant just so happened to have an ice cream plant on the
same property, and they were trying to claim the drive-through
option that Mr. English made reference to.

We disallowed that and reclassified that cream to
Class 3. So no, we don't just simply take that Certificate of
Usage and say, good enough, we actually try and follow through.

Q. Okay. Thank you. In response to Mr. English, you
indicated, and correct me if I'm wrong, that Cooperative
diversions of milk, transactions of milk from a farm to an out-of-state plant, is not included in the pool? Did I understand that correctly?

A. That's correct.

Q. Okay. Is there -- is there no option by which it may be included in the pool or is it automatically excluded?

A. I can't think of a reason. Well, I can't think of a situation where it could be pooled.

Q. Okay. And the same would be true for a proprietary handler responsible for a milk supply that may direct some of its shippers' milk be shipped from a farm in California to an out-of-state vendor. Same thing would happen, not pooled; is that correct?

A. Could you restate that?

Q. Okay. If it is not a Cooperative, same transaction --

A. Okay.

Q. California plant operator with an independent milk supply directs some of that independent milk to go from a California farm to an out-of-state buyer. That also would not be included?

A. That milk is included in the pool.

Q. It is included in?

A. It is included in the pool.

Q. For proprietary handlers? Essentially the same transaction in one case, another case not included?
A. Correct.

Q. Okay. And the proprietary handler does not have the option that might exist under federal law, I don't know if you are familiar, but Federal reports some diversion and some elect to include or not include it in your pool report. In the California system, proprietary handler must include those diversions in a pool report correct?

A. Well, I am not qualified to compare the Federal Order, but --

Q. In your order, it must be included?

A. If the California company is moving that milk anywhere under their own account, then the California company has to account to the pool and it is regulated.

Q. Okay. But if the farmer on his or her own decides to find a buyer out-of-state, that milk is not included in the pool, correct?

A. That's correct.

Q. And is that milk included in the Exhibits for I, J -- no, J, K, and L, commercial milk production, and various assembled commercial milk production in California data.

A. Yes, it is.

Q. And a slightly different use of milk that we have had questions about here, but haven't had an answer to. If milk cannot find a home in California and ends up, say on a heifer replacement farm as feed, can that be included in the
California pool in some circumstances?

A. Yes.

MR. ESTES: Your Honor. If I may, I think the question --

JUDGE CLIFTON: Start again, Mr. Estes, because your mic wasn't on.

MR. ESTES: Your Honor, if I may. I think the question is getting a little bit far afield from the data that's been presented, so I'm going to instruct the witness not to answer hypotheticals that are unrelated to the data, since it is an admitted exhibit.

JUDGE CLIFTON: And specifically you object to the last question?

MR. ESTES: Well, actually, I'm not objecting. He hasn't been authorized to answer questions of this kind today. We have -- we basically had to get authorization for the witness to appear today from the Executive Office. He's not authorized to speak on these matters.

JUDGE CLIFTON: Can you repeat that last question for me, Mr. Vetne, so that I can determine whether it flows from the data?

MR. VETNE: Yes. The question was whether milk that is directed by a California handler, regulated handler, to, for example, a heifer replacement farm, can be included in the pool. And my next question would be, you know, in what tables would you find that kind of information? Not the information
JUDGE CLIFTON: Mr. Estes, do you think that question fairly addresses data that we have been examining?

MR. ESTES: I don't have an issue with that.

JUDGE CLIFTON: All right.

MR. SHIPPELHOUTE: You could find that milk included in any of the tables where we show pool usage broken out by components.

BY MR. VETNE:

Q. And also classification, would that receive a classification of use?

A. It does. You would not be able to see what classification it was in, you wouldn't be able to pick that out of the table.

Q. Would it be included in the volume of the lowest price class?

A. I don't recall the answer to that right off hand.

Q. Okay. Now, again, I'm looking for where I might look in the tables for something. Section 801 and 802 of the Pooling Plan use, a third category of milk, there's, we talked about Grade A milk or market milk as it's called in California, Grade B milk, and the third term is introduced there called restricted use market milk. Is milk in that category included in volume data in Exhibit 61?

A. It is, or could be. In one of my answers I indicated
that the milk on that table would be any milk that did not meet
market milk definition, so it could be in CDFA-P.

Q. Okay.

JUDGE CLIFTON: CDFA-P?

MR. SHIPPELHOUTE: P as in Paul.

MR. VETNE: CDFA Exhibit 61, Tab P.

JUDGE CLIFTON:

BY MR. VETNE:

Q. Is there a circumstance in which restricted use market
milk can be included in the pool?

MR. ESTES: Again, he's not authorized to answer questions
of that kind. He's not authorized to speculate upon when
certain types of milk could be included in the pool. We're
talking about the pool as something different that the data set
that's been introduced today.

MR. VETNE: Let me rephrase the question, your Honor, I
don't want to create angst.

BY MR. VETNE:

Q. In the volume of milk by classification of use in your
data sets, does that include any volume that, in your process,
would be restricted-use market milk?

A. The only milk that my numbers would have would be
market milk -- excuse me, the only -- my numbers where I am
representing pool pounds, would only include market milk.

Q. Yes. Okay. Thank you. I can't remember which tab it
is, the list of California plants with any production in any
month. Do you recall that?

Q. Milk produced at least one month. I just want to make
sure we're not going to confuse the record with our use of
terms. In that exhibit, the word produced is synonymous with
processed; am I correct?

A. I'm sorry, I don't see produced.
Q. California handlers reporting milk produced at least
one month of the year?

A. Production.
Q. Production, yes. Production is synonymous with having
processed raw milk into something, correct?

A. Correct.
Q. Okay. It doesn't mean specifically does not include
milk production as we would attribute to a farmer?

A. Correct.
Q. Maybe this was asked, but I just want to make sure I
have a note. Tab X, X and Y, actually, bulk milk, skim and
cream received from out-of-state, that -- that those data sets
X and Y, include bulk milk received both from an out-of-state
farm as well as transfers from out-of-state plants, correct?

A. It could.
Q. Her aggregated there to the extent?

A. We don't know when we receive the number, we just get a
number.

Q. Okay. Oh, then I have a question about Tab H, transportation allowances. You described this as the allowances as reflecting shipments that qualify for allowance, which you further described as to a plant where at least 50 percent is Class 1, 2, and 3.

A. Correct.

Q. Okay. If a producer's milk went to a plant that had 49 percent Class 1, 2, and 3, would all of that producer's milk be excluded from the data in Tab H, or would it be prorated so that it came down to 50 percent?

A. Our transportation allowance, milk moving into a plant either qualifies in total or it doesn't qualify.

Q. All or none.

A. All or none.

Q. Good. I do understand it, then. And also on transportation allowances, so that our Eastern brethren understand, it's referred in your system to as ranch-to-plant, and that means the same as dairy farm to plant, correct?

A. I know what I use the term ranch-to-plant for. What anybody else uses other terminology, it sounds right, but I don't know.

Q. The colloquialism in California refer to dairy farm locations as ranches, correct?

A. That's correct.
Q. Thank you.

JUDGE CLIFTON: Dr. Schiek?

CROSS-EXAMINATION

BY DR. SCHIEK:

Q. Bill Schiek.

Mr. Shippelhoute, I just have three, probably will be quick clarification questions.

A. I'll hold you to that.

Q. Please do. Please do.

Exhibit 61, CDFA-B, where you list commodity prices used in California Class Price Formulas, I just want to clarify that you have listed these commodity prices irrespective of whether in that particular timeframe where they were listed, they were actually listed in the formulas; is that correct?

A. That's correct.

Q. So for example, the Western dry whey prices from the 26th to the 25th, and the 26th to the 10th, may not have been used during certain parts of this time?

A. That's correct. We list down so that if folks want to go back and do some analysis using current formulas going backwards. They have the raw data to feed into the formulas.

Q. Thank you, and that's helpful, I appreciate that.

CDFA, same exhibit, CDFA-O, Table O. So this is titled Grade A Milk Used in Manufacturing Classes, Not Pooled, and I
believe in your explanation you had mentioned that it's direct
contract with a nonpool plant in Classes 4a and 4b, and
possibly Class 3, if one of those plants, nonpool plants, was
receiving Grade A milk from a Cooperative, would that milk be
pooled?

A. It would be.

Q. Okay. And I think lastly, CDFA Table P, P as in Peter,
Grade B Milk Used in Manufacturing Classes, Not Pooled, and in,
again, in your discussion you talked about the selection to
switch from Grade A to Grade B can only occur on the first of
the year, so I just want to make sure I fully understand that.
So when that election or selection is made, they can't shift
back to Grade A during that calendar year, can they? They have
to wait until the next year; is that correct?

A. That's correct.

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

CROSS-EXAMINATION

BY MR. VLAHOS:

Q. John Vlahos.

I have a few questions, Mr. Shippelhoute, but decline
for purposes of self-protection to specify the number, so have
some leeway there.

First, in your testimony you refer to market milk,
Grade A milk, and manufacturing milk, and I think we need some
clarification so the record is clear. In California, there is
a thing called marketing milk, as shown in your tables, correct?

A. There is.

Q. And is that exactly the equivalent to Grade A milk?

A. For the purposes of my discussion here today, yes. Technically, no. And I say that because lawyers in the crowd want to go to Food Man, Co., and do a search for Grade A milk, there is a Code Section in there that defines Grade A milk, and it is a subset of something else. So from, again, the purpose of my discussion I used Grade A interactively with the term market milk.

Q. And those are the terms used in the Stabilization Marketing Act, Chapter 2, and in the Pooling Act, Chapter 3, as I understand it?

A. Yes.

Q. Now, I think in your testimony you had indicated that market milk that's used for Class 1 must be pooled.

A. Yes.

Q. Does that include, also include certain what they call mandatory Class 2 products?

A. Mandatory Class 2, any plant that manufactures a mandatory Class 2 product, must be pooled at a pool plant as well.

Q. Okay. Now, by use of your table in Exhibit 62, can you identify what the mandatory Class 2 products are?
A. I would say, well, all of the Class 2 products except for eggnog.

Q. So eggnog is the only one that isn't mandatory?

A. Yes.

Q. Thank you. You referred to in your Table I of Exhibit 61 to market whey in terms of quota adjusters. I, for one, have never been completely clear about those. Could you explain what they are and why?

A. You know, I don't want to go too far off of the path.

MR. ESTES: Your Honor, if I may? My understanding is the regional quota adjusters are set forth under the Stabilization of the Pool Plan, aren't they?

MR. SHIPPELHOUTE: The regional quota adjusters are defined in the pool plan for market milk. The origin of those --

MR. ESTES: Well, just, the question was that he didn't understand them. So if they are not understood, then I would just direct Mr. Vlahos to the appropriate references.

MR. VLAHOS: Sure. Mr. Shippelhoute was about to say the origin, that's all I wanted to know.

MR. SHIPPELHOUTE: So on our web page there is quite a number of documents out there, historical documents, and the regional quota adjusters came about in 1981 or '82, when we transitioned from one milk, one method of encouraging milk to do the higher class to the current system of transportation allowances in RQA's. I would just refer you to the historical
document where there's quite a bit of discussion of how we transitioned from one system to the other, and there's some discussion of regional price adjusters in there, and I would kind of let that document kind of speak for itself.

BY MR. VLAHOS:

Q. Thank you very much. And finally, going again to Table H of Exhibit 61, Transportation Allowances they found in the Stabilization and Marketing Act?

A. No. The Transportation Allowances are found in the pool plant or market milk.

Q. And what about the credits?

A. They are in the stabilization and marketing plans.

Q. I think you explained in your direct testimony that the allowances, ranch-to-plant, and that is an allowance that is paid to the to the ranch.

A. Correct.

Q. And that comes out of the pool, right?

A. Correct.

Q. So the cost of that, then, is a reduction of the pool that was in their own cost and shared by everybody in the pool?

A. Correct. So if the cost of the transportation allowance goes up in a given month, then the announced pool price goes down.

Q. So any blend price that sells from also goes down?

A. Yes.
Q. And what about credits?
A. What about them?
Q. Well, credits -- good point. Credits are a, as you explained it, paid for plant-to-plant transfers, correct?
A. Correct.
Q. And those are all of the negative numbers you referred to? What effect do they have in the pool, then?
A. Similar to transportation allowance, as the cost of the transportation credits go up, the pool, announced pool prices, go down.

The distinction between the credits and the allowances is that the allowances are paid out to producers, so the total money paid out to the overall producer pool doesn't change with the allowances. Whereas with the credits, the credits are paid to the manufacturer and so the higher the credit out of the pool, the less money to the overall producer community.

Q. Thank you very much.
JUDGE CLIFTON: Mr. Shippelhoute, I would like you to look at Exhibit 62, and just help me understand if there's a distinction between fat-free and skim. I don't see the word skim in this classification, but we use it.

MR. SHIPPELHOUTE: In some product definitions it does specifically mention maybe flavored or low fat. So your question is, is there a distinction here for this table, I don't see that distinction made in any of the products.
With UHT, ultra high temperature products, if you go to page 2, there is some reference to whole, lowfat, and fat-free, as there are gallon of frozen. And you will note that even though that distinction is there, all fluid flavored milk, for example, on the top line, whether it be whole, lowfat, or fat-free, is Class 1.

JUDGE CLIFTON: For my purposes, I could regard as equivalent fat-free, nonfat, and skim?

MR. SHIPPELHOUTE: Yes.

JUDGE CLIFTON: And as I look at, again, Exhibit 62, and I notice that fluid milk products can include both reduced fat and lowfat, is there any distinction between those terms?

MR. SHIPPELHOUTE: The percentage of fat in those products, and while I don't know those definitions specifically, I know there is a difference between, say, milk that contains two percent fat versus one percent fat in the bottle. And so it's a reference to that. Again, I don't know those definitions well enough to say exactly which one is which.

MR. ESTES: Your Honor, if I just may --

JUDGE CLIFTON: Mr. Estes?

MR. ESTES: -- comment briefly. I believe your question is getting to some milk composition issues, which are more within the purview of Milk Dairy Food and Safety Branch than they are with the Dairy Marketing and Milk Pooling.

JUDGE CLIFTON: Thank you. And then I would like to go to
Exhibit 61, Table AA. Help me understand the column that says Number of Sales at 100 Percent.

MR. SHIPPELHOUTE: So when a producer sells their quota, or sells some quota, they don't have to sell all that they own, but if they do sell all of it in a given month, then that is considered a hundred percent sale. And so, for example, the first month on AA, 1969, August, of those transfers, of the sellers, there were 23 sellers in August of '69, 19 of those sellers sold all of the quota that they owned.

JUDGE CLIFTON: In the same month?

MR. SHIPPELHOUTE: In the same month.

JUDGE CLIFTON: My last question relates to Table T. And I love this table which could have solved a lot of our spelling problems all through two and a half weeks. Would you spell into the record Stremicks Heritage Foods?

MR. SHIPPELHOUTE: So you are assuming that my spelling is correct on this document?

JUDGE CLIFTON: I am.

MR. SHIPPELHOUTE: Stremicks is spelled on my document, S-T-R-E-M-I-C-K-S.

JUDGE CLIFTON: Thank you. Who else has questions?

Ms. Hancock, why don't you go before Mr. Francis?

CROSS-EXAMINATION

BY MS. HANCOCK:

Q. Nicole Hancock.
Can we turn on Exhibit 61, turn to Table C. This is the blend price by month.

A. Got it.

Q. Can you tell me again what blend price includes? Is that the total pool or is that some adjusted amount?

A. This is based on the total pool, the pay out to the producers. It was based on the announced prices on the pool.

Q. And are the quota prices or the Class 1 prices included in that as well, or is that an amount after the quota has been paid out?

A. So the quota price, all the pool prices under our current system, include some Class 1 revenue. So Class 1 revenue would be included in the quota price, as well as a base price, as well as the overbase price. The price that I used to generate this document is the weighted average price coming out of the pool, so it would be a weighted average on the quota base and overbase prices.

Q. Okay. So does that mean that you have already taken the Class 1 quota prices out and you are looking at what was left?

A. First, Class 1 and quota, your use of Class 1 and quota are correct. There is Class 1 and then there is quota, they are not the same. Well, they may be, given your client. Let me make sure I understand your question.

Are you asking if it's the 4 PD handler Class 1 exempt
quota is deducted?

Q. Well, let's clarify that. So there is no PD exempt quota that would be even factored into this credits, correct?

A. That's correct.

Q. And then there is regular quota that would be Class 1 quota?

A. No.

Q. That's not factored into this price either?

A. Quota is not Class 1.

Q. Okay. So, sorry. So then there's, is quota, is regular quota factored into this price?

A. The revenue that's being paid out to the quota is included in this price, yes.

Q. Some of these are already answered. Let me see if I can skip ahead.

If you look at Table H in Exhibit 61, this is back on the transportation allowances.

A. Okay.

Q. I just want to be clear. For a producer-handler such as my clients who hold exempt quota, they would never qualify for any transportation allowances or credits. Is that your understanding?

A. Their exempt milk can never qualify for transportation allowance.

Q. But any regular quota that they hold, or other
production, could qualify?

A. Yes, it could, assuming that their plant was in a deficit area. You do have some clients whose plants are not, and therefore, would not qualify for transportation allowances.

Q. Right. So regular quota or any other production, it would still have to meet the other transportation allowance criteria?

A. Yes.

Q. Okay. If you look at Exhibit K, or Table K in Exhibit 61. This is the commercial production of all milk in California by county, by month, in pounds, for various years identified throughout that chart.

A. Yes.

Q. Would this table include any out-of-state production?

A. No, it would not.

Q. Any in-state production that would fall into exempt quota would be included, though?

A. Yes, it would.

Q. If you turn to Exhibit 61, Table X. So this is the out-of-state production received by an in-state handler; is that right?

A. Yes.

Q. And this milk is not currently calculated in your pool in California?

A. The milk pounds are not included in our pool, nor is
the revenue. The reason I answered that, you said is it computed. That is reported to us and it goes through our system and it goes through the computations, that at the end of all those computations, it gets kicked out or left out of the pool.

Q. If we look at Exhibit 61, Table AC, on the last page of the exhibit. And you said that you had made a correction from what had been originally posted onto the CDFA website, to what was then corrected as of yesterday. Can you tell me what number changed on there just so I make sure I have the correct version?

A. The daily pounds of fat for producer-handler, that stayed the same. It was the regular quota pounds for fat and solids not fat that was corrected.

Q. So the regular quota, daily pounds of fat, should be 909,196.87?

A. Yes.

Q. And for the daily pounds of solid nonfat regular quota should be 2,215,977.26?

A. Yes.

Q. Okay. And when you were walking through this chart with your counsel, I thought I heard you say the daily fat, the daily pounds of fat and solid nonfat for regular quota was what was held by the producer-handlers. But --

A. If I said that, and I won't deny I said that, but if I
did say that, that was not correct.

Q. Okay. So it's correct that what you have reported for
daily pounds of fat and solid nonfat for regular quota is the
total regular quota for all of your producers?

A. Correct.

Q. Okay. And then, so if I look at and I compare, well
let me back up for one second. Why do you have it broken down
into fats and solids nonfat?

A. Because the Legislature said to do it that way.

Q. But the numbers aren't in proportion to one another.

So, for example, the producer-handler quota fat, isn't the same
percentage as if I compare the relationship between the fat of
producer-handler quota and regular quota, compared to the solid
nonfat percentages, to regular quota.

Do you understand what I'm saying?

A. Yes, I do.

Q. Okay. Can you help me understand why those
relationships are not equal?

A. Some people milk Jerseys, some milk Holsteins. Let me
elaborate on that. When quota was initially issued, it was
issued based on an individual's historical production base and
their Class 1 usage. And if we look at their historic fat and
solids not fat, so that back to that one Jersey versus
Holstein. And if you have a Jersey herd, your ratio between
your fat and solids not fat was different than a Holstein herd.
Your quota that you received was based on your ratio. And so for whatever reason, the quota that these four producer-handlers have accumulated over the years has a different ratio than the others. And again, it is all based on who initially received the quota and what kind of milk they had and how much they had. It doesn't surprise me that there's a difference.

Q. And the CDFA tracks the volumes that were acquired from all the way back to the end, back to the origination of the quota system; is that right?
A. Yes.

Q. And so it was back, it was based on the historical production and sales all the way back to 1967?
A. Most of it. And there's been some quota that was issued subsequent to '67, but the majority was some of the original issued quota.

MR. ESTES: Your Honor, if I may?

JUDGE CLIFTON: Start again, Mr. Estes, your mic wasn't on.

MR. ESTES: Yes, your Honor, if I may. As Mr. Shippelhoute eluded to earlier on another issue, there's an extensive amount of historical information available, I believe, on the CDFA website that discusses the origination of quota as evolutional to time.

JUDGE CLIFTON: Thank you, Mr. Estes, that's very helpful, too.
BY MS. HANCOCK:

Q. Under, still staying with Exhibit 61, Table AC. Under the last section that's titled January through December 2014, and you have it starts with a calculation of total pounds based upon solid nonfat, and there's numbers in there. The next line down says, Total Cooperative Pounds (Product).

Why is it that that is broken down just by product and not by the fats and solid not fats?

A. Because that's the way it was requested, or at least that's the way we understood the request.

Q. And then under the next line item, Producer Handler Option 70 Pounds Exempt. We have also had testimony on the Option 66 Producer-Handlers. Do you have any Option 66 producer-handlers?

A. There are two.

Q. Okay. And is it not on here just because it wasn't requested?

A. That's correct.

Q. But that Option 70 producer-handlers, that would be what you understand is the four producer-handlers that I represent?

A. Yes.

Q. Okay. And that's the total calculations of what you calculate as their exempt quota?

A. On the, which number are you referring to? The
243,733,051 line?

Q. That's correct, under product.

A. So that's the total pounds that they had exempt based not only on the actual quota that they owned, but also the additional 150 pounds of fat and 375 pounds of solids not fat that they could qualify for.

Q. The three of the four would qualify for?

A. Yes.

Q. Okay. And I just want to make sure, and then in addition, if they hold regular quota, that is, that just gets calculate under what we have seen in Exhibit 61 is just your normal quota calculations?

A. Yes.

Q. And then the bulk non-California milk packaged in California, is that the volume for out-of-state milk?

A. I'm sorry, one more time?

Q. Under four line item, under that same section.

A. Yes. That's the bulk milk that was received from outside of California that was packaged in California.

Q. Okay. So when you said yes, you mean yes it is out-of-state?

A. Yes, it did originate from out-of-state.

Q. Okay. And then under your asterisk, just so I'm clear, there's list asterisks that says, and it refers back to at the top, Total Producer-Handler Class 1 Pool Utilization, and then
it is also at the end of the section titled Total
Producer-Handler Exempt Class 1 Utilization-Quota.

In there, for the asterisk it says, Producer-Handler
Type 70 shall have its quota milk deducted. When you say it
quota milk deducted, are you referring to exempt quota?

A. Yes.

Q. Okay. So not all of its quota, just the exempt quota
deducted?

A. Correct.

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

CROSS-EXAMINATION

BY MS. REED:

Q. Mr. Shippelhoute, Kristine Reed with Select Milk
Producers. Thank you for being so patient and cooperative with
our many questions. I promise when I get up, you are very
close to the end.

Okay. Just drawing your attention to Table J. My
questions are fairly broad and mostly stem from the fact that
I'm not that familiar with how and when CDFA reports its data.
So in J, this is Commercial Production Milk and Milk Fat by
Counties and District, California, and you started with 1980,
and then we have five-year increments through 2010. Is the
data in each of those pages a snapshot for that particular year
as opposed to the five years prior?

A. It's a one-year snapshot.
Q. Okay. So if I wanted to, obviously we're still in 2015, I think you mentioned it's California Dairies Specific Annual that publishes this. When might the 2015 data, when is that publicly available?

A. The monthly information through August is already available.

Q. Okay.

A. So you could get, again, the month-by-month through August. It would not be in a location titled California Dairy Specific Annual, but it is available on our website.

Q. Okay. So, and then for the annual, is the data then compiled then, compiled and made publicly available at a certain time of the year?

A. It comes out in April, May -- February.

Q. February?

MS. GATES: The end of February.

MR. SHIPPELHOUTE: So definitely by April or May.

BY MS. REED:

Q. April would give you a good window there.

And then in Exhibit Q, which is Pounds of Producer Milk and Quota for the Various Hauling Regions by Month, 2012, January 2012 through June 2015. You, I wrote it down when you were describing this exhibit, that CDFA completes the milk hauling survey twice a year. You were discussing, so I think you mentioned that, so it looks like that you compiled the data
through April and October of each year?

A. Not through, but for.

Q. For? Okay.

A. In April.

Q. Okay. And then the April data for at least 2014, which was on the website, was published in September of 2014?

A. Yes.

Q. The April, the data for April of 2015, then, I didn't see that on the website. Is that available yet?

A. I saw a copy of that floating around the office being verified and getting ready for publication. I'm sure it will be on our -- I think it will be on our web page next week.

Q. Stay tuned, then?

A. Stay tuned. And definitely by April or May.

Q. Okay. Finally, then, on Exhibit, Table AC, I thought Ms. Hancock was going to ask this, but I just wanted to make sure, with the issue of the error and the website version, if I was looking at the website version today, has that also been corrected?

JUDGE CLIFTON: Now, you are referring to Table AC. The variation was on a different table.

MS. REED: I thought it was AC.

MR. SHIPPELHOUTE: AC, she's correct.

BY MS. REED:

Q. So I guess what I'm saying is, I was looking at the
monthly exhibits that are on the CDFA website, and as well as
the paper exhibits that we received today. Is it correct in
both places now?
A. I believe so. I was not able to verify that before I
left the office last night, but I believe they had it updated.
Q. I didn't have a chance to actually compare the numbers,
so I wasn't sure.
A. If it's not, it will definitely, it should be by Friday
and it will definitely be by April or May -- by Wednesday
when we get back.
Q. Okay. I just didn't want to rely, if I was looking at
something on the website. Okay. That's it. Thanks.

JUDGE CLIFTON: I'm going to call on Mr. Francis unless
anyone else also has questions.

CROSS-EXAMINATION

BY MR. FRANCIS:

Q. Will Francis, USDA.

This will be very quick, I hope, and hopefully we will
get you out of here. I just want to say, we certainly do
appreciate all the hard work that CDFA has been doing over the
last two years to help us get to this point. It's been
extensive, and I'd just comment that the staff have been
extremely wonderful to work with. They have been professional,
considerate, cordial. Your technical expertise is outstanding.
And I just wanted the dairy industry in California to recognize
that they have a tremendous asset in the staff that work for CDFA, and we thank you.

So I do have a question. So in Exhibit 1 we've referenced the Regulatory Flexibility Act, so we have a responsibility to look at the impact on small businesses. My question is this. Would you have data that would be available that could help us identify or estimate the number of California dairies that meet the definition of small business?

A. No.

Q. No. Okay. That's all I have. Thank you.

MR. ESTES: I think we have clarified the situation with the website version of Exhibit 61, A and C. And from what I am being told here, it's been corrected so that now it is accurate.

JUDGE CLIFTON: Thank you. I'd just like to ask, because you have such a wealth of experience and knowledge, Mr. Shippelhoute, is there any other agency within California that might keep track of the small businesses who are in the dairy business? This is off the top of your head.

MR. SHIPPELHOUTE: Off the top of my head, no.

JUDGE CLIFTON: All right. Thank you.

MR. SHIPPELHOUTE: Part of the struggle is, so many of our producers have more than just dairy farms, and so they may employ a number of people, but they may not necessarily be one hundred percent dairy. It is a whole bunch of variables is
what make that nearly impossible to come up with.

JUDGE CLIFTON: That actually is very helpful for us to remember that. We're looking at only the dairy operation, we're neglecting perhaps the remainder of the business.

MR. SHIPPELHOUTE: It could be the majority of the business.

JUDGE CLIFTON: Mr. Shippelhoute, is there anything you would like to add that would clarify anything that has already been presented today?

MR. SHIPPELHOUTE: No clarification. Just a thank you for your, the comments and the appreciation that is shown. We have been thankful for you guys who are here, and I want to acknowledge the staff that are still in Sacramento that have been helpful in getting this information together for us.

JUDGE CLIFTON: Thank you. It has been a phenomenal presentation. I thank you very much.

If there are no other questions, I'll allow this witness to step down and be excused. You may do so. Thank you so much.

It is almost 1:00, would this be a good time to break for lunch? All right. Please be back and ready to go at 2:15.

(Whereupon, the lunch recess was taken.)

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THURSDAY, OCTOBER 8, 2015 - - AFTERNOON SESSION

JUDGE CLIFTON: We're back on record at 2:16. I have one preliminary item and then I would ask if anyone else has any preliminary items before we have our next witness.

Mine is to remind you that tomorrow is casual Friday and that we will stop no later than 12:00 noon tomorrow. And that when we resume, it will be the following Wednesday morning at 9:00 a.m.

Does anyone else have any preliminary matters? I see none. Mr. Beshore?

MR. BESHORE: Marvin Beshore. We'd ask that Mr. Hollon resume the stand.

JUDGE CLIFTON: Mr. Hollon, you remain sworn. I would like you again to state and spell your name, please.

MR. HOLLON: Elvin, E-L-V-I-N, Hollon, H-O-L-L-O-N.

JUDGE CLIFTON: Thank you. And I have been handed a couple of documents. Mr. Beshore, do you want to identify what's being distributed?

MR. BESHORE: Yes, I would like to have two documents marked for purposes of identification. The first, which is identified as Cooperatives' Exhibit 5, is the testimony of Elvin Hollon, Second Statement, which is a 34-page document. The second document that we would ask to be marked for identification is titled Exhibits of Elvin Hollon, Second Statement, and it has attached, documents identified as tables...
5.A through 5.E. I would ask that they be given the next two
numbers.

JUDGE CLIFTON: Ms. Frisius, will the statement be Exhibit
63?

MS. FRISIUS: Correct.

JUDGE CLIFTON: The statement, which is also marked as
Cooperatives' Exhibit 5, will be Exhibit 63. The exhibits will
be Exhibit 64.

(Thereafter, Exhibit Numbers 63 and 64
were marked for identification.)

MR. BESHORE: Thank you, your Honor. And I won't -- I
assume Mr. Hollon is proceeding subject to his identification
and background and qualifications the first time, and I would
not propose to go through that again. But I'd ask him to
simply proceed to present at this time, your statement that's
been marked as Exhibit 63, with your Honor's consent.

JUDGE CLIFTON: Yes. Mr. Hollon, is there anything you
want to say preliminary to beginning to read into the record
your statement?

MR. HOLLON: No.

JUDGE CLIFTON: You may proceed.

MR. HOLLON: My testimony today concerns the pooling
provisions contained in the Cooperatives' proposal, Proposal 1.
It will explain those pooling provisions, demonstrate how they
operate, and indicate why the Cooperatives believe those
provisions are both proper and necessary for inclusion into the California Federal Milk Marketing Order, ("FMMO"). Our proposal is designed to address the wide disparity in producer and handler prices that we have identified in previous testimony and exhibits, and to restore equity and fairness to both producers and handlers.

I. Designing the Proposal Which Addresses the California Marketplace.

Q. Mr. Hollon, may I suggest, as has been the practice with some previous witnesses, where you are reading a heading, indicate that when you read it, and that will perhaps help the explain the text of the transcript.

A. I. Designing a Proposal Which Addresses the California Marketplace.

In order to design the proper pooling provisions, we start our analysis with estimated historical pool blends using the California State Order ("CSO") class utilizations and prices and FMMO prices.

A. Methodology for Blend Price Estimation.

We have converted the published price series and use stated into estimated --

JUDGE CLIFTON: I'm sorry, you are going 90 miles an hour, Mr. Hollon. Go way slower.

MR. HOLLON: We have converted the published price and use data into estimated producer blend prices for the period
January 2000 to July of 2015, using the following methodology.

1. We used prices as published by the Federal Milk Marketing Order.
   a. Cooperatives' Table 5.A (6 pages), "Announced Class Prices FMMO and CSO 2000 to July 2015" recap the FMMO Class I Mover prices, a population weighted Class I differential for California and the Class II/III/IV prices used in this process.

Q. Okay. Would you stop at that point with the text of the Exhibit 63, and turn to table 5.A in Exhibit 64? Now, you have just identified this table. Could you please, first of all, did you prepare this, Mr. Hollon?

A. I did.

Q. And could you just walk us through it and explain what it shows and how it was prepared?

A. Table 5.A is simply a listing of the various prices as they were downloaded, extracted out of the Federal Milk Marketing Order website and the California State Order website. I'll walk across the columns and indicate what they represent, or how they are -- well, there's no calculations -- yes there are -- calculations that are on this page.

Column A is the month and year.

Column B is the published Federal Milk Marketing Order Class I Mover.

Column C is the Federal Milk Order Class I differential.
estimated for California, and I'll explain the estimation process in the second table.

Class D would be then, the resulting Federal Milk Order Class I price used in our blend estimate calculation.

Column E is the announced California State Order Class I price for Southern California.

Column F, California State Order price, Class I for Northern California.

And Column G is the weighted average of those prices, assigning a weight of 52 percent to Southern California and 48 percent to Northern California.

Q. How did you derive those percentages?

A. Those percentages were derived in using data that's shown in Table 5.B, so looking to Table --

Q. Do you want to go to that?

A. I prefer to go across the columns then go there.

Q. Let's finish the columns in 5.A.

A. Okay. Column H is the Federal Milk Order Class II price.

Column I, the California State Order Class 2 price for Southern California.

Column J, the California State Order price for Northern California.

Column K, the weighted average Class 2 or California State Order, Class 2 price, using again, 52 percent weighting
for Southern California and 48 percent for Northern California.

Column L is the California State Order Class 3 price for Southern California.

Column M, California State Order Class 3 price for Northern California. And as pointed out by Mr. Shippelhoute earlier today, for a number of months there was a different price, and I think in 2009 it was only one published price for Class 3, for California Class 3.

Q. Prior to that time there were separate prices in many months?

A. Correct.

Column N is the weighted average California State Order Class 3 price, again using the 52 percent, 48 percent weight.

Column O is the Federal Milk Order Class III price.

Column P, the California State Order 4b price.

Column Q, the Federal Milk Order Class IV price.

And Column R, the California State Order 4a price.

So in order to compute comparable blend prices, we try to make the best comparable method that we could. I had several conversations with CDFA staff early in the process, talking about how to make some of these computations, and as they pointed out this morning, certain of the data would be confidential and simply not available. They indicated they couldn't release the data, and they also would be unable to compute the data.
And so -- and in order to make an estimate, first of all, for Class 1 price, we needed a single number for the state, so I'll explain the population weighted differential, but that's why we computed what's in Column C. And we needed single numbers for the Federal Order side of the calculation for Class II and Class III to combine those into a single number to compare with Federal Order Class II.

And the Federal Milk Order Class III and California State Order 4b would be comparable. And the Federal Milk Order Class IV and 4a would be comparable without some type of adjustment.

Q. So Table 5.A which is six pages, is the set of these various class prices for the time period January 2000 through July 2015, correct?

A. Correct.

Q. Okay. So then if you would go back to back to your text on page 1 of 63 and continue that narrative, starting on b.

A. b. We used California State Order published class usage on a total solids basis for each monthly estimated blend price calculation. (Cooperatives' Table 5.C.)

Q. So let's turn to 5.C at that point and walk us through that data set which is sort of your second data set that's going into the blend price estimates.

A. Cooperatives' Table 5.C.1 are blend price estimates we
made using California State Order utilization rates on a total solids basis, and California State Order in Federal Milk Order Class prices, 2000 through July 2015. The utilization rates I just spoke of are in columns C, D, E, F, and G, and those are taken, again, directly from the California State CDFA regular website. They were not in any table that Mr. Shippelhoute, that Mr. Shippelhoute published this morning, but there's a standard table of those utilization rates that's regularly published by CDFA.

Q. Okay.

A. So going back to testimony.

c. We constructed a weighted average statewide Class I differential of $1.92 per hundredweight by using each county's population as a percentage of the total population, multiplying each county weighting, times the county's Class I differential, and then summing the total rates of per hundredweight values for the state. We also computed weightings for both the Northern California pricing zone and the Southern California pricing zone. The detail of this calculation is outlined in Cooperatives' Table 5.B (2 pages) "Calculation of Population Weighted Average FMMO Class I Differential, California Marketing Area, 2015."

Q. Could you turn to 5, Table 5.B, then, and just walk us through that two-page table where you calculated the population weighted average Class I differential?
A. Column -- there are Columns A is simply a count of the counties.

Column B, just a notice they are all California counties.

Column C, the county name, and all counties through row 49 would be in the Northern California zone as published by the Department -- California Department of Food and Agriculture. I would note that not all of the counties are wholly incorporated. Some of the boundaries are less than counties known, so I looked and made the best estimate of which two zones it should be in for the purposes of this table.

Column D is the differential that's associated with each county.

Q. What's the source of the differential?

A. The Federal Order website and Federal Order data, and those are published for every county in the United States.

Q. Part of the Uniform Order Provisions in Section 51 perhaps?

A. Correct.

Q. Okay. Column E is a population for each county taken from the Census Bureau, my recollection is it's a 2015 number.

Column F is the percentage of that county's population as the percentage of the total state population. So, for example, in Alameda County, 1,594,569 persons is 4.12 percent of the 38.7 million total state population.
So by multiplying the population percentage times the differential for that county that is assigned a dollar weight for that county, and adding them all up, is how we arrived at the $1.92 as an estimated Class I differential for the state. In order to estimate a population, sorry, in order to estimate a blend price, and summing those population weights for Northern and Southern California, arrived in the calculation of 48 percent for Northern California, and 52 percent for Southern California.

So absent another way of assigning those weights and not being able to get any information from either of the two regulatory agencies, this was our best estimate to weight those prices.

Q. What's the second page of Table 5.B?
A. The second page is the listing out of the state regulations for the definitions of the marketing area for each county. And in some cases, for example, in the middle of the section, the Southern California marketing area definition, there is a phrase that says "and that portion of Ventura County Line, South of the standard parallel between township 5 North and township 6 North," so that would be an example of where a line didn't exactly parallel the county, so I made an assignment of Ventura County to be put in the Southern California pricing zone.

Q. Okay. That covers Table 5.B?
A. Correct.

Q. So return to your description of the blend price estimates in your statement.

JUDGE CLIFTON: If I might ask, Mr. Hollon, I notice on page 1 of 5.B there are only a few counties shown for the Northern portion is -- or for the Southern portion; is that correct?

MR. HOLLON: Yes, ma'am.

JUDGE CLIFTON: Okay. And that's all that they show, isn't it, on the next page?

MR. HOLLON: I'm glad that you confirmed that.

JUDGE CLIFTON: Okay. Thank you.

MR. HOLLON: You're welcome.

Returning to the testimony of page 2.d.

An estimated FMMO blend price was calculated by multiplying each Class price by a California State Order, Class Use Percentage. This is shown in Cooperatives' Table 5.C "Blend Price Estimate Calculation Using California State Order Utilization Rates (Total Solids) and California State Order in Federal Milk Marketing Order Class Prices -- 2000 through July 2015."

Q. Why don't you continue in your text through number 2, just identify the source of some of the other information on Tables 5.A, 5.B, 5.C and talk about 5.C further.

A. 2. We used prices as published by the State Order.
a. We used Class 1, Class 2, and Class 3 for Northern and Southern California and Class 4a and Class 4b prices. (Cooperatives' Table 5.A).

b. We used California State Order published Class Usage (total solids basis) for each monthly estimated blend price calculation (Cooperatives' Table 5.C).

c. We used population data to weight the Class 1, 2, and 3 uses by the two California pricing zones. (Cooperatives' Table 5.B).

d. The weighted average result was 52 percent for Southern California and 48 percent for Northern California. (Cooperatives' Table 5.B)

e. An estimated California State Order blend price was calculated by multiplying each Class price by its Class Use Percentage. (Cooperatives' Table 5.C)

Q. Continue with the first paragraph there of page 2, and then get back to the table, if you would.

A. B. Results of Blend Price Estimates.

Cooperatives' Table 5.C (6 pages), "Blend Price Estimate Calculation Using California State Order Utilization Rates (Total Solids) and California State Order and FMMO Class Prices, 2000 through July 2015," displays the results of the estimated blend prices that result from the price multiplied by utilization process.

Q. So if you turn to Table 5.C and just talk about the
Columns H, I, and J, which are how they were derived and what calculations are in those columns.

A. Using, for example, January of 2000 of table 5.C.1, the estimated California State Order blend price, Column H, was composed by taking the weighted average California price times its utilization, plus the weighted average Class 2 price times its utilization; plus the weighted average Class 3 price times its utilization; plus the weighted average 4a price and 4b price times their respective utilizations. So if you multiplied those out, you would get $10.65.

The Federal Milk Order blend price was computed by taking the Class I price as published by the Federal Order, plus the population-weighted differential estimate of $1.92, times Class 1 use that's published by California Department of Food and Agriculture; the Federal Order Class II price times the combined Class 2 and 3 usage, times the utilization, I'm sorry, times the weighted price, no, sorry, that's not the weighted price, that's times the Federal Order price. The Federal Order Class III price times its use, and the Federal Order Class IV price times its use. And if you perform those multiplications and added them up, you should get $10.97. And there may be a rounding of a penny off of each one, depending on how the spreadsheet calculation.

And Column J is a subtraction of Federal Milk Order minus California State Order.
Q. And that calculation is then shown for each month, January 200 through July 2015, on the 6 pages of Table 5.C, correct?

A. It is.

Q. And at the end of the table you have some averages and other analysis of the data, correct?

A. Correct.

Q. Okay. So go back to the narrative then and describe which relates to Table 5.C?

A. These calculations are "top line" prices with no deductions for any reason applied to either California State Order blend or the Federal Milk Marketing Order blend.

Note that the Class I (Column C) use averages 15.2 percent for the entire 2000 to July of 2015 period, and in recent months it has fallen to near 12 percent. Class II use (California State Order Class 2 and 3 -- Columns D and E) averaged 8.69 percent; below the 12 percent average for all Federal Milk Orders. So the higher use classes represent a small proportion of the total pool usage.

There is a calculation for each month. Our summary calculations show that the 2000 through July 2015 blend price, using California State Order pricing (Column H) results in a $14.65 per hundredweight blend price and a Federal Milk Marketing Order blend price (Column I) estimate of $15.22. The average difference (FMMO less CSO) is an increase in the
producer price of 57 cents per hundredweight -- Column J. We have provided summary totals for ten periods on this table, including annual summaries for each year 2010 through 2014, and a year-to-date summary through July of 2015. The California State Order estimated blend price has always been lower than the proposed Federal Order or FMMO price for each period measured.

These differences are not trivial. For the period August 2012 to July 2015, a period of much higher than average whey prices, the average difference between the estimated blend prices resulting from the use/price calculation of the two systems is $1.02 for hundredweight. The peak monthly difference for this period occurred in May 2014 at $1.58 per hundredweight. As whey prices have declined, the differences have narrow, and year-to-date through July 2015, the spread has been 86 cents -- and I note that the 88 cents in the text should be corrected to 86 cents.

JUDGE CLIFTON: We will make that change on the record copies as well. This is the very last figure on page 3, instead of showing 88 cents, the record copies will show 86 cents.

MR. BESHORE: Thank you, your Honor.

MR. HOLLON: Of these 36 months, there were no times that the CSO estimated blend prices were above the FMMO estimated prices. Every month, the difference was more than 25 cents per
hundredweight; 35 times more than 50 cents per hundredweight; and 17 -- half the period observations, the difference was more than $1.00 per hundredweight.

Based on the estimated blend prices calculated, the California FMMO will bring California milk prices into alignment with the national grid, as they will be computed using similar product price formulas, announced based on the same timing sequence, derived from the same underlying national commodity prices, and computed on methods similar to all other FMMO's. In order to achieve these blend prices, the proposed California FMMO's pooling provisions must include all of the class price values.

Q. Could I interrupt you right there? Mr. Shippelhoute testified this morning and presented some -- a document that he identified as California blend prices. Do you recall that?

A. Yes.

Q. Okay. Is that the same blend price you used?

A. No.

Q. Okay. Can you just, at this point, since we have talked about this calculation, explain why not? Just, in one, at one place here.

A. In order to have a comparable comparison, California versus State Order, I wanted to try to have as many of the factors be the same. And the utilizations were published, the prices were published, but I didn't have a way to get a
comparable price, so that's why I used the weighting sequence
to get a Class 1 price that I thought could, that would be
representative, and a Class 2 price, and a Class 3 price. When
Mr. Shippelhoute discussed his calculation, he mentioned
several of those factors, and when I talked with him, you know,
months ago and we discussed what could be done and what
couldn't be done, he did not indicate that the State Order can
publish or provide me with any other further break down so that
I could get comparable volumes and comparable weight and
comparable prices.

MR. ENGLISH: I do object to the extent that testimony is
viewed as evidence of statements of truth made by
Mr. Shippelhoute.

JUDGE CLIFTON: That's fine. The objection is noted.

MR. HOLLON: I would say those were inquiries about data
and would be similar to inquiries, so --

MR. ENGLISH: But my point is, what was said as being truth
and assertion.

JUDGE CLIFTON: He's just saying that that witness is not
here to verify exactly what he told you, and it's hearsay, and
that's fine. And it doesn't change a thing about the evidence
you have presented, but it does note the hearsay objection.

BY MR. BESHORE:

Q. Okay. So, in any event, that's the rationale behind
the blend price calculations that you made?
A. It is.

Q. Comparisons? Okay. Go on then.

A. C. Impact of the Quota Program on Blend Prices.

The California FMMO must recognize the integration of the state's quota program.

MR. ENGLISH: Your Honor, I'm not sure this is a statement of what the law is, we have had so many of them. To the extent this is an attempt to state what the law is, I object for previous reasons. And I know what you are going to rule, but I object.

JUDGE CLIFTON: Your objection is noted.

MR. BESHORE: Please proceed, Mr. Hollon.

MR. HOLLON: Based on calendar year 2015 calculations, the payments to quota holders will reduce monies available to pay through the market-wide pool by approximately 37 cents per hundredweight each month. The proposed California FMMO presents a combination of low utilization in the higher use classes, and the presence of the California quota system. No other FMMO has this combination of marketing factors.

In order to grasp the monetary impact of the quota and other marketing programs on the proposed California FMMO blend price, we will first review historical CSO pool and price results.

Cooperatives' Table 5.D (6 pages) "Comparison California State CSO announced Class 4a, 4b, and Overbase
Price -- 2000 through July of 2015." The overbase price is comparable to the FMMO blend price. Columns C, D, and E of the California State Order Class 4a and 4b price and overbase price as announced each month from July of 2000 to July 2015. Of the 187 months of published data, the overbase price is greater than both the 4a and 4b price only 17 times or 9 percent of the time.

Of the 91 percent of the months in which the overbase is lower than either 4a or 4b, that is 171 observations, 78 times Class 4 is higher than the overbase price, and 92 times 4a is higher than the overbase price.

Absent California's current strict pooling requirements, significant volumes of milk would exit the pool an estimated 91 percent of the time, resulting in different minimum prices to producers depending on which Class was higher.

Q. So let me interrupt you there, and ask you to turn to 5.D which you have described in text. And let's just go through that column by column to show how it depicts what you have just testified to.

A. Cooperatives' Table 5.D, and I'm looking on page 1; Column A, months.

Column B, years.

Column C, the published 4a price.

Column D, the published 4b price.
Column E, the overbase, the published overbase price.

Column F, a calculation of which is higher, Column C-4a price or Column D-4b price.

Column G, would be a choice of would the higher of those two prices choose to pool or depool. And;

Column H is which of those classes chose to pool or depool.

Q. So just for clarity, the last two columns, G, the choice of depool means that either 4a or 4b is higher than overbase; is that correct?

A. Correct. One of the two are higher.

Q. And H identifies which one?

A. H identifies which one.

Q. Very good. Is there summary data at the end of the table or is that just in the text?

A. It is only in the text.

Q. So return to the text, then, please.

A. When the overbase price (or in the FMMO, the blend price) is greater than the manufacturing prices, the manufacturing milk will benefit from being pooled. That is, it draws money from the blend pool to meet producer payment obligations. If the manufacturing class price is higher than the blend price pool, the incentive is to exit the pool, if that is an option, and retain the gained value. This situation creates unequal minimum prices among handlers. The exited use
class would be able to pay a higher standardized blend price than the milk remaining in the pool, and the prices paid to similarly situated producers would not be uniform. Because of the likely frequency of depooling and the attendant negative impact on marketing conditions, our proposed pooling provisions are the only solution.

There is a common misconception that in the FMMOs, milk is depooled to clear the market of distressed milk when prices are low. That is never true. If possible, a handler will always try to pool distressed or lowest priced milk in order to obtain the pool draw. Milk is depooled in FMMO markets due to the loss of Grade A status or the failure of meeting some level of performance standards or to retain the higher class value when manufacturing class value is greater than the estimated blend price.

D. Pooling Incentives and Disincentives

To further define what pooling provisions are required for the proposed California FMMO, we evaluated the incentives to pool milk by analyzing the differences between the calculated blend prices as shown in Cooperatives' Table 5.E (8 pages) "Blend Price Estimate Calculation Using CSO Utilization Rates (Total Solids) and CSO and FMMO Class Prices -- 2000 through July of 2015, Columns L, M, and N, Adjusted for Quota Premium Payment (estimated 37 cents per hundredweight) and the Transportation Allowance (estimated 9
cents per hundredweight), and the RQA Adjuster (estimated at 3
cents per hundredweight)."

Looking to Table 5.E, we can evaluate the expected
incentive to pool or not pool milk for the manufacturing
classes in the California FMMO pool by looking at Columns K, L,
and M, which compare the blend prices to the Class II, III, and
IV prices.

Column C is the FMMO estimated blend price obtained by
multiplying the FMMO class price times the class utilization
for the Cooperatives' Table 5.C.1-6. Columns E, F, and G are
the FMMO class prices for the Class II, III and IV.

Columns K, L and M represent the estimated price, less
an average 37 cents per hundredweight estimated cost to pay for
the quota premium (Column H), and 9 cents per hundredweight
estimated cost to pay for the transportation pool (Column I)
and adding back 3 cents per hundredweight for the value of the
RQA's (Column J). 37 cents per hundredweight represents the
average cost to fund the quota premium the first seven months
of 2015, and 9 cents the cost of the transportation allowance
system. The 3 cents per hundredweight is added back to the
pool to reflect contribution of the RQA's. The negative
difference in the table indicates that if allowed, the class
will choose not to pool.

As shown on page 8 of the Cooperatives' Table 5.E, for
the 187 months from January 2000 to July 2015, 130 months or 70
percent of the time, Class II would choose not to pool. In 111
months or 59 percent of the time, Class III would choose not to
pool. And in 80 months or 43 percent of the time, Class IV
would choose not to pool.

Looking to the 36-month period from August 2012 to July
2015, the number and percentages of the time that a particular
use class would choose to depool are shown. In 24 of the 36
months, (67 percent of the time), Class II would choose not to
pool. In 19 of the 36 months (53 percent of the time) Class III
would choose not to pool. And in 17 of the 36 months
(47 percent of the time) Class IV would choose not to pool.

Over the entire period, 34 percent of the 36 months --

JUDGE CLIFTON: Read that again from the beginning, "over
the entire period."

MR. HOLLON: Over the entire period, 34 of the 36 months
(94 percent of the time) either Class III or Class IV would
choose to be out of the monthly pool.

The Class 4a/IV utilization for the 36 month period was
33 percent, and the 4b/III utilization was 46 percent. Thus,
there would be significant volumes of milk (one or the other
class) choosing to exit the pool 94 percent of the time (34 out
of 36 months). The result of this constant in and out decision
making would make producer pricing very unstable and the goal
of uniform prices to producers unlikely.

Q. You missed a word in that sentence I think. Could you
just re-read it, Mr. Hollon?

A. The result of this constant in and out decision making would make producer milk pricing very unstable and the goal of uniform minimum prices to producers unlikely.

Q. Thank you.

A. Additionally, without the proposed pooling provisions and with the high frequency of incentives for Class III and IV to be out of the pool, the situation is prime for gaming the pool by creating a permanent "non-pool class of producers." In the milk dense counties of the marketing area, there are significant volumes of producer milk produced on farms with nearly identical delivery cost to Class III and Class IV plant or plants owned by the same handler (or perhaps a pair of different handlers." With little or no additional cost, these handlers could designate a block of producer milk to deliver to whichever plant/use class, that was incented not to pool each month and switch that block back and forth depending on the price relationship. This would be relatively easy to arrange and for the pooling handler to financially correct marketing decision. Handlers without the easy ability to game would likely seek some type of arrangement with the second handler to create a gaming situation to gain a portion of the incentive monies through likely -- though likely at a lesser rate, as they may have to share a portion of the gain.

The Midwestern Orders provisions that establish pooling
limits based on prior month pooling volumes, would not in any way prevent this gaming scenario from occurring, because this milk would never seek to return to the pool.


The combination of low FMMO Class I and II use, and the very high and near equal volumes of Class III and IV use, and the unique presence the quota system, combine for very different market conditions that calls for specific and unique solutions. In order to accumulate and retain all the revenues necessary to provide for the blend prices proposed and to create an orderly milk market, this proposal requires that all milk delivered to plants located in the marketing area from farms located in California, must be pooled each month. Without the proposed pooling provisions, the incentives to depool would be so great as to render blend prices unstable at best. Month-to-month milk pricing would have significant variation --

JUDGE CLIFTON: Let me have you start that sentence again, month-to-month.

MR. HOLLON: Month-to-month producer milk pricing would have significant variation as the majority of months either Class III or Class IV would elect to depool and then repool in a subsequent month. Producer prices would vary depending on the volatility of class pricing and reduce the desired benefits of market-wide pooling tremendously. The ability to forecast
prices would be extremely difficult and impact business planning for producers, processors, lenders, and those desiring an improved risk management strategy. Unstable market conditions would prevail.

II. Proposed Pooling Compared to Other Orders:

The Commonality and Uniqueness of Pooling Provisions and FMMO's.

The FMMO system has shown it is capable of creative, innovative, and necessary solutions to unique and changing market conditions over time in different regions of the country, and that the system-wide level when necessary. The proposed pooling provisions will make the California FMMO different from any existing order, but they are necessary in order for the California FMMO to operate in an orderly manner.

Pooling standards are common and necessary in all orders, but they differ in their exact specification in each order, as they establish the terms and trade necessary to fit the unique marketing conditions -- I'm sorry, unique marketing characteristics of a given marketplace. For example, the Southeastern Orders have high number of touch base days per month, while the Upper Midwest Order has "once per ever" so long as the farm does not get pooled on another order. Several orders prevent pooling of a diversion of producer milk "until" that producer has "touched base" while other orders prevent a pooling diversion "unless" there's been a touch base delivery.
The result of this language is very different for the pooling handler. The Northeast, Central, Mideast and Upper Midwest Orders have provisions, have special pooling provisions which apply solely to milk supplies located outside the marketing area.

While the pooling terms of each Order stand on their own and are developed to meet the needs of the particular Order, there is consensus in the industry that completely unstrained depooling destabilize --

Q. Now, could you stop there and read starting with "there is consensus."

A. There is consensus in the industry that completely unrestrained depooling destabilizes the marketplace, is not orderly, and should not be allowed. So the question becomes, what are the correct provisions for the particular order? Therefore, the proposed California Federal Milk Marketing Order, the answer is the pooling provisions we have proposed. Limitations on depooling vary from Order to Order in system. All Orders have addressed the issue of proper pooling provisions and have crafted provisions that were proposed, heard and accepted for those orders.

Some examples of those would include, dairy-farmer-for-other markets provision in Orders 1, 124, and 131 as well as the state unit pooling provisions of Order 1. Orders 30, 32, and 33 have percentages limiting the amount of
milk that can be pooled in any given month to a percentage of the milk pooled in the previous month. Additionally, these same orders have provisions (different from all the other Orders) that further govern the ability of an out-of-area plant to pool milk by requiring deliveries for the qualifying volumes associated with that plant be delivered directly from the supply plant attempting to qualify producer milk and not allow any 1000(9)(c) diversions to be included in the calculations qualifying the plant. Order 124 chose instead of the percentage limitation provision to increase the touch base days for regaining pool status whose milk was depooled.

JUDGE CLIFTON: Missed a phrase there. "For regaining pool status --"

MR. HOLLON: For a producer whose milk was depooled.

BY MR. BESHORE:

Q. And that should be singular producer rather than --

A. Should be singular producer, that's correct.

Q. As it was typed.

JUDGE CLIFTON: I would like for us to note that change on the record copies. We're on page 10, we're in the middle of the page of the last line of the first full paragraph. There's a word there "producers" plural, which we will make singular simply by striking the S.

MR. BESHORE: Thank you, your Honor.

MR. HOLLON: While some of these provisions are rooted in
market conditions that predate the FMMO Reform process, the
provisions for percentage limitations and not allowing (9)(c)
diversions to assist in qualifying a plant were "new" and
"unprecedented" in the system of post-Reform orders. In a
similar vein, the pooling provisions proposed here are
necessary for the California FMMO to function properly and
should in no way be dismissed simply because they are new or
unusual.

III. Order Language Which Fits California Marketing
Conditions, Pool Plant, Producer and Producer Milk
Provisions

A. Section 1051.7-Pool Plants.

The specific language necessary to define the pool
plant definitions is found in Section 11.57 --

JUDGE CLIFTON: Start again with the number.

MR. HOLLON: 1151.7.

BY MR. BESHORE:

Q. Let me interrupt you there, should that be 1051.7,
Mr. Hollon?

A. It should be.

Q. Thank you. Could we have that correction shown on the
record copy, your Honor?

JUDGE CLIFTON: Yes, let us do that. We'll correct the
record copy at the very bottom of page 10, second line up from
the bottom, beginning of that line should read 1051.7(a)
through (f). So the only change is to strike 1151 and insert above it 1051.

MR. HOLLON: I'll start with that sentence starting over again.

The specific language necessary to define the pool plant definitions is found in Section 1051.7(a) through (f), titled "Pool Plant". These provisions define which plants are regulated in the proposed California MMO. Pool plants serve different functions. All serve to process milk from producers who will share in the market-wide pool, and thus generate revenues to be shared by producers. These plants are involved in the production of Class I and fluid associated products and are also plants that produce Class II, Class III, and Class IV products.

Some plants may provide a mix of uses and also serve to balance the needs of other plants across all the class uses in the market. As plants become more specialized and process larger volumes, the need to have plant capacity dedicated whole or in part to balancing all sectors of the market, becomes more common and necessary.

Our proposal pools all Grade A milk delivered to a plant in the marketing area and produced on a farm located in the marketing area. The inclusion of performance standards for in area milk is found in many Orders such as touch base requirements, free-ride periods, or diversion limits, is not
needed. With limited exception, all Grade A milk produced in the market area is pooled, no matter to which type of plant it delivers. In addition, there are provisions that provide for milk delivered from outside the marketing area to be pooled. Further, milk from outside the marketing area may be associated with the pool even if not delivered to the marketing area, as such milk is substantially related to deliveries to Section 1051(7)(a) and (b) plants.

JUDGE CLIFTON: Now, I would like to stop you there so that we can take a five-minute stretch break. We don't need to go far, but I just want everybody to move around a little.

MR. VLAHOS: Your Honor?

JUDGE CLIFTON: Mr. Vlahos?

MR. VLAHOS: John Vlahos.

Your Honor, it's so hard for a witnesses when they are reading testimony to catch every word. If I may, for the clarity of the record, I caught a few others that we missed a couple that --

JUDGE CLIFTON: All right. Could we do it after the break? I'll call you up first. So please be back and ready to go on record at 3:17. Gives you about five minutes.

(Whereupon, a break was taken.)

JUDGE CLIFTON: We're back on record at 3:19. We'll accept those proposed corrections from Mr. Vlahos at a later time.

Mr. Beshore, if you would resume near the bottom of
BY MR. BESHORE:

Q. Yes, thank you, your Honor. And Mr. Hollon, I want you to resume at the bottom of page 11 where there's quoted material, and there's a number of, in the text here, if I could, your Honor, just indicate there's -- Mr. Hollon quotes the proposed language and then explains the proposed language of some these order provisions. And I've asked him to identify the proposed language when he's quoting it at the beginning and the end of the quote, although that is not -- there's not language printed on the Exhibit 63, per se, but to help the transcript, you can just say when you start the quote and when he's ending it, perhaps it will be useful.

JUDGE CLIFTON: I'm sorry, do you have a suggestion, Mr. English? No? Okay. All right. I think that's good. So we're about to go into such quoted language, and Mr. Hollon, you may proceed.

MR. HOLLON: So this would be quoted language from the proposal:

Section 1051.7, pool plant:

Pool plant means a plant as specified in paragraph (a) through (d) of this section, but excluding a plant specified in paragraph (f) of this section. The pooling standards described in paragraphs (d) of this section are subject to further modification pursuant to paragraph (e) of this section.

JUDGE CLIFTON: And you added the word "further", is that
because that's in the proposal?

MR. HOLLON: It is not.

JUDGE CLIFTON: Okay.

MR. HOLLON: Where did I add the word further?

JUDGE CLIFTON: Just before "modification."

MR. HOLLON: The last sentence should read:

The pooling standards described in paragraphs (d) of this section are subject to modification pursuant to paragraph (e) of this section. (a) a distributing plant, other than a plant qualified as pool plant pursuant to paragraph (b) of this section, or Section 7(b) of any or more of the total quantity of fluid --

MR. BESHORE: You missed a line.

MR. HOLLON:

Any other Federal Milk Order from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant, (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or transfer in the form of packaged fluid milk products to other distributing plants.

JUDGE CLIFTON: There was just one word that you left out and that's the word "are". I don't know where you want to begin, that was a long sentence.

MR. HOLLON:

(a) a distributing plant other than a plant qualified as pool plant pursuant to paragraph (b) of this section, or Section 7(b) of any other Federal Milk Order from which during the month, 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from
use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

BY MR. BESHORE:

Q. Mr. Hollon, "in the marketing area" ended the proposed language, correct?

A. Correct.

Q. Okay. Back to the text of your testimony.

A. This language outlines how a plant becomes qualified as a pool distributing plant. The proposal requires that during the month, 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class 1 use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. Proponents consider the 25 percent packaged fluid milk standard to be reasonable for this market. The plants meeting this standard, if at least 25 percent of the deliveries are made in the marketing area, the plant will be a pool distributing plant in the California FMMO. This standard should be sufficient to pool plants with a significant distribution presence in the marketing area, but will not capture plants that do not have significant sales in the marketing area.
Reading from the proposed language again:

(b) any distributing plant located in the marketing area which during the month processed at least 15 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class 1 use) into ultra-pasteurized or aseptically-processed fluid milk products.

This is the end of the language cite.

This language serves to lock a plant located in the marketing area that processes at least 15 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class 1 use) ultra-pasteurized or aseptically-processed fluid milk products. These types of plants generally have much more diverse distribution patterns due to the extended shelf life of the product. It is not uncommon for these types of plants to have significant production for a specific geographic distribution in one month, and then have much less to none for the next month. It is difficult to supply plants with this type of production/distribution as the FMMO blend price may change depending on the area (or Order) in which the plant may become regulated and the milk supplier would be faced with the unforeseen consequence of a lower minimum price for milk or the buyer, a higher price than expected. Additionally, California's proximity to the Pacific Rim export markets makes
it more likely to have business in those markets and perhaps
the greater need for this provision to have a reasonable
standard and a consistent raw materials cost.

Again reading from the proposal language:

(c) A plant that is located in the marketing area
which during the month, receives milk from a
producer located in the marketing area.

MR. HOLLON: This provision provides that all other plants
located in the marketing --

JUDGE CLIFTON: I'm sorry, you have already finished the
quote from the proposal and now back to your statement. It
begins with?

MR. HOLLON: This provision provides that all other plants
located in the marketing area that receive milk from a producer
located in the marketing area be pooled. There is no allowance
for this type of plant not to pool all the milk it receives.
This is the key provision to provide for orderly market of milk
in the proposed California FMMO. With this provision, the
operation of the California FMMO will be more orderly.

There is at this spot a reference to footnote 1. And
footnote 1 says, "the presence of the word underline and bold
indicates a proposed language modification from the Hearing
Notice.

Now back to reading proposal language.
(d) A plant located in Churchill County, Nevada, strike the word that, insert the words which during the month receives milk from, insert the word producer(s) in Churchill County or in the marketing area.

MR. HOLLON: This is the end of the proposed language.

This provision allows for the deliveries to a plant located in Churchill County, Nevada to also be fully pooled on the California Federal Milk Marketing Order by receiving milk from producers located in the marketing order and/or from Churchill County.

BY MR. BESHORE:

Q. Just read the last clause of that -- of that sentence, "by receiving milk from producers."

A. From producers located in the marketing area and/or from Churchill County.

Q. Thank you.

A. Any milk delivered to this plant will be pooled and paid announced California FMMO producer prices. The producers in this Nevada milkshed have been affiliated with the California market for many years and still ship milk to a distributing plant that has distribution in the proposed marketing area. Any milk pooled would be subject to the full pooling provisions as called for in Section 7(c).

Reading again from the proposal language:
(e) A supply plant located outside the marketing area (except the plants subject to (7)(c)(1)) from which the quantity of bulk fluid milk products shipped to (and physically unloaded into) plants described in paragraphs (a) and (b) of this section is not less than 50 percent of the Grade A milk received from dairy, insert the word farmers and handlers described in Section 1000.9(c) including milk diverted pursuant to Section 1051.13, subject to the following conditions:

(1) If milk is delivered directly from producers farms that are located outside of the marketing area, such producers must be grouped by state into reporting units and each reporting unit must independently meet the shipping requirements of this paragraph.

(2) Concentrated milk transferred from a supply plant located outside the marketing area to a distributing plant shall be excluded from the supply plants shipments in computing the percentages in paragraphs (d)(1).

MR. HOLLON: This is the end of the language cite.

JUDGE CLIFTON: Mr. Hollon, before you go further, when you read the word "paragraph" as plural "paragraphs" in Subsection E, I thought that was best. Mr. Beshore, I'm asking you.

MR. BESHORE: I thought it was appropriate, also when read. It could -- could be either way. I'm satisfied with the plural.

JUDGE CLIFTON: All right. I'm going to ask then, that this change be made on the record copies. This is page 14 of Exhibit 63, we're at the top, we're four lines down in the italicized, indented portion which shows proposed language. And we're just making the word "paragraph" plural, we're just
adding an S, that's all. Good. Now, Mr. Hollon, you are about in the middle of page 14, and you may continue.

MR. HOLLON: This provision provides for the qualification of a supply plant on the proposed California FMMO. A California FMMO will have low Class 1 utilization. Nevertheless, where a plant located outside the marketing area provides a substantial and consistent supply to a California FMMO, Section 7(a) and (b) plants, it should be in the pool. The shipping requirements for supply plant establish that if milk is truly needed and economically justified, it will be accommodated.

Q. Could you stop there and begin that sentence again?

You missed a word, Mr. Hollon.

A. The shipping requirements for a supply plant establish that if the milk supply --

MR. HILL: Your Honor, Brian Hill. I would like to stop the witness for just a second. We found a little problem that I think needs to be addressed.

MR. FRANCIS: Okay. Will Francis, USDA.

On page 13 where you are talking about Churchill County, Nevada, we have a (d). If you have Exhibit 1, which I can hand you, and I think we are on page 47, 211, I'm sorry, 47, 212 of Exhibit 1. It reads:

I. And I think that begins a sort of out of sequence labeling in your printed testimony compared to what was in the
Notice of Hearing, and we're worried that's going to carry through. So we would rather address it now.

MR. HILL: Brian Hill. And it does carry through, because if you look at the top of page 15, he cited to Section (e), which talks supply plant, and that's actually Section (d), page 14 -- and so it's kind of missing a number, and it continues down from there.

JUDGE CLIFTON: I'm very glad you brought this up when you did, because we do want, unless there's an intended departure from the numbering in the proposal, then we do want to fix it now.

MR. BESHORE: There's not an intended departure from the numbering. The language in mine is identical, I think, and I'm, we're certainly willing to conform to the numbering in the Hearing Notice.

JUDGE CLIFTON: What might be a good idea, Mr. Beshore, is for us to take about a five, ten-minute break while you and Mr. Hollon get his copy right, and then we can conform ours as he reads to us from his corrected copy. It puts a little more burden on Ms. Frisius in making those changes on the record copies, unless you want to --

MR. BESHORE: Well, we can do that in a minute.

JUDGE CLIFTON: Okay. All right. So let -- I think it's going to take you at least ten minutes, don't you, Mr. Beshore?

MR. BESHORE: We'll take ten.
JUDGE CLIFTON: Okay. Everybody be back and ready to go at about 3:48. That gives you about 10 or 11 minutes.

(Whereupon, a break was taken.)

JUDGE CLIFTON: It's 3:47. Everybody's back, so we'll proceed. Mr. Hollon?

Do you -- Mr. Beshore, did you want to start?

BY MR. BESHORE:

Q. Well, I will, if I could.

Mr. Hollon, do you have some corrections to the identifying subparts of part 7 that some of the languages in your testimony, number 63, something got mislabeled, not in conformity with the Hearing Notice.

So if you start with the, on page 13 of Exhibit 63, the text of 7, the pool plant text that was labeled (d) in the printed exhibit, should be what?

A. (c)(1), (c) rather than (d).

Q. Okay. So on the next page, page 14, the provision for supply plant which was labeled (e) should be what?

A. Should be (d).

Q. Okay. Going on, then to page 15, those paragraph that was labeled (f) should be?

A. (e).

Q. And the paragraph at the bottom that is labeled (g) should be?

A. (f).
Q. Okay. You didn't reach that point yet in your testimony, but we'll correct them in advance, and when you get to page 16, it continues with (g) which is correct; is that right?

A. That is correct.

JUDGE CLIFTON: It is my understanding that the record copies have been so corrected; is that right, Ms. Frisius?

MS. FRISIUS: Correct.

JUDGE CLIFTON: Thank you.

BY MR. BESHORE:

Q. With those corrections, could you then resume presenting your testimony in Exhibit 63, and I think you were at the paragraph beginning with "furthermore" on page 14.

A. That is correct, page 14.

Q. Okay.

A. Furthermore, if the milk that is delivered from producers' farms that are located outside of the marketing area and in more than one state, the producers and milk supplies must be accounted for individually by state, and independently meet the shipping requirements described in Section 1051.7(d).

Also, we do not want to allow concentrated milk transferred from the supply plant located outside the marketing area to a distributing plant to be a part of any computation made to determine if the supply plant can meet the requirements of this section.
Our language does not allow for a supply plant for
which we see no economically justified function.

JUDGE CLIFTON: May I interrupt, Mr. Hollon? We've just
gotten through page 14, and I would like to go up about five
lines from the bottom, and just ask whether there should be a
dot inserted in the section reference?

MR. HOLLON: Section 10517(d).

JUDGE CLIFTON: Should be dot 7.

MR. HOLLON: Oh, I was looking at the dot at the end of the
(d). Okay. Section 1051.7(d).

JUDGE CLIFTON: All right. And I would like the record
copies to reflect the addition of the dot. Thank you.

All right. So we have completed page 14, and
Mr. Hollon, you may resume.

MR. HOLLON: Reading again from the proposal language:

(e) The applicable shipping percentages of
paragraphs (d) of this section and section 1051.13
(d)(2) and (d)(3) may be increased or decreased
for all or part of the marketing area by the
Market Administrator. If the Market Administrator
finds that such adjustment is necessary to
encourage needed shipments or to prevent
uneconomic shipments. Before making such a
finding, the Market Administrator shall
investigate the need for adjustment either on the
Market Administrator's own initiative, or at the
request of interested parties if a request is made
in writing at least 15 days prior to the month for
which the requested revision is desired effective.
If the investigation shows that an adjustment of
the shipping percentages might be appropriate, the
Market Administrator shall issue a notice stating
that an adjustment is being considered and invite
data, views, and arguments. Any decision to
percentage must be issued in writing at least one day for the effective date.

End of the language cite.

This provision allows for modification of the shipping percentages by the Market Administrator if needed to best serve the market and warranted by an investigation of market conditions. We support this provision and the methodology outlined.

Reading again from proposal language:

(f) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal Order.

(2) An exempt plant as defined in Section 1000.8(e).

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal Order and from which more than 50 percent of its route disposition has been in the other Federal Order marketing area for three consecutive months.

(4) A plant located outside any Federal Order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal Order and has had greater route disposition and such other Federal orders marketing area for three consecutive months.

(5) A plant located in another Federal Order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal Order and does not have a majority of its route disposition in this marketing area for three consecutive months,
such other Federal Order without regard to its route disposition in any other Federal Order marketing area.

JUDGE CLIFTON: You read, I believe, "distribution" as "disposition". I would like you to go back, and I'm sorry to have you do the whole thing, but re-read Section 5.

MR. HOLLON:

(5) A plant located in another Federal Order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal Order, and does not have a majority of its route disposition in this marketing area --

MR. BESHORE: Distribution.

MR. HOLLON:

-- distribution in this marketing area for three consecutive months or if the plant is required to be regulated under such other Federal Order without regard to its route disposition and any other Federal Order marketing area;

A plant qualified pursuant to paragraph -- sorry -- start over.

(6) a plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal Order and from which greater qualifying shipments are made to plants regulated under the other Federal Order then are made to plants regulated under the order in this part or the plant has automatic pooling status under the other Federal Order -- and that is the end of this quote or this cite reference.

Paragraph (f) describes the special situations for which pool plant status does not apply. We support the situations as listed. The situation of a producer-handler in
section (f)(1) and as described in Section 1051.10 would not be a pool plant. A producer-handler plant that has special provisions -- I'm sorry -- a producer plant has special provisions --

Q. Producer-handler. Start that sentence again, Mr. Hollon, please.

A. A producer-handler plant has special provisions relative to its ownership, operation, milk supply, milk processing and distribution, and does not qualify as a pool plant. An exempt plant as described in Section (f)(2) and as described in Section 1000.8(e) has special provisions that describe its ownership, operation, milk supply, milk processing and distribution, and does not qualify as a pool plant. The unique situation set forth in Sections (f)(3) through (6) describe plants designated individually by location, regulatory status, and the length of regulatory status, and refer to situations which cause the plant that has been regulated as a pool plant on this proposal order, to lose its pool plant status and become regulated on another order. In each case, we support the provision and concept as outlined.

Reading again from the proposal language:

(G) any plant that qualifies as a pool plant in each of the immediately preceding three months, pursuant to paragraph (a) of this section or the percentages in paragraph (c) of this section that is unable to meet such performance standards for the current month because of unavoidable
Administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind, storm, flood) fire, breakdown of equipment or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

Paragraph (g) describes the situation which circumstances beyond the control of the handler--

JUDGE CLIFTON: I'm sorry, you wanted to tell us that at the bottom of page 14 you had finished reading the proposed language and you were about to return to your statements about it.

MR. HOLLON: That is correct.

JUDGE CLIFTON: Okay.

MR. HOLLON: Returning to the testimony:

Paragraph (g) describes the situation where circumstances beyond the control of the handler prevents the handler from complying with the regulations that establish pool plant status and, accordingly, allow the Market Administrator to make special accommodations under the given circumstances.

B. Section 1051.12-Producer

The language and testimony -- this language and testimony outlines our proposal for the definition of a producer.

Reading from the language cite:
(a) except as provided in paragraph (b) of this section, producer means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk, and whose milk (or components of milk) is:
(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with section -- sorry -- start over again.
(1) received at a pool plant directly from the producer or diverted by the plant operator in accordance with Section 1051.13; or
(2) received by a handler described in Section 1000.9 (c).

This is the end of the language cite.

The term "producer" defines those dairy farms whose milk is a part of the pool.

JUDGE CLIFTON: I'm sorry, say it again, please?

MR. HOLLON: The term "producer" defines those dairy farmers whose milk is a part of the pool. Producer status under the California FMMO should be provided to any California dairy farmer who produces milk pooled by duly constituted regulatory agency for fluid consumption as Grade A milk, and whose milk or components of milk is received at a pool plant directly from the producer's farm or is marketed by a cooperative.

Producer status also should be according to dairy farmers located outside the state of California who deliver milk to pool plants as defined by Section 1051.7 and whose milk meets the requirements of 1051.13.

Reading again from the language cite:
(b) Producer shall not include a dairy farmer described in paragraphs (b)(1) through (5) of this section. A dairy farmer described in (b) (5) -- start over again.

(b) Producer shall not include a dairy farmer described in paragraphs (b)(1) through (5) of this section. A dairy farmer described in paragraph (b)(5) of this section shall be known as a dairy farmer for other markets.

(1) A producer-handler as defined in any Federal Order.

MR. BESHORE: Well, you want to close the paren after 1.

Read that again.

MR. HOLLON:

(1) A producer-handler as defined in any Federal Order.

(2) A dairy farmer whose milk is received at an exempt plant excluding producer milk diverted to the exempt plant pursuant to Section 1051.13(d).

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal Order if the other Federal Order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class 1.

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal Order with respect to that portion of the milk so diverted as assigned to Class 1 under the provisions of such other order; and

(5) A dairy farmer who having had the Grade A permit has marketed milk as other than Grade A for more than 30 consecutive days shall not be a producer until twelve consecutive months have passed until from time non-Grade A status started.

MR. BESHORE: Could you read that provision 5 once more?
You missed a word on the second line.

MR. HOLLON:

(5) A dairy farmer who having had a Grade A permit has marketed milk as other than Grade A milk for more than 30 consecutive days shall not be a producer until twelve consecutive months have passed from the time non-Grade A status started.

This is the end of the language cite.

JUDGE CLIFTON: May I interrupt just a moment? We're about in the middle of page 18. I just want for the transcript, for the court reporter to know that when the witness is telling us where to open and close parentheses, it is all right to use the exhibit to close the parentheses if the witness forgot to. And this is supposed to be a verbatim transcript, yes. But what we're trying to capture here is the layout that is shown in the exhibit. And to the extent, you know, the witness refers to dot, we don't expect you to type D-O-T, we just expect the number to show in it with a period. So, yes, it's a verbatim transcript, but this is a -- this witness is doing an excellent job with the punctuation, but just punctuation. And the exhibit will be very helpful as far as formatting the transcript appropriately.

All right. Back to you, Mr. Hollon, you're beginning now with your statement again.

MR. HOLLON: The producer definition proposed specifically excludes producer-handlers as defined in any Federal Order, and
dairy farmers whose milk is delivered to exempt plants (unless 
the milk is diverted in accordance with Section 1051.13(d)). 
Since these operations are exempt from the proposed California 
FMMO pricing and pooling provisions, milk which is in excess of 
the needs of these operators should not be treated as producer 
milk when it is moved directly from the farms of these 
operators to a pool plant. Milk delivered to a pool plant from 
such operations would be other source milk. 

In addition, provision is made to preclude the 
possibility of a dairy farmer being a producer under two orders 
with respect to the same milk. The producer definition 
excludes a dairy farmer with respect to milk which is received 
at a pool plant under this proposed order by diversion from a 
pool plant under another order, if the dairy farmer is a 
producer under the other order with respect to such milk and 
the milk is allocated to Class II or Class III use under this 
order. Also, the definition excludes a dairy farmer with 
respect to milk which is converted to a pool plant under 
another order from a pool plant under this order, with respect 
to the portion of such person's milk assigned to Class I under 
the other order.

BY MR. BESHORE:

Q. Class I milk?

A. Class I milk under the other order.

Q. Thank you.
A. A dairy farmer for other market provision is added to ensure that a producer who loses his Grade A permit for less than 30 days does not lose his pool status upon the reinstatement of his permit. However, where a permit is given up for more than 30 days, the producer is not eligible for pool status until twelve consecutive months have passed.

Section (12) close --

Q. Should that be 13? 13(b)(5)?

A. It is 12.

Section 12. Start the paragraph over. Section open paren --

Q. Sorry, 12.

A. -- (12)(b)(5) has been inserted to deal with the historical practice in the California market of producers volunteering to give up their Grade A status to avoid being pooled. Producers who voluntarily degrade must remain out of the pool for at least twelve consecutive months. Producers can lose Grade A status occasionally due to issues beyond their control, and therefore, we want to allow the producer the ability to regain pool status when this occurs. It is our expectation that such incidents are correctible in a 30-day period.

C. Section 1051.13-Producer Milk.

This language and testimony outlines our proposal for the definition of producer milk.
Reading from the cite:

Section 1051.13 Producer Milk.

Except as provided for in paragraph (e) of this section, producer milk means the skim milk (or the skim equivalent of components of skim milk) including nonfat components and butterfat in milk of a producer that is;

(a) Received by the operator of a pool plant directly from a producer or handler described in Section 1000.9 (c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received.

End of the language cite.

This provision defines the status of the majority of milk included in the pool. It defines milk received directly at pool plants, whether directly from producers or marketed by Cooperatives. It is our intention that no location value be applied to payments for producer milk, but location prices will apply to the handler value of milk used as Class I.

Reading again from the language cite:

(b) Received by a handler described in Section 1000.9(c) in excess of the quantity delivered to pool plants;

This provision allows Cooperatives to pool milk not delivered to pool plants, provided all the other requirements of producer milk are met.

Reading from the language cite:

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced to
diverted; or

Q. Now, you want to note that there's language added there which was not in the submitted proposal?

A. That is true. The words "to the handler" are added to the language now, it was not in the original proposal.

Q. Thank you. And now?

A. And now I'm finished with the language cite.

This provision allows pool plant operators to pool milk not delivered to their own pool plant, provided all other requirements of producer milk are met. This will allow the operator of any pool plant to divert milk supplies to another pool plant and retain the producer milk status and payroll responsibility for such milk. Without this provision, a plant operator who wants to retain regular producers on the plant's payroll for the entire month, would have to physically receive milk of such producers into the plant (so that it will be considered "producer milk"), then pump it back into the truck and deliver it to another pool plant. Such milk would then be considered a transfer from one plant to another, with the transferor-handler accounting to the pool for the milk and paying those producers as well. This practice is obviously uneconomic, resulting in unnecessary costly movements of milk. In addition, the unnecessary pumping of milk is damaging to its quality. Permitting diversions between pool plants will promote the efficient handling --
JUDGE CLIFTON: That sentence again, please.

MR. HOLLON: Permitting diversions of milk between pool plants will promote the efficient handling of milk.

Reading again from the proposal language:

(d) Diverted by the operator of a pool plant or cooperative association described in Section 1000.9(c) to a nonpool plant subject to the following conditions:

This provision, which defines the qualifications for diversions to nonpool plants, concerns primarily deliveries to plants located outside the marketing area, as any delivery from a producer located inside the marketing area to a plant located in the marketing area, is to a pool plant. Diverted milk must meet all of the criteria, (paragraphs 1 through 5) --

BY MR. BESHORE:

Q. Read that again, Mr. Hollon.

A. Diverted milk must meet all of the following criteria (paragraphs 1 through 5) as applicable.

Reading from the language cite:

(1) Milk of a dairy farmer shall not be eligible for diversion until at least five days production of such dairy farmer is physically received as producer milk at a pool plant during the first month the dairy farmer is a producer. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval or as a result of the handler of the dairy farmer's milk failing to pool the milk under any order), the dairy farmer's milk shall not be eligible for diversion until at least five days production the dairy farmer has been physically received as producer milk at a pool plant.
reassociated with the market.

This is the end of the language quote.

To be eligible for diversion, five days production of a dairy farmer's milk must first be received at a pool plant.

Reading again from the language cite:

(2) The quantity of milk diverted by a handler described in Section 1000.9(c) may not exceed 50 percent of the producer milk receipts reported by the handler pursuant to Section 1051.30(c) provided that the quantity of milk diverted may not exceed delete the language not less than, 50 percent of such Cooperative's receipts delivered to plants described in Section 1051.7(a) or -- start that sentence over again.

(2) The quantity of milk diverted by a handler described in Section 1000.9 (c) may not exceed 50 percent of the producer milk receipts reported by the handler pursuant to Section 1051.30(c) provided that the quantity of milk diverted may not exceed 50 percent of such Cooperative's receipts delivered to plants described in Section 1051.7(a) or (b). These percentages are subject to any adjustments that may be made pursuant to Section 1051.7(e); and

(3) The quantity of milk diverted to nonpool plants by the operator of the pool plant described in Section 1051.7(a) or (b) may not exceed 50 percent of the Grade A milk received from the dairy farmers (except dairy farmers described in Section 1051.12(b)) including milk diverted pursuant to Section 1051.13; and

And that's the end of the language cite.

Diversions defined by (2) and (3) above --

JUDGE CLIFTON: I know what you read means practically the same, but go ahead and start again.

MR. HOLLON: Diversions as defined by (2) and (3) above are
limited by the producer receipts reported and the shipments to
plants described in Section 1051.7(a) or (b)—pool distributing
plants. We choose this measure as the best choice to
demonstrate the need for reserve supplies in the California
market. Deliveries to these plants--

JUDGE CLIFTON: One more time on that sentence.

MR. HOLLON: We choose this measure the best -- we chose
this measure as the best choice to demonstrate a need for
reserve milk supplies in the California market. Deliveries to
these plants usually contribute the highest value to the pool,
and thus, are a valid measure that the milk is needed by the
market. The standards as proposed will insure that these
deliveries are truly needed as the cost of meeting the
standards will not be trivial.

However, the diversion standard of 50 percent does
recognize a balancing component of the Class I and II market
and would not require uneconomical shipments of milk in order
to qualify for the sharing of market proceeds. The need would
have to be present and met each month. This is a strict
requirement that the California market appears to have an
adequate reserve supply for the Class I market, the chosen
standard for measure, and so the demonstration of the need must
also be strict. The combination of an initial five-day touch
base and the 50 percent diversion limit should be a valid
measure. The performance standards can be modified by the
discretion of the Market Administrator if needed. As evidenced
by this hearing, the California market is well represented by
both producer and processor interests, so the investigation
required by the provision would be well researched and
reviewed.

Reading from the proposal language:

(4) Further, such --

MR. HILL: Your Honor, I think we have another issue in the
same vein.

JUDGE CLIFTON: All right. Thank you, Mr. Hill.

MR. HILL: If you look here, I think he's actually reading
from section, from subsection paragraph 3 at the bottom. If
you look at the Federal Register, he has it marked as 4 here.
Yes, it's on the middle column of page 4713 of the Federal
Register, 1051.13(d)(3), if you look at the bottom of that
section.

JUDGE CLIFTON: Yeah, we do have some numbering issues. I
think the easiest way to do this is what we did last time.
Have Mr. Beshore --

MR. FRANCIS: Is he changing, sorry, we jumped the gun. He
explains it. My fault.

MR. HILL: Yes, I think he may be explained this.

MR. HOLLON: Can you tell me where I was?

MR. BESHORE: You are on page 22, number 4.

JUDGE CLIFTON: I'm not -- I'm not matching up entirely.
MR. HILL: Next paragraph.

MR. FRANCIS: It is in the text.

JUDGE CLIFTON: Mr. Beshore, take us back to where we should be on page 22.

MR. BESHORE: If I only knew.

MR. HILL: We're at paragraph 4.

MR. BESHORE: The quoted paragraph 4, Mr. Hollon.

MR. HOLLON: Reading section language:

(4) further, such diverted milk is subject to the pooling requirements of Section 1051(7)(d)(1); and,

That's the end of the section cite.

Diverted milk is subject to the state unit provisions as described in section --

JUDGE CLIFTON: I'm sorry, I need help. How come I don't have a dot?

MR. HOLLON: Because there's not one there.

JUDGE CLIFTON: Okay.

MR. BESHORE: After 1051.

JUDGE CLIFTON: Right. So if I don't have a dot, then what section do I go to, the very beginning?

MR. HOLLON: No, there should be one there.

MR. BESHORE: There should be one after 1051.

JUDGE CLIFTON: What follows the dot? Is it paren 7 or am I still in --
MR. BESHORE: We're in -- that should be .7 instead of paren 7.

JUDGE CLIFTON: All right. So if I'm in .7 then I'm still with pool plants.

MR. BESHORE: Correct.

JUDGE CLIFTON: I don't need the parentheses around the 7.

MR. BESHORE: Correct.

JUDGE CLIFTON: Okay.

MS. FRISIUS: Your Honor, that's in two locations.

MR. BESHORE: It's on two consecutive lines.

JUDGE CLIFTON: Well, and it's in the quote. I still think the best way to do this is have Mr. Beshore stand by the witness and the two of them figure it out and then they will tell us, like you did last time. What are you thinking, Mr. Beshore?

MR. BESHORE: The parens are not -- it's not correctly punctuated as per the proposed text. It should be .7 rather than (7), however, the label, the text in the next sentence describes the fact that the subparagraph divider "4" should have been inserted, "was not inserted correctly before the foregoing language of "(5)" when submitted for the Hearing Notice." And therefore, we're inserting here a (4).

JUDGE CLIFTON: All right. Let me try it then. Let's, Mr. Beshore and Mr. Hollon, listen to what I'm saying and tell me if this is correct. When Mr. Hollon, on page 22 of his
testimony, cited subsection 4, it should have read as follows:

(4) further, such, insert diverted milk is subject to
the pooling requirements of Section 1051.7(d)(1); and,

That completes the cited proposed text. Returning to
Mr. Hollon's statement, the next line would read:

Diverted milk is subject to the state unit provisions
as described in Section 1051.7(d)(1).

Are we good so far, Mr. Beshore and Mr. Hollon?

MR. BESHORE: We are. Yes.

JUDGE CLIFTON: Okay. Before you go next, then I would
like the record copies to reflect those changes, and
Ms. Frisius is way ahead of me, she's already said it's in two
places, so she's already identified it, that's great.

Now, Mr. Beshore, you may go ahead with what you are
concerned about after that.

MR. BESHORE: Well, there's a bracketed sentence next, and
maybe to facilitate things, I just -- I would like to just
explain what the bracketed sentence says.

In the Hearing Notice, the last clause of (3), which
is: "And further, such milk is subject to the pooling
requirements of 1051.7(b)(1)" has been moved into a new paren
(4), that's what the bracketed sentence says. It just makes
the provision cleaner that way, although there was no language,
per se, added there, other than the word diverted, as
Mr. Hollon noted.
Then what's paren (5) in the text on page 22, is paren (4) in the Hearing Notice. So the clause at the end of 3 was just moved to create a (4) for better text of the language, we felt.

JUDGE CLIFTON: That is very helpful. And so I see why Mr. Francis said, oh, they've already taken care of it, but I wouldn't have known that until you had just explained it, Mr. Beshore. All right. Good. Thank you.

So now, Mr. Hollon, you can go back and even though Mr. Beshore has explained the gist of it, you may read your testimony on page 2, excuse me, 22, beginning with "diverted milk."

MR. BESHORE: Begin with the sentence in brackets. I think we corrected through there.

JUDGE CLIFTON: You are right. Thank you.

MR. BESHORE: Thank you, your Honor.

MR. HOLLON: [The sub-paragraph divider "(4)" was not inserted correctly before the foregoing language of "(5)" when submitted for the Hearing Notice. It was incorrectly placed at the end of (3) and the word "diverted" was omitted.]

Reading again from the language cite:

(5) Diverted milk shall be priced to the handler at the location the plant to which diverted.

(e) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a market-wide equalization pool
imposed under the authority of the state
government maintaining market wide pooling of
returns.

That's the end of the language cite.

This provision denies producer milk status to milk that
could possibly be dual pooled in both a State Order and an
FMMO. This provision is included in all FMMO's.

Returning to the language cite:

The quantity of milk reported by a handler
pursuant to either Section 1051.30(a)(1) or
Section 1051.30(c)(1) may not exceed 115 percent
of the producer milk receipts pooled by the
handler during the prior month. Milk diverted to
nonpool plants reported in excess of this limit
shall be removed from the pool. Milk in excess of
this limit received at pool plants other than pool
distributing plants shall be classified pursuant
to Section 1000.44(a)(3)(v) and Section
1000.44(b). The handler must designate by
producer pick up which milk is to be removed from
the pool. If the handler fails to provide this
information, the Market Administrator will make
the determination.

The following provisions apply:

(1) Milk shipped to and physically received at
pool distributing plants in excess of the previous
month's pool volume shall not be subject to the
115 percent limitation.

The Market Administrator may waive the --

JUDGE CLIFTON: Go ahead and give me a number before you
start that paragraph.

MR. HOLLON:

(2) the Market Administrator may waive the 115
percent limitation:
(i) For a new handler on the order, subject to the
provisions of Section 1051.13(f)(3), or
changed milk supply conditions due to unusual circumstances;
(3) A bloc of milk may be considered ineligible for pooling if the Market Administrator determines that handlers altered the reporting requirements of such milk for the purpose of evading the provisions of this paragraph.

This is the end of the language cite.

JUDGE CLIFTON: Now, is bloc, B-L-O-C, is that a term that's commonly used in the industry? Is that supposed to be spelled that way?

MR. HOLLON: That's the way it is spelled in the other Orders.

JUDGE CLIFTON: Okay. Good. Thank you.

MR. HOLLON: Section 1051.3(f) --

JUDGE CLIFTON: I'm sorry, for the record, how is it spelled there, Mr. Hollon -- bloc?

MR. HOLLON: B-L-O-C

JUDGE CLIFTON: Yes, thank you.

MR. HOLLON: Section 1051.3(f) regulates the volumes of milk that this type of handler may pool on the proposed Order from month-to-month. The provision --

MR. BESHORE: Could you stop there? The reference at the beginning of that sentence you just read, Ms. Frisius has called to my attention should be 1051.13, rather than just 3.

MR. HOLLON: Thank you.

Section 1051.13(f) regulates the volumes of milk that this type of handler may pool on a proposed order from
month-to-month. The provision limits the volumes to be pooled to not more than 115 percent of the volume pooled in the previous month, unless the Market Administrator waives the limitation, provides for an allowance for a new handler, or determines that the supply conditions of the reporting handler had a significant change.

Section 1051.13(f) prescribes procedures to be followed in case a handler reports milk in excess of the percentages allowed by the proposed order. The excess quantity of milk would not qualify as producer milk, and would not be priced under the Order, or would be down allocated for pricing purposes. Where possible, the reporting handler would be required to designate the dairy farmer deliveries that should not be considered producer milk. Absent such designation, the Market Administrator will make the determination.

D. Pooling of Milk from Outside the Marketing Area

The proposed Order primarily involves the marketing and pooling of milk in the State of California and the requirements for equal pricing to producers and handlers. Producers and plants outside the state can clearly participate in the pool, but as in other Orders, with different benefits and burdens. Benefits may include the price improvement generated by the California FMMO pool versus the local market, and burdens may include the high level of delivery necessary to share in those returns.
Qualified distant reserve supplies may choose to pool or not pool, depending on advantageous price relationships, without causing the extent of disorderly marketing conditions that such behavior would result in if practiced within the marketing area.

E. Section 1051.11 -- Grade A Milk and Market Milk

MR. BESHORE: Mr. Hollon, should that be 1051.11?

JUDGE CLIFTON: That's what it is.

MR. BESHORE: I'm sorry, when you get to the text of the proposed, it is incorrect. I'm sorry.

MR. HOLLON: Yes.

MR. BESHORE: But maybe we can pre-mark that and read it correctly, the textual language should be 1051.11 when it says 1050.

MR. HOLLON: E. Section 1051.11--Grade A Milk and Market Milk

We propose to utilize the reserved Section 1051.11 to add a definition of Grade A milk and market milk in order to assure that these terms which are used in the proposed order and in California law and regulations, are properly interpreted in the FMMO.

Referring back to proposed language:

Section 1051.11 Grade A Milk
"Grade A milk" shall mean milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk, or as market milk as
End of the proposed language.

Under California --

JUDGE CLIFTON: Now, I'd just like to point out,

Mr. Hollon, the heading in your proposal just says "reserved". So even your heading "Grade A milk" is actually to be inserted.

MR. HOLLON: Yes, that's correct.

JUDGE CLIFTON: Okay.

MR. HOLLON: Under California law, the term "market milk" is the term used to define milk eligible for fluid consumption and is generally synonymous with the FMMO term "Grade A milk". Section 11 was a reserve section of the proposed order, and to prevent any possible conflicts with terms and definitions going forward, the Cooperatives proposed to insert this language for the proposed California FMMO into Section 1051.11.

IV. Examples of Major Changes in Federal Order Regulations Over the Years.

The adoption of pooling terms from California Order which are different from any permanently existing in other Federal orders --

BY MR. BESHORE:

Q. Read that again, please, Mr. Hollon.

A. The adoption of pooling terms for the California Order which are different from any presently existing in other FMMO's, is just one example of how Federal Orders under the
AMAA are able to meet the needs of the marketplace as it inevitably changes over time. We note here just a few significant changes in FMMO regulations over the past several years.

A. The Elimination of Individual Handler Pools in Favor of Market-wide Pools

In the early periods of Milk Order regulation, the use of individual handler pooling regulation was neither unusual nor rare. For example, in 1961, there were 67 Federal Order markets with market-wide pools, and 14 Federal Order markets with individual handler pools. However, as the FMMO system evolved, the presumed benefit of individual handler pools, as viewed through the lens of orderly marketing, became less acceptable and the number of individual handler pools decreased over time.

The Secretary discussed individual handler pools extensively in the Final Decision of the 2010 Producer-Handler hearing, noting their place and use in the Orders and the ultimate elimination of that class of handlers:

The market-wide sharing of the classified use values of milk among all producers supplying a marketing area is an essential feature of the Federal Milk Marketing Order system. It ensures that producers supplying a given marketing area receive the same uniform price for their milk, regardless of its end use. In combination with classified pricing, market-wide pooling has, among other things, successfully mitigated price competition between producers seeking the higher-valued fluid outlets for their milk.
favor of an individual handler pool system would reverse the stability achieved by its adoption in all Federal Milk Marketing Orders.

... Over the years, USDA has repeatedly concluded that market-wide pooling promotes orderly marketing conditions more completely and is one of the most important marketing order tools used to ensure uniformity in prices to producers. In markets where much of the milk is handled by operating Cooperatives and large surpluses of milk are unevenly distributed among handlers, conditions observable today, market-wide pooling best ensures orderly marketing.


Individual handler pools had been a viable part of the FMMO system for many years. As individual handler pools gradually fell out of favor due to the rise of larger markets and more complex pooling issues, the Secretary concluded that they no longer served the purpose of orderly marketing and made the significant decision to eliminate them. The last individual handler pool was in the Michigan Upper Peninsula Order (Order 44) and was eliminated in Order Reform. Undoubtedly, the handler in this Individual Handler pool was very opposed to the change in no small part due to the economic implications it brought. But the Secretary, nevertheless, concluded that the broader benefits to orderly marketing outweighed any negative consequences, and thus made the change.

Similarly, as we have documented, without the pooling provisions proposed by the Cooperatives, the benefits of market-wide pooling will be greatly impaired. In the many
months where either Class III or Class IV would not be pooled, the resulting scenario would greatly resemble the deficiencies of an individual handler pooling system.

B. Regulation of Large Producer-Handlers

In 2010, the Secretary issued a Final Decision that substantially changed the FMMO regulations governing producer-handlers. In particular, the Final Decision amended "the producer-handler definitions of all Federal Milk Marketing Orders to limit exemption from pooling and pricing provisions to those with total route disposition and sales of packaged fluid milk products to other plants of three million pounds or less per month." (75 Fed. Reg. 21157 (2010).)

The Producer-Handler hearing was lengthy with substantial testimony, noting there was a longstanding tradition of treatment of producer-handlers that was significantly different from what was being proposed; that the discussion of the issue was legitimate; and that the proponents' proposal would have significant negative economic impacts on the opponents (large producer-handlers). The Secretary recognized these points in the Final Decision, noting that the historical exempt status provided to producer-handlers had been "based on the premise that the declared policy and objectives of the AMAA, namely orderly marketing, could be achieved without the extension of full regulation of this category of handler."
(75 Fed. Reg. 10122, 10146 (2010).) The Secretary determined that this significant change was necessary because "USDA found the activity of large scale producer-handlers to be a source of significant and measurable disorder in the Arizona and Pacific Northwest marketing areas." (Id. At 10147.)

With regard to economic impact, the Secretary noted:

"While this may cause an economic impact on those entities with more than three million pounds of total monthly sales that are currently considered producer-handlers under the Federal Order system, the impact is offset by the benefit to other small businesses."

(Id. At 10122.)

Of course, the economic impact referenced by the Secretary would be a negative impact. The results of the Hearing Decision would increase some costs to the largest producer-handlers. But the overall effects of the change were deemed by the Secretary to be beneficial to the market as a whole, in part because the new provisions made the operations of producer-handlers more similar to the other pool distributing plants that competed within the market for sales. The decision thus resulted in more orderly marketing conditions.

JUDGE CLIFTON: Now, I would like to stop you because you are about to begin with page 28 of Exhibit 63, and you can not finish your getting through this exhibit before we have to
leave tonight, so I would like us to stop and talk about what
we'll do tomorrow.

And Mr. Vlahos, you have a number of corrections that
you also had caught in what we have done thus far. I'm going
to invite you to suggest those at this time.

MR. VLAHOS: Thank you, your Honor. John Vlahos. I
completely sympathize with the witness having to read through
the myriad of testimony and the fact that you are here and what
they do is quite amazing to me.

Your Honor I had some of the opening and closing
parentheses which your Honor has already indicated would be
corrected, so we won't deal with those, but on page 9, at eh
bottom line, Mr. Hollon was reading the testimony, the word
"currently" in the text was omitted.

JUDGE CLIFTON: All right. Mr. Hollon, would you read the
last full sentence that shows the bottom of page 9 beginning
with the word limitations?

MR. HOLLON: Limitations on depooling currently vary from
Order to Order in the system.

JUDGE CLIFTON: All right. So the exhibit is fine, is that
correct, Mr. Hollon? That is a correct statement?

MR. HOLLON: Yes.

JUDGE CLIFTON: And if in reading it you left out the word
currently, you meant to include it?

MR. HOLLON: Yes.
JUDGE CLIFTON: All right. Thank you.

MR. VLAHOS: On page 13, the footnote indicates that the presence of an underline and bold indicates proposed language modification. In the, just below the middle of that page, there is a paragraph that in the proponent's proposal, the way the witness read it, did not indicate the underline and bold were indeed the words that were inserted. He just read it as is, without saying inserted, insert that which during the month and insert producers, he just read it as it is without that information.

JUDGE CLIFTON: All right. Then, Mr. Hollon, with regard to page 13 of Exhibit 63 in about the center of the page, the provision would read as follows, with you showing what's been inserted.

MR. HOLLON: A plant located in Churchill County, Nevada, strike the word that, and insert the words which during the month, then the next receives milk is correct, then insert the word producer(s) in Churchill County.

JUDGE CLIFTON: Thank you.

MR. VLAHOS: The same thing happened on page 14, he omitted the quoted language, the proposed language, the word farmers, that if underlined and boldfaced in that text was just read, indicating it was an insertion.

JUDGE CLIFTON: All right. Then, Mr. Hollon, looking at the top of page 14 of your testimony, subsection "d", what word
is inserted in that section?

MR. HOLLON: In the fifth row, beginning with the words 50 percent of the Grade A milk received from dairy, insert the word farmers, and that's the only word that's inserted.

JUDGE CLIFTON: All right. Thank you.

MR. VLAHOS: In the next paragraph of the text, while the second to the bottom line of that paragraph, beginning with the word plan, established that, Mr. Hollon was reading did not read the word supply, he read that if the milk distributed.

JUDGE CLIFTON: All right. So Mr. Hollon, on page 14, in the middle of the page, will you read the last sentence, the first full paragraph following the proposed order language?

MR. HOLLON: Shipping requirements for a supply plant establish that if the milk supply is truly needed and economically justified, it will be accommodated.

MR. VLAHOS: On page 16, a very tiny insert but to make the record totally accurate, the full paragraph after the middle of the page ending seventh line, the line beginning with processing and distributing.

THE COURT: It says, not that, but we're looking in the right place.

MR. VLAHOS: Have I got the right page? 16?

THE COURT: What it says is milk processing and distribution.

MR. VLAHOS: Thank you. I made a mistake, distribution and
the witness did not read the following work "it", tiny point.

JUDGE CLIFTON: Okay. Mr. Hollon, on page 16, the middle of the page, would you please read the sentence in full that begins an exempt plant?

MR. HOLLON: An exempt plant as described in Section (f)(2) and as described in Section 1000.8(e) has special provisions that describe its ownership, operation, milk supply, milk processing and distribution and it does not qualify as a pool plant.

MR. VLAHOS: Your Honor, on page 17, the quotation of the proposed language under the heading B. Section 1051.12--Producer. In the middle of the quoted language, the proposed language that is underlined and bold, again this is a situation where the witness read it without indicating that that was conservative language.

JUDGE CLIFTON: All right. Mr. Hollon, with regard to page 17 of Exhibit 63, would you read subsection (a) and point out to us what words are added?

MR. HOLLON: (a) except as provided in paragraph (b) of this section, producer means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk insert the words (or components of milk).

JUDGE CLIFTON: Thank you.

MR. VLAHOS: On page 20, in the proposed language from the
proposal under the paragraph that began at near the top of the page, this provision allows Cooperatives to pool milk, in the quoted language the words "to the handler" there are bold and underlined. Again, were not indicated by Mr. Hollon.

JUDGE CLIFTON: All right. On page 20 of Exhibit 63, Mr. Hollon, will you read into the record, again, the subsection (c) in the top half of page 20?

MR. HOLLON: (c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced, insert the words "to the handler" at the location of the plant to which diverted; or

JUDGE CLIFTON: Thank you.

MR. VLAHOS: And I think, your Honor that from that point on Mr. Hollon actually indicated each time that there was an insert or a revision. He read it correctly in his testimony.

Oh, one final thing, I think It's final, that on page 25, at the bottom, carries over to page 26, there's some language that is in the text as boldfaced and the, he made the citation to the Federal Register, and he states emphasis added. Mr. Hollon, in his testimony, literally indicated it was the bottom paragraph, the bottom of page 25, started, Over the years, and the language carrying over to the next page was the language that was emphasized.

JUDGE CLIFTON: All right. Thank you. I would ask the court reporter, when you are utilizing the Exhibit 63 to assist
with punctuation and the like for Mr. Hollon's testimony, that
when you get to the bottom of page 25 and you see that the
second paragraph 9 of that citation from the final decision of
the 2010 producer-handler hearing is contained in bold and the
exhibit bold, the second of the two paragraphs.

Would that suffice with regard to that, Mr. Vlahos?

MR. VLAHOS: I think so. And I think that's most of the
things that I noticed, your Honor. Thank you for allowing the
corrections.

JUDGE CLIFTON: Thank you. I do really appreciate how
everyone is so vigilant. It's been very helpful.

MR. HILL: Brian Hill. I don't want to belabor this, I
just want to make you aware of this, on page 13, the two cites
to 1051.7(c) and what are not (c)(1) in his testimony, those
citations are not complete. They do not encompass the entirety
of what's in the Hearing Notice. I just want to make sure that
we're not changing or shortening those up.

MR. BESHORE: We're aware of that. Thank you.

JUDGE CLIFTON: Good. All right. Now, so my question was,
what will we do tomorrow? I know we'll finish Mr. Hollon's
direct testimony.

MR. BESHORE: I suggest we finish his direct, finish his
cross, and --

JUDGE CLIFTON: Doesn't that give some incentive to finish
his cross so we can go? Because you might got to go prior to
noon.

MR. ENGLISH: My cross will be very lengthy.

JUDGE CLIFTON: Mr. English says his cross will be very lengthy. Hard to give that man a good incentive.

All right. So is there anyone who is hopeful that Mr. Beshore will call another witness tomorrow once we finish Mr. Hollon's testimony about pooling? Thank you, Mr. Hollon.

Mr. Hill?

MR. HILL: Brian Hill. We do have one point to make everyone aware of. We have one potential witness coming in on October 14th, it could be the first day that we return from our break. I believe that's a Wednesday. Al Zolin. So I just want to -- No?

JUDGE CLIFTON: How do you spell his last name?

MR. HILL: Z-O-L-I-N.

THE COURT: Okay. Thank you. All right. Is there anything else preliminary to our closing for the day? There is nothing. We go off record at 5:03. I'll see you tomorrow morning.

(Whereupon, the evening recess was taken.)

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2789
COURT REPORTERS CERTIFICATE

STATE OF CALIFORNIA  )
COUNTY OF FRESNO  ) ss.

I, MYRA A. FISH, hereby certify:

I am a duly qualified Certified Shorthand
Reporter, in the State of California, holder of
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force and effect.

I am not financially interested in this
action and am not a relative or employee of any
attorney of the parties, or of any of the parties.

I am the reporter that stenographically
recorded the testimony in the foregoing
proceeding and the foregoing transcript is a true
record of the testimony given.

Dated: October 26, 2015

Myra Paul
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