VOLUME VI

BEFORE THE SECRETARY OF
THE UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICES

In the Matter of Proposed	)	Docket Numbers
Amendments to Tentative	)	AO-14-A74, et al.,
Marketing Agreements	)	DA-06-01
and Orders.	)	

National Public Hearing
Friday, September 15, 2006
8:03 o'clock a.m.
Holiday Inn Select
15471 Royalton Road
Strongsville, Ohio 44136

BEFORE:
JUDGE VICTOR W. PALMER
US ADMINISTRATIVE LAW JUDGE
UNITED STATES DEPARTMENT OF AGRICULTURE

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I N D E X

E X H I B I T S

JUDGE PALMER: You can mark the statement that you're being given now by Dr. Bailey as Exhibit 78.

(Thereupon, Exhibit 78 was marked for purposes of identification.)

MR. YALE: We're ready for Dr. Bailey.

JUDGE PALMER: All right, Doctor, if you'll come forward, sir.

KENNETH BAILEY, PH.D., having been first sworn by the judge, was examined and testified under oath as follows:

DIRECT EXAMINATION

BY MR. YALE:

Q. This is Benjamin F. Yale on behalf of Select Milk, Zia Milk Producers, Lone Star, Continental Dairy Products and Dairy Producers of New Mexico.

And, Dr. Bailey, would you please provide your name and your position?

A. Kenneth Bailey, Associate Professor at Penn State University.

Q. And who are you giving testimony on behalf of?

A. I'm giving testimony on behalf of myself.

Q. And do you have a written statement?
A. Yes, I do.
Q. And does that statement explain your qualifications and what your position -- what you wanted to provide?
A. It doesn't provide my qualifications, but it does provide my statement.
Q. What are -- what is your position at Penn State?
A. I'm an Associate Professor of Dairy Markets and Policy.
Q. And does that -- what's your educational background?
A. I have a bachelor of science in agricultural economics at the University of Arkansas, a master's of agricultural economics at the University of Missouri and a Ph.D. in agricultural economics from the University of Minnesota.
Q. And how many years have you been involved in dairy economics?
A. Roughly 20 years. I had to add it up.
Q. And as part of your position at Penn State, are you involved in developing any models or analysis of impact of Federal policy?

A. Yes. We have -- we develop models and we're analyzing Federal policy.
Q. Very well. You have a statement. Could you please read it?
A. Yes.
STATEMENT FOR THE RECORD OF KENNETH BAILEY,PH.D.
THE WITNESS: The title is "Impact of Modifications to Federal Order Make Allowances on Class Prices, Blend Prices and Pool Values in 2006 and 2007."
MR. VETNE: Your Honor?
JUDGE PALMER: Yes, Mr. Vetne.
MR. VETNE: John Vetne, representing proponents Agri-Mark, et al. I've been glancing through the statement which we got a couple minutes ago, and it's very relevant to the hearing, particularly to the nature of evidence discussed last winter, the first segment of this hearing. However, on its face, except for the concluding paragraph on page 5, it appears to address matters outside of the scope of the limitation of the hearing notice for this reconvened session.
JUDGE PALMER: Well, I'm not going to strike it. I'm going to allow it to go

forward as is, primarily because we've had testimony from one dairy economist, a professor of dairy economics, now we're having testimony from another one. And there's a good deal of statistical material here that I think would be helpful to the Secretary. And if it is a little bit beyond the scope, it's a little bit beyond, but I'll allow this one to go ahead as is.

MR. VETNE: Thank you.

JUDGE PALMER: Go ahead, sir.

THE WITNESS: I am an associate professor at Penn State University. I study dairy markets and policy. I am testifying today on behalf of myself and do not represent Penn State University.

U.S. dairy producers participate in a national market and are under intense economic pressure to lower costs, expand, modernize, become more efficient, possibly relocate or exit the market. According to USDA, the number of farm operations with milk cows fell 19.7 percent from 97,560 farms in 2001 to 78,295 farms in 2005. During this same time period, the U.S. milk supply grew 7.1 percent. Market pressures resulted in fewer farms becoming more efficient.

Processors located in Federal orders don't face the same economic incentives. They face regulated make allowances for the processing of American cheese, butter, nonfat dry milk and dry whey. As long as their costs are in line with national averages and they meet minimum quality standards, they will have the opportunity to cover costs and earn a return on their investment.

I have told dairy producers in Pennsylvania that they must face competitive markets, and that processors face this regulated margin. I explain that this is the tradeoff for having Federal orders. If the make allowance is set too low, plants will not be able to recover their costs; however, if set too high, plants will have less incentive to modernize their plants and lower per unit costs.

Also, they will have an incentive to expand production despite market conditions. This will lower commodity prices and, hence, farm-gate milk prices.

The objective of my testimony today is to present a study conducted at Penn State, with my graduate student, Mirjana Pajic, to

evaluate the impact of changes in make allowances on Federal order prices, the uniform blend price and pool values for 2006 and 2007.

We analyzed six alternative scenarios for changes in make allowances. These scenarios are based on results from a Cornell Study conducted by Mark Stephenson on dairy processing costs dated September 1, as well as his testimony presented at this hearing.

We used a Penn State dairy industry model to conduct the study. This model is a monthly dynamic model that reflects the details of Federal milk marketing orders. The monthly results were averaged and summed for 2006 and 2007.

The scenarios conducted. The following scenarios were analyzed for cheese, dry whey, butter and nonfat dry milk make allowances. The values are presented in Table 1.

The baseline is the current make allowances used in Federal orders.

Two scenarios represent the confidence interval from the Cornell testimony. Confidence interval low is the low range

presented by Mark Stephenson based on his Cornell Study. Confidence level high is the high end of his confidence interval range.

The weighted average is the weighted average make allowances presented in the September 1 Cornell Study.

Modified weight average. This is the same scenario as the weighted average scenario with the exception that the whey make allowance was set equal to the weighted average cost of the nonfat dry milk plus 2.56 cents per pound. This was based on a post-hearing report presented by Agri-Mark that noted that processing costs for liquid skim milk and skim whey were only differentiated by the volume of water that had to be removed during drying time.

Population average. This scenario used the weighted average scenario with the exception that the cheese make allowance is the new Cornell estimate for the population of U.S. cheese plants located in Federal orders. It's 20.28 cents per pound.

Population average with energy adjustments. The last scenario is the same as the population average scenario plus the higher

energy costs for 2005 reported in Stephenson's testimony. And I will note that there is a Table 1 in my report.

Model results for 2006 and 2007. The simulation results are discussed next in terms of changes in Federal order prices, uniform blend prices and pool values and are compared to the baseline. These results are presented -- reported in Tables 2 through 7.

The model results indicate that small changes in the make allowances result in big changes in Federal order prices. For example, the Cornell Study, dated September 1, shows that the weighted average make allowances are very similar to the baseline. The exception is dry whey, which is currently 15.9 cents per pound in the baseline and is 19.41 cents under the weighted average scenario.

This change, when entered into the model, increased the Class III skim solids value and resulted in the Class III price rising 19 cents per hundredweight relative to the baseline.

In addition, this change resulted in the Class I mover rising 20 cents per

hundredweight, since the skim portion of the mover is the higher of the Class III and IV skim prices. This change in the whey make allowance also reduced the average blend price all of 10 Federal orders by 14 cents per hundredweight, with the largest adjustments coming out of the heavy Class I and Class III markets. Finally, this slight change reduced the pool value in 10 orders by 176 to $177 million per year.

Arguing that the population average scenario would be more representative of U.S. cheese makers again has big implications for U.S. dairy farmers. That scenario would reduce the Class III price by 57 cents per hundredweight and the Class I mover by 36 cents per hundredweight. It would reduce the average blend price by 31 to 32 cents per hundredweight and transfer 428 to $429 million per year from dairy producers to processors.

Adding in an energy adjuster, again, based on the 2005 Cornell estimates, would reduce the blend prices an additional 7 cents per hundredweight and would transfer an additional 86 to $87 million per year away from dairy producers to processors.

And I'll note that page 3 and 4 and 5 have Tables 2 through 7.

Going to page 5, under "Summary and Conclusions," the weighted average make allowances presented in the Cornell Study, dated September 1, are very similar to make allowances currently used in Federal orders. The exception, however, is dry whey.

Cornell estimated a weighted average of 1941 -- I'm sorry, 19.41 cents per pound compared to the current value of 15.9. In my opinion, current make allowances are set at a level that has allowed processors to expand plant capacity and production levels.

For example, data from USDA's Dairy Products report indicates that total cheese production in the U.S. continues to grow year after year and is above the five-year average for 2001 through 2005. And I'm referring to Figure 1 in my report.

And two large and efficient cheese plants have been built in the West within the last year. The point is, these two facts would not be possible if current make allowances are not too small.

This hearing is being conducted during a time period where milk prices are relatively low. The Class III price averaged $12.62 per hundredweight during the 10-year period 1996 to 2005. For 2006 I am forecasting it will be $11.81 per hundredweight, 6.4 percent below the 10-year average. Clearly dairy producers will scrutinize every penny deducted from the Federal order pools in this current marketing environment.

On the one hand, USDA could set the make allowances at a level that will allow most plants to operate profitably. On the other hand, USDA may not want to set make allowances at a level that will guarantee every plant in Federal orders a profit regardless of efficiency.

From these two arguments, one could state that individual processing plants should face the same economic realities that dairy producers face: they should lower costs, expand, modernize, become more efficient, possibly relocate or exit the market.

To conclude, given the current environment of low milk prices, USDA should be

very cautious about increasing make allowances from current levels due to their negative impact on farm-gate milk prices.

That concludes my testimony.

JUDGE PALMER: All right. Is there a motion to receive the statement? So Exhibit 78 is received.

(Thereupon, Exhibit 78 was received into evidence.)

JUDGE PALMER: And now he's available for questioning. Are there questions? I presume there are. Who will start? Oh, you have some more?

MR. YALE: No, if somebody else wants to start. I just didn't want him to get down before I asked him some questions. I just have two.

JUDGE PALMER: Yes, go ahead, sir.

FURTHER DIRECT EXAMINATION

BY MR. YALE:

Q. The model that you present, does that look at the prices on a month-to-month basis?

A. Yes, it's a monthly model.

Q. So it's able to reflect that the Class I movers went from Class III to Class IV?

A. Correct. All those equations are in the model.
Q. I noticed in one of your exhibits that Class II -- the impact on Class I is less than the impact on Class III, and that indicates that because of these changes, you would be predicting some months in which Class IV would be the mover?
A. Correct. We simulated changes in the make allowances for protein fat, all the make allowance changes, and they fed through all the equations, and still a Class I mover is the higher of the Class III and IV skim, so yes.
Q. Now, do you put out a weekly thing called a Dairy Outlook or a newsletter?
A. We switched to a monthly Outlook newsletter, which I released yesterday.
Q. Okay. And that's available on the web?
A. Correct.
Q. All right. And do you send an e-mail out notifying people that it's up, or do you have a broadcast that lets people know that it's available?
A. I have an e-mail list server where we send out a notice wherever the Outlook report is made

available. But it forecasts for 2006 and 2007 market prices, and it's available on my website, correct.

Q. And on this e-mail list, does that include just the industry? Does that include -- what does that include?

A. Anybody that wants to get on my list, they can do it themselves.

Q. Now, do you have any communications with producers?

A. I have a lot of communication. Producers call in, I write. A lot of my columns end up in "Farm Shine" and "Lancaster Farming." I've had them call on the phone; I've had them crying on the phone in recent weeks. So it's a low, low price.

Q. So the economic statement that you made regarding the prices in there, the kind of cold numbers, that has a very personal impact in terms of people talking to you?

A. Yes. I interact with producers not only in Pennsylvania, but throughout the United States. People call me on the phone. My number and e-mail is listed in all my publications, and people freely call me and discuss things with

me.
Q. Now, you mentioned, you know, two plants being built out in the West. They're kind of a follow-up on a question that was asked yesterday that you weren't here to hear, so I'm going to try to set up the scenario. The question is, let me put it simply, cheese and manufacturing products, are they in a national market or a regional market?
A. It's clearly a national market.
Q. So if you have a plant, say, out in Eastern New Mexico or the panhandle of Texas that can produce cheese at, say, 14 cents a pound, and they can market it and bring it to Philadelphia -- we'll bring in a Pennsylvania connection. Bring it to Philadelphia for 2 cents a pound, what about a cheese plant located in the Northeast? Will it have to meet that 16 cents, or can it sell its cheese at a higher price?
A. If it's producing commodity cheese, it will have to compete in the national market.
Q. Which would be whatever the lowest cost is plus the cost of that market, or transportation?
A. It's the low pricing point for cheese plus

the basis. In this case, the transportation costs.

Q. All right. Now, there's a proposal here to reduce make allowances. Who knows what the level, but we use sometimes it's 50 cents. I mean, whatever the number is. Let's just use 50 cents as an example in the proposal across the board on this cheese. For all plants in the country. Will that protect a plant in New England that's selling commodity cheese in its competitive relationship with a plant in Texas or New Mexico?

A. Are you talking about -- I'm confused. Are you talking about lowering the make allowance or increasing the make allowance?

Q. Lowering the make -- increasing the make allowance, lowering the minimum price, I'm sorry.

A. Okay. So you're talking about all of the plants facing the same higher costs?

Q. Sure. Throughout the Federal order, you reduce the make allowance. I mean, increase the make allowance and reduce the Class III price throughout the country. All right. So that would affect the plants in the West and affect

the plants here in the East, right?
A. It would not impact -- obviously, it wouldn't impact the sale price directly. It is a market for cheese, and the basis is set by transportation costs. So if you lowered -- if you lowered the Class III value, obviously, they would still sell things at national market. Both plants would still face the national market.
Q. In the same relationship they started?
A. Correct. And their costs wouldn't obviously, in the short run, wouldn't -- besides the cost of milk, their costs wouldn't change. If they have one plant that's very efficient, one plant that's inefficient, that would change it.
Q. And we see such fluctuations in the raw milk price from month-to-month, right?
A. Correct. Because of the Federal formulas, those Federal order prices are off of the commodity markets, which fluctuate.
Q. So what would be the effect of reducing that make allowance -- or increasing the make allowance and reducing the price to 50 cents a cost? If it doesn't affect the plants and help

it compete, what is the impact?
A. Well, in the short run, it's a transfer. In the short run it's a transfer from the pool to the producer.
Q. I don't have any other questions.
JUDGE PALMER: All right. Yes, sir.

CROSS-EXAMINATION

BY MR. ROSENBAUM:
Q. Steve Rosenbaum for the National Cheese Institute. Dr. Bailey, when did you start to draft your testimony?
A. I think two days ago.
Q. I -- on page 2 you report some results from your model, and maybe you can explain the logic to me. The statement is made that you're tracking their -- you talk about how the weighted average make allowances are very similar to baseline. Do you see where I'm referencing towards the bottom?
A. You're talking about the last paragraph on page 2?
Q. I am. Do you see the second sentence?
A. Correct.
Q. "The Cornell Study showed the weighted

average make allowances are very similar to the baseline"?
A. Yes.
Q. And then you say the exception is dry whey, which is currently 15.9 cents per pound, the baseline is 19.41 cents under the weighted average scenario. Do you see that?
A. Correct.
Q. And you say "this change," and the word -- when you're talking about this change, you're talking about the change from the 15.9-cent make allowance for dry whey to a 19.41-cent make allowance for dry whey, is that what you mean by the words "this change"?
A. That's correct.
Q. "This change, when entered into the model, increased the Class III skim solids value and resulted in the Class III price rising 19 cents per hundredweight relative to the baseline"?
A. Correct.
Q. You're saying an increase in the base allowance causes the Class III price to rise by 19 cents?
A. Oh, sorry, I record the results differently. It declined.

Q. So --
A. If you look at Table 3, it shows the results.
Q. So when you say -- when you said in your report "rising," you actually meant the exact opposite? Is that what you're telling us?
A. From Table 3, that when you increase the make allowance, obviously prices -- prices will decline.
Q. In the next sentence you said, "This change resulted in the Class I mover rising 20 cents." Is that another example where what you really meant to say is the exact opposite? That you meant to say --
A. Yes, it is. That would probably be incorrect. If you look at -- it depends from which point of view, the baseline, but for Table 2, you can see the results are there.
Q. So --
A. The Class I mover would, under the weighted average, would decline 20 cents and the Class III would decline 19 cents.
Q. So just to confirm --
A. Yes.
Q. What you said here is the exact opposite of

what you meant to say?
A. Yes.
Q. Now, you're aware of -- I mean, in your last paragraph you talk about something along the lines of "USDA may not want to set make allowances at a level to guarantee every plant in Federal orders a profit regardless of efficiency." Do you see that?
A. Yes.
Q. You're aware of the fact that Dr. Stephenson testified that under his scenario, where you use the weighted population average for cheese, 67 percent of plants would not even be able to cover their costs. Are you aware of that fact?
A. I've read his study.
Q. Yeah. You haven't performed your own, I take it?
A. No.
Q. Now, make allowances, I'm sure you'll agree with me -- well, let me just back up. I mean, the way the Federal order system works now is you take the -- let's focus on cheese. You take the price that's available in the market for cheddar cheese based upon a NASS survey of

actual prices paid, correct?
A. Correct.
Q. And you -- the processor gets to keep -- assuming the processor is making cheese and selling it for that price, which is the national price, then the only thing the processor is able to keep, by law, is the make allowance, right? The rest he has to turn over to the farmer for a minimum price for milk, right?
A. Well, that's assuming that they don't get any premiums for cheese. Cheese is on the national market. It is not one price.
Q. I'm assuming that they're making the very cheese that's the surveyed cheese. Commodity cheddar cheese. Okay? And under those conditions, the only thing the processor is allowed to hang on to is the make allowance, correct?
A. Assuming they're not getting -- there is a national market for cheese and there is a premium difference between the East and West, and there's premiums for different kinds; but assuming they're producing cheddar cheese and receiving the NASS survey, that's correct.
Q. And so -- all right. And you're aware of

the phenomenon that if cheese prices, in general, go up, that results in the minimum milk price going up, correct? The processor has to pass that on to the farmer, correct?
A. Correct.
Q. So the make allowance is a cap on what the processor can receive, correct? Assuming he's making commodity cheese?
A. Making those assumptions, yes.
Q. Okay. And is there a cap by law as to what the dairy farmer can receive for their milk?
A. They face a competitive market.
Q. And so the answer to my question is there is no legal limit on that, correct?
A. No, that's correct.
Q. Okay. There's no regulation that says a farmer can only receive his cost of producing the milk, correct?
A. They face the open market there.
Q. Right. And you would agree with me that it would be a -- that if you have a scenario under which the make allowance is set at a level that simply isn't sufficient to cover costs, then the processor making commodity cheese is just losing money as a matter of law. There's nothing we

can do about it, right?
A. Is the question that if the make allowance is set at a level that nobody can make a profit?
Q. Well, a make allowance set at a level at which a -- which processor A can't cover his costs, that processor A is out of luck in terms of any ways to solve the problem, right?
A. They'll have to compete with processors that can produce below that cost.
Q. And according to Dr. Stephenson, even if we raise the price to the weighted average population level of 20.28 cents, 67 percent of the processors currently will not cover the costs, right?
MR. YALE: Your Honor, I object. It's not what the testimony was. It said, "was not able to produce it at these margins." It did not say that they were unable to make a profit or recover their costs.
MR. ROSENBAUM: I believe "cover the costs" is the exact right phrase. Are we helping the witness?
JUDGE PALMER: We'll let the witness answer it. I don't remember the testimony that clearly. The witness can

clarify.

THE WITNESS: I read Dr. Stephenson's report very quickly. I'm sure that he can answer that question.

BY MR. ROSENBAUM:

Q. Okay. Is there a value to having a continued cheese manufacturing base in the Northeast, from your perspective?

A. From my perspective, I work with producers and processors in Pennsylvania, and so I'm not going to speak on behalf of the Northeast. I'm from the State of Pennsylvania, and more and more of our milk has been going to Class I, Class II markets and away from cheese.

Q. If you happened to be located in Massachusetts, you think you would have a greater concern?

A. I think if you're located in Massachusetts, your milk should go to the highest and best use of that milk.

Q. And are you indifferent then to the continued existence of a manufacturing cheese population in the Northeast?

A. I think the milk in the Northeast should go to the highest and best value use that returns

the best value for dairy producers. That's the way it works in the rest of the economy. It would benefit producers.

Q. Well, of course, there is -- when you say "the highest and best use," there is competition for milk above the minimum regulated price, correct?

A. We have premiums in our market, yes.

Q. And that exists other places, too, correct?

A. It depends on where you're located.

Q. Well, I mean, when you talk about a guaranteed return, for example, I mean, to the extent that a dairy processor facing competition, from an example, Class I users, and forced to place an over-order premium result, that's a burden that that processor has to bear above and beyond the minimum price that's been based on the make allowance; is that correct?

A. In the Northeast -- in the Eastern Seaboard, we have a competitive market for fluid milk that involves over-order premiums; and if a processor wants a current milk supply, they will have to pay premiums.

Q. And so -- all right. And so the answer is that, yes, Class III processors face -- many

places face the competitive need to pay over-order premiums above and beyond the minimum price; is that right?

A. I don't have the data on that, but I have seen where -- limited data where Class III and IV processors in the East have to pay over-order premiums.

Q. And that would be a circumstance therefore in which there's no guarantee being provided to processors, Class III processors based upon the Federal minimum milk price; is that right?

A. We've seen a situation in Pennsylvania where Class III and IV processors, because of the premiums involved, could no longer afford to operate their plants. Eagle Foods relocated to Texas, where they secured a lower cost to supply Class IV milk.

Q. Do you know what percentage of the milk in the Northeast goes into Class III and IV today?

A. I don't have that statistic, but -- I don't have it in front of me.

Q. Around 40 percent, does that sound right?

A. Oh, III and IV, yes, around 40 percent in Northeast Federal order.

MR. ROSENBAUM: That's all I have.

JUDGE PALMER: Other questions?
Mr. Vetne.

CROSS-EXAMINATION

BY MR. VETNE:

Q. Good morning, Dr. Bailey.
A. Good morning.
Q. John Vetne representing proponents Agri-Mark, et al. You started writing your paper, you say, a couple days ago. When did you start inputting data into the model?
A. September 1, the Cornell Study was released, and I started looking at scenarios. And then we got an e-mail from Mark Stephenson about his testimony, and I got other information, and from there I constructed these scenarios.
Q. You constructed the scenarios, it's a -- your model produces information about changes in Federal order class prices and Federal order blend prices; am I correct?
A. Correct.
Q. Produces projected changes?
A. Correct.
Q. And to do that, you need to know something about how milk is used?

A. Correct.
Q. How much milk is used?
A. Correct.
Q. What was your source of information for utilization and volumes?
A. We went to the AMS website and we downloaded the data from -- monthly data for the pounds of milk utilized in all 10 Federal orders from January 2005 through, I think, July 2006.
Q. Okay. So you're assuming for projection into the future, that the utilization is the same as for that past period; am I correct?
A. Utilization rates will be -- what we did is we took the -- for each month, for each order, for each class, I, II and III, I took the same level of use from the year before and then put the pool, the total pool -- I took the -- I took the pool volume from the year before and I multiplied it by my projected percent change in the national milk supply.

Now, I understood the weakness in that is that the pool volumes won't all grow at the same rate, but it didn't have very much impact on the final results, because most of the changes that occurred were in prices.

Q. So let's see, you had about 18 months of past data?
A. (Witness nodding head up and down.)
Q. But you applied it to 18 months of project data?
A. Correct. For -- only for, we're talking about pooled volumes.
Q. Pooled volumes.
A. And our objective was to calculate the utilization rates, which tend to be seasonal.
Q. All right. And you did not include in your projections non-pooled volumes, volumes that had been depooled?
A. No. We went straight to the -- we went straight to the AMS website and got the pool volumes. And in our model, what we did was we then calculated an average price, and then we compared that to the reported uniform price. And we noted that there was slight differences in our -- between our blend, our average price that we calculated and the announced uniform price. It wasn't very much.
Q. Okay. Your model does not produce any price information other than projected Federal order prices and projected Federal order blend

prices?
A. That's not correct.
Q. What price information other than that does it capture?
A. We start with the commodity prices for the major markets: cheese, butter, dry whey and nonfat dry milk. We feed those into price, estimated price linkage equations with the two-week and four-week NASS survey. Those go into all the Federal order prices and calculate the actual projected class -- class prices.

From there we feed that into a linkage equation for the all-milk price. We also androgenize the supply side monthly models and cow numbers and deal with the cows, which feeds off the milk feeds pipe ratio. So there's a direct linkage from the commodity prices all the way through to the all-milk prices.
Q. I probably asked the question inartfully.

On the model results, does it produce milk price information other than class price under the Federal order and projected blend price under the Federal order?
A. It produces changes in the all-milk price which weren't reported here.

Q. Changes?
A. In the U.S. national average all-milk price.
Q. Which are derived how?
A. Well, we have estimated a price linkage equation that says the U.S. average all-milk price has been estimated as a function of the Class III and the Class IV price. So it's an approximation.
Q. Okay.
A. Which is exactly what the all-milk price is.
Q. So it incorporates also -- let me see. You indicated that you put in projections of changes in milk production; is that right?
A. The price linkage equation simply is the all-milk price estimated as a function of the Class III and the Class IV. We're in the process of developing a completely -- a complete supply and demand model, so we only androgenize at this point the supply size.
Q. Why don't you just use Cornell's model rather than spend time making your own?
A. We have really good models at Penn State.
Q. All right. Up through the last seven words

of your statement, you discuss class prices and blend prices. In the last seven words of your statement you jump to a comment about impact on farm-gate milk process. Does your model capture projections of premiums paid by handlers and changes in premiums paid by handlers in response to changes in a make allowance?

A. No, we don't have premiums in there. I'm trying to imagine in my mind how much premiums could possibly change if you change the make allowances. But the answer is no.

Q. Okay. Does your model capture -- let me see. On page 3 you talk about a transfer from dairy producers to processors by a change of the make allowance. You're aware that a lot of the processors that would receive the benefit of capturing their costs are, in fact, producers. So if money is transferred from the pool to processors, it goes back to producers, correct?

A. Not necessarily.

Q. If the producers own the manufacturing facility, the producers receive the benefit, correct?

A. The answer is a lot of the cheese production capacity is now in the hands of

proprietary producers; and also, if you have a cooperatively owned plant that's inefficient, there would not be that transfer. And finally, if it is a proprietary-owned plant, that the producer may just receive a per unit retain -- at the end of the year, that is a certificate saying that before you retire, you may get some of this money back. So it's not necessarily -- that's not necessarily the case that they'll end up in the pocket that year.

Q. Let me try to get an answer that doesn't confuse the question. My question related only to cooperative-owned manufacturing facilities. Your answer addressed proprietary. I will get to that in a minute.

If the manufacturing facilities are owned by the producers through their cooperative association, the benefit flows to the owners, correct? In some way, either in their price today or their price tomorrow?

A. Most cooperatives that I work with that own these manufacturing plants have looked at that cheese plant that's a profit center. So producers get paid a price for their milk. The cheese plant is a profit center. If it makes a

profit, then the benefits of that profit are then paid back to producers in the form of a capital retain at the end of the year. So the answer is it depends.

Q. And if it makes a loss, the producers are assessed -- the producers' members are assessed the loss?

A. In the short run, I would hope that if they had losses, they would look at other, alternative uses for that milk. But that's the best and highest value use for that milk.

Q. That might be what you hope, but --

A. That's not my hope, that's what happens in the marketplace. It's competitive.

Q. If the product is actually made, and if the best -- if the examination is done and the best alternative market produces locally at a loss, let's look at Las Cruces, New Mexico, at a cost of $5 per hundredweight of transportation, once that's done and the product is marketed locally, if it's local, if there's a loss, it's transferred to the producer members, just like gains are transferred in some way?

A. That would be directly transferred to the producers as a loss, correct.

Q. And your model doesn't capture either one of those?
A. No.
Q. And now let's get to proprietary. In many parts of the country, with perhaps the exception of the Southeast, the competition for producer milk supplies is fairly intense, particularly the Upper Midwest, correct?
A. Correct.
Q. And if there is an increase in revenue retained by a processor in the form of a make allowance, the ability of the processor to respond to competition to pay premiums would be increased, correct?
A. If they were located in a market where they had to pay over premiums for the milk and they increased the make allowance, yes, they would have more revenue.
Q. That was my assumption, that we're looking at the Upper Midwest, there was a lot of competition? Or like any other market, there was a lot of competition?
A. You're talking about the Upper Midwest where cheese prices are higher than the West?
Q. I'm talking about where competition for

milk supplies is higher.
A. And more especially where cheese is made.
Q. And competition for milk supplies. That was the premise of my question.
A. There's a national market for cheese and there's competition, yes.
Q. The yes is going back to my original question, where there's competition for milk supplies among manufacturers, the higher make allowance would improve their ability to pay producers to meet that competition for raw milk?
A. Yes. I mean, they would have more revenue. I don't know how they'd use it, though.
Q. Okay. You don't know. And that response to competition for milk supplies is not programmed into your model in any way?
A. No. This is a short-run analysis.
Q. And toward your last paragraph again, referring to plants, plant options, relocation or exiting the market. And, in fact, that happens, and you referred to one example that that's happened.
When a local manufacturing plant relocates or exits the market, producers who have been supplying that plant have to seek another outlet

or themselves go out of business, correct?
A. (Witness nodding head up and down.)
Q. Nodding your head doesn't get recorded.
A. If a producer is shipping to a plant and the plant closes, it's obviously that they have to find another source for their supplier -- where they deliver their milk, correct.
Q. And frequently, if not predominantly, that results in additional transportation costs for the producer?
A. No. The Federal order incurred is known to move South, where a lot of those costs are recouped. So milk would more than likely move South along the Federal lines.
Q. I'm talking about an individual producer, for an individual, you don't agree that producers, if they can, sell milk to the closest available outlet?
A. In the Northeast we have Dairy Marketing Services which is very efficiently transporting milk.
Q. Uh-huh.
A. So they figured out how to move the milk for all of the farm members. So some of them

are moving it long distances and some are not. Some are getting recouped from the Federal order and getting premiums in the Southeast.

Q. Let's go back to my question. The preference of a milk marketer, raw milk marketer, whether it's DMS or anybody else, is to move milk the shortest distance?

A. All else the same.

Q. All else the same.

A. It depends on the premiums, the customers and transportation costs.

Q. Unless you can recover more money elsewhere. But we'll go with transportation. If a plant closes that's 50 miles from the farm and there's no other plant 50 miles from the farm, the cost of moving milk from that farm will increase. That goes without saying, yes?

A. It -- again, it -- yes, your transportation costs are increasing; but we have producers in Southern Pennsylvania that regularly every day move tanker loads of milk into the Southeast markets.

Q. And --

A. And they receive premiums.

Q. And those tanker loads, are we talking

about milk going into Southeast Class I plants?
A. Correct.
Q. My question, maybe I didn't make this clear, was referring to that portion of the Northeast milk supply, for example, or any other in our country, that goes to manufacturing. There's always some that goes to manufacturing, even though it varies seasonally, correct?
A. Currently we have -- all Class III uses are made for milk in the Northeast order, correct. It doesn't have to be that way.
Q. Okay. Let's assume that all Class III operations in the Northeast closed or relocated.
A. You're referring to the Northeast order? You keep saying "Northeast." Are you talking about New England or the Northeast?
Q. I'm talking about the Northeast United States. There's no New England order anymore.
A. No, no. Are you referring to a region or an order?
Q. I'm referring to the Northeast. The Northeast region. All right?
A. Which includes the Northeast Federal order.
Q. Which includes the Northeast Federal order.
A. Yes.

Q. Let's assume all Class III plants decided they couldn't continue in the long-term operating costs. And let's assume milk production -- let's assume producers did not produce less milk as a result. Producers would have to move their milk, that portion that used to go to Class III, much farther, correct?
A. We have a lot of customers in the Northeast all along the Eastern Seaboard, so I would say it depends. Obviously it also depends on the time frame you're talking about. If you're saying this year all Class III plants shut down, the milk would, yes, have to find a home, as unlikely as that scenario is.
Q. It is unlikely, but, you know, it's an extreme example of shutting down one plant. Are you aware that milk from the Northeast, in order to find a home, has moved to Ohio and Wisconsin on occasion?
A. On occasion, I'm sure it's moved a lot of different places.
Q. Because there is not enough capacity. The milk production looks for capacity, and if there's not capacity local, you look for capacity farther away and you keep going until

you find a home for it, correct?
A. Correct.
Q. Does your model capture any of the costs to dairy farmers for that kind of movement?
A. No.
Q. Does your model project anything about the continuing ability of manufacturers in the Northeast or anywhere else to continue producing Class III products?
A. No. We don't have a cost study for Class III products.
Q. Does your model, other than the Federal order class prices and projected Federal order blend prices based on the past 18-month period, capture any other component of the farm-gate milk price other than Federal order and projected changes to the all-milk price?
A. No, it doesn't reflect over-order premiums or transportation costs. Those are highly individual.
Q. Okay. Were you here yesterday when a farmer testified from the Southeast that he receives $1.50 under Class III because there's little capacity for his milk and he incurs a lot of transportation costs? In the Southwest?

A. Could you state it again? I was confused.
JUDGE PALMER: The first part he asked was, were you here yesterday?
THE WITNESS: I was teaching classes yesterday.
BY MR. VETNE:
Q. And are you aware that a witness testified from West Texas that he receives $1.50 below Class III for his milk in a significant part because there's not enough capacity?
A. In which part of Texas is this again?
Q. West Texas.
A. I think there's a pretty large -- it depends on the month that they're looking at, and did he state the time frame for this? Every month?
JUDGE PALMER: I think we're getting too hypothetical here, Mr. Vetne.
BY MR. VETNE:
Q. The point is that your model wouldn't capture expenses characteristic of his, where a good portion of his prices, transportation enough to bring his --
A. Unless he looks for another alternative how to turn his milk. It doesn't make sense.

Q. On page 5 in your summary, you make two points in the top paragraph, two factors that you look at that would not be possible if current make allowances are too small. One is cheese production growth from 2001 to 2005. The cheese production growth from 2001 to 2005 that you reference is a national growth in cheese production, correct?
A. In my figure.
Q. Uh-huh.
A. I compared monthly cheese production for total U.S. cheese production in the U.S. for 2004, 2005, 2006 to a five-year average.
Q. Uh-huh. Okay. Nationally?
A. Yes. That's from Dairy Products Report.
Q. And the National Dairy Products Report includes California?
A. Correct.
Q. Which has nothing to do with the Federal make allowance, correct?
A. Correct.
Q. It includes Idaho, where since 2004, there hasn't been a Federal order, in Utah, where there hasn't been a Federal order, correct?
A. Correct.

Q. And, in fact, much of the growth has been in those areas, correct?
A. There's been a large growth in Idaho, correct.
Q. And --
A. But in Idaho, the prices have to be aligned with surrounding markets since we produce cheese on a national market.
Q. There's also been a growth of production in California during that time?
A. Yes, there's been a production growth. Correct.
Q. On the news this morning there was something about Ford Motor losing lots of money, and for a long period of time, it hasn't moved or relocated. Isn't it true that manufacturers, and producers as well, will absorb losses for a period of time hoping and expecting to turn things around in the future and continue to operate notwithstanding losses?
A. Producers and processors understand the competitive markets we're in. They understand what competition and efficiency is about, and if they do a poor job, they'll face losses.
Q. Let's see if you can answer the question.

Isn't it true that producers as well as manufacturers will operate for a period of time at a loss?

A. I don't have their cost data.

Q. I know. Just as a general rule. You have no knowledge of whether producers, for example, are now continuing to operate at a loss, or whether in the past producers or processors have operated at a loss? You have no knowledge of that? You never studied it? Is that true? Is that your answer?

A. I don't really understand the question.

Q. Okay.

A. Maybe you can restate it.

Q. Dairy farmers individually, or in aggregate, will continue to operate when they're receiving revenue that does not cover their costs?

A. In what time period?

Q. In any time period.

A. If they have the ability to refinance, then some months they -- some months they can make a positive cash flow and profit, some months they won't. Some years they may make more money and lose in other years.

Q. That's my question.
A. Because we have a marketplace where commodity prices are volatile.
Q. That's my question. So producers operate sometimes for years without recovering their costs and regain it in other years?
A. You say "years." It depends on the equity the producer of the plant has, their ability to refinance. But years, no.
Q. Okay. Months or a year?
A. Every business operates in some months with positive cash flow and some months with negative cash flow.
Q. Exactly. Let me ask you this, related to producers first and then processors. When milk price fall and stay low, producers respond eventually by producing less milk; is that correct?
A. We've done studies that could be 12 months to 16 to 18 months, yes. There's a lag there.
Q. The lag is basically a response, an eventual response of producers throwing in their towel.
A. Producers, when they face a period of low milk prices, will reach the point where they

have to refinance. If their equity isn't there and their costs are too high, they may eventually exit the business. Correct.

Q. And the same thing would be true for manufacturers such as Ford Motor, such as any cheese maker. Eventually, operating at a loss, manufacturers throw in the towel also?

A. Some manufacturers will operate with a loss until a point in which they go out of business. Some will look into the future and will make plans to adjust to the market realities. So every- -- everyone is different.

Q. Okay. You indicated a time frame for producers, the lag of the response for reducing milk production. Do you have any information as to a comparable lag for dairy manufacturers responding to operating at a loss over a period of time?

A. No, I don't have that, because on the supply side I have data and I've estimated that. I haven't done that for processors.

Q. Okay. So you don't know, when you say that cheese makers continue to operate, that would not be possible if current make allowances are too small, you don't know and haven't studied

whether the continued production of cheese is simply that the lag time hasn't kicked in for mass exodus or significant exodus from any region?

A. Well, I sat in Ireland and talked to the executive from Glanbia, and he told me at that time that he had one of the largest processes of American cheese in the United States. They -- I don't know if they're located in the Federal order, but obviously they must be aligned to the Federal order prices. And they seem to think the market environment was over the -- some period of time was profitable enough to be making cheese.

Q. So is your response essentially you take a sample of one and make a conclusion of 153 cheese plants in the country and that's a reasonable conclusion for the benefit of the times?

A. I never drew that conclusion.

Q. You referred to Glanbia.

A. I gave one instance, but I have many, many experiences. We can talk for hours probably.

Q. Okay. We have 153 cheese plants, for example, that are part of the population that

Mark Stephenson studied. From that population, if there is continued operation at a loss, you would expect some, eventually, to exit the business, just like producers do. Have you done any study of what that time period is? That's my question.

A. No.

Q. Does your model capture anything about the relationship of prices and competition between California's class prices and blend prices and Federal order class prices and blend prices?

A. No. We just looked at the Federal orders.

Q. Are you aware that there is an influence on Federal order prices by what happens in California?

A. I'm sure there is. I mean, California is a large state.

Q. When milk production and cheese production go up in California, it has a negative impact on cheese prices, on the market prices for cheese, correct?

A. Well, in my classes on prices, I would say prices are determined by supply and demand, so I wouldn't draw that conclusion from what you said. It depends on demand; and demand, per

capita, demand has been increasing over time.
Q. If California's cheese production goes up 10 percent and everybody else's is stagnant and demand remains the same, would you expect cheese prices surveyed by NASS to go down?
A. It depends if we export it.
Q. Okay.
A. It's supply and demand.
Q. Okay. Supply and demand. Eliminate the export. Would you expect generally, if there is a production of cheese anywhere in the country for which there is no increased comparable demand, that cheese prices surveyed by NASS would fall?
A. If demand remains static and supply shifts, prices will fall; and it will apply to cheese.
Q. Thank you.
JUDGE PALMER: Other questions? Yes, Mr. Beshore.

CROSS-EXAMINATION

BY MR. BESHORE:
Q. Good morning.
A. Good morning.
Q. Marvin Beshore, and I represent the Association of Dairy Cooperatives in the

Northeast in this proceeding.

I first wanted to ask you a little bit -- try to understand how you calculated the energy adjuster aspect of these proposed make allowance changes in your study here, Exhibit 78.

How did you come up with the changes in make allowances that you attribute to energy adjustments?

A. Oh, again, Dr. Stephenson was kind enough to send out his testimony via e-mail. I read it, found it very well written and interesting. I -- he noted in both his testimony and in the September 1 report that there was a general period of time in which the survey -- his surveys were conducted. And I -- the ending point being sometime in the middle of '05. And in his testimony, he noted that when he looked at energy costs, that they went up in '05, particularly toward the end of '05.

So I simply constructed a scenario where I took the population average estimate, which is basically a higher cheese make allowance, and added his energy costs. And obviously, I understand that I simply took the energy cost adjustment that he gave and added it to the

weighted average and also include -- I mean, to the population average.
Q. Okay.
A. The population average scenario is simply the cheese make allowance that Cornell estimated for the general population, along with the weighted average for the other ones.
Q. Okay.
A. So I simply added it to it.
Q. I don't remember seeing an energy figure in Dr. Stephenson's papers.
A. It's his testimony.
Q. His testimony.
A. He had some estimates for an energy index and the impact it would have on make allowances.
Q. Okay. Now, when you -- so on Table 1, the final column, that is -- those are what you would understand to be the resulting make allowances with an energy adjustment?
A. Correct. I wanted to run a scenario where there wasn't some kind of an energy adjustment added in for a particular year. And I took -- chose the energy adjustment for '05 and I applied it to the '06 and '07 baseline.
Q. Okay. That was my next question. Did you

apply it on a static basis in '06 and '07? That is, did you maintain the energy adjustment at the same rate?

A. Correct. And I simply wanted to show the impact on my baseline of an energy adjustment. So yes, it went all the way through monthly through '06 and through '07. Correct.

Q. From having read the -- reviewed the record from January, as you indicated you did, were you -- do you recall the energy adjuster that Dr. Cryan, from the National Milk Producers Federation, for instance, is advocating varies with energy prices?

A. Correct. And I understand those energy prices rise and fall monthly.

Q. Okay. So -- and I guess my question is, if there were to be during '06 and '07 any reduction in prices of natural gas, for instance, which spiked in '05, that would not have been factored into your price projections, correct?

A. Correct. And, yes, and I did not want anyone to assume that, that I was saying that this is the energy adjustment that should have been applied for monthly in '06 and '07. It was

simply a scenario.
Q. Okay. Now, when -- moving through your tables, Table 2 -- and these tables are basically a buildup, as I understand it; is that correct? They kind of progress one from the other to show the pool value changes in Table 7?
A. Correct. I mean, it's one way of looking at it.
Q. Okay. So in Table 2, to get from the changes in the make allowances, the next thing you show is changes in class prices in the Federal orders. Table 2 is 2006, Table 3 is 2007, and you show changes in all four classes, even though the make allowances relate just to the products in Classes III and IV. Can you explain why you did that?
A. I took the protein and the component formulas that existed, and I -- they also applied to Class I and Class II. I didn't run a decouple scenario. So I just simply assumed that if you changed the make allowance for protein, for example, that that make allowance would also change for the two-week average.
Q. It reduces the minimum price that the processors in the Federal order system are

required to pay producers for milk going into Class I uses and Class II uses as well?

A. Yeah, it depends on what mover is the higher of the Class III, IV scale.

Q. And in Table 2, you show that in 2006, the -- with the energy adjustment, the Class I mover would have been reduced 42 cents per hundredweight on an annual basis; is that correct? Am I interpreting the data -- or stating your data correctly?

A. Right. That's simply the population average scenario plus the energy adjustment.

Q. And Class II prices would have been reduced 6 cents per hundredweight, correct?

A. I simply would look at the difference between the population scenario -- population average scenario and the population average scenario with the energy adjustment, and that difference is the energy adjustment.

Q. Okay. I'm off the energy adjustment concept.

A. Okay.

Q. I'm just talking about the changes in prices generally because of changes in the make allowance.

A. Correct.
Q. So whether you're looking at the population average with or without the energy adjuster, Class I, the Class I price, throughout the Federal order system, is going to be reduced by the amounts that you've estimated?
A. Correct.
Q. Okay. Now, have you -- could one calculate -- determine from your data the proportion of the bottom line sums on Table 7, the proportion of those impacts that relates to changes in Class I and II prices rather than -- versus III and IV prices?
A. I could run a decouple scenario.
Q. Well, I'm not asking about any decoupling scenario. I'm just asking whether one can determine from the data, or one could calculate from the data, you know, the buildup to the bottom line sums attributable to each of the classes.
A. I think you could. The only exception is that the -- that when the all-milk price changes, the percent growth in the national milk supply could change in '07, and that could change the utilization rate. But it's such a

small factor, I would say that yes, you can probably determine that.

Q. Okay. Do you know, just roughly, you know, on the national aggregate basis, how much of the reduction in producer income is attributed to the reduction in Class I and II prices versus as opposed to Class III and IV prices?

A. No, because I would simply have to go through every order. The utilization rates are all different.

Q. But you could just look at the national aggregate utilization in the system, I assume, and apply those percentages and have some estimate?

A. I mean, I would need to get the computer and figure it out.

Q. You don't have any general feel for the ratio, for the relative impact?

A. No. I would just have to estimate that. I'd feel more comfortable estimating it.

Q. Now, if, hypothetically, if the make allowances in the Federal order system were reduced rather than increased, and say the make allowance for cheese is 16 1/2 cents now, is, you know, reduced 4 cents, down to 12 1/2 cents,

what, can you tell us generally, what your model would project in that scenario? Generally. I'm not asking specific numbers.

A. It's a simple short-run dynamic model. And if you lower the make allowance, the protein price would go up and the Class III price would go up. Class I could possibly go up. And that would feed through rules.

Q. And the bottom line at the end of Table 7, would it be fair to say that it would be pluses rather than minuses?

A. Correct. And my -- we run those scenarios.

Q. Now, let's -- do you think that if that were done -- okay, let's talk about cheese. If the make allowance for cheese were reduced 4 cents, from 16 1/2 to 12 1/2 cents, do you think that, you know, in the next two years, producer benefit in the Federal order system would -- there would be a huge producer benefit in the Federal order system?

A. I don't know that 2 cents would be huge. I don't think so, no. You're saying if producers --

Q. Four cents on the make allowances.

A. Producers receive 4 cents a hundredweight?

Q. No, no, no. If the make allowance, the make allowance for cheese were reduced from 16 1/2 cents per pound -- I'm sorry, per pound, 16 1/2 cents per pound to 12 1/2 cents per pound, okay, your model would project pluses on the producer's side of Table 7 when you got to the bottom, right?
A. Correct.
Q. Okay. Would that be a -- would that, in your opinion now, as the economist, would that be a healthy situation for dairy farmers?
A. I ran a low scenario where, relative to baseline, the make allowance was dropped from 15.90 to 13.28.
Q. Ah, okay.
A. So it went up a couple of pennies. And just that slight change elevated the blend price, like, 23 cents.
Q. Okay.
A. So farmers would be -- enjoy receiving 23 cents.
Q. And on Table 7, the bottom line, they would have, in your projections, they would have benefited to the tune of what, $298 million in aggregate?

A. That's a short-run analysis.
Q. For 2007?
A. Right.
Q. And what, another 295 million in 2006 on Table 6?
A. Correct.
Q. Now, if -- since the manufacturers, cheese manufacturers are operating on a make allowance, I mean, what do you think that change would -- or that scenario would do to the cheese processing industry in the Federal order system if the make allowance was reduced to the low end of your confidence range?
A. That's not my confidence range. That's from the Cornell Study. Mark Stephenson's testimony yesterday.
Q. Well, the low confidence interval shown on your tables is all I'm talking about. In that scenario, how would you think that scenario would play out in the cheese processing industry?
A. Well, according to the -- again, I would ask Dr. Stephenson from his study, he said there's a confidence interval on his estimate that ranges from one low end to the high end.

So I would ask you -- but in my -- in my opinion, if you lower the make allowance, it depends on the processing costs.

If plants in the U.S. were expanding -- and again, it shows clearly in the Cornell Study if you expand plant capacity, that you have significant cost savings. So if the plants are generally getting larger and becoming more efficient in lowering their costs, their costs and their profit would be recovered.

Q. If --

A. But I don't have the actual data to answer your question specifically.

Q. Right. I understand that. I understand you don't have data, but I'm asking your view, as a dairy economist who has, you know, run some projections here with your model, if the margins -- okay, if the make allowance, you know, is squeezed on an industry, the process is roughly what, 40 percent of the milk in the Federal order system goes into cheese? Class III?

A. I think I've done estimates like 35 percent, but --

Q. Let's --

A. It depends on the -- that's a U.S. estimate, 35 percent, significantly.
Q. Let's -- 35, 40, it doesn't matter. If the margin, if the allowance is squeezed on that industry, what impact would that have -- doesn't that have potentially not an automatic positive impact on the producer benefit, but wouldn't there potentially be some negative, adverse impacts to producers with respect to the health of the 35 to 40 percent of the outlet for their milk production?
A. I think it would put increased competitive pressure on processors. You would probably have a continued relocation out of the Upper Midwest and in the Northeast towards the Southwest, which means that the milk that remains would have to find alternative uses.
And that's generally what's been happening in the Northeast region, and that's why we have more of our milk going into Class I, particularly in Pennsylvania, into Class I and Class II markets. So the milk is being diverted to other uses.
Q. And that may have a -- depending on how those alternative uses compare to the ones that

are lost, it could be a positive or negative impact on the system?
A. Correct, correct.
Q. Let's talk about Pennsylvania a little bit. Pennsylvania, the total production, milk production in Pennsylvania is approximately what?
A. I --
Q. Annual.
A. I can't recall the number off the top of my head.
Q. Nine or ten billion pounds, maybe?
A. I'd have to look it up. You just caught me blank there.
Q. Where --
A. We're number 4 producer in the nation, so --
Q. What's the -- your estimate of the utilization of milk produced in Pennsylvania for Class I? Approximately, what percentage?
A. I kind of looked at those numbers. I don't recall. It's kind of tough, because we have so much of our milk is produced in Pennsylvania and only, like, 20 percent of it's actually produced -- processed in the state. And a lot

of it moves around to different parts of the country. But we're a major Class I processor. I just don't -- I don't recall the exact estimate. A lot of our milk moves out of state.

Q. Okay. Before processing?

A. Yes.

Q. Do you know how --

A. A lot of it does.

Q. Do you have an estimate of how much is processed in Pennsylvania for all uses?

A. I don't have that figure.

Q. Do you have a --

A. But we have -- we are a high Class I and Class II processor, and we do have balancing. We have balancing for Class III and IV. We have a limited cheese production in our state.

Q. Do you have any estimate on the percentage of Pennsylvania production that is processed in the -- for Class III and Class IV in Pennsylvania?

A. I just don't have that. I mean, we have -- it depends on the year, too. We have these balancing plants, and if milk is really tight in the general Eastern portion of the U.S., very little of that milk is being diverted

to those balancing plants. If milk is long, then there's going to be a lot of milk going to those balancing plants. So we do have balancing functions.

Q. And those balancing plants are cooperatively owned plants in Pennsylvania, correct?

A. Correct. Correct.

Q. And probably all cooperatively owned. Would you agree?

A. Probably. And doing a great job.

Q. And as you've indicated, those are the plants which absorb the ebbs and flows of milk supply?

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

Q. And so then those plants, the producers who deliver milk to those plants expect to get at least the minimum order class value out of that usage, would you agree?

A. That's correct.

Q. And if those plants do not have a lot of milk in them so that their level of operating efficiency is not great, would you agree that it's going to be very, very difficult for the owners of the plants to return the minimum class

value to the producers?
A. Over time, that's correct. But if you're in the short run and milk is really short, the owners of that plant would rather put that milk into fluid purposes and get higher premiums. But yes, year in and year out, if the supplier of milk going in the supply is reduced, they'll fix losses.
Q. And, of course, the profitability of those plants as profit centers to their owners, as you've indicated, they're not responsible for -- that's dependent upon the minimum values that they're required to account to the Federal order pools, correct?
A. That's one of the factors. But our plants also get higher prices for nonfat dry milk and butter, for example, on the Eastern Seaboard as compared to the West. There's a little more revenue there. Not a lot, but there's a little more revenue.
Q. Okay. Thank you very much.
JUDGE PALMER: Any other questions?
Yes, sir. This gentleman first then the gentleman in the back.

MS. DESKINS: Judge Palmer, does the witness need a break? He's been up there an hour and a half.

THE WITNESS: I'm fine.

JUDGE PALMER: He looks tough to me.

CROSS-EXAMINATION

BY MR. WELLINGTON:

Q. Bob Wellington with Agri-Mark. Good morning, Ken.

A. Good morning.

Q. Are you an expert on plant costs and how plants operate?

A. I don't have a lot of expertise in that area.

Q. You don't, okay. I'm just noting on the last paragraph of your statement, you talk about the fact that plants should lower costs, expand, modernize, so forth. Are you aware of particular areas where plants in the Northeast are extravagant, have extravagant costs that could be lowered?

A. Well, the Cornell Study shows that if you expand cheese production, you can lower costs.

Q. Is there a cost to doing that, to expanding

it?
A. Is there an investment?
Q. An investment.
A. Yes.
Q. Okay. And if your costs are already lower and you're losing money, is that going to be a difficult investment to make if there's already a loss situation?
A. I have this conversation many times with producers that tell me we're already efficient. And it depends on what efficiency is, but producers can always find ways to lower costs to become more efficient. We continue to educate them on that.
Q. That's a good question. We've talked -- heard a lot about lower costs. If you lower costs, you're more efficient. What's the definition of "efficiency"? You mentioned that in here. What's your definition of efficiency?
A. Well, it could be production efficiency, financial efficiency. All aspects of your business. Any way you can expand production given a finite set of inputs or lower per unit costs or take fixed costs and have them allocated over a larger volume. Or in the

marketing environment, you realize the greater savings. There's all aspects.

Q. If a business, two businesses, comparable businesses, and one has lower costs, does it always mean that it's less efficient? I'm sorry, if it has lower costs, does it always mean it's more efficient?

A. I mean, I don't know how you would evaluate that.

Q. Let's say whether it's a plant or farm, it doesn't matter, let's say you have the exact same farms, the exact same circumstances, but one is operating in one region of the country and has higher utility costs and labor costs, and the exact same farm is in another area of the country and has lower costs. Okay. And all else being equal, there's a lower cost. There's a cost difference. Okay. Does that necessarily mean there's an efficiency difference?

A. Maybe not. I just hope that one was getting a premium over the other.

Q. Well, okay. That's the issue, can they get a premium over the other.

A. And you're assuming that the size of the farms are exactly the same?

Q. I'm saying the exact same. I'm just saying that lower costs don't always -- maybe this is a better question. Lower costs don't always mean greater efficiencies, because it's the use of the resources you have available?
A. Correct.
Q. Okay. You talk about -- that the farm should -- the plant should expand, modernize or relocate as options for this. Are you familiar with the new make allowances that California has announced that will go into effect sometime in the fall?
A. No. I understand California make allowances are higher than the Federal make allowances.
Q. Higher. Okay. If those make allowances result in a make allowance impact that's 75 cents a hundredweight in that vicinity less than the Federal order, would that be an inducement to plants, the manufacturing plants to operate in California?
A. Yes. They would have an incentive to expand.
Q. In addition, I know there were questions about a producer who testified that he's

receiving, in West Texas, a $1.00 to $1.50 less. If there was -- if farmers are receiving less than that amount, and that was available for manufacturers to buy milk under the Class III price, to the extent of whether it be 50 cents, a dollar, would that be an inducement to those plants to relocate out of those areas also?

A. I mean, again, it depends on if there's an opportunity -- there's a market in California. There's a finite market for cheese in California. And there's land and whatnot. There's a lot of costs. It depends on a lot of factors. You have to develop a business plan and see if it's profitable to move to California.

Q. Okay. But there's a finite market in California?

A. Oh, there's a finite national market, too, which is what you're getting to.

Q. But in terms of -- you were saying that if plants close, for example in Pennsylvania, or the Northeast -- we'll use the whole region. States in the Northeast. And they were to move that milk into the Southeast, isn't there a finite market for Class I milk in the Southeast?

A. We've been seeing, over time, the population growing on the Eastern Seaboard, less milk production in the Southeast. And over time, our milk has been moving gradually into more and more Class I markets. There hasn't been any one year of just change. Milk has to find a home.

So if there was a very large disruption in plant capacity in the short run, yes, that would create a problem. But over time in the Northeast, more and more co-ops have been moving milk into Class I markets, over time.

Q. And so you're saying that if plants were to close, manufacturing plants were to close in the Northeast, their milk could then move to the South -- the producer milk can move to the Southeast?

A. I didn't say that. But, for example, in Pennsylvania we had a Class IV user -- I mean, Eagle Brand Foods could no longer compete in that market and pay over-order premiums. They moved out to a market where they can secure a growing milk supply at a lower cost.

But that milk -- I think the problem they face, where there was such a demand for the

milk, that there were premiums in that market, and then they couldn't pay the same premiums as a Class I user. And the co-ops had no other alternative but to move that into the Class I market. Clearly there was demand for that milk and that's why there were premiums.

Q. Right. So they ended up paying -- they could have gotten a lower price for that milk inputted into their plant elsewhere, that's why they moved?

A. They moved, yes, to secure a lower cost into a market where there was more surplus milk and less premiums, yes.

Q. Correct. Okay. Over-order premiums in the marketplace. Are they a function of local -- or regional, say regional supply and demand?

A. Yes.

Q. They are?

A. Yes.

Q. So if several plants were to leave, would that impact the local supply and demand situation?

A. If all of a sudden all these plants were shuttered in the short run, it's possible.

Q. Okay.

A. But it depends on the time frame. We haven't experienced all of a sudden plants shutting down.
Q. Well, if there's the same or better opportunity to sell milk to the Southeast, okay, why aren't the producers just automatically keeping moving if it's a better opportunity?
A. Well, again, in Pennsylvania, we have producers moving milk into New Jersey and sometimes Connecticut and sometimes the Southeast. It depends on the quality of the milk and the market environment. Milk is moving in many directions.
Q. You had said earlier about -- that transportation costs wouldn't necessarily be higher if you moved to the Southeast.
A. No, no, no.
Q. Or milk --
A. No. Obviously if you move milk to Pennsylvania, you would --
Q. Transportation costs reduced?
A. Yes. And I evaluate many milk trucks, and I also tell them you look at your Class I differential or your revenue, but you also have to look at your transportation costs to figure

out if you're getting a good deal or not. It depends on those two things.

Q. Okay. Thank you.

JUDGE PALMER: We had one more person who wished to ask some questions. Yes, sir.

DR. CRYAN: Thank you, Judge.

CROSS-EXAMINATION

BY DR. CRYAN:

Q. My name is Roger Cryan, C-r-y-a-n, National Milk Producers Federation. Good morning, Ken. How are you?

A. Good morning.

Q. Mark covered a couple of things on energy adjusters, but I wanted to make things, you know, absolutely clear for the benefit of everyone involved. Marvin indicated -- I'm sorry, Mr. Beshore indicated that NMPF has proposed a monthly energy adjuster based on Producer Price Index so that prices, when energy prices rise, the make allowances can account for that increase in costs. But then when energy prices fall, that there's no unfair windfall, there's no unfair windfall associated with old prices so that it's equitable for both sides all

the way around. That's the objective.

I just wanted to, you know, clarify, absolutely clarify for everybody that's paying attention, that your scenario of population average with energy adjustments is not a changing energy adjuster that takes into account energy prices from month-to-month, year-to-year. It is strictly based on Dr. Stephenson's calculation to estimate costs based on 2005 energy?

A. Yes, that's absolutely correct that we did not reflect a monthly -- we did not run the scenario in this study that reflected a changing monthly energy cost index. Correct.

Q. 2005, of course, was a very high energy cost year. And there are no projections for 2006 and 2007 costs in your estimates for 2006 and 2007.

A. No, there are not.

Q. And I apologize, but I would really want to make this clear that your scenarios -- I'm sorry, if an energy adjuster like National Milk was proposing was applied and energy costs were lower in 2006 and 2007 than they were in the base period, that the make allowances would be

lower than for the base period. Is that how you understand it?
A. I haven't reviewed recently that -- the National Milk's energy adjuster. I did not run that scenario here.
Q. And you didn't run any scenarios that would look at -- that only make an energy cost adjuster to change?
A. That's correct. We didn't run any scenarios that solely looked at the energy adjuster.
Q. No scenario that would only look at, for example, adjusting the 2004 or 2005 energy costs on a monthly basis? You didn't do that?
A. No, we did not do that. Correct.
Q. That's all. Thank you very much.
JUDGE PALMER: Thank you. Any other questions? Questions over here? Yes, Ms. Deskins.

CROSS-EXAMINATION

BY MS. DESKINS:
Q. I'm Sharlene Deskins, Office of the General Counsel for USDA. Dr. Bailey, I just wanted to ask you about some of the tables you have in your testimony. You prepared all of these

tables yourself?
A. That's correct. With assistance.
Q. Okay. And the assistance of Mark John?
A. Mirjana Pajic.
Q. Okay. And can you just tell us where you got the data you used to prepare all the tables?
JUDGE PALMER: You want to go table by table?
BY MS. DESKINS:
Q. Yeah, if we can go table by table. Let's start with Table 1.
A. Correct. Table 1 is my scenarios, and I developed those scenarios from the Cornell Study published on September 1 and Dr. Mark Stephenson's -- and from Dr. Mark Stephenson's testimony yesterday.
Q. Okay. And maybe if you could just tell us what Table 1 is supposed to show?
A. Table 1 is outlining the scenarios for make allowances that I conducted in this study.
Q. And maybe you could define for us what "95 percent confidence interval" means?
A. It's a statistical estimate on when you're trying to make inferences about a population.
Q. Okay. Let's go to Table 2 then. Why don't

you tell us where you -- did you get the data for that from Dr. Stephenson's study?

A. Well, as an analyst, the rest of these tables are developed from my model. So, for example, in Table 2, the baseline is simply the make allowances that are reported by AMS in the form that they currently uses -- I'm sorry, the -- that's not correct.

Table 2, the baseline for Federal order prices, is reported Federal prices by AMS. The rest of those changes were generated by my model.

Q. Okay.

A. So whenever there's a baseline for prices or for Federal order pool values, that came from the AMS website.

Q. Okay. And can you just tell us for the record, you know, what the citation for the AMS website is?

A. It's www.ams.usda.gov/dairy.

Q. Okay. And did the page have any particular name to it? I mean, the particular one, was it dairy statistics or --

A. There's a -- I can't recall the name, but there's a report put out by AMS on Federal order

statistics.
Q. Okay.
A. And it's by year, and a very good website that for 2006, for example, gives all the most recent Federal order data and statistics.
Q. Okay. And then for Table 3, if you could just tell us about that?
A. Table 3 is a forecast. Some of these numbers are forecasted for the baseline. And my forecast, I believe, began in July or August. I think August 2006 through December 2007 my Federal order prices are forecasted. And so that's how my baseline is constructed.
The rest of those scenarios are simply changes from the baseline and generated by my -- by the model.
Q. Okay. So number -- Table 5 would also be a forecast, because it refers to 2007 prices?
A. Yes, 2007 prices, the baseline is forecasted. The baseline is just what's published yesterday in my Dairy Outlook Report.
Q. And where is your Dairy Outlook Report located? Does it have a web page?
A. I have a website. It's dairyoutlook.aers.psu. -- it's a long site,

but --
Q. Would it be on the Pennsylvania -- you're with Pennsylvania --
A. I'm at Penn State University.
Q. Okay. Would it be on their website?
A. Yes. We're the Department of Agricultural Economics.
Q. Okay. So Table 7 also would be a forecast?
A. Yes. That's my forecast for pool values, for the baseline, and the changes are generated by the model.
Q. Okay. You also have a Figure 1 on page 6. Now, the source of that was also the AMS dairy statistics?
A. No, and I apologize for not providing a source for that figure. But that's the National Agricultural Statistics Service, and it's from the Dairy Products Report.
Q. Because in your references you referred to NASS, "U.S. Dairy Herd Structure." That's not the same source, is it?
A. That number provides the change in the number -- the number of farm operations in the U.S. I had a statement about the number of farm operations in the U.S., so I did cite that

source.
Q. Okay. In looking through these, do you want to make any comments about anything in here that's notable in the tables or in the figure?
A. All the notable analysis was included -- I noted in this text in my report.
Q. Okay.
MS. DESKINS: I don't have any other questions. Thank you.
JUDGE PALMER: All right. Yes, sir.

FURTHER CROSS-EXAMINATION

BY MR. ROSENBAUM:
Q. Dr. Bailey, I think you, in response to Ms. Deskins, identified the fact that Tables 3 through 7 constitute your -- maybe it's actually Tables 2 through 7 constitute your forecasts for what would happen if various changes in the make allowances would take place; is that right?
A. I'd like to call them simulations.
Q. Simulations, okay. Well, predictions of -- modeling of potential future outcomes; is that fair?
A. We forecast prices to construct a baseline, and then we do simulations from the baseline.

Q. Okay. But you are, in all those cases, you are forecasting future prices and then attempting to forecast what the impact of changes in the make allowances would have on those forecasted prices; is that right?
A. Well, again, we make a forecast on what our baseline is going to be, and I published that in my report. And then we do simulations with the model off of that baseline.
Q. Okay. So the baseline is itself a forecast, correct?
A. Yes.
Q. And a price forecast, correct?
A. Correct.
Q. And then you do simulations off that price forecast?
A. Correct.
Q. And I take it you've been doing price forecasts for a number of years; is that right?
A. Correct.
Q. And you have, at times, done a look-back to see how accurate you've been?
A. I haven't done a statistical look-back.
MR. ROSENBAUM: Let me just -- what is the next exhibit number, Your Honor?

JUDGE PALMER: I just put this one aside for a second. This one was --

MS. DESKINS: This is 78.

JUDGE PALMER: Seventy-eight, so the next one is seventy-nine.

(Thereupon, Exhibit 79 was marked for purposes of identification.)

MR. ROSENBAUM: I would show you a document that I marked as Exhibit 79. Let me hand out copies.

JUDGE PALMER: Make sure you have some for the reporter.

MR. ROSENBAUM: Yes, I have -- I've got extras. I think -- let me just do that.

JUDGE PALMER: And I'll take one. Just give one to me. Thank you, sir.

BY MR. ROSENBAUM:

Q. Dr. Bailey, is Exhibit 79, which I got from your website, is that, in fact, an excerpt of a PowerPoint presentation you yourself prepared?

A. Yes, it is.

Q. And were you, in your Dairy Outlook 2005, looking back as to how your -- how accurate your price projections had been in 2004?

A. I was giving a presentation to producers.

Q. And was that the subject matter of this page?
A. Not all of this. For this slide there was a little humor that we use in the dairy extension business. Perhaps you're not aware of it in your business, but we like to use humor. Producers like that.
Q. We tell jokes, but no one laughs at them but ourselves.
But was the subject matter of the slide your, what your -- what were your price projections for 2004?
A. For the second and third bullets, yes.
Q. Okay.
A. The first bullet was a joke.
Q. Okay. Well, by that you mean you hadn't literally calculated you had been right 2 percent of the time?
A. Right, right.
Q. But I take it you had been inaccurate a fair amount of the time?
A. Yes. Yes. And I'm very up front about that.
Q. That's all I have.
MR. ROSENBAUM: Your Honor, I would

ask that Exhibit 79 be entered.

JUDGE PALMER: Any objection?

MS. DESKINS: I just have one question. Could you state where this web page is, if you have that location?

MR. ROSENBAUM: It's the same location that he described.

MR. YALE: Your Honor, I would -- you know, he said it was a joke. I mean --

JUDGE PALMER: I have some problems with it. I don't want the -- I'm not going to receive it. I'll have it as an offer of proof, though, if you like.

BY MR. ROSENBAUM:

Q. If that's the case, let me just say, was it your conclusion in 2005 that there had been substantial inaccuracies in your price forecasting in 2004?

A. I didn't use the word "substantial." I was very up front what I did forecast that occurred and what I missed. So when you say "substantial," there's physical indications of that.

Q. Humorously or not, you said you have been

right 2 percent of the time, correct?
A. Again, I was making a joke. That was not a statistical analysis.
MR. ROSENBAUM: Your Honor, I think that's --
JUDGE PALMER: You want this to go as part of your offer of proof?
MR. ROSENBAUM: I will, but I think the testimony is fine.
JUDGE PALMER: Fine. I'm not going to receive it, but it will go along as an offer of proof.
All right. Other questions? Yes, sir.

CROSS-EXAMINATION

BY MR. SCHAD:
Q. Good morning, Dr. Bailey. Dennis Schad. Probably just a few questions. Page -- Table 1, page 2. As I go across the table, there's a column called "Population Average."
A. Correct.
Q. And I look at nonfat and butter, and I see that if you go back to the left one column, you'll see modified weighted average, and you'll see those numbers between those two columns for

butter and for nonfat are the same.
A. That's correct.
Q. I know that you were teaching classes yesterday, but we had a discussion about this yesterday. Are you aware that in Dr. Stephenson's testimony, he makes the point that because of a lack of information, he could not make population inferences from the descriptive statistics that he gleaned from a sample?
A. I wasn't here for his testimony. I read his testimony they presented, but again --
Q. Well, he says that in his written testimony.
JUDGE PALMER: Well, you can do one or two things. He wasn't here, so if you want to hypothesize, you can do that. If you want to ask a hypothetical. Doctor -- well, I'm not going to do it for you.
BY MR. SCHAD:
Q. I'll back up. Are you saying that from the information that you received from Dr. Stephenson's testimony that you put in this chart that, are you testifying that Dr. Stephenson made statistical inferences about

the population costs for the costs of making butter or powder for the population?

A. No. I simply looked at his study and I, from his study, I constructed scenarios. Those are my scenarios.

Q. I understand your scenarios. I'm not disputing you on the scenarios. But you're just making -- you're making a point here that Dr. Stephenson didn't, and I guess I'll just leave it at that.

JUDGE PALMER: All right, sir. I think that's all the questions for you.

Oh, one more? Yes.

FURTHER CROSS-EXAMINATION

BY MR. WELLINGTON:

Q. Bob Wellington, Agri-Mark again. Ken, are you familiar with the Dairy Price Support Program?

A. Yes.

Q. Are you familiar -- or are you aware of the fact that the last two times that the Secretary adjusted the make allowance on the Federal orders, they also adjusted the purchase prices of the dairy products in the Support Price Program?

A. Yes.
Q. And so let's assume this time that they're going to do that again, like they did the first two times. And if you were to put these -- this higher cheese price into the support program and raising the amount of the make allowance that you're looking at under your scenario --
A. If I did what?
Q. If you -- what I'm assuming is that the department makes that change again in the support price.
A. Well, what change in the make allowance is made? You raise the make allowance?
Q. In your analysis, your --
A. I did a number of scenarios, but which one?
Q. Okay. Let's say it's the one where the make allowance goes up to 20.28 cents.
A. Okay. And then the --
Q. How much higher is -- how much higher -- okay.
A. The protein prices go down.
Q. Okay. Well, I'm just saying that the cheese -- if they assume the make allowance difference on that, if they say that they have to put that new make allowance in, into the

Support Price Program, and so effectively the difference is a make allowance that was 20 -- what, 16.5 and goes to 20.2, you're almost about a 4-cent increase. If you were to increase the support price for cheese by 4 cents, okay, if that would happen in 2006, would that have impacted the market prices?

A. No.

Q. No?

A. Well, we didn't have any ceasing purchasing of cheese in 2006.

Q. No. But if the support price for cheese had increased, and I believe it's a little over $1.13 for a block, close to $1.17, would that have impacted the market prices this year?

A. I haven't -- I have the charts. I don't have -- I have to look at what they were, if there was any month. But what we've seen historically is that cheese prices are very -- cheese makers are very hesitant to ship to the CCC. So there's been very few months, even when they've fallen below support price level, cheese processors typically don't ship very much product to the CCC. So only if they ship the product would it be a floor.

Q. Right. But if the floor, the market price in 2006 -- you do price forecasting. You're aware of what cheese prices were. Okay. Were the block cheese prices the lower $1.17 in 2006?
A. I have to go back and look. But, I mean, right now they're in the 30s, and they were low. They were in that range. They were in that low range, yes, for a period of time.
Q. So if the record were to show that they were $1.15, for example --
A. Okay.
Q. -- would that impact the market price for cheese, if --
A. Not necessarily, because again, I can show you that there's been many months where the cheese price has fallen down in support levels and fell below it. And what you would expect to have occurred, if the market price for cheese fell below the support level, that the support level provided -- would have provided market support.

But there's been a number of instances where it went down a very short period of time and actually fell below it. It did not provide that level of support and bounced back up.

Q. For how long a period of time?
A. Right. We're talking about an amount of weeks.
Q. Right.
A. So, yes, if there was a long period of time, then obviously cheese processors would gear up from making what they supply to customers with, or what the USDA wants under the price support program and you could have a market impact. It would have to be more than a couple of weeks.
Q. Are you --
A. Or months.
Q. Are you familiar with the MLIC program?
A. Yes.
Q. How many producers in Pennsylvania are covered under that program? What percentage roughly?
A. I know that statistic. It's fairly significant.
Q. Would it be over 80 percent, for example?
A. I would say that would be a good estimate.
Q. Now, are you aware that if the Class I price were to fall, the MLIC payments would rise?

A. Correct.
Q. Did you factor that into the impacts?
A. No.
Q. You didn't?
A. No. Yes, you're right, we did not factor any premiums into the -- or the MLIC payment into our supply model.
Q. Okay. Thank you.
JUDGE PALMER: I'm looking around, I don't see any hands -- oh, yes, over here.

CROSS-EXAMINATION

BY MR. SCHAEFER:
Q. Henry Schaefer, USDA. Just one question, Dr. Bailey. On your Table number 1 where you've got your butter and your confidence interval, I notice you've got it at 11.08 for the confidence intervals and the weighted average. Did you do that because Dr. Stephenson's confidence interval showed a negative 9 to a positive, I believe it was 30 cents in there?
A. That's correct. And I should make it clear that the scenarios in this report were constructed by me and that I just read the Cornell Study and then from that information, I did that. But you're right, I did ask

Dr. Stephenson about the negative number, and he told me that it was a negative number; and I felt that when I constructed mine, my scenario, I did leave it at the base, at that level.

Q. Thank you.

JUDGE PALMER: No other questions? Thank you very much, Doctor. We'll go off the record.

(Thereupon, a discussion was held off the record.)

JUDGE PALMER: Back on the record. Are there any other questions? Apparently, there are none. So let's go off the record.

(Thereupon, a discussion was held off the record.)

JUDGE PALMER: We've had an off-the-record discussion about when the briefs should be filed, and the decision, not exactly a consensus here, there was a number of suggestions, but it's been decided that by midnight October 2nd, all briefs shall be postmarked as having been mailed to the hearing clerk's office.

Now, having said that, I might point out to you that although you might want to have

something postmarked and mailed, it won't get to the hearing clerk's office unless you do it by overnight express, because they're still checking them for anthrax down in Washington. So anything that goes through the actual post office regular mail stays there for about five or six days.

MS. TAYLOR: You can also e-mail them to the AMS dairy comments website. We'll make sure they get down to the clerk.

JUDGE PALMER: What's your e-mail address?

MS. TAYLOR: It's amsdairycomments@usda.gov. And if they're e-mailed to that address by the end of October 2nd, they'll get to the hearing clerk's office.

MR. BESHORE: And I understand that to mean the department accepts e-mailing as service?

JUDGE PALMER: That will be accepted, yeah.

MS. TAYLOR: They are. And that's the way it's done on any decision, or comments that are filed.

MS. DESKINS: 900 rules it's mailing, U.S. mail.

JUDGE PALMER: Did everybody hear that e-mail address?

THE AUDIENCE: No.

JUDGE PALMER: Let's say that again very loud. Please, please, we need a very loud statement as to the e-mail address.

MS. TAYLOR: It's amsdairycomments@usda.gov.

JUDGE PALMER: Dairy comments?

MS. TAYLOR: Comments, plural, c-o-m-m-e-n-t-s.

MR. ROSENBAUM: Your Honor, could we also add that any correction to the transcript be due at that time?

JUDGE PALMER: Same time due for the transcript. But there will be none, because she does perfect work. I think that concludes it. Thank you very much.

(Thereupon, the proceedings were concluded at 9:58 o'clock a.m.)

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C E R T I F I C A T E

STATE OF OHIO,)
) SS:
SUMMIT COUNTY,)

I, Anika W. Patrick, a Registered Merit Reporter, Certified Realtime Reporter and Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that these proceedings were taken by me and reduced to Stenotypy, afterwards prepared and produced by means of Computer-Aided Transcription and that the foregoing is a true and correct transcription of the proceedings so taken as aforesaid.

I do further certify that these proceedings were taken at the time and place in the foregoing caption specified.

I do further certify that I am not a relative, employee of or attorney for any party or counsel, or otherwise financially interested in this action.

I do further certify that I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Akron, Ohio on this 18th day of September, 2006.

_____
Anika W. Patrick, RMR, CRR

My commission expires March 13, 2010.

- - -