

CERTIFIED  
TRANSCRIPT

NATIONAL FEDERAL MILK MARKETING ORDER  
PRICING FORMULA HEARING

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

Before the Honorable Channing D. Strother, Judge

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Carmel, Indiana

August 23, 2023

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Reported by:

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

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28 Peter Vitaliano  
29 Jim Sleper  
30 Bradley Prowant  
31 Chris Hoeger

32 FOR SELECT MILK PRODUCERS, INC.:

33 Ryan Miltner



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

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Lucas Sjostrom  
Dr. Marin Bozic  
Travis Senn  
Tim Trotter

FOR THE MAINE DAIRY INDUSTRY:

Daniel Smith

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

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1 WEDNESDAY, AUGUST 23, 2023 - - MORNING SESSION

2 THE COURT: Let's come to order on the record.

3 Good morning, everyone. Welcome. Thank you for joining  
4 me here. It's August 23rd, 2023, at approximately  
5 9:10 a.m., Eastern time, which is local time set.

6 We're gathered at 502 East Event Center, Carmel,  
7 Indiana. My name is Channing Strother. I'm USDA's chief  
8 administrative law judge. I will be presiding over this  
9 hearing.

10 This hearing is held pursuant to the Agricultural  
11 Marketing and Agreement Act of 1937, as amended in the  
12 Rules of Practice and Procedure hearing at 7 CFR Part 900.

13 The United States Department of Agriculture,  
14 Agricultural Marketing Service, provided notice of this  
15 hearing on July 24th, 2023, 88 Federal Register 47, 396.  
16 Docket numbers, there are two of them, one from my office,  
17 hearing clerks' office, and one for AMS. Our number is  
18 23-J0067; it's AMS-DA-230001.

19 Pursuant to this notice, we are here to take  
20 testimony and other evidence on and to otherwise consider  
21 certain proposals to amend the pricing formulas in the 11  
22 Federal Marketing -- Federal Milk Marketing Orders, FMMOs.  
23 Evidence will be taken on economic and marketing  
24 conditions related to the proposed amendments and any  
25 appropriate modifications to the marketing orders.

26 I will administer the hearing to allow the sworn  
27 testimony from or on behalf of interested parties,  
28 cross-examination of those witnesses by interested parties



1 and their representatives, and submission of supporting  
2 documents as evidence.

3 Our hearing reporter, to my right, will transcribe  
4 verbatim what is said on the record, and that transcript  
5 and exhibits made a part of the record here will be made  
6 available on the AMS website.

7 As I understand it -- and I should confirm this --  
8 we think the transcript will be available in about two  
9 weeks, after the close of the hearing. Okay.

10 As set out in the notice of hearing, certain  
11 testimony will be taken virtually, namely that of certain  
12 dairy farmers. I want to say I understand also that this  
13 hearing, as the deputy administrator indicated, is being  
14 broadcast on the Internet.

15 Part of my duties here are to ensure that the  
16 hearing adheres to the requirements set forth in the  
17 applicable legal provisions, including that the  
18 information gathered during this hearing is pertinent to  
19 the subject matter of the Federal Register notice.

20 Among other things, if a witness makes comments or  
21 testifies to matters outside the scope of the contents of  
22 the Federal Register notice, or for that matter, is asked  
23 about matters outside the scope of the Federal Register  
24 notice, I have the authority to interrupt and not allow  
25 the witness to continue. Of course, my interruption may  
26 come after objection.

27 I will not be issuing a decision in this matter.  
28 Rather, others at USDA will utilize the records we develop



1 in determining whether and how to amend the Federal Milk  
2 Marketing Orders.

3 As an initial step, we will take, on the record,  
4 appearances of all participants, including USDA personnel,  
5 technical support people, and industry proponents. I ask  
6 each of you to state and spell your name, give your  
7 professional title, and describe your role in this  
8 hearing, including identifying on whose behalf you are  
9 testifying.

10 Let's start with the USDA, AMS.

11 Ms. Taylor?

12 MS. TAYLOR: Good morning. My name is Erin  
13 Taylor, E-R-I-N, T-A-Y-L-O-R. I am the director of the  
14 order formulation and enforcement division with the  
15 Agricultural Marketing Service Dairy Program.

16 MR. WILSON: I'm Todd Wilson, T-O-D-D,  
17 W-I-L-S-O-N. I'm with USDA Dairy Programs.

18 MS. CASHMAN: Good morning, my name is Lorie  
19 Cashman, L-O-R-I-E, C-A-S-H-M-A-N. I am director of the  
20 economics division for AMS Dairy Program, and I will be  
21 presenting data.

22 MR. HILL: I am Brian Hill, B-R-I-A-N, H-I-L-L.  
23 United States Department of Agriculture's office of the  
24 general counsel, representing the Agricultural Marketing  
25 Service.

26 MS. McMURTRAY: Good morning. Michelle McMurtray,  
27 M-I-C-H-E-L-L-E, M-C-M-U-R-T-R-A-Y. I'm an attorney with  
28 the Department of Agriculture representing the



1 Agricultural Marketing Service.

2 MR. VIERRA: Bradley Vierra, B-R-A-D-L-E-Y,  
3 V-I-E-R-R-A, with USDA Dairy Program.

4 MS. DECKER: Good morning, Lauren Decker,  
5 L-A-U-R-E-N, D-E-C-K-E-R, USDA Dairy Program.

6 MS. BIERMAN: Hi, I'm Phoebe Bierman, P-H-O-E-B-E,  
7 B-I-E-R-M-A-N, and I'm with the USDA Dairy Program.

8 THE COURT: Will you be gathering the exhibits for  
9 us and manning them?

10 MS. BIERMAN: Yes.

11 THE COURT: And just by way of explanation, this  
12 is a ministerial task, so I don't think there's any issue  
13 of any ex parte issues here, but it relieves the hearing  
14 reporter of trying to keep track of things and trying to  
15 take things down, so we decided to take this approach this  
16 time. So that's where the exhibits -- official copies of  
17 the exhibits will go.

18 Anyone else from AMS? Oh, yes, sir.

19 MR. RIORDON: Good morning. I'm Brian Riordon.  
20 I'm a supervisory agricultural economist with the  
21 Northeast Milk Marketing Order. I'm here today to enter  
22 testimony as a witness and provide specific data as  
23 requested by proponents.

24 THE COURT: Welcome.

25 Anyone else from AMS?

26 I don't really have an order to do this. Who  
27 should be next? Maybe the party presenting the first  
28 witness.



1 MR. RIORDON: May I spell my name for the --

2 THE COURT: You may.

3 MR. RIORDON: Brian Riordon, B-R-I-A-N,  
4 R-I-O-R-D-O-N.

5 THE COURT: Okay. Who is next? I think that's  
6 all the AMS.

7 Okay. First table, as I look down on my left.  
8 NMPF, if I can read that.

9 MS. HANCOCK: Hi, I'm Nicole Hancock. I'm with  
10 Stoel Rives, and I represent National Milk Producers  
11 Federation.

12 THE COURT: Ms. Hancock, thank you. If you could  
13 spell your name?

14 MS. HANCOCK: N-I-C-O-L-E. Hancock is  
15 H-A-N-C-O-C-K.

16 THE COURT: Stoel Rives is a law firm.

17 MR. VITALIANO: I'm Peter Vitaliano, P-E-T-E-R,  
18 V-I-T-A-L-I-A-N-O, the Vice President for economic policy  
19 and market research, National Milk Producers Federation.  
20 And I'll be testifying on behalf of National Milk  
21 Producers Federation.

22 THE COURT: Welcome, Mr. Vitaliano.

23 MR. SLEPER: Jim Sleper, J-I-M, S-L-E-P-E-R. I  
24 represent Sleper Consulting, LLC. I'm a consultant with  
25 National Milk.

26 THE COURT: Mr. Sleper.

27 MR. PROWANT: Good morning, Bradley Prowant,  
28 B-R-A-D-L-E-Y, P-R-O-W-A-N-T, also with the law firm Stoel



1 Rives, and also representing National Milk Producers  
2 Federation.

3 THE COURT: Welcome, Counsel.

4 MR. PROWANT: Thank you.

5 MR. HOEGER: I'm Chris Hoeger, C-H-R-I-S,  
6 H-O-E-G-E-R. I'm Vice President for Prairie Farms Dairy.

7 THE COURT: Okay. Is that everyone for National  
8 Milk?

9 Next? Yes, sir.

10 MR. ENGLISH: Good morning, your Honor. My name  
11 is Chip English. I'm with Davis Wright Tremaine. We  
12 represent the Milk Innovation Group.

13 Online, but here later in the proceeding, will be  
14 Ashley Vulin, V-U-L-I-N, also with Davis Wright Tremaine.  
15 And other people live will introduce themselves in a  
16 moment.

17 The members of the Milk Innovation Group are:  
18 Anderson Erickson, A-N-D-E-R-S-O-N, E-R-I-C-K-S-O-N, Dairy  
19 Company, Inc.; Aurora Organic Dairy, A-U-R-O-R-A, Organic  
20 Dairy; Crystal Creamery, C-R-Y-S-T-A-L, Creamery; Danone  
21 North America, D-A-N-O-N-E; Fairlife, F-A-I-R-L-I-F-E; HP,  
22 H-P, Hood, LLC; Organic Valley/Cropp, C-R-O-P-P,  
23 Cooperative; Shamrock Foods Company, S-H-A-M-R-O-C-K;  
24 Shehadey Family Foods, S-H-E-H-A-D-E-Y, which encompasses  
25 Producers Dairy Foods, P-R-O-D-U-C-E-R-S, Model Dairy,  
26 M-O-D-E-L, and Umpqua Dairy Products, U-M-P-Q-U-A, Dairy  
27 Products, Company; and Turner Dairy Farms, T-U-R-N-E-R,  
28 Dairy Farms.



1 Most of these are small businesses as defined by  
2 the Small Business Administration, and a number of these  
3 entities include dairy farmers.

4 THE COURT: Thank you, Mr. English.

5 MS. BULGER: Good morning, my name is Grace  
6 Bulger, B-U-L-G-E-R. I'm also with the Davis Wright  
7 Tremaine, representing Milk Innovation Group.

8 THE COURT: Ms. Bulger.

9 MS. KEEFE: Good morning. My name is Sally Keefe,  
10 S-A-L-L-Y, K-E-E-F-E. I'm a consultant. My company is  
11 skFigures, LLC, and I'm a consultant for the Milk  
12 Innovation Group.

13 THE COURT: Ms. Keefe. Thank you.

14 Next, if that's everyone for MIG?

15 MR. ENGLISH: For now, your Honor, yes.

16 DR. CRYAN: Good morning. Good morning. My name  
17 is Roger Cryan, C-R-Y-A-N. I'm not an attorney, but I am  
18 an economist. I'm here representing the American Farm  
19 Bureau Federation. And later this afternoon we will have  
20 Danny Munch, M-U-N-C-H, also from the American Farm Bureau  
21 Federation. Thank you.

22 THE COURT: Thank you. Is it Mr. or Dr. Cryan?

23 DR. CRYAN: Dr. Cryan.

24 THE COURT: Dr. Cryan. Thank you.

25 MR. METZGER: Good morning, Erick Metzger,  
26 E-R-I-C-K, M-E-T-Z-G-E-R, representing National  
27 All-Jersey, Incorporated.

28 THE COURT: Thank you, Mr. Metzger.



1 MR. VETNE: My name is John Vetne, V-E-T-N-E, from  
2 Bluefield, West Virginia, formerly of Maine, and I'm a  
3 consultant for National All-Jersey.

4 THE COURT: Thank you, Mr. Vetne.

5 MR. LOWE: Good morning. My name's Randale Lowe,  
6 R-A-N-D-A-L-E, L-O-W-E, also with National All-Jersey.

7 THE COURT: Thank you, Mr. Lowe.

8 MR. ROSENBAUM: I'm Steven, with a V, Rosenbaum,  
9 R-O-S-E-N-B-A-U-M, representing the International Dairy  
10 Foods Association. And there will be others with me as  
11 the hearing proceeds, and I'll have them introduce  
12 themselves when they come.

13 THE COURT: Thank you, Mr. Rosenbaum.

14 MR. SJOSTROM: Good morning. My name is Lucas  
15 Sjostrom, L-U-C-A-S, S-J-O-S-T-R-O-M. I'm a managing  
16 director of the Edge Dairy Farmer Cooperative. We have  
17 got some flight delays. Dr. Marin Bozic, Travis Senn, and  
18 Tim Trotter will be here later today, and we will likely  
19 have farmers testify also and state their names at that  
20 time.

21 THE COURT: Thank you.

22 MR. MILTNER: Good morning. My name is Ryan  
23 Miltner, M-I-L-T-N-E-R. I'm an attorney with the firm of  
24 Miltner Reed, that's R-E-E-D, from Ohio. I'm here  
25 representing Select Milk Producers, Incorporated, for the  
26 proponents of three different proposals in the hearing  
27 today. As we present our testimony, of course, we'll have  
28 different people up to testify, and when they arrive,





1 we'll put their information on the record. Thank you.

2 THE COURT: Very well, Mr. Miltner. Thank you.

3 MR. SMITH: Good morning. My name is Daniel  
4 Smith, S-M-I-T-H, represent the Maine Dairy Industry  
5 Association.

6 THE COURT: Thank you, Mr. Smith.

7 Anyone else? Seeing none.

8 In terms of overall procedures, and the deputy  
9 administrator went into this a little bit, but henceforth,  
10 we're going to be starting the hearing day at 8:00 a.m.,  
11 as she said, and most days we expect to conclude at around  
12 5:00 p.m. I am not sure whether we can go past that at  
13 all -- or I guess we can go past that a little bit. I  
14 hate to break up -- try not to carry witnesses over, so we  
15 don't have to, for more than one day, but -- and we can  
16 play some of this stuff by ear as we go along.

17 I don't know if we're going to -- we had discussed  
18 the possibility of trying to wrap early on Fridays,  
19 because some of us have to catch planes, but I don't know  
20 whether that's still on the table or not. We are under  
21 time pressure here.

22 Ms. Taylor?

23 MS. TAYLOR: Thanks, Judge.

24 Yes, we -- we would like to -- and this week we  
25 are not doing virtual testimony, so we'll still be able to  
26 go to around 5:00. But the Fridays where we will have  
27 dairy farmers testifying virtually, we would -- that ends  
28 around 3:00, and then if everyone's amenable, we would



1 conclude for the day at that point -- at that time.

2 THE COURT: Very well.

3 As typical, I'm going to take a lunch break. I  
4 think we can do lunch in an hour. There do seem to be  
5 some places to eat nearby. We can talk about other  
6 arrangements later in the week, I think as things develop,  
7 as I think they might.

8 I expect to take one midmorning and one  
9 midafternoon break, I'm thinking 10 to 15 minutes each.  
10 If our hearing reporter needs something more -- if my  
11 hearing reporter needs anything at all, she has my  
12 authority to interrupt me, ask or make whatever  
13 suggestions are necessary. She's among -- I'm not  
14 important compared to her in this room.

15 Okay. We'll convene Monday through Friday, except  
16 for Thursday, September 21st; Friday, September 22nd,  
17 which are days the hearing room is not available. There  
18 is also the Labor Day holiday, as I recall.

19 These hearings may go on continuously for as long  
20 as seven weeks, although we'll see.

21 We can discuss the following matters in more  
22 details as we get closer to the end of the hearing, but  
23 I'll provide some preview now.

24 We are going to need to establish post-hearing  
25 procedural dates. My hope is that parties will be able to  
26 work out dates we all can agree to. As I said earlier,  
27 I'm not going to be the one to write the decision, so I  
28 will have less say in it than I might normally.



1           And the dates, I think we'll key them to the date  
2           the transcript is posted on the AMS website. I would  
3           expect that all the exhibits, documentary exhibits entered  
4           into this proceeding, would be posted by that time as  
5           well.

6           I think we'll need a date for proposed transcript  
7           corrections, another date for objections to proposed  
8           transcript corrections. Corrections are to go to what is  
9           actually said. They are not an opportunity to add  
10          testimony to the transcript or to change testimony.

11          It would be useful for participants to try to work  
12          out and stipulate the transcript corrections. It may not  
13          be possible, especially given the number of participants  
14          in this matter, but my office will need some time  
15          thereafter to determine and issue transcript corrections.

16          The next date would be first, and maybe the only  
17          briefing date, depending on what the participants or what  
18          the particular AMS, whoever is writing the decision,  
19          wants. And I want you to think of -- if we have more than  
20          one brief, think about whether they are simultaneous  
21          briefs, initial in answering, or step briefs, versus  
22          someone going first, someone answering, and someone having  
23          a reply brief.

24          I say no sandbagging. That is, if you have got a  
25          position, state it in your first brief, don't wait for  
26          some kind of reply when other parties do not have the  
27          opportunity to respond.

28          Now, for the presentation of witnesses. We have



1 an order of proposals to be heard that we will be  
2 following. That's on the -- made available on the AMS  
3 website section established for this proceeding.

4 But the first topic we'll take up, I guess, is  
5 called USDA Impact Analysis and Data. AMS, as I  
6 understand it, has a list of witnesses who will testify.  
7 I will bring up those witnesses in order.

8 We also have, I guess before then, a number of  
9 exhibits that are put in, sometimes legally required as  
10 part of this case, that are not sponsored by any  
11 particular witness but go into the record, such as the  
12 notice, Federal Register notice of the proceeding, and  
13 other documents relating to that.

14 When a witness takes the stand, I'll swear the  
15 witness in, where they should be asked to state and spell  
16 their name for the record, or they can just go ahead on  
17 their own and do it, or I can do the asking, we'll see.

18 But the regulations also provide that the witness  
19 provide their occupation and address. However, in  
20 deference to concerns about public disclosure of personal  
21 protected information, I'd ask that witnesses not divulge  
22 an address that is a personal residence, but instead,  
23 ensure that the reporter has a working regular mailing  
24 address for you, whatever that address is.

25 Before going into their -- if they have a  
26 statement -- or before going into their testimony, I think  
27 we will have the witness identify each of their proposed  
28 exhibits. We will mark each one for identification, but



1 will not enter them into the record until after the direct  
2 and cross-examination of the witness, in case anyone's got  
3 any objection to that -- to the exhibit.

4 As I noted, the AMS will be collecting the  
5 exhibits officially. Corner table down there.

6 Again, part of my duties are to keep out anything  
7 that's -- that's irrelevant or immaterial to what we're  
8 supposed to be considering here based on the notice.  
9 Also, to preclude any unduly repetitious testimony or  
10 questioning. Failure to -- again, I may do this on my own  
11 or pursuant to an objection -- but failure to object may  
12 waive any objection of that material.

13 Participants and witnesses, cross-examiners, are  
14 to address each other through me rather than directly to  
15 each other, to maintain order.

16 Everyone try to speak clearly and slowly, one  
17 person at a time, so that the hearing reporter can get  
18 down correctly what is said in her transcript.

19 A participant proffering the witness goes first in  
20 asking questions, next will be other participants, and AMS  
21 will go last.

22 Thanks for bearing with me through all that.

23 So I think we have come to the time to put in  
24 unsponsored exhibits.

25 Mr. English.

26 MR. ENGLISH: If I may, your Honor, it may make  
27 sense to discuss a couple prospective ground rules or  
28 issues, if I may.



1 First, we -- all of industry, I think we learned  
2 last week, either Thursday or Friday, Friday in my case --  
3 that the typical economic -- preliminary economic analysis  
4 that USDA performs will not be available at the beginning  
5 of the proceeding, I think I understood that maybe at the  
6 end of the proceeding.

7 I want to note that this is the first hearing  
8 where I have been at, and I have done a lot of these,  
9 where that's the case. That impacts the fact that we had  
10 all staged witnesses in a certain way. So we're going to  
11 have witnesses here as we can.

12 I just wanted everybody to know, I had that  
13 conversation with Ms. Taylor last week, but I think on the  
14 record I wanted to note that, you know, there are some  
15 factual witnesses who had already made their plane  
16 reservations. The experts are here on Issue 1.

17 I think similar to that, the reality is that as  
18 opposed to the economist, the professional consultants who  
19 will be here, that there are fact witnesses who, you know,  
20 they run a business, small businesses, whether they are  
21 farmers or processors. And they may show up later in the  
22 hearing but talk about multiple issues, because the issues  
23 interrelate.

24 And I think my conversation procedure with USDA  
25 suggests that's going to be okay. We'll do the best we  
26 can to move through the issues. But I think it's fair to  
27 say that there are -- the way the hearing was set up with  
28 Issue 1 affecting Class I components, and then Issues 4



1 and 5 affecting Class I, Class I processors are stuck  
2 with, you know, the end of the proceeding.

3 And one other thing I would like to just discuss,  
4 and this is something we did in California at the last  
5 proceeding that I was at, there may be witnesses where it  
6 makes sense that two witnesses for a company appear: One  
7 will give testimony, and then the two will be available  
8 for cross-examination. In our experience, it makes it  
9 more efficient.

10 You know, it's up to you, your Honor, whether you  
11 are amenable to that, whether USDA is amenable to that,  
12 but we have certainly done that in the past. And I know  
13 of at least one entity testifying on Issue 3 where that  
14 would be very helpful.

15 So I just -- I wanted to at least lay those out  
16 and let anybody else talk about things like that, and at  
17 least have the conversation now rather than surprise  
18 people.

19 THE COURT: Thank you, Mr. English. If you can  
20 stay at the lectern for a minute, I'm going to ask for  
21 AMS's thoughts on those things.

22 But on the -- and thanks for the preview of what  
23 may be coming up, as I understand it.

24 I'm really here to serve the public interest and  
25 to serve the participants in how they want to run this  
26 hearing as -- as they can decide what is best for them.  
27 You all are going to know this case much better than I  
28 ever do.



1           On the -- as I understand, there's an economic  
2 report that's pertinent to the matters we are talking  
3 about here that will not be available now, but may come in  
4 later. And the question is what to do about that, and you  
5 don't want to exclude -- if I have this right -- you don't  
6 want to exclude further testimony on something that  
7 doesn't come in until later.

8           Do I have that right?

9           MR. ENGLISH: Well, that was going to be my  
10 position, but I think I learned yesterday that it may not  
11 come in until the very end. Under the theory that if it's  
12 not coming in at the beginning, putting it in the middle  
13 sort of disadvantages the people who already went.  
14 Putting it at the end sort of puts us all in the same  
15 boat, which I'm -- you know, I'm okay with.

16           I was actually getting at a slightly different  
17 issue, which is the administrative issue that, at least in  
18 California, and in my experience otherwise, the economic  
19 analysis is large enough that the examination of it would  
20 likely have taken at least a day or so.

21           And we, who have done these a long time,  
22 therefore, staged our witnesses based upon the  
23 anticipation that the analysis would be after the data  
24 that we're discussing, be the next thing. And then as a  
25 result, at least we, and I think probably others, thought  
26 about their testimony coming staged on that.

27           And so while our experts are here, the fact issue  
28 is on Issue 1, who are actually going to come during





1 Issue 1 as opposed to later in the hearing, aren't going  
2 to be here by Friday, and it may be that we end up moving  
3 to Issue 2 because -- and then have to go back to Issue 1,  
4 because that's the time they had scheduled. And they are,  
5 you know, businesspeople who really just can't jump around  
6 and do this, unlike those of us who do this for a living.

7 So that's what I was getting at. And, again, I,  
8 you know, procedurally had a brief conversation with USDA  
9 about that.

10 THE COURT: Okay.

11 Mr. Hill, can you address these?

12 MR. HILL: Yes. There is no objection to them  
13 doing that. We understand the position that they are in,  
14 and so we have no objection.

15 THE COURT: Great. So like I said, I'm here to  
16 help where I can. If the participants agree to something,  
17 that's fine with me.

18 How about the two witnesses on the stand at once?

19 MR. HILL: The same answer for that. We have done  
20 that before, as he said, in the California hearing. It's  
21 not a problem.

22 THE COURT: Sure. I've experienced that as well.  
23 And if it makes sense to you all, I'm sure it makes sense  
24 to me. You can bring it up, though, at the appropriate  
25 time, and we'll see if anyone else has got an objection.

26 We may have an objection right now. I'm sorry, I  
27 forgot your name.

28 MR. MILTNER: That's okay. It's Ryan Miltner. I



1 represent Select Milk Producers. And this is not an  
2 objection, it's just another issue that kind of arose in  
3 my mind as Mr. English was discussing this.

4 That piece of economic testimony informs an awful  
5 lot of what the industry as a whole will use to formulate  
6 their positions as well as their questioning of witnesses.  
7 And I understand if we don't have it, we don't have it.

8 But I would be interested in the Judge's position,  
9 and that of AMS, about whether once that data is  
10 available, if -- if there will be an opportunity to  
11 perhaps put witnesses on for additional examination about  
12 that data, which is absolutely critical to evaluating the  
13 proposals.

14 THE COURT: Mr. Hill, has AMS formulated any  
15 thinking on -- on this?

16 MS. TAYLOR: I guess our thinking is, it's not  
17 coming on until the end once everyone's gone, because  
18 that's what it will be ready to be on. The hearing ends  
19 when the judge says it ends, so if you would like to put  
20 witnesses on after that and we still have -- are able to  
21 meet, you know, we have time in the -- in the hearing  
22 process to do that, I don't think we would object to that,  
23 you know. You can bring people back on, if you would  
24 like, at any time.

25 MR. MILTNER: Thank you.

26 THE COURT: Yeah, even if -- as I recall the  
27 procedural rules, there is provisions for motions to  
28 reopen the record. Any new evidence that's developed, I



1 mean, creates a possibility of something like this coming  
2 up, and if it's important enough and things work  
3 otherwise, we'll deal with it at the time. But I do  
4 appreciate the heads-up on what may happen. I will not  
5 likely have a strong opinion on this now because I don't  
6 know enough about it, but it does sound important, and  
7 thank you for bringing it to my attention.

8 Yes?

9 MR. ROSENBAUM: This is Steve Rosenbaum. I -- for  
10 the International Dairy Foods Association. I do want to  
11 reiterate that we would at least like to hold open the  
12 potential of calling a witness after -- recalling a  
13 witness after the government presents its economic  
14 analysis to testify regarding it.

15 We can cross that bridge when we come to it, but  
16 normally that has come first in the hearing. I understand  
17 the reasons why it is not happening this time. But we can  
18 obviously examine the USDA witness, but we may have to  
19 have affirmative testimony regarding that analysis.

20 The other issue is a technical one. We may have  
21 some exhibits that are Excel spreadsheets that are not  
22 really amenable to being printed in some cases. And so I  
23 would suggest that if -- and I don't think we would likely  
24 to be the only ones in that situation -- I would suggest  
25 in that situation, we will commit to providing a copy  
26 electronically to USDA. USDA has been posting exhibits as  
27 we provided them, and that they would simply post it on  
28 the website, and then it would be available to everyone to



1 use during the examination of our witnesses.

2 THE COURT: I think that works for me.

3 Does that work for AMS?

4 MR. HILL: Well, we do need to have a paper copy  
5 for the -- for the Hearing Clerk's Office.

6 MR. ROSENBAUM: It will be an electronic copy,  
7 obviously. In my experience, in the modern world, there  
8 is no way to avoid that in trials anymore. People are  
9 doing that kind of analysis -- in the modern trial world,  
10 people have Excel spreadsheets where they have done  
11 calculations, and sometimes printing them out is just  
12 impractical and they just are printed.

13 Or, I mean, as a -- one can typically put those  
14 onto a thumb drive or on a -- and that can be a physical  
15 copy of it, so to speak, if that's -- if that's what's  
16 necessary.

17 MR. HILL: Yeah. We're going to have to talk to  
18 the Hearing Clerk to make sure that this is acceptable.

19 THE COURT: Sure. I mean, I think we can at least  
20 waive the requirement that there be 15 copies or whatever  
21 we talked about turning in. I mean, the Hearing Clerk's  
22 Office -- I'm trying to think whether there's any possible  
23 slippage in there. I mean, the hearing clerk's office can  
24 print out an Excel file, if necessary.

25 Thanks for raising that. I mean, good point. I  
26 don't think there'll be a -- we'll figure out what to do.  
27 You know, we can have an exception for voluminous -- or  
28 documents that would be voluminous if printed out, we can



1 figure out what to do about that. Thank you,  
2 Mr. Rosenbaum.

3 MR. ROSENBAUM: Thank you.

4 THE COURT: Any other preliminary matters before  
5 we -- one more.

6 Mr. English.

7 MR. ENGLISH: Charles English for the Milk  
8 Innovation Group. Actually, Chip English, I don't know  
9 why I used my legal name.

10 So, your Honor, earlier today we posted to the  
11 website, to the link, Exhibit MIG-1, and I rise to raise  
12 an objection to the USDA decision to exclude price-related  
13 proposals submitted by the Milk Innovation Group.

14 I believe we have copies being distributed.  
15 May -- may Ms. Bulgur approach both the court reporter and  
16 your Honor to provide copies to you?

17 So good morning, again, your Honor. I rise at the  
18 outset of this proceeding to lodge a critical objection.  
19 My name is Chip English, and together with Ashley Vulin,  
20 who is participating today remotely, and Grace Bulger, we  
21 at Davis Wright Tremaine represent the Milk Innovation  
22 Group.

23 I'm submitting a complete version of this  
24 objection as Exhibit MIG-1, but I'm going to admit as I  
25 present live some key citations to expedite things.

26 Pursuant to 7 USC, Section 608(c)15, MIG objects  
27 to USDA's decision to exclude two of its pricing-related  
28 proposals as being not in accordance with law. We request



1 a modification of matters open for hearing and/or reversal  
2 of the decision to exclude what are known as MIG  
3 Proposals 5 addressing, ESL shrink, and 6, a partial  
4 exemption from FMMO's pricing regulations of certified  
5 organic milk.

6 USDA's decision to exclude MIG's price-related  
7 proposals is not in accordance with the Agricultural  
8 Marketing Agreement Act, 7 USC, Section 601, et seq., or  
9 USDA's obligations under the Administrative Procedure Act.

10 As I discuss a little later, there is a U.S.  
11 District Court of District of Columbia case squarely on  
12 our side. This objection is timely.

13 As a preliminary matter, I want to explain why I  
14 raise the objection now and explain why this objection is  
15 timely.

16 Pursuant to USDA's rules governing procedures for  
17 this hearing, specifically 7 CFR, Section 900.16,  
18 implementing 5 USCA, Section 557(d)(1), once USDA issues a  
19 hearing notice, ex parte rules apply to any communication  
20 regarding the substance of this proceeding.

21 Given that we were not and could not be aware that  
22 USDA had applied an arbitrary and capricious methodology  
23 in this proceeding until that hearing notice was issued,  
24 the first moment to raise this objection in compliance  
25 with ex parte rules is today on the record. Thus, our  
26 objection is not only timely, it is perfectly timed for  
27 this morning.

28 USDA invited interested parties to submit



1 pricing-related proposals. On June 1st of 2023, USDA  
2 issued an invitation providing -- "providing the  
3 opportunity for interested parties to submit additional  
4 proposals regarding potential amendments to the current  
5 pricing provisions applicable to all FMMO's."

6 The invitation instructed that "each  
7 pricing-related proposal should be accompanied by a  
8 comprehensive explanation on the need for, and potential  
9 impacts of, the proposed changes, how the proposed changes  
10 facilitate more orderly marketing, and any other relevant  
11 information."

12 In its action plan issued on the same day, USDA  
13 stated that it was "considering initiation of a rulemaking  
14 procedure" -- "proceeding that would include a public  
15 hearing to collect evidence regarding proposed changes to  
16 pricing provisions effective in all 11 FMMO's."

17 Accordingly, MIG submitted six proposals,  
18 including the two pricing-related proposals raised here:  
19 An extended shelf life shrinkage pricing proposal, MIG's  
20 Proposal 5, and an organic milk pricing -- partial  
21 pricing -- partial pricing exemption proposal, MIG's  
22 Proposal 6.

23 USDA excluded milk's price-related proposals. In  
24 its June 24, '23 response to MIG, USDA based its refusal  
25 to hear MIG's extended shelf life shrinkage proposal,  
26 MIG's Proposal 5, and MIG's partial organic milk exemption  
27 proposal, MIG's Proposal 6, because each proposal price --  
28 each proposed price-related change "does not seek to amend



1 the uniform FMMO pricing formulas, and therefore, does not  
2 fall within the scope of this hearing."

3 USDA excluded each proposal because the proposal  
4 "does not seek to amend the uniform FMMO pricing  
5 formulas."

6 Note, your Honor, this critical difference between  
7 what USDA invited June 1st and now what it asserts was the  
8 limitation. For the first time, USDA now says "pricing  
9 formulas," implying that only 7 CFR, Section 1000.50, is  
10 open.

11 But that is not what USDA said June 1st. The  
12 invitation for additional proposals was not limited only  
13 to proposals which directly sought to amend the uniform  
14 pricing formulas. Instead, USDA invited additional  
15 "pricing-related proposals regarding potential amendments  
16 to the current pricing provisions applicable to all  
17 FMMO's."

18 USDA likely had to define the hearing in such  
19 broad terms if it intended to accept every single one of  
20 National Milk Producer Federation -- NMPF's -- five  
21 different district proposals that prompted the start of  
22 this proceeding.

23 The only unifying umbrella for National Milk's  
24 five proposals is "pricing." And contrary to USDA's later  
25 and belated assertion, both the extended shelf life  
26 shrinkage proposal and the organic milk partial exemption  
27 are pricing-related and are directly responsive to the  
28 potential amendments proposed by other entities to the





1 current pricing provisions applicable to all FMMO's.

2 MIG Proposal 6 seeks to amend the pricing  
3 provisions so that they treat organic certified milk  
4 differently from conventional milk. The proposal  
5 expressly ties to pricing. That is, under MIG Proposal 6,  
6 certified organic milk would have to meet certain specific  
7 pricing constraints on a nonclassified basis, and then it  
8 would be eligible for an exemption from pooling.

9 While this proposal requires harmonizing  
10 amendments in other sections of the regulatory code, each  
11 primary substance is found in Section 50.

12 Moreover, a critical proponent of FMMO pricing is  
13 the payment of significant funds by Class I processors  
14 into the Producer Settlement Fund. That is, without a  
15 doubt, a significant portion of the price paid by organic  
16 handlers for milk and one, by the way, that provides  
17 absolutely zero benefits to organic dairy farmers or  
18 organic processors.

19 Certified organic milk commands a nonclassified  
20 price premium that is higher than, and unrelated to, the  
21 FMMO minimum prices.

22 Finally, NMPF proposes to amend the FMMO by  
23 raising the Class I differentials. A significant  
24 justification historically for the original base  
25 differential was the value provided by farmers of  
26 balancing the market and incentivizing service of the  
27 Class I market. USDA did not accept -- I'm sorry -- USDA  
28 did accept MIG's proposal, which is Proposal 20, that



1 addresses that issue.

2           MIG will explain how these justifications no  
3 longer exist in any circumstance, but they especially do  
4 not exist for organic milk. The fact that this proceeding  
5 will already be considering and addressing the issues of  
6 the treatment of pricing of organic milk within this  
7 regulatory framework only further highlights the arbitrary  
8 nature of the new line drawn by USDA to exclude a partial  
9 organic exemption that is essentially another alternative  
10 to the pending proposals.

11           To say now that USDA intended only to hear  
12 proposals directly linked to price formula mechanics of  
13 NMPF's proposals is an after-the-fact justification for  
14 preventing our clients from being heard, when, of course,  
15 NMPF got all of its proposals noticed for the hearing.

16           Turning to ESL shrink. MIG's ESL shrink provision  
17 is undoubtedly pricing-related. It is a proposal about  
18 the price applicable to different levels of shrink. This  
19 proposal is designed to address the fact that USDA has  
20 long recognized that not all milk produced on a farm makes  
21 it to the bottle. Some milk is lost on the tanker, and  
22 some is inevitably left behind in milk lines.

23           ESL facilities face unique challenges with respect  
24 to shrink and our proposal is designed to impact that.  
25 And it is pricing because the amount of milk that is  
26 legitimate shrink is subject to the lowest price rather  
27 than the highest Class I price.

28           Milk has prepared and is ready to present data



1 that supports its contention that ESL shrink is uniformly  
2 different from other shrink and so should be priced  
3 differently. This proposal is undoubtedly about pricing  
4 and should be considered.

5 USDA's decision to prevent MIG's shrink proposal  
6 from consideration at the hearing is inconsistent with  
7 USDA's decision to include in the hearing notice, Select  
8 Milk Producers' proposals on yield factors, including  
9 particularly hearing Proposal 11 that directly addresses  
10 the same issue of shrink.

11 As -- as discussed by USDA in the hearing notice,  
12 the proposal seeks to update the specified yield factors  
13 to reflect actual farm-to-plant shrink. USDA did not  
14 limit the hearing to one section of the CFR, so it cannot  
15 maintain that dairy farmers get to discuss shrink as to  
16 butterfat and protein because it is only found in  
17 Section 50, but my clients cannot discuss shrink because  
18 it is found in a different section.

19 Shrink is shrink, and pricing-related, no matter  
20 where it is found in the code. The Secretary has opened  
21 the door to discussing shrink as to other classes, but  
22 proposes to keep the door closed as to Class I.

23 Likewise, USDA has previously stated that this  
24 very similar ESL shrink proposal needs to be considered at  
25 a national hearing, just as we have here. A number of us  
26 had the privilege of being in California in 2015 for the  
27 California Promulgation Hearing, and the Dairy Institute  
28 of California put forth a proposal to adjust shrink levels



1 for ESL.

2 In its recommended decision, USDA denied making  
3 the requested amendment on the basis that "amending  
4 provisions that are uniform throughout the Federal Order  
5 system to allow an additional shrinkage allowance on ESL  
6 production should be evaluated on the basis of a separate  
7 national rulemaking hearing." I omit the citation.

8 Your Honor, we are here at that national  
9 proceeding, making the request, just as USDA instructed,  
10 and yet, are denied again.

11 USDA's explanation for why the proposals were  
12 excluded is insufficient and unpersuasive. The AMS  
13 administrator is "required to make such an investigation  
14 and give such consideration that it deems warranted  
15 regarding a proposal and to deny the application only if  
16 it includes that, the proposed marketing order, or  
17 amendment will not tend to effectuate the declared policy  
18 of the act or that for other proper reasons a hearing  
19 should not be held on the proposal."

20 I'm citing the National Farmers Organization,  
21 Inc., vs. Lynn case. In the NFO case, I have been around  
22 just long enough, I was involved -- I was not involved in  
23 the actual lawsuit brought by NFO, but I was involved in  
24 the underlying Federal Milk Order hearing preceding the  
25 case that set the precedent. This was for then Orders 1,  
26 2, and 4, in the Northeast. Payment dates for dairy  
27 farmers were made open. Producers were then, and are now,  
28 paid twice a month.



1 NFO proposed a third payment to accelerate some  
2 monies paid to dairy farmers. USDA excluded the proposal,  
3 but on appeal to a Federal District Court by the  
4 proponent, USDA was ordered to reopen the hearing to  
5 include a proposal.

6 In other words, the arbitrary exclusion of an  
7 irrelevant proposal for the hearing even starts is a  
8 reversible error that could be appealed and result in  
9 nullification to proceeding as to that portion.

10 Here, that is, you know, the issues for Class I  
11 only. I want to emphasize that Class I and the make  
12 allowances can, and are, separate.

13 Here, both the extended shelf life shrinkage  
14 proposal and organic exemption proposal are related to  
15 pricing, and USDA fails to explain a proper reason the  
16 proposal should not be heard.

17 USDA's arbitrary exclusion of these proposals  
18 means that it is keeping certain proponents from even  
19 being heard. Not only does this put the Class I-only  
20 portion of the proceeding at risk for later reversal, but  
21 it certainly does not reflect the type of open and fair  
22 process that our clients deserve. And our clients are not  
23 the only losers if that happens, so are consumers.

24 MIG's rejected proposals sought to have the real  
25 economics of FMMOs considered and likely would result in  
26 decreases in the cost of milk to fluid milk processors.  
27 From a public policy consideration, if the economics do  
28 not justify current prices, then a failure to address that



1 reality by this agency is really a failure for consumers.

2 The issue is not academic or within the agency's  
3 discretion. The NFO case applies, and you, your Honor,  
4 can cure this today.

5 I'm skipping the next two paragraphs of case  
6 citations.

7 At best, USDA's decision to exclude MIG's  
8 proposals suggest a decision to change the scope of the  
9 hearing, specifically related to the meaning of pricing  
10 related and regarding proposed changes to pricing  
11 provisions effective in all 11 orders.

12 USDA fails, though, to provide the required  
13 explanation as to the difference between the proposals  
14 USDA invited and those accepted for the hearing.

15 If USDA made its determination to change the scope  
16 of the hearing, permissibly under the AMA and APA  
17 standards, USDA's response to MIG and other interested  
18 parties excluding proposals fails to provide the  
19 reasonable explanation as to the change in scope, and thus  
20 is not in accordance with law.

21 I skip the rest of the paragraph, for now.

22 USDA's failure to include proposals properly  
23 submitted within the scope of the invitation risks  
24 invalidating any final Class I pricing decisions resulting  
25 from the FMMO hearing. To be validly promulgated, a final  
26 agency rule must be a logical outgrowth of the proposed  
27 rule on which the public had the opportunity to comment.

28 To be very clear, our clients object to the fact



1 that not all Class I proposals are being heard,  
2 tentatively, except for my client's Proposal 20. The  
3 Class I proposals all increase Class I prices by some  
4 estimates, as much as \$1 billion annually.

5 Obviously, this proceeding can and will consider  
6 proposals that could increase the Class I price, and MIG  
7 has no objection to non-Class I proposals found in Issues  
8 2 and 3.

9 But if this proceeding is to address Class I  
10 pricing, it is premature, and it is a premature merit  
11 determination to exclude nearly all relevant Class I  
12 pricing proposals.

13 We believe we are correct here and that the notice  
14 of deficiency is not cured. The Secretary risks a  
15 successful 15A or 15B proceeding at some point, where a  
16 reviewing federal court may well determine long after the  
17 fact that any Class I price increases were improbably  
18 granted.

19 In past litigation, your Honor, huge fights have  
20 been erupted over how refunds to those persons for money  
21 are to be distributed by USDA.

22 Zuber v. Allen. I will note that my law firm I  
23 started at was involved in the Zuber v. Allen case and in  
24 that aftermath of trying to redistribute monies from eight  
25 years prior.

26 Let me say here and now to USDA and National Milk,  
27 that everyone is on notice of this risk of retroactive  
28 refunds for Class I is on the table. No one down the road



1 will be credibly permitted to make an equitable argument  
2 to the contrary.

3 And by the way, that was made in the Zuber case  
4 and rejected.

5 Right now, the hearing notice exclusions reinforce  
6 a perception the Class I fluid milk handlers are at best  
7 third class participants in the Federal Marketing Orders  
8 after dairy farmers and handlers that can voluntarily pool  
9 or not pool their milk.

10 Class I fluid milk sales are the only segment of  
11 the industry, quite literally, on life support. Class I  
12 fluid milk processors are the only segment who cannot exit  
13 the FMMO system. Non-Class I handlers can choose not to  
14 pool. Farmers can go down an order, or they can choose  
15 not to pool. But fluid milk processors are stuck.

16 And it is Class I that essentially funds this  
17 program, certainly the Producer Settlement Funds. All  
18 handlers pay assessments to fund the USDA operations, to  
19 be clear. Yet, despite all of this, Class I processors  
20 cannot even get their own proposals heard by the  
21 secretary.

22 MIG's proposals, including others not noticed for  
23 this hearing that are not in our objection, are designed  
24 to take a hard look at the reality of the economic  
25 situations before us and how USDA and this industry might  
26 actually try something new and different to spur  
27 innovation in Class I, rather than simply running it into  
28 the ground.





1           Now is the moment and time to fix it. And there  
2 is no way USDA can do so unless it hears from those on the  
3 front lines as to MIG Proposals 5 and 6.

4           We respectfully urge you, as the presiding  
5 officer, to provide us with a real opportunity to be heard  
6 on MIG Proposals 5 and 6, and I move admission of  
7 Exhibit MIG-1.

8           THE COURT: First, any objection to -- I guess we  
9 are going to mark this. We didn't mark it but -- and this  
10 isn't the normal way of handling an objection -- or I  
11 guess it's really -- this is a motion, but it gets it into  
12 the record, so this works for me.

13           So this will be -- Exhibit MIG-1 will be marked  
14 Exhibit --

15           MR. HILL: Your Honor?

16           THE COURT: Yes.

17           MR. HILL: We do have one question. Since the  
18 government has several exhibits that we're going to offer,  
19 we basically have numbered them up to number 59.

20           THE COURT: Okay.

21           MR. HILL: So we would like to see if we can  
22 reserve those and start at number 60.

23           MR. ENGLISH: I certainly am not getting in the  
24 way of that. I'm certainly happy to make it number 60.

25           THE COURT: Excellent. All right. No objections,  
26 I take it, so this -- my -- well, I don't see any  
27 objection -- anyone object to this going into the record?

28           So we'll mark Exhibit MIG-1 as Exhibit 60 for



1 purposes of this hearing, and put it into evidence as  
2 well.

3 (Thereafter, Exhibit Number 60 was marked and  
4 received into evidence.)

5 THE COURT: Okay. We have another person -- I'm  
6 sorry, I forgot names. But we have another person who  
7 stepped up to the mic.

8 Please.

9 MR. VETNE: My name is John Vetne, V-E-T-N-E,  
10 consultant for National All-Jersey. And this is an  
11 opportune moment for an echo of Mr. English's objection.

12 Early this morning, National All-Jersey submitted  
13 to USDA, on the designated website, an objection that is  
14 similar to that of Mr. English. That is an objection to  
15 exclude two pricing provisions submitted by National  
16 All-Jersey for consideration at this hearing.

17 One would be to make uniform to all Federal  
18 Marketing Orders a pricing provision -- pricing provisions  
19 for multiple component pricing of Class II, III, and IV  
20 milk, which exists in all but four orders, and is the  
21 basis upon which all prices are established. And the  
22 other was to price Class I milk on the -- in all federal  
23 markets on the basis of multiple components.

24 As Mr. English said, not all Class I proposals are  
25 being heard. That is one that is not being heard,  
26 although several are being heard.

27 The objection that has been made is being printed  
28 at the moment. I would -- when it's available, I would



1 ask that it -- that it be numbered with the next  
2 consecutive number, so that the two objections are  
3 together on the record. It's the same -- the very, very  
4 same issue.

5 One of the issues that was argued in the NFO vs.  
6 Lynn case in the District of Columbia was that USDA  
7 perceived that the proposal submitted by NFO did not have  
8 broad-based support from the primary proponent  
9 cooperatives. And that essentially was disavowed by the  
10 court as a legitimate reason for excluding a hearing -- an  
11 issue in the hearing notice.

12 What we have here is a proposal by National Milk  
13 Producers Federation -- multiple proposals by National  
14 Milk Producers Federation, and the yardstick chosen by  
15 USDA to see which proposal would be heard or not heard is  
16 how closely does it relate to the proposals submitted by  
17 National Milk Producers Federation, not to the marketing  
18 problems or disorder in the existing system, not to the  
19 problems identified, but how closely do they relate to the  
20 solution proposed by National Milk Producers Federation.

21 Both of National All-Jersey's proposal address the  
22 problems, the same problems, addressed in -- by National  
23 Milk Producers Federation, but come to a different  
24 conclusion as to what's the best solution.

25 In particular, there is a Class I proposal to be  
26 made uniform throughout, and there is a proposal for  
27 multiple component pricing to be made uniform throughout  
28 the system.



1           The AMAA in Section 608(c)(5) does not speak to  
2 disorderly marketing in the establishment of provisions  
3 for Federal Milk Orders. That comes earlier in the New  
4 Deal Act and relates to multiple programs. Disorderly  
5 marketing is a term of administrative interpretation that  
6 has evolved through the past, almost century now,  
7 80 years.

8           But what Section 5, 608(c)(5), does speak to is  
9 uniform pricing. It requires that prices charged to  
10 handlers, minimum prices charged to handlers, be uniform  
11 among handlers. The existing system results in  
12 non-uniform prices. The proposed system proposed both by  
13 National Milk Producers Federation and NAJ comes closer  
14 perhaps to making prices uniform but doesn't make prices  
15 uniform for Class II, III, and IV, in the four fat skim  
16 orders, Southeast and Arizona.

17           The proposal for MCP applied universally in all  
18 markets would have produced uniform prices. That is the  
19 objective that meets the problems identified in the market  
20 better.

21           We're not on the same page substantively with the  
22 proposal submitted by Mr. English, on the same page  
23 procedurally.

24           So, when -- when the objection comes, I don't know  
25 if it has been posted -- and it's pretty clear, by the  
26 way, on the USDA website, that, stated overtly, simply  
27 because something is posted on the website does not mean  
28 it's part of the record.



1 My objective today, and Mr. English's objective  
2 today, is to make these objections part of this record for  
3 consideration by USDA, by the parties, and any other  
4 authority in the future. Thank you.

5 THE COURT: Okay. So I think we will reserve  
6 Exhibit 61 for this objection, this is really a motion.  
7 Okay? And I'll put it into the record that way when --

8 MR. VETNE: And I don't think our objection -- I  
9 don't think our objection has been posted.

10 And the other thing is, part of the reason,  
11 apparently, that the NAJ proposals weren't considered was  
12 that National Milk Producers Federation submitted an  
13 objection, to which NAJ responded and submitted to the  
14 agency.

15 The response, also, about a month ago, is still  
16 not on the USDA website, and that was submitted on  
17 June 30, 2023.

18 So we should have the full record of both  
19 submissions and responses available to the parties, at  
20 least, if not part of this record. But it is -- it is  
21 incorporated in our objection. So thank you.

22 THE COURT: So I would like to hear from the other  
23 side. The other side is exactly, we have AMS. Sounds  
24 like other participants have a quarrel with NMPF as well.

25 Mr. Hill of AMS is standing. First in time, you  
26 get to talk first.

27 MR. HILL: Yes. We do reject these assertions,  
28 but seeing that they just came in this morning, we would



1 like time to look them over and formulate a response.

2 THE COURT: Okay. I mean, I guess my -- I've got  
3 a number of preliminary questions. Some may have to  
4 resolve on their own.

5 But I guess it occurs to me as timing, when do we  
6 have to make -- when do we need a decision on this? I --  
7 it doesn't seem like these topics would be up first  
8 anyway.

9 MR. HILL: That's what it seems like to me, your  
10 Honor, we should have time to do this. It's going to be a  
11 long hearing.

12 THE COURT: Yes.

13 MR. HILL: But I will get something to you within  
14 the next three to four business days and we can discuss  
15 this on the record.

16 THE COURT: Okay.

17 And any objection to that? Anyone else who wants  
18 to -- to file written materials on this?

19 MR. VETNE: I have a copy now, your Honor.

20 THE COURT: Okay. This is what we're going to  
21 mark as Exhibit 61?

22 MR. VETNE: Yes.

23 THE COURT: Okay. Thank you.

24 Okay. You want to identify -- describe what we're  
25 identifying as Exhibit 61? Somebody? Just so we have it  
26 in the spot in the record. Or I can.

27 MR. VETNE: Pardon?

28 THE COURT: Yeah. Identify for the record what



1 we're marking as Exhibit 61.

2 MR. VETNE: Yes. The objection to which I  
3 referred, which was submitted onto the website this  
4 morning, is an objection on the letterhead of Baker  
5 Donelson law firm, signed by Wendy Yoviene, an attorney,  
6 and me, dated August 23, 2003 -- 2023.

7 And the footnote at the bottom of the first page  
8 refers to both the proposals submitted by National  
9 All-Jersey, the letter from National Milk Producers dated  
10 June 30, seeking to exclude the NAJ proposals, and the  
11 response of June 30 from NMPF and the revised proposal  
12 submission, all of which were submitted as part of the  
13 objection this morning has been marked here is the letter.

14 THE COURT: Okay. Very well. The above-described  
15 letter of August 23rd, 2023, has been marked Exhibit 61.

16 Any objection to introduction of this exhibit into  
17 the record?

18 Seeing none. Exhibit 61 is admitted into the  
19 record, even though it is, more in the nature of a motion  
20 than an evidentiary document.

21 (Thereafter, Exhibit Number 61 was marked and  
22 received into evidence.)

23 THE COURT: Yes?

24 MS. HANCOCK: Nicole Hancock on behalf of National  
25 Milk Producers Federation. We would also like to reserve  
26 the right to respond to both Exhibit 60 and 61 objections  
27 that have been filed.

28 THE COURT: Yes. Of course, Ms. Hancock. Okay.



1           And anyone else as well. I mean, I can hear  
2 from -- we'll hear from whomever has something to say.  
3 Yes. Others stood up in this.

4           In any event, it doesn't sound like I need to  
5 resolve this today. And I don't think I'll have too much  
6 further to say on this. I mean, I suppose it is part of  
7 my duties to exclude from the record anything that's  
8 beyond the scope of the notice.

9           I guess it also occurs to me that as a general  
10 matter, since I'm not writing the decision, I'm loathe to  
11 exclude things so that the person that is drafting the  
12 decision can consider it later.

13           I don't know -- can anyone -- if we let this into  
14 the record, just give me maybe a little preview of this,  
15 how much more time would it take?

16           Mr. English?

17           MR. ENGLISH: Your Honor, as to MIG Proposal 5,  
18 which is the ESL shrink proposal, I have two things to  
19 say. First, the testimony is likely to be very similar to  
20 what was given in California. I think it was, at most,  
21 three-quarters of a day, but I'll have to go back and look  
22 at the record. It might have been half a day.

23           It is a little different in that we do have being  
24 prepared a survey, maybe by way of an offer of proof, we  
25 have a survey being prepared by Irvine & Company on this  
26 subject.

27           I note here for the record -- partly because I  
28 think fairly people should know -- that that survey was





1 being primarily prepared by Jeff Davis, a longtime member  
2 of the dairy industry who was a fluid processor from  
3 Pennsylvania and who was a consultant to Irvine.  
4 Unfortunately, Mr. Davis was killed in a motorcycle  
5 accident on Saturday.

6 A number of people here know who he is, and so I  
7 thought it at least appropriate on this proceeding to  
8 recognize, Mr. Davis.

9 THE COURT: So recognized. What a tragedy.

10 MR. ENGLISH: Yeah, it is. For the industry and  
11 for everybody in his family.

12 Now, that would not delay ultimately because if  
13 ESL shrink were added, it would be, you know, I guess near  
14 the end of the hearing. It relates to other issues.

15 Frankly, it is my view that the testimony is valid  
16 regardless because when we get to Class I, we're going to  
17 talk about, you know, raising Class I. And so in a way,  
18 it will be a defense to raising Class I. So in fairness  
19 to people, it's coming in anyway. So I think the ESL  
20 shrink would add very little time to the hearing.

21 I'm not going to make the same claim about a  
22 partial organic exemption. That is obviously a bigger  
23 question. It is one, frankly, that we raised with the  
24 Secretary going back as far as 2015, and have not had the  
25 opportunity to have it heard, and we think that it's  
26 critical that it be heard. But I will not claim it could  
27 be done in the same timeframe.

28 Again, you are likely to hear some of the



1 testimony in organic as a defense to higher Class I, as I  
2 previewed in my objection, but I would say that that would  
3 be more. That would be longer.

4 THE COURT: Let me see if I have this right. It  
5 was excluded in 2015, California?

6 MR. ENGLISH: No, it was -- it was a separate  
7 hearing request in 2015.

8 THE COURT: Okay.

9 MR. ENGLISH: And the Secretary, under the  
10 statute, chose to ask for more information and more time  
11 for about 16 months at which time, the proposal was  
12 withdrawn, as happened in the case of other proposals on  
13 other subjects.

14 So it was -- to be clear, it was not -- it was not  
15 part of or excluded. It just happened to be, we submitted  
16 the proposal at the same time of the 2015 hearing.

17 THE COURT: Very well. I think I understand.  
18 Yes.

19 MR. VETNE: Mea culpa. Mr. Metzger pointed out  
20 that NAJ's response of July 13th to the NMPF letter is  
21 indeed posted on the AMS website. Thank you.

22 THE COURT: The record's corrected, and thank you  
23 for keeping things clear on the record.

24 Anything else on this? I mean, I guess -- I  
25 started to say it is my job to keep things consistent with  
26 the notice and this, but I'm not the one that makes the  
27 decision. So people maybe should give me some guidance as  
28 to what my role is as opposed to the role of the USDA



1 personnel that set up this hearing and that will decide it  
2 in the end, so -- but I think we'll be talking about this.

3 Anything further on this?

4 Is now a good time -- or -- well, I -- we can have  
5 a break, or we could put in the 59 exhibits. How are you  
6 doing, Ms. Reporter?

7 THE COURT REPORTER: Can we take a break?

8 THE COURT: Break, yes.

9 All right. It's 25 after. Let's come back at 25  
10 of 11:00. Off the record.

11 (Whereupon, a break was taken.)

12 THE COURT: Okay. Can we come to order after our  
13 morning break?

14 Okay. I'm going to get started. On the record.

15 I think you are up, Mr. Hill, for AMS, with some  
16 59 non-sponsored exhibits.

17 MS. McMURTRAY: Yes, good morning, Judge. We have  
18 13 exhibits that we would like to place on the record.  
19 These are the documents that are required by the  
20 regulations. So I will just go through them one by one  
21 and have them marked.

22 Marked for Exhibit 1, we have the Federal Register  
23 notice, that is just the proposed rules that were  
24 published in the Federal Register with the hearing notice.

25 We would like marked for Exhibit 2 is the Notice  
26 to Trade. It says "Notice to Trade" at the top, and then  
27 "USDA Sets Hearing on Proposed Amendments to the Pricing  
28 Provisions of All Eleven Federal Milk Marketing Orders."



1           We would like marked for Exhibit 3 the notice that  
2 was sent from the Market Administrator of the Northeast  
3 Marketing Area.

4           For Exhibit 4 -- or what we would like marked as  
5 Exhibit 4 is the Notice to the Appalachian, Florida,  
6 Southeast Marketing Areas from that Market Administrator.

7           For Exhibit Number 5, we would -- it would be the  
8 notice from the Market Administrator to the Upper Midwest  
9 Marketing Area.

10           Marked for Exhibit 6 would be the notice to the  
11 Central Marketing Area from their Market Administrator.

12           What we have marked for Exhibit 7 would be the  
13 notice to the Mideast Marketing Area from that Market  
14 Administrator.

15           What we would like marked as Exhibit 8 would be  
16 the notice to the California Marketing Area from their  
17 Market Administrator.

18           Exhibit 9 would be the notice to the Pacific  
19 Northwest and Arizona Marketing Areas.

20           Exhibit 10 is the notice to the Southwest  
21 Marketing Area from the Market Administrator.

22           And then what we would like marked as Exhibit 11  
23 is the notice from the Department of Agriculture to the  
24 interested state governors.

25           So those are the 11 that are required by the  
26 federal -- by the current regulations.

27           We do have two additional exhibits that we would  
28 like marked as Exhibit 12 and 13.



1           Exhibit 12 is just for reference due to the way  
2 the Federal Register requires and publishes these  
3 proposals. These two documents are ways that the  
4 department has made to allow those who are participating  
5 in the hearing to see what the regulations would look  
6 like, where those changes go in the current regs.

7           So Exhibit 12 is titled the "Federal Milk  
8 Marketing Order, 2023 Pricing Formula Hearing, Proposed  
9 Regulatory Text Changes," and it is the clean version.

10           And then marked for Exhibit -- what we would like  
11 marked as Exhibit 13 is a very similar document. At the  
12 top, it reads "Federal Milk Marketing Order, 2023 Pricing  
13 Formula Hearing, Proposed Regulatory Text Changes," and it  
14 is a marked-up version.

15           So we would ask that all those be admitted as part  
16 of the record just because they are required by the  
17 Federal Register, and then we would ask the two, 12 and  
18 13, be admitted just so -- as a clarification for the  
19 Federal Register so parties can see what is what.

20           THE COURT: Any objection to the admission into  
21 evidence of Exhibits 1 through 13?

22           Seeing none, Exhibits 1 through 13 are admitted to  
23 the record.

24           (Thereafter, Exhibit Numbers 1 through 13  
25 were marked and received into evidence.)

26           MS. BULGER: Your Honor, sorry.

27           THE COURT: I'm sorry.

28           MS. BULGER: Your Honor, I understand there's no



1 witness, but I have a question regarding one.

2 My name is Grace Bugler, B-U-L-G-E-R, Milk  
3 Innovation Group.

4 Exhibit 1 is USDA's hearing notice, and the notice  
5 contains the relevant definitions of small businesses or  
6 entities participating here, as I understand correctly.  
7 It's -- to be found on the chart on the first page.

8 I raise this issue because we believe that USDA  
9 inadvertently included some outdated numbers here.

10 Recall that on February 15th, 2023, the United  
11 States Small Business Association updated the small  
12 business definition for fluid milk manufacturers from  
13 1,000 employers to 1,150 -- or employees, sorry, excuse  
14 me. And that can be found at 88 Federal Register, at page  
15 9982. 1,250.

16 If I could note for the record that this change is  
17 reflected in 13 CFR, Section 121.201.

18 But the USDA's hearing notice lists the old  
19 threshold of 1,000 employees, and likewise for small  
20 business definition for dry, condensed, and evaporated  
21 dairy products, it used to be entities with 750 employees,  
22 which is included in USDA's notice, but that was also  
23 updated, now at 1,000 employees.

24 We don't believe that a new hearing notice must be  
25 issued to reflect this correction given that regulations  
26 stand on their own, but we did just want to ensure that  
27 the hearing record reflects the updated numbers.

28 MS. McMURTRAY: No objection.



1 THE COURT: AMS will stipulate to that?

2 MS. McMURTRAY: Yes.

3 THE COURT: Very well. Okay.

4 MS. BULGER: Thank you.

5 THE COURT: So stipulated. Thank you, Ms. Bugler.

6 I guess I have -- with that -- with that

7 correction, Exhibit 1 is again admitted to the record.

8 And I think I admitted all the other Exhibits 1 through --

9 2 through 13.

10 Anything -- anything else, Mr. Hill, or AMS, I  
11 guess regarding Exhibits 14 through 59, if I understand?

12 MR. HILL: Yes, we have a witness next, your  
13 Honor.

14 THE COURT: Okay. Are we ready to call our first  
15 witness then?

16 Okay. Go ahead. Mr. Hill, you can call your  
17 witness to the stand.

18 And there's no written statement I take it for  
19 this witness?

20 MR. HILL: No, there is not.

21 THE COURT: And you are going to have direct  
22 examination to --

23 MR. HILL: Correct.

24 THE COURT: Very well.

25 MS. CASHMAN: While he's doing that, my name is  
26 Lorie Cashman. I am the Economics Division director for  
27 USDA AMS Dairy Program. I have a Master's degree and a  
28 Bachelor's degree in economics from the University of



1 Tennessee. I have been with USDA for approximately  
2 22 years, the majority is with -- has been with AMS  
3 overseeing the dairy products mandatory reporting program  
4 and the Federal Order statistics programs. And I have  
5 been the Economics Division director for approximately two  
6 years now.

7 THE COURT: Ms. Cashman, I should swear you in.

8 MS. CASHMAN: Oh.

9 LORIE CASHMAN,

10 Being first duly sworn, was examined and  
11 testified as follows:

12 THE COURT: And that goes for what you just -- the  
13 introduction you just gave as well, correct?

14 THE WITNESS: Retroactive.

15 THE COURT: You may continue, or it is your  
16 witness, Mr. Hill, whichever procedure you plan on  
17 following. And we do have you on the screen.

18 MR. HILL: I'm just waiting to make sure that they  
19 are ready, your Honor.

20 DIRECT EXAMINATION

21 BY MR. HILL:

22 Q. Well, good morning, Ms. Cashman.

23 A. Good morning.

24 Q. All right. So --

25 A. I -- oh, go ahead.

26 Q. In preparation for this hearing, did you prepare  
27 any documentation?

28 A. Yes, I did.





1 Q. And do you have that with you right now?

2 A. I do.

3 Q. Okay. And were these documents prepared under  
4 your supervision, or were you part of preparing them?

5 A. Yes, I was.

6 Q. And were these documents put together sua sponte,  
7 or did you receive a request for the data that you are  
8 presenting?

9 A. Yes. Or can you repeat the question?

10 Q. Did you -- did you do this of your own accord or  
11 did you receive a request for the --

12 A. Yes, I received requests for these data.

13 Q. Okay. So the data presented here does not in any  
14 way reflect your views, but is simply a fulfillment of the  
15 data request that you received?

16 A. They do not reflect my views, and they are for the  
17 sole purpose of the request.

18 Q. All right. And none of -- none of these are  
19 offered in favor -- you are not offering these in favor or  
20 against any of these proposals, are you?

21 A. They are not.

22 Q. And you intend that they may be used by all the  
23 parties for the purposes that those parties may require?

24 A. Yes.

25 Q. Okay. So let's look at what is marked here for  
26 identification as Exhibit 14 on the document.

27 (Thereafter, Exhibit Number 14 was marked for  
28 identification.)



1 THE WITNESS: Yes. This is the listing of data  
2 requests, the requesting entity, and the associated  
3 exhibit number. I would like to note that these exhibit  
4 numbers are not the same numbers that were posted on the  
5 website. We were trying to get the data out in order for  
6 the industry to be able to use them. So I will try my  
7 best to refer to what the table number is on the website  
8 compared to the exhibit that I'm going to put on.

9 BY MR. HILL:

10 Q. Okay. So this document is eight pages long; is  
11 that correct?

12 A. Yes.

13 Q. So, if you go to page -- pages 1, 2, 3, and half  
14 of page 4, I see that there are exhibit titles.

15 Can you explain what that is?

16 A. Yeah. So pages 1, 2, 3, and 4 will all be the  
17 data presented by either myself or our two other  
18 witnesses, and the associated exhibit numbers, the exhibit  
19 title, and the actual request wording from the proponent,  
20 as well as the requesting entity that requested it, and  
21 the -- whether or not the data request was fulfilled.

22 Q. So I see further at the bottom of page 4, and  
23 continuing through 8, that exhibit title box is empty.

24 Can you tell us --

25 A. Yes. So on pages 4 and the top part of 5 are data  
26 requests that we are pointing towards our websites for the  
27 official record. And then, beyond that are data requests  
28 that were not able to fulfill, either because the data was



1 not available or it was restricted due to confidentiality.

2 MR. HILL: Okay. So, your Honor, I'm not sure how  
3 you want to do this. It is listed as Exhibit 14 for  
4 identification on the document. Would that suffice to  
5 leave it as such?

6 THE COURT: Well, we can -- I mean, we can admit  
7 this. We have been admitting everything else. Does that  
8 answer --

9 MR. HILL: Yeah.

10 THE COURT: I mean, it is a handy reference.

11 MR. HILL: Correct.

12 THE COURT: I'm not sure what to make of the  
13 listings after 59.

14 MR. HILL: That was what I just asked her about,  
15 those documents.

16 THE COURT: Yes. Are those to be considered to be  
17 in evidence or --

18 MR. HILL: Can you repeat yourself, Ms. --

19 THE COURT: She said they are on the website.

20 MR. HILL: Which -- which particular documents are  
21 you talking about, your Honor? All of them or just the  
22 ones --

23 THE COURT: Well, anything that's after 59. I  
24 think she said that these are -- these are materials that  
25 are on the AMS website. And I take it we're not marking  
26 those --

27 MR. HILL: Yeah.

28 THE COURT: -- for identification. I take it



1 we're not entering those into evidence?

2 MR. HILL: No. I would like Ms. Cashman to repeat  
3 herself because part of that answer is correct, and I  
4 think part of it is --

5 THE COURT: Okay. Better than usual.

6 THE WITNESS: Right. So the first ones on page 4  
7 through the first two on page 5, our response to that data  
8 request is that the data are available on the website, and  
9 we gave the website where they could find it.

10 MR. HILL: And then after that point?

11 THE WITNESS: Okay. And then after that point,  
12 are all the data requests that we were not able to  
13 fulfill, either for the data is not available or  
14 restricted due to confidentiality.

15 MR. HILL: Is that sufficient, your Honor?

16 THE COURT: I think that's sufficient. If  
17 something comes up, we start referring to the ones that  
18 are on the website, we'll figure out what to do then.

19 And the other, I think the exhibit -- it's in the  
20 exhibit. We were asked for this, we didn't have it, okay,  
21 or whatever. Okay.

22 Let's -- I guess we'll wait until the end to admit  
23 exhibits.

24 BY MR. HILL:

25 Q. Let's please move to what's marked as Exhibit 15  
26 for identification.

27 THE COURT: Well, actually, I mean we'll mark it  
28 as 15.



1 MR. HILL: Right.

2 (Thereafter, Exhibit Number 15 was marked  
3 for identification.)

4 THE WITNESS: Just to note, what I have up on the  
5 screen here is the data request page on our national  
6 hearing site, and that is where the tables and charts have  
7 all been posted here. We do intend to update these with  
8 the actual exhibits.

9 So Exhibit 15 is the Announcement of Advanced  
10 Prices and Pricing Factors, January 2000 through August of  
11 2023. The first column is the year. Second column is the  
12 month. The base Class I price is next. It should be  
13 noted per footnote 1 that these are announced at 3.5%  
14 percent butterfat.

15 The next column is base skim milk price for  
16 Class I; Advanced Class III pricing factor; Advanced  
17 Class IV skim milk pricing factor; advanced butterfat  
18 pricing factor; Class II skim milk price; Class II nonfat  
19 solids price; and then the two-week product price averages  
20 for butter, nonfat dry milk, cheese, and dry whey. These  
21 are all announced and published. No new calculations were  
22 made on these. The Announcement of Advanced Prices and  
23 Pricing Factors are published on or before the 23rd of the  
24 month.

25 The second footnote is in reference to November of  
26 2013 and states, "Pricing constituent used in calculation.  
27 Equivalent Prices computed pursuant to 7 CFR 1000.54."

28 BY MR. HILL:



1 Q. And so these calculations were made from 2000,  
2 January of 2000, through August of 2023, and they are the  
3 same type of calculations each month and year, correct?

4 A. Yes.

5 Q. So let's move on to the next document, please.  
6 It's titled Announcement of Class and Component Prices,  
7 January of 2000 to June of 2023.

8 MR. HILL: And mark that for identification  
9 Exhibit 16.

10 (Thereafter, Exhibit Number 16 was marked  
11 for identification.)

12 THE WITNESS: Okay. So as already stated, this is  
13 the Announcement of Class and Component Prices. These are  
14 announced and published on or before the 5th of the month.  
15 There was no new calculations involved in this.

16 So the first column is year. Next is month. Next  
17 is the Class II price, as footnote 1 states is announced  
18 at 3.5% percent butterfat. Then there's the Class II  
19 butterfat price; Class III price, also announced at  
20 3.5% butterfat; Class III skim price; Class IV price, also  
21 announced at 3.5% butterfat; Class IV skim milk price;  
22 butterfat price; nonfat solids price; protein price; other  
23 solids price; somatic cell adjustment rate; and then the  
24 product price averages for butter, nonfat dry milk,  
25 cheese, and dry whey.

26 And footnote 2 is in reference to September and  
27 October of 2013, "Pricing constituent was used in  
28 calculation. Equivalent Prices computed pursuant to



1 7 CFR 1000.54."

2 Q. And these are the same calculations from 2000  
3 through 2023; is that correct?

4 A. Yes.

5 Q. Let's move on to the next document, please, which  
6 is Component Tests in Producer Milk."

7 MR. HILL: I would like to have this marked for  
8 identification as Exhibit Number 17.

9 THE COURT: So marked.

10 (Thereafter, Exhibit Number 17 was marked  
11 for identification.)

12 BY MR. HILL:

13 Q. And can you describe this document for us, please?

14 A. I'm just trying to get my bearings here.

15 Q. It's all right.

16 A. Okay. So Component Tests in Producer Milk By  
17 Order, January 2000 through May of 2023. Per footnote 1,  
18 "Component tests are based on test results submitted by  
19 Market Administrator, Cooperative, or outside  
20 laboratories."

21 First column is the Federal Order that the data  
22 references; the year; the month; the butterfat test; the  
23 nonfat solids test; protein test; and other solids test.

24 And per footnote 2, "Orders 5, 6, 7, and 131 do  
25 not report protein, other solids, or nonfat solids in  
26 their calculation of the uniform price." It should be  
27 noted that "the California Federal Milk Marketing Order  
28 became effective on November 1st, 2018." That is Federal



1 Order 51. And "Order 135 was terminated after March of  
2 2004."

3 Q. Thank you.

4 Let's move to the next exhibit, which would be  
5 Yearly Average Component Tests.

6 MR. HILL: I would like to have that marked for  
7 identification as Exhibit Number 18.

8 THE COURT: So marked.

9 (Thereafter, Exhibit Number 18 was marked  
10 for identification.)

11 THE WITNESS: All right. These are the Yearly  
12 Average Component Tests in Producer Milk By Order and All  
13 Market Combined, 2000 to 2022. The "component tests are  
14 based on test results submitted by Market Administrator,  
15 Cooperative or outside laboratories," per footnote 1.

16 The first column is the year. Second column is  
17 the Federal Order. Third is butterfat test. Next is  
18 nonfat solids test; protein test; other solids test; and  
19 somatic cell count.

20 Per footnote 2, "Orders 5, 6, 7, and 131 do not  
21 report protein, other solids, or nonfat solids in their  
22 calculation of the uniform price. Orders 1, 5, 6, 7, 51,  
23 124, and 131, do not report somatic cell count."

24 Per footnote 3, the all orders combined total for  
25 each year is a yearly average weighted by producer pounds.  
26 But it should be noted that "the California Federal Milk  
27 Marketing Order (51) became effective on November 1st,  
28 2018." And "Order 135 was terminated after March of





1 2004."

2 MS. TAYLOR: This is Erin Taylor. Before we get  
3 too far down, were you going to let everyone know what  
4 tables they are?

5 THE WITNESS: I was, yeah. My bad. All right.  
6 Let's back up here.

7 MS. TAYLOR: Yeah. Make it clear.

8 THE WITNESS: Okay. So Exhibit -- this is the  
9 wrong table. Exhibit 15, which was the Announcement of  
10 Advanced Prices and Pricing Factors, is Table 4 on the  
11 data request site.

12 Exhibit 16, the Announcement of Class and  
13 Component Prices, is Table 5. Nope, I got lost here. Did  
14 I say that right? 4 is advanced; 5 is class -- oh, I got  
15 two here, that's why. Okay. Sorry.

16 Exhibit 17, the Component Test in Producer Milk,  
17 is Table 2 on the website.

18 Yearly Average Component Tests, Exhibit 18, is  
19 Table 3.

20 And I will go through the rest as we go.

21 MS. TAYLOR: Thank you.

22 BY MR. HILL:

23 Q. So let's move on to the next exhibit, Final Butter  
24 Sales and Weighted Average Price.

25 MR. HILL: I would like to mark that as Exhibit 19  
26 for identification, your Honor.

27 THE COURT: So marked.

28 (Thereafter, Exhibit Number 19 was marked



1 for identification.)

2 BY MR. HILL:

3 Q. You may describe this, Ms. Cashman.

4 A. Right. So the next few tables -- or exhibits are  
5 19 through 23, but they all relate to Table 7 through 11  
6 on the website.

7 Exhibit 19 is the Final Butter Sales and Weighted  
8 Average Price.

9 Per footnote 1, "sales volumes and prices are  
10 reported as part of the Dairy Products Mandatory Reporting  
11 Product (DPMRP) and published in the National Dairy  
12 Product Sales Report (NDPSR)." And for more information  
13 you can see our website.

14 And then for footnote 2: "Under the Dairy  
15 Products Mandatory Reporting Program (DPMRP), each week  
16 respondents are required to submit sales volume, total  
17 dollars, and dollars per pound for the current week and  
18 any revisions to the prices or volumes previously reported  
19 for the prior four weeks.

20 "The sales volume and prices shown here include  
21 revisions (if any). The weekending date is the week for  
22 which the sales volume and prices apply, and the report  
23 date is the date of the report in which the final fifth  
24 week price was published."

25 It should be noted, "These reported sales volumes  
26 and prices may not be the same volumes and prices used in  
27 the Announcement of Class and Component Prices; they are  
28 the volumes and prices after all of the eligible revisions



1 were incorporated."

2 The first column is weekending date; second column  
3 is report date; then total sales; then weighted average  
4 price.

5 And then, footnote 3, is in reference to so many  
6 pages --

7 Q. I think it appears on the last page.

8 A. Oh, the last page.

9 October 12th, 2013; October -- well, weekending  
10 date October 12th, 2013; weekending date October 5th,  
11 2013; and weekending date September 28th, 2013. And that  
12 states that a "pricing constituent was used in the  
13 calculation." And the "Equivalent Prices were computed  
14 pursuant to 7 CFR 1000.54."

15 Q. Thank you.

16 Did you say the table number for that one?

17 A. That is Table 7.

18 Q. So let's move on to the next exhibit, Final  
19 Cheddar 40-Pound Block Sales.

20 MR. HILL: And I would like to mark that for  
21 identification as Exhibit Number 20.

22 THE COURT: So marked. Sorry, everyone.

23 (Thereafter, Exhibit Number 20 was marked for  
24 identification.)

25 THE WITNESS: Okay. So Exhibit 20 would be  
26 Table 8 on the website.

27 This is the Final Cheddar 40-Pound Block Sales and  
28 Weighted Average Price. All the same footnotes from the



1 prior table apply to these. It is all the same  
2 information, just for 40-pound blocks instead of butter.

3 BY MR. HILL:

4 Q. Very good.

5 So let's move on to the next exhibit, Final  
6 Cheddar 500-Pound Barrel Sales.

7 MR. HILL: I would like to mark that for  
8 identification as Exhibit Number 21.

9 THE COURT: So marked.

10 (Thereafter, Exhibit Number 21 was marked for  
11 identification.)

12 THE WITNESS: So this would be Table 9 on the  
13 website.

14 And again, it's, all the same footnotes, and the  
15 same pricing information, except for 500-pound barrels, we  
16 report a weighted average price, a weighted moisture  
17 content, and a weighted average price adjusted to  
18 38 percent moisture.

19 BY MR. HILL:

20 Q. And it has the same -- it has the same  
21 footnotes --

22 A. Yes.

23 Q. -- correct?

24 A. All the same footnotes apply.

25 Q. So let's move on to the next document which is  
26 Final Dry Whey Sales.

27 MR. HILL: I would like to mark that for  
28 identification as Exhibit Number 22.



1 THE COURT: So marked.

2 (Thereafter, Exhibit Number 22 was marked  
3 for identification.)

4 THE WITNESS: And that would be Exhibit 10 -- or,  
5 no, Table 10 on the website. And it is all the same  
6 information as the prior table, same footnotes apply.  
7 This is for dry whey.

8 BY MR. HILL:

9 Q. Okay. And let's move to the next exhibit, which  
10 is Final Nonfat Dry Milk Sales.

11 MR. HILL: I would like to mark that for  
12 identification as Exhibit Number 23.

13 THE COURT: So marked.

14 (Thereafter, Exhibit Number 23 was marked  
15 for identification.)

16 THE WITNESS: Okay. And Exhibit 23 would be  
17 Table 11 on the website. And again, all the same  
18 footnotes and information apply to this as the other  
19 tables. This is for nonfat dry milk.

20 BY MR. HILL:

21 Q. Okay. Let's move on to the next exhibit, which is  
22 the Weekly Dairy Product Sales Volumes.

23 MR. HILL: I would like to mark that for  
24 identification as Exhibit Number 24.

25 THE COURT: So marked.

26 (Thereafter, Exhibit Number 24 was marked  
27 for identification.)

28 THE WITNESS: So this Exhibit 24 is Table 25 on



1 the website.

2 Weekly Dairy Product Sales Volumes in Pounds, for  
3 week ending January 4th, 2014, to week ending July 15th,  
4 2023.

5 Per footnote 1, "Sales volumes and prices are  
6 reported as part of the Dairy Products Mandatory Reporting  
7 Program (DPMRP) and published in the National Dairy  
8 Product Sales Report (NDPSR)." And for more information  
9 you can refer to the website.

10 The first column is year. The second column is  
11 weekending date.

12 And per footnote 2, "Sales volumes associated with  
13 a specific Week Ending Date include all qualified sales  
14 reported for the previous week, starting from Sunday at  
15 12:01 a.m. and ending Saturday at midnight."

16 The next column are the products in the Dairy  
17 Product Sales Report, and then it's butter, cheddar cheese  
18 40-pound blocks, cheddar cheese 500-pound barrels, dry  
19 whey, and nonfat dry milk.

20 Q. So let's move to the next exhibit, which is  
21 Monthly Dairy Product Sales Volume.

22 MR. HILL: I would like to mark that for  
23 identification as Exhibit Number 25.

24 THE COURT: So marked.

25 (Thereafter, Exhibit Number 25 was marked  
26 for identification.)

27 THE WITNESS: Okay. So Exhibit 25 is Table 26 on  
28 the website. It is the Monthly Dairy Product Sales



1 Volumes in Pounds for weekending January 4th, 2014,  
2 through the weekending July 15th, 2023.

3 Per footnote 1, "Sales volumes are reported as  
4 part of the Dairy Products Mandatory Reporting Program  
5 (DPMRP) and published in the National Dairy Product Sales  
6 Report (NDPSR)." For more information see our website.

7 And footnote 2, "Monthly sales volumes are equal  
8 to the sum of the weekly NDPSR sales volumes with  
9 weekending date in the identified month and year."

10 So the first column is year. The second column is  
11 month. And then the remaining columns are the products in  
12 the report: Butter, cheddar cheese 40-pound blocks,  
13 cheddar cheese 500-pound barrels, dry whey, and nonfat dry  
14 milk.

15 Q. All right. So let's move to the next exhibit,  
16 which starts off Annual Dairy Product Sales Volume.

17 MR. HILL: I would like to mark that for  
18 identification as Exhibit Number 26.

19 (Thereafter, Exhibit Number 26 was marked  
20 for identification.)

21 THE WITNESS: Yes. So Exhibit 26 is Table 27 on  
22 the website. So this is the Annual Dairy Product Sales  
23 Volumes in Pounds, week ending date January 4th, 2014,  
24 through July 15th, 2023.

25 Per footnote 1, "Sales volumes are reported as  
26 Dairy Products Mandatory Reporting Program (DPMRP) and  
27 published in the National Dairy Product Sales Report."  
28 For more information see the website.



1           And then, "Annual sales volumes are the sum of  
2 weekly NDPSR sales volumes with weekending dates in the  
3 identified year."

4           And I'd like to make a correction that the second  
5 footnote should be footnote 2, not 1.

6           Q. Thank you very much for that.

7           So let's move forward to the next exhibit.

8           MR. HILL: And I'd like to mark that, DPMRP Annual  
9 Dairy Product Sales Volumes, I would like to mark that as  
10 Exhibit Number 27 for identification.

11          THE COURT: So marked.

12                   (Thereafter, Exhibit Number 27 was marked  
13 for identification.)

14          THE WITNESS: Okay. Exhibit 27 is Table Number 28  
15 on the website. This is the DPMRP Annual Dairy Products  
16 Sales Volumes and Reporting Entities, NASS Dairy Product  
17 Production and Number of Manufacturing Plants, 2014  
18 through 2022.

19           Per footnote 1, "Sales volumes are reported as  
20 part of the Dairy Product Mandatory Reporting Program  
21 (DPMRP) and published in the National Dairy Product Sales  
22 Report (NDPSR)." For more information see our website.

23           The footnote Number 2 is "U.S. dairy product  
24 production and number of manufacturing plants reported by  
25 the USDA National Agricultural Statistics Service (NASS)."  
26 For more information, see their website at  
27 [www.nass.usa.gov](http://www.nass.usa.gov).

28           So the first column is the year. The second





1 column is the NDPSR sales volume in pounds for butter.

2 Per footnote 3, "Annual sales volumes are the sum  
3 of the weekly NDPSR sales volumes with weekending dates in  
4 the identified year."

5 The next column is NASS U.S. production in pounds.  
6 It should be noted that that was pulled from their  
7 website. NDPSR sales volume share of U.S. production  
8 percent, so that is the NDPSR sales volume divided by the  
9 NASS U.S. production. The next column is NDPSR reporting  
10 entities in number.

11 Footnote 4, "Under DPMRP, companies can submit  
12 their data as individual plants or as one company. The  
13 NDPSR reporting entities totals may include individual  
14 plants or multiple plants reported as one entity, i.e.,  
15 the number of reporting entities does not compare to the  
16 NASS Manufacturing Plants totals."

17 The next column is the NASS manufacturing plants  
18 in number.

19 Then we continue on through all the same  
20 information, but for cheese 40-pound blocks, cheese  
21 500-pound barrels, cheese 40-pound blocks and 500 barrels  
22 together, nonfat dry milk, and then, finally dry whey.

23 And it should be noted in footnote 5 that "NASS  
24 does not report the number of plants manufacturing dry  
25 whey."

26 Q. So let's move forward to the next exhibit that  
27 starts -- that's titled Licensed Dairy Herds.

28 MR. HILL: I would like to mark that for



1 identification as Exhibit Number 28.

2 THE COURT: So marked.

3 (Thereafter, Exhibit Number 28 was marked  
4 for identification.)

5 THE WITNESS: That is Table 29 on the website. So  
6 this table is the licensed dairy herds from 2003 to 2022.

7 Per footnote 1, "Average number of dairy farms  
8 licensed to sell milk, based on counts collected from  
9 State and other regulatory agencies." The source was  
10 National Agricultural Statistics Service, USDA, and their  
11 website is [www.nass.usda.gov](http://www.nass.usda.gov).

12 It should be noted that these data were from  
13 pulled from NASS' website.

14 BY MR. HILL:

15 Q. So we can move forward to the next exhibit which  
16 is Monthly Mailbox Prices.

17 MR. HILL: And I would like to mark that for  
18 identification as Exhibit Number 29.

19 THE COURT: So marked.

20 (Thereafter, Exhibit Number 29 was marked  
21 for identification.)

22 BY MR. HILL:

23 Q. And when you are ready, you can discuss that.

24 A. Okay. Exhibit 29 is Table Number 18 on the  
25 website. This table is Monthly Mailbox Prices reported in  
26 dollars per hundredweight for January 2000 through April  
27 of 2023.

28 Per footnote 1, these are the net pay prices



1 received by dairy farmers for milk. Prices reflect all  
2 payments received for milk sold (including over-order  
3 premiums; quality, component, breed, and volume premiums;  
4 payouts from state-run over-order pricing pools; payments  
5 from superpool organizations or marketing agencies in  
6 common; payouts from programs offering seasonal production  
7 bonuses; and monthly distributions of cooperative  
8 earnings. Annual distributions of cooperative  
9 profits/earnings or equity payments are not included) and  
10 all costs associated with marketing the milk, such as  
11 hauling charges; cooperative dues, assessments, equity  
12 deductions/capital retains, and reblends; the Federal Milk  
13 Order deduction for marketing services; Federally-mandated  
14 assessments such as the National Promotion Program and  
15 budget deficit reduction; and advertising and promotion  
16 assessments above the national program level.

17 Other deductions such as loan, insurance, or feed  
18 mill assignments are not included. Prices are weighted  
19 averages of the prices reported for all orders receiving  
20 milk from the reporting area and are reported at the  
21 average butterfat tests.

22 For footnote 2, "For dates not shown, data were  
23 not published for that reporting area during that  
24 timeframe."

25 Okay. So first column is year. Second column is  
26 month. Then the following columns are all reporting  
27 areas.

28 For footnote 3, this is "areas for which prices



1 are reported for at least 75% of the milk marketed under  
2 Federal Milk Marketing Orders."

3 The first reporting area is New England states,  
4 which includes Connecticut, Maine, Massachusetts, New  
5 Hampshire, Rhode Island, and Vermont.

6 The next one is New York.

7 Then Eastern Pennsylvania, which includes all of  
8 the counties to the east of those listed in footnote 9,  
9 which I will read in a minute.

10 The next is Appalachian states, includes Kentucky,  
11 North Carolina, South Carolina, Tennessee, and Virginia.

12 And then we have the Southeast states, which  
13 includes Alabama, Arkansas, Georgia, Louisiana, and  
14 Mississippi.

15 Then we have Southern Missouri, which includes the  
16 counties in Vernon, Cedar, Polk, Dallas, Laclede, Texas,  
17 Dent, Crawford, Washington, St. Francois, and Perry, and  
18 all those to the south of these.

19 Next we have Florida.

20 Then Western Pennsylvania, which include the  
21 counties of Warren, Elk, Clearfield, Indiana,  
22 Westmoreland, and Fayette, and all those counties to the  
23 west of these.

24 Then we have Ohio, Indiana, Michigan, and  
25 Wisconsin. For printing purposes I had to split the  
26 tables, so starting on page 10 are the remainder of the  
27 reporting areas.

28 So same thing as before, the year, the month, and



1 then the reporting areas. So we have Minnesota, Iowa,  
2 Illinois, the Corn Belt States, which include Kansas,  
3 Nebraska, and the Missouri counties to the north of those  
4 listed in footnote 8.

5 Western Texas, which includes all counties to the  
6 west of Fanin, Hunt, Van Zandt, Henderson, Houston,  
7 Cherokee -- I'm going to spell this one for the court  
8 reporter, N-A-C-A-G-D-O-C-H-E-S -- and Shelby.

9 Then we have New Mexico.

10 The Northwest States, which include Oregon and  
11 Washington.

12 California -- which I think I skipped something.  
13 No, okay.

14 California, which should be noted that  
15 January 2000 through October of 2018 were calculated and  
16 published by the California Department of Food And  
17 Agriculture.

18 Then we have all reporting areas. Footnote 3  
19 (sic) notes that it is the "weighted average of prices for  
20 all selected reporting areas."

21 Then we have Western FO (135), that was -- yeah,  
22 Western FO (135).

23 And then Idaho and Utah.

24 Q. So let's move on to the next exhibit. Starts --  
25 the title starts as Total Eligible Milk Pooled in All  
26 Orders.

27 MR. HILL: I would like to mark that for  
28 identification as Exhibit Number 30.



1 THE COURT: So marked.

2 (Thereafter, Exhibit Number 30 was marked  
3 for identification.)

4 THE WITNESS: Okay. So Exhibit Number 30 is  
5 Table 14 on the website. This might take me a minute  
6 because it is small writing. Total Eligible Milk Pooled  
7 in All Orders, Total Eligible Milk Not Pooled in All  
8 Orders, Total Eligible Milk Not Pooled in the Upper  
9 Midwest Order, Federal Order 30, and Total Estimated 9(c)  
10 Milk Not Pooled Pounds, for January 2000 through March of  
11 2023.

12 So the first column is year. Second column is  
13 month. The third column is the total eligible milk  
14 pooled.

15 And per footnote 1, "Only rounded numbers were  
16 published prior to 2016."

17 The next column is total eligible milk not pooled  
18 estimated.

19 Footnote 2 states, "Only the combined Federal  
20 Order totals were published for 2000 and 2001."

21 The next column is total eligible milk not pooled  
22 in the Upper Midwest Order, Federal Order 30, estimated.  
23 And the "totals may not add due to rounding."

24 And Total Eligible Milk Not Pooled in the Upper  
25 Midwest Order 30 and Total 9(c) Milk Not Pooled are  
26 mutually exclusive subsets of Total Eligible Milk Not  
27 Pooled.

28 And then the final column is total 9(c) milk not



1 pooled estimated. And the data were only available from  
2 2016 to the present.

3 And there are several places where there is an  
4 asterisk located throughout the table, and those refer to  
5 data that were restricted due to confidentiality.

6 Q. Thank you very much.

7 So let's move to the next exhibit, which begins  
8 Other Uses Milk Pounds Pooled.

9 MR. HILL: I would like that marked for  
10 identification as Exhibit Number 31.

11 THE COURT: So marked.

12 (Thereafter, Exhibit Number 31 was marked  
13 for identification.)

14 THE WITNESS: Other Uses, Exhibit 31, is Table 19  
15 on the website. Okay. So this is Other Uses Milk Pools  
16 Pound -- no -- Other Uses, which are in quotation marks,  
17 Milk Pounds Pooled By Order, January 2000 through  
18 January 2023.

19 Per footnote 1, "'Other Uses' -- in quotation  
20 marks -- "for all orders (except order 126 data) includes  
21 pooled milk and products of pooled milk that is dumped at  
22 plants - including route returns - or at farms, lost by  
23 occurrences beyond the handler's control, or used for  
24 animal feed. Such uses of pooled milk are assigned to the  
25 lowest price class for the month subject to verification  
26 by the Market Administrator."

27 Okay. The first column is year. The second  
28 column is month. Then the remaining columns are for all



1 of the orders. Until the end, we have the monthly order  
2 total, and then we have the calendar year totals.

3 Per footnote 2, "Order 126 data does not include  
4 dumps at farms or used as animal feed; these were included  
5 in the published 'other' category; revision of historical  
6 data to conform with the definition in other markets would  
7 reveal confidential information."

8 Footnote 3, "The California Federal Milk Marketing  
9 Order" -- order 51 -- "became effective on November 1st,  
10 2018."

11 Footnote 4 refers to the calendar year totals  
12 column. "Some calendar year totals include restricted  
13 data that cannot be reported by month and by order.

14 And footnote 5 for the same column is "2023  
15 calendar year total is year-to-date."

16 There are some Rs throughout the table, and those  
17 represent "restricted data due to confidentiality. Total  
18 for all orders includes the restricted amounts."

19 Q. Thank you.

20 So can we move to the next exhibit, which begins  
21 Average Diesel Fuel Price.

22 MR. HILL: I would like that marked for  
23 identification as Exhibit Number 32.

24 THE COURT: So marked.

25 (Thereafter, Exhibit Number 32 was marked  
26 for identification.)

27 THE WITNESS: Okay. Exhibit 32 is Table 24 on the  
28 website. These are the Average Diesel Fuel Price --





1 prices, April 2012 through July -- well, that's wrong,  
2 should be 2007, sorry -- January 2007 through July 2023.

3 Per footnote 1, this is the "simple four-week  
4 average of the Gulf Coast PADD 3 and Lower Atlantic  
5 PADD 1C sourced from" the website for -- yeah -- Energy  
6 Efficiency Association, and their website is listed there.  
7 And these are used in the Announcement of Advanced Prices  
8 and Pricing Factors, and our website is listed below.

9 MS. TAYLOR: I just wanted to clarify for the  
10 record. It is from the Energy Information Agency.

11 THE WITNESS: Energy Information Agency.

12 BY MR. HILL:

13 Q. So let's move to the next exhibit, which begins I  
14 think Regulated Pool Distributing Plants and Federal Order  
15 by Month.

16 MR. HILL: I would like to have that marked for  
17 identification as Exhibit Number 33.

18 THE COURT: So marked.

19 (Thereafter, Exhibit Number 33 was marked  
20 for identification.)

21 THE WITNESS: So Exhibit 33 is Table 16. I  
22 believe, on the website. It says Regulated Pool  
23 Distributing Plants and Federal Order Number, the Federal  
24 Order that the plant was regulated on in that month, by  
25 Month, January 2010 through March of 2023.

26 The first column is year; the second column is  
27 plant name; city; state; zip code; the next column is  
28 effective Class I differentials.



1           And prefer -- per footnote 1, the "effective  
2 Class I differentials include the Class I differentials  
3 adjusted for location listed in 7 CFR 1000.52 and, where  
4 relevant, the adjustments to Class I prices listed in  
5 7 CFR Sections 1005.51, 1006.51, and 1007.51."

6           The next column is the Federal Order number by  
7 month.

8           And per the footnote, "The Federal Order Number  
9 refers to the Federal Milk Marketing Order number under  
10 which the listed plant is regulated. Current Federal Milk  
11 Marketing numbers: 1 - Northeast, 5 - Appalachian,  
12 6 - Florida, 7 - Southeast, 30 - Upper Midwest,  
13 32 - Central, 33 - Mideast, 51 - California, 124 - Pacific  
14 Northwest, 126 - Southwest, and 131 - Arizona. Note: If  
15 there is no Federal Order Number listed, the plant was not  
16 regulated that month."

17          Q.    So just for a moment I would like to go back to  
18 Exhibit 32 marked for identification that you just did  
19 prior.

20                So on the last page, page 6 of 6, it is true that  
21 you have a calculation for August of 2023? Is that  
22 correct?

23          A.    Yes.

24          Q.    So in fact, the title should be January 2007 to  
25 August 2023; is that correct?

26          A.    Yes.

27          Q.    Thank you.

28                So let's move on to the next exhibit begins



1 Regulated Pool Supply Plants and Federal Order Number by  
2 Month?

3 MR. HILL: I would like to mark that for  
4 identification as Exhibit Number 34.

5 THE COURT: So marked.

6 (Thereafter, Exhibit Number 34 was marked  
7 for identification.)

8 THE WITNESS: So 34 is Table Number 17 on the  
9 website. This is all the same information and footnotes  
10 as the prior table. This is for Regulated Pool Supply  
11 Plants and Federal Order Number by Month, January 2010  
12 through March 2023.

13 BY MR. HILL:

14 Q. And you did say that the footnotes were the same?

15 A. They are the same as the prior table.

16 Q. Thank you.

17 So let's move to the next document, Spot Milk  
18 Prices Relative to Class III Milk.

19 MR. HILL: I would like to mark that for  
20 identification as Exhibit Number 35.

21 THE COURT: So marked.

22 (Thereafter, Exhibit Number 35 was marked  
23 for identification.)

24 THE WITNESS: Exhibit 35 is Table Number 15. This  
25 is Spot Milk Prices Relative to Class III Milk Price,  
26 reported in dollars per hundredweight, for the Central  
27 United States, January 2015 through June of 2023.

28 The first footnote says, "Spot milk price ranges



1 relative to the monthly Class III price as reported on the  
2 most recent (at the time of the report) Announcement of  
3 Class and Component Prices. Price ranges are reported  
4 voluntarily by buyers of milk for use in manufacturing  
5 cheese." The source is from Dairy Market News Fluid Milk  
6 and Cream report for the Central U.S. report, and the  
7 website is listed below.

8 Report date is the first column.

9 And per footnote 2, "Report date and report number  
10 represent the date and week of the year the report is  
11 published. The price ranges reported are for the Friday  
12 to Wednesday prior to the report date."

13 Then we have the low, high, and midpoint reported.  
14 And the last column is trade activity.

15 It should be noted per footnote 3 that "spot milk  
16 Trade Activity reporting began in May of 2019."

17 And anywhere that is listed as not available on  
18 the table means that there was no data reported in that  
19 week.

20 Q. So I see on the last column, Trade Activity, you  
21 do have obviously that footnote. But could you give us  
22 any insight into what slow, moderate, active --

23 A. Yes. So this is --

24 Q. -- refers to?

25 A. All of this data is self-reported, and they are  
26 reporting in their opinion how much spot milk activity was  
27 occurring during that week. For example, for -- let me go  
28 to one that has numbers -- or moderate. Okay.



1           For January 6, 2022, Report Number 1, it would be  
2     \$4 is the low range, and the high -- negative \$4, and  
3     negative \$1 is the high range, and that represents the --  
4     anywhere from 4 to \$1 below the Class III price. And the  
5     buyers were saying that there was moderate activity, as  
6     self-reported by them, occurring for spot sales that week.

7           Q.     Thank you very much.

8           So let's go to the next document, which begins  
9     U.S. Mozzarella Production.

10          MR. HILL:   And I would like to mark that for  
11     identification as Exhibit Number 36.

12          THE COURT:   So marked.

13                 (Thereafter, Exhibit Number 36 was marked  
14     for identification.)

15          THE WITNESS:   Okay. This one is Table 30 on the  
16     website. So this is U.S. Mozzarella Production in  
17     Wisconsin Wholesale Prices, 2000 to 2023.

18                 The U.S. Mozzarella Production was sourced from  
19     USDA National Agricultural Statistics Service. And the  
20     Wisconsin wholesale prices are sourced from the Dairy  
21     Market News report, Cheese - Midwestern U.S., and the  
22     Wisconsin wholesale selling price for 5- to 6-pound  
23     mozzarella loaves, and the associated website below that.

24                 The first column is year. Second column is month.  
25     The next one is mozzarella production in pounds. The next  
26     column is the price range in dollars per pound, the  
27     minimum and maximum. And then the average price in  
28     dollars per pound.



1 Q. Okay. I think -- is that the --

2 A. That's the end for me.

3 MR. HILL: Okay. Your Honor, I would like to move  
4 for the admission into evidence of 14 through 36.

5 THE COURT: Any objections? As to Mr. English?

6 MR. ENGLISH: Chip English for the Milk  
7 Innovation.

8 I don't believe we're going to have objections,  
9 your Honor, but I think it might be appropriate,  
10 nonetheless, as we go through, to allow the parties to ask  
11 questions. There may or may not be modifications to the  
12 documents as a result of that, maybe there won't be.

13 But I don't have objections per se, but I just  
14 wonder as a matter of procedure if we should go through  
15 the questions first and then move admission.

16 THE COURT: I think so. And, of course, this  
17 witness is vouching for these exhibits, and -- and so we  
18 shouldn't actually introduce those exhibits until direct  
19 and cross, and any other examination of the witness is  
20 completed.

21 MR. ENGLISH: Thank you, your Honor.

22 THE COURT: With that, do you have questions --  
23 does anyone have any questions for this witness?

24 Mr. English does.

25 MR. ENGLISH: Thank you. I would not have done  
26 that had I not had questions.

27 THE COURT: Fair enough.

28 CROSS-EXAMINATION



1 BY MR. ENGLISH:

2 Q. Bear with me a little bit because we prepared  
3 based on the table numbers, and so I'm trying to keep  
4 track. You will be glad to know the most questions I had  
5 were Table 1, which is not yours apparently. So whoever  
6 that lucky person is.

7 So the order I'm going to take this in, though, is  
8 the order that I prepared them in, if I could.

9 A. That's fine.

10 Q. So Exhibit 17, which I believe is Table 2.

11 A. That is Table 2.

12 Q. And my first question is going to be hard, and I  
13 apologize. How does Table 2 compare to Table 1? And  
14 since you didn't do Table 1, I don't know --

15 A. Oh, yes. Okay.

16 Q. Is it the same data? Do you know?

17 A. No -- yes, it -- I mean we did -- in Table 1 we  
18 don't have the actual tests.

19 Q. So Table 1 --

20 A. But they are related.

21 Q. Okay. And I -- you know, in fairness, I really  
22 was hoping one witness would do both, but I'll work out  
23 whatever you want me to work out on this.

24 MS. TAYLOR: I think what might be helpful,  
25 Table 1 is going to come in this afternoon.

26 Is that correct?

27 THE WITNESS: No, I don't think Table 1 will be  
28 until tomorrow.



1 MS. TAYLOR: Oh, that's 1. Okay.

2 THE WITNESS: But John and I can come together.

3 MS. TAYLOR: Yes. So we can put that in tomorrow.

4 We have another witness coming on Table 1. And then we  
5 would be glad to put that witness and Lorie up together  
6 and answer any questions you guys have.

7 MR. ENGLISH: I'm -- I'm hardly going to disagree  
8 with that idea since I suggested two people at once  
9 earlier today. I think that will make things a lot  
10 easier.

11 MS. TAYLOR: That's fine.

12 THE COURT: So we should put a hold on the  
13 admission of this --

14 MR. ENGLISH: Of Exhibit 17 I think.

15 THE COURT: Okay.

16 MR. ENGLISH: All right.

17 BY MR. ENGLISH:

18 Q. You were almost off the hook.

19 A. Until tomorrow, right?

20 Q. All right. So then I would turn to Exhibit 18,  
21 which I believe is the same thing as -- you know what, my  
22 second question is, you know, how does it compare to  
23 Tables 1 and 2, so I think it makes sense to do the same  
24 thing with Exhibit --

25 A. Well, it could help for tomorrow to note that  
26 Exhibit 18 is the annual averages of the tests reported in  
27 Exhibit 17.

28 Q. Okay. So they are directly related?





1 A. They are directly related.

2 Q. Okay. So whatever questions I have would -- they  
3 are going to connect up.

4 MR. ENGLISH: So I would -- I would say, your  
5 Honor, for efficiency purposes that we treat Exhibit 18  
6 like Exhibit 17, and the questions I have will be for two  
7 witnesses tomorrow, just to make sure we cover it.

8 THE COURT: Yes, we will hold consideration of the  
9 admission into evidence of Exhibit 18 as well as 17.

10 MR. HILL: Your Honor?

11 THE COURT: Yes, Mr. Hill.

12 MR. HILL: If it's -- we're fine with holding off  
13 on the admission of all of these until we go through them  
14 rather than go piecemeal exhibit by exhibit.

15 MR. ENGLISH: So what you are just saying is we'll  
16 wait until the end tomorrow and then do it all at once?

17 MR. HILL: Correct.

18 MR. ENGLISH: That makes sense to me.

19 THE COURT: Does to me as well. In that case,  
20 just to be clear, we're -- we're not going to rule on the  
21 admission of Exhibits 14 through 36 until we hear from a  
22 couple of other witnesses.

23 BY MR. ENGLISH:

24 Q. All right. I would then turn to Exhibit 29, which  
25 I believe is Table 18, monthly mailbox.

26 A. Yeah.

27 Q. Just to make sure we're talking about the same  
28 thing, I understand Exhibit 29 to be the monthly mailbox



1 prices, and I understand that to be the same as Table 18  
2 on the website.

3 A. That's correct.

4 Q. All right. So, the first question is how did USDA  
5 develop this table?

6 A. These were all reported prices monthly, and we  
7 compiled them into one table with all the years and  
8 months.

9 Q. Is this the NASS all milk data series or the AMS  
10 milk?

11 A. This is AMS' monthly mailbox prices.

12 Q. And how did -- how did you get the data?

13 A. The Federal Orders submit data to headquarters  
14 every month, and we compile it and publish the report.

15 Q. So if the Market Administrators report the data,  
16 is it audited data? Is it coming as -- as having been  
17 audited?

18 A. Yes. Brian said yes, but we're going to have to  
19 get back to you on that one.

20 THE COURT: Can I ask what "audited" means in this  
21 context?

22 MR. ENGLISH: In this context my question meant,  
23 has USDA -- has somebody at USDA, whether Market  
24 Administrator or somebody at headquarters, confirmed  
25 through the usual processes of -- because this -- this  
26 whole system depends on accurate data that USDA has  
27 confirmed. And so, that's what I'm getting at, is audited  
28 means that you have confirmed it, okay, in a way that USDA



1 would so you can trust the data -- you know, basically, a  
2 handler reports 10 million pounds of volume  
3 hypothetically, correct?

4 A. Hypothetically.

5 Q. Yes; is that correct?

6 A. Yes.

7 Q. And if so, USDA is going to find some way of  
8 confirming that, correct, to make sure they are not lying  
9 to you and they really had 20 million pounds, correct?

10 A. Oh, yes. Correct.

11 Q. Okay. That's what I mean by audited.

12 MR. ENGLISH: Does that help, your Honor?

13 THE COURT: Yes.

14 And your answer remains the same, yes, this is  
15 audited data --

16 THE WITNESS: Well, not in the same way that we --  
17 so we say audited data as in the data's reported monthly,  
18 and then at some point thereafter, a Federal Order auditor  
19 goes out and performs an audit on it.

20 BY MR. ENGLISH:

21 Q. Right.

22 A. So the monthly mailbox prices are not audited in  
23 the same way as a, you know, pool handler report or  
24 something would be audited. But it is confirmed. We  
25 do -- much like DPMRP, we analyze all the data that's  
26 submitted to us. We look for outliers. We go back to the  
27 orders and confirm their data, or the orders go back and  
28 confirm their data.



1           So all of the data that is in the mailbox price  
2 has been scrutinized multiple times by multiple people in  
3 my division, and if there are errors, then we do revise.  
4 And so everything that's here would -- could and would  
5 have been revised at some point, if there was some need to  
6 do that.

7           Q.     But I thought I heard -- and again, listen, I'm  
8 just trying to understand. I thought I heard you say it  
9 is not audited in the same way as, say, going back and  
10 looking at pool handler reports.

11                  So how is it different?

12           A.     I might have to confer with my colleagues to  
13 explain that correctly. So I can come back up after I  
14 confer.

15           Q.     All right. And I guess if you will be back  
16 tomorrow, we can just add that at some point.

17           A.     Yeah.

18           Q.     Thank you very much.

19                  All right. There's a very long footnote 1. I do  
20 not propose to read it into the record just to do that.

21                  When I look at all the data and look at  
22 footnote 1, can you confirm this data does reflect  
23 variations in component pricing?

24                  THE COURT: This is footnote 1 of Exhibit --  
25 BY MR. ENGLISH:

26           Q.     Well, it is the whole exhibit, but taking into  
27 consideration footnote 1. Can you confirm that the data  
28 in Exhibit 29, which is Table 18, reflects variations in



1 component pricing?

2 A. I believe the answer is yes, it does. But I --  
3 again, I will confer and get back to you.

4 Q. Gerat.

5 Let me try this, and if it doesn't work, then we  
6 can just confirm. So assuming yes is the right answer --  
7 and by the way, I do, but that's okay, I'm not  
8 testifying -- but presuming yes is the right answer, that  
9 would mean that it would be impossible to do a direct  
10 comparison with this data with Federal Order announced  
11 prices?

12 A. I'm going to -- I'm going to refer -- or get back  
13 to you on that one.

14 Q. All right.

15 THE COURT: I hate to say imposs- -- and maybe I'm  
16 not familiar -- not fully understanding what impossible to  
17 compare. I mean you can compare apples to oranges, right?

18 MR. ENGLISH: Well --

19 THE COURT: What is the -- what is the -- from  
20 where does the impossibility in comparing stem,  
21 Mr. English?

22 MR. ENGLISH: It is our view that the answer to  
23 the question a moment ago -- again, I'm not testifying --

24 THE COURT: I understand.

25 MR. ENGLISH: -- but it is correct, that it  
26 does -- it does actually reflect variations of component  
27 pricing. It is our view that Federal Order announced  
28 prices do not reflect that, and therefore, you can't



1 compare the two if you are looking at two different  
2 documents.

3 And we think that some witnesses may make a  
4 comparison, and the purpose of this examination, your  
5 Honor, is for the record to be able to reflect what is it  
6 and isn't a fair comparison.

7 THE COURT: Do you have that in mind, Ms. Cashman?  
8 Beginning --

9 MR. ENGLISH: It is not a criticism of the data.

10 THE COURT: Understood.

11 MR. ENGLISH: It is the recognition of what's  
12 collected and how it's reported is different in our view,  
13 whether she needs to confirm or not, and therefore, if  
14 somebody chooses to say, hey, I want to compare mailbox  
15 data to announced prices, we -- we believe, at least, it  
16 is an invalid comparison. And I'm not saying anybody is  
17 going to do that, but in case somebody does that, you  
18 know, we want to be able to have that on the record.

19 THE COURT: I understand. I just want the witness  
20 to -- and her staff, the people that work on that side,  
21 understand the question so we don't get an answer to a  
22 different question tomorrow.

23 MR. ENGLISH: Yeah.

24 THE COURT: And as much as I enjoy talking with  
25 you all, we -- no criticism whatsoever.

26 MR. ENGLISH: At day one at 11:48 you say that  
27 now. Let's see what you are saying on a different day  
28 but --



1 THE COURT: Fair enough.

2 BY MR. ENGLISH:

3 Q. So in fairness, and not expecting an answer now,  
4 but I might as well let you know what the next question  
5 is.

6 A. Sure.

7 Q. The data, can you confirm -- as obviously, I'm not  
8 testifying again -- can you confirm the data reflects  
9 variations without providing the background component test  
10 information that would explain the variations?

11 A. Definitely going to have to get back to you on  
12 that one.

13 Q. Okay.

14 A. But can you repeat the question one more time for  
15 me?

16 Q. Sure. That the data -- if the data reflects  
17 variations, without providing the background component  
18 test information, that would explain such variations.

19 THE COURT: Yes, Ms. Taylor?

20 MS. TAYLOR: Let's see if I can help with this  
21 conversation a little bit, maybe, because I think I know  
22 what you are asking.

23 Lorie, so for our announced prices that the  
24 Federal Orders announce, are they announced -- standard  
25 prices, are they announced at 3.5% butterfat --

26 THE WITNESS: Yes.

27 MS. TAYLOR: -- standard components?

28 THE WITNESS: Yes.



1 MS. TAYLOR: Not market components or components  
2 of a dairy farmer's check?

3 THE WITNESS: Yes.

4 MS. TAYLOR: And the mailbox price series reflects  
5 what dairy farmers actually get paid, however they get  
6 paid?

7 THE WITNESS: Yes.

8 MS. TAYLOR: So that's -- it could be 25,000 dairy  
9 farmers and they are paid 25,000 different ways, and  
10 that's all in that number?

11 THE WITNESS: Yes.

12 MS. TAYLOR: Okay.

13 MR. ENGLISH: And I think you -- I think you just  
14 helped me with the first two questions. I think the last  
15 one may be just a slightly bit different. So let's see if  
16 we can cover it tomorrow.

17 MS. TAYLOR: That's fine.

18 MR. ENGLISH: I definitely -- I think that covered  
19 prior to, but not the one I just asked about the  
20 variations not providing the background component test  
21 information in the mailbox data.

22 BY MR. ENGLISH:

23 Q. I'm going to try to conclude, at least on this  
24 exhibit, with an easy question, or what I think is an easy  
25 question.

26 Does the data in Exhibit 29, Table 18, include  
27 specialty milk supplies such as organic milk?

28 A. Yes.





1 Q. How about grass fed, does it include that?

2 A. Yes, it could.

3 Q. How about A2 milk, does it include that?

4 A. It could.

5 Q. It could or it does, do you know?

6 A. I mean, like Erin said, there's 25,000 farmers  
7 going into all these prices. They all have different  
8 things, so -- I mean, I couldn't speak directly to every  
9 farmer's paycheck.

10 Q. Okay. All right. Thank you. And if we could  
11 just clarify the question of auditing and the variations  
12 issues tomorrow.

13 A. Yes.

14 Q. All right. My next one is Exhibit 30, which is  
15 Table 14.

16 So how is -- how is this data developed by USDA?  
17 By generality, so for January of 2000, you know, total  
18 eligible milk pooled, that is obvious, that comes from the  
19 statistics, correct?

20 A. Yes.

21 Q. And then because it's up time when it wasn't being  
22 collected for other orders necessarily, you only have  
23 total eligible milk not pooled, it wasn't collected in  
24 2000, just as restricted, until for, for the total?

25 A. Correct.

26 Q. It was restricted except the total?

27 A. I mean -- I mean that was prior to me. That was  
28 all the way back.



1 Q. Okay.

2 A. But it just isn't available. We don't have it.

3 Q. All right. But how does USDA estimate, for any  
4 one of these times, but for instance, for January of  
5 2000 -- well, let me jump ahead. When you were here, so  
6 let's come to -- let's come to January of 2023.

7 For the third column, total eligible milk not  
8 pooled for Order 30, how did USDA estimate 664,327,162?

9 A. So those are reported by the orders, and they use  
10 their best knowledge and understanding of their markets  
11 and come to an estimate.

12 Q. Do you know if the Market Administrators talk to  
13 each other and try to use the same methodology?

14 A. I do not.

15 Q. And do you know what's changed between 2015 and  
16 2016 that's, you know, allowed you to report total 9(c)  
17 milk not pooled estimated in January of 2016 but not prior  
18 to that time?

19 A. I'm not sure. I think, you know, it just -- it  
20 wasn't published prior to that. There was probably a  
21 request at that point to start publishing it. But we did  
22 not have the information to compile it prior to that.

23 Q. All right. Exhibit 31 which is Table 19.

24 I admit I'm struggling here. I'm trying to  
25 understand what actually this shows. What -- what exactly  
26 are other uses in -- I understand the -- I know there's a  
27 footnote. But I have been doing this for a while, and so  
28 I'm trying to understand exactly what the concept is and



1 how footnote 1 relates to footnote 2 with respect to  
2 Order 126.

3 That's a pretty big round question, but I mean if  
4 you can help me out here about -- because I -- for this  
5 one I really am just struggling to understand what it  
6 shows.

7 A. Sure. So other uses, for all orders, except 126,  
8 you know, it's -- it includes pooled milk and products of  
9 pooled milk that are dumped, could be at the farm, route  
10 returns, anything like that, loss at the farm by, you  
11 know, some act of God or something, and used for animal  
12 feed. So, you know, just all those kind of, you know,  
13 things that would be covered like that.

14 For Order 126, it does not include the dumps at  
15 farms or used as animal feed, and that was because 126  
16 publishes their data in a different manner, so revising  
17 their historical data to meet this data request would  
18 reveal confidential information, so it is slightly  
19 different than the other orders.

20 Q. Okay. I appreciate the answer, as I may still be  
21 where I was, but that's not your fault, that's mine.

22 Okay. If we could turn to Table 24, which is  
23 Exhibit 32.

24 So by regulation, USDA uses the simple four-week  
25 average --

26 A. Yes.

27 Q. -- data? Okay.

28 Are you aware that there is weekly data available?



1 A. Well, that is -- oh, well, you mean that went into  
2 these prices?

3 Q. Well, this is -- this is simple -- is this simple  
4 average? This is simple four-week average. So this takes  
5 four weeks, and it simply averages it, correct?

6 A. Yes.

7 Q. Are you aware -- so there may be weekly data out  
8 there that varies enough so -- so if you used the weekly  
9 number for a different calculation, the simple average  
10 wouldn't necessarily give you the same answer, correct?

11 MR. HILL: Objection. This calls for speculation  
12 here. And she provided -- she provided what the request  
13 was.

14 MR. ENGLISH: Well, let me --

15 THE COURT: Yeah, sustained. I -- you asked  
16 her -- asked her what other data -- if she knows that  
17 other data is there. You can ask her -- and it is cross,  
18 you can lead and all that. But I -- that question didn't  
19 quite make sense to me either.

20 MR. ENGLISH: Okay. Let me try again.

21 BY MR. ENGLISH:

22 Q. Are there other sources of data than the Gulf  
23 Coast data that you are using, if you know?

24 A. There are, but per the regulation, these are the  
25 regions that we use.

26 Q. Are you aware of U.S. Energy Information  
27 information that you are not using because of the  
28 regulation?



1 MR. HILL: I -- I don't understand the question,  
2 your Honor, Mr. English.

3 MR. ENGLISH: I'm trying. I'm trying.

4 THE COURT: Take a shot at rephrasing. I'm not  
5 sure I did either. You are asking whether there's other  
6 sources of the EIA data?

7 MR. ENGLISH: Okay. Let me -- let me get at it  
8 from a different way.

9 THE COURT: I'll try not to interfere.

10 MR. ENGLISH: No, no, no.

11 BY MR. ENGLISH:

12 Q. How much familiarity do you have -- and so you may  
13 be the wrong witness -- how much familiarity do you have  
14 with the U.S. DSFS -- U.S. DFS model? They are the ones  
15 that started with Cornell. The one that is used by Mark  
16 Stephenson and Chuck Nicholson. How --

17 MR. HILL: I'm going to -- I'm going to object  
18 again here, your Honor. I'm not sure of the relevance of  
19 this.

20 MR. ENGLISH: Well, I'm trying to get at if  
21 USDA -- okay. This data was requested by someone with  
22 respect to Issue 5. Issue 5 is the Class I pricing.  
23 Class I price surface is largely based upon the study that  
24 started in the 1980s and then was used in the 1990s and is  
25 going to be relied on by multiple parties.

26 And what I'm getting at is given the fact that  
27 that study has been around for a long time and USDA relies  
28 on it, does -- is USDA aware that diesel prices in that



1 study are done differently. If you are not, fine. That's  
2 the question.

3 THE WITNESS: Well, I'm here to present the data  
4 that was requested, and this is what was requested.

5 MR. ENGLISH: Okay, thank you. I will -- I will  
6 take that answer.

7 BY MR. ENGLISH:

8 Q. So my next question will be, really simple I  
9 think. Exhibit 33 and Exhibit 34, which is the list of  
10 regulated pool distributing plants. Really long list.

11 Would it be safe to say that you might know the  
12 names of the ultimate owners of the plant from the name,  
13 but you might not know the names of the ultimate owner  
14 from the list of the plants?

15 A. I'm sorry, the names of what?

16 Q. The ultimate owner. In other words, there's all  
17 these companies, but they may be owned by an entity that  
18 isn't the name of the plant; is that correct?

19 A. That could be.

20 Q. Okay.

21 THE COURT: You are talking about column 2 on the  
22 first page of each of these exhibits?

23 MR. ENGLISH: Yeah, the plant name.

24 BY MR. ENGLISH:

25 Q. The plant name may not necessarily reflect the  
26 name of the owner?

27 A. That's true.

28 Q. I seem to have not brought up all of my materials.



1 I'm sorry.

2 So Table 30, which is -- this is Exhibit 36, which  
3 is the mozzarella production table. Do you know how  
4 mozzarella is defined as used in Exhibit 36?

5 A. It is however NASS defines it.

6 Q. Do you know the water content of the mozzarella  
7 listed on Exhibit 36?

8 A. You would have to refer to NASS.

9 Q. Do you know how NASS collects the information?

10 A. They conduct a survey monthly.

11 Q. And unlike, you know, the survey that AMS conducts  
12 weekly on dairy product prices, do you know if that survey  
13 by NASS is audited?

14 A. It is not.

15 MR. ENGLISH: Your Honor, subject to the reserved  
16 questions on Tables 1, 2, and 3, and I think there was one  
17 other question that I have asked, and obviously with  
18 questions of the other tables, I am -- I appreciate --  
19 very much appreciate the effort, and I am completed for  
20 now.

21 THE COURT: Okay. Mr. English has stepped down.

22 Do we have additional cross-examination? Any of  
23 the other participants?

24 Yes.

25 MR. MILTNER: Ryan Miltner representing Select  
26 Milk Producers.

27 CROSS-EXAMINATION

28 BY MR. MILTNER:



1 Q. I have some questions here, and I am going to try  
2 to keep these in order.

3 I want to look at Exhibit 29 where we look at the  
4 monthly mailbox prices.

5 So if I -- if I look at the source data that goes  
6 into this table, am I correct that it encompasses more  
7 than 75% of the milk that's within the Federal Order  
8 system? Is that -- did I -- did I pull that correctly  
9 from the source data?

10 A. Yes.

11 Q. And so as I look through the regions that are  
12 included in the tables here, as well as the source data,  
13 am I correct that there is no reported monthly mailbox  
14 price for Central Texas or East Texas?

15 A. Yeah. I mean, what's listed here is what we  
16 publish in the mailbox price and report, and there are no  
17 others reported except for maybe one order reports theirs.

18 Q. Is there a reason why the data is not collected  
19 nor reported for Central Texas, Arizona, or Minnesota?

20 A. Well, it's -- it's not that they may not be  
21 collected. It is that they are not reported separately,  
22 probably due to confidentiality.

23 Q. And Idaho would not be reported, at least here,  
24 because it's not part of the Federal Orders?

25 A. I apologize. I'm trying to think back through all  
26 the past -- I think I'm going to have to get back to you  
27 on that one.

28 Q. So it could be that Idaho is collected and just





1 not included in this table?

2 A. It could be, yeah. But I'll -- I'll get back to  
3 you for the record.

4 Q. Thank you.

5 A. Yeah.

6 Q. Okay. On Exhibit 30, a lot of folks in this room  
7 understand what it means to be 9(c) milk.

8 But for the purposes of the record, can you  
9 explain what it means in column 4 where you refer to 9(c)  
10 milk not pooled?

11 A. That's cooperative milk.

12 Q. And 9(c) refers to a particular section of the  
13 regulations?

14 A. Oh, yes, it does refer to a particular section of  
15 the CFR, but I don't have that handy. But I can get that  
16 for you for the record.

17 Q. We can -- we can go from there.

18 A. Yeah.

19 Q. I had a question about footnote 4. It reads,  
20 "Total Eligible Milk Not Pooled in the Upper Midwest  
21 Order" -- Order 30 -- "and Total 9(c) Milk Not Pooled are  
22 mutually exclusive subsets of Total Eligible Milk Not  
23 Pooled."

24 And maybe I'm not processing this right, but if  
25 they -- if those two are mutually exclusive, if I then  
26 added those two mutually exclusive numbers together,  
27 should I not have something that is less than the total  
28 eligible milk not pooled?



1 A. I would think so, yeah.

2 Q. Okay. So then if I'm looking at the second  
3 column, and I'm looking -- I just happen to be looking at  
4 page 4. So for 2018, 824 million pounds of total eligible  
5 milk not pooled, and then the two next columns which are  
6 mutually exclusive, you get --

7 A. Okay. I know what you are asking me.

8 Q. Okay.

9 A. Okay. So there is milk -- so let's say -- let  
10 me -- I'm trying and just say this understandably.

11 Okay. So total eligible milk not pooled in the  
12 Upper Midwest may or may not include also total 9(c) milk  
13 not included -- or not pooled, I mean.

14 So -- but the two columns together do not -- are  
15 not some -- you know, all the total eligible milk not  
16 pooled is not equal to the eligible milk not pooled in the  
17 Upper Midwest and total 9(c) milk added together. So  
18 there could be duplication in the columns is what I'm  
19 saying. So like, you know, a co-op could be in the Upper  
20 Midwest and be reported there and also be reported in the  
21 co-op number.

22 Q. Okay. So what do you mean then by they are  
23 mutually exclusive subsets of total eligible milk not  
24 pooled?

25 A. I meant that, you know, column 1, 2, 3, 4 may or  
26 may not be equal to 5 and 6 added together. And really  
27 aren't equal to that.

28 Q. Okay. Okay. Thank you.



1 A. Uh-huh.

2 Q. Mr. English asked some questions about Exhibit 31  
3 and what other uses are, and I -- you went through those,  
4 and I appreciate that clarification.

5 You put other uses in quotes. Is that -- that  
6 term "other uses," is that something that was kind of  
7 defined for the purposes of this table or is that -- --

8 A. Yes.

9 Q. -- that's not a term that appears in any of the  
10 order language or any --

11 A. No.

12 Q. -- of the definitions, right?

13 A. That's correct.

14 Q. On Exhibit 32, in the footnote, it refers to this  
15 data being used in the Announcement of Advanced Prices and  
16 Pricing Factors. Just to clarify for the record, the only  
17 place where those numbers are used in advanced prices are  
18 with relationship to the transportation credit programs in  
19 Orders 5 and 7, correct?

20 A. 5, 6, and 7.

21 Q. 5, 6, and 7. Thank you.

22 In Exhibit 33 -- yes, Exhibit 33 -- give you a  
23 second to grab that one -- footnote 2, the last line, "if  
24 there is no Federal Order number listed, the plant was not  
25 regulated that month."

26 Am I correct that that means the plant would not  
27 be fully regulated that month, it could have been  
28 partially regulated and not listed here; is that correct?



1 A. I'll get back to you.

2 Q. Okay. I think because at the top, you know, you  
3 have regulated pool distributing plants, that usually a  
4 pooled distributing plant and partially regulated  
5 distributing plant, as least as I use those terms, they  
6 don't overlap. But if you could confirm that, that would  
7 be great.

8 The last question I think I have here is on  
9 Exhibit 35. And when I looked at the summary of the data  
10 request that was made, I don't think it specifically  
11 referred to the Central U.S. It was looking for milk  
12 prices wherever -- spot prices regardless of where they  
13 would be.

14 Is there data for any other region of the country  
15 available in addition to the Central U.S. that would be  
16 responsive?

17 A. No.

18 Q. Okay.

19 MR. MILTNER: Thank you much. That's all I have.

20 THE COURT: Thank you, Counsel.

21 Any further cross-examination?

22 Yes.

23 MR. HILL: Your Honor, I note that it is about a  
24 quarter after 12:00. Might we think about taking a lunch  
25 at this time?

26 THE COURT: How much more cross -- does anyone  
27 else have cross for this witness?

28 Have you got some cross? How many minutes,



1 Gentlemen?

2 MR. SMITH: Five minutes.

3 THE COURT: How about you, sir?

4 DR. CRYAN: Two minutes.

5 THE COURT: Two minutes. Okay.

6 Do you know if you are going to have redirect,  
7 Mr. Hill?

8 MR. HILL: Yes, we will, but we can wait after  
9 lunch.

10 THE COURT: All right. We'll wait for you, and  
11 we'll let these two gentlemen have the witness on cross.

12 MR. SMITH: Thank you, your Honor.

13 THE COURT: You're welcome.

14 MR. SMITH: Daniel Smith for the Maine Dairy  
15 Industry Association.

16 CROSS-EXAMINATION

17 BY MR. SMITH:

18 Q. If I could direct you to Exhibit 14, which I hope  
19 is the listing of the exhibits.

20 A. Okay.

21 Q. With regard to Exhibit 29, there is an  
22 identification that you are unable to provide the organic  
23 data because of the confidentiality restrictions.

24 Could you just explain the confidentiality  
25 restrictions briefly?

26 A. Yes. So if it is three or less handlers, we will  
27 not report it.

28 Q. So the Federal Order 1 reports the organic pool



1 volume. So I'm -- what is the difference between the  
2 reporting for mailbox prices versus the reporting of the  
3 pool volume on the price announcement?

4 A. I think I need -- can you repeat the question or  
5 rephrase?

6 Q. Yeah. Let me break it up a little bit.

7 A. Yes.

8 Q. The Federal Order 1 reports the pool volume of  
9 organic Class I whole milk, and I think it's nonfat milk  
10 in two categories. So it would appear that the  
11 confidentiality restrictions don't apply to that reporting  
12 because that -- that volume is reported.

13 So why is it -- are you able to report that pool  
14 volume for organic milk and not the mailbox prices?  
15 What's the difference?

16 MR. HILL: I will -- I will ask for a little break  
17 here. I think that she's probably not the person to be  
18 asking this. There is another person that we can have  
19 answer that question who is more knowledgeable.

20 THE COURT: Okay. We'll get back after the lunch  
21 period, and you can come back and ask more questions.

22 MR. SMITH: I don't want to get in the middle of  
23 lunch.

24 DR. CRYAN: My name is Roger Cryan. I'm with the  
25 American Farm Bureau Federation. Thank you.

26 CROSS-EXAMINATION

27 BY DR. CRYAN:

28 Q. Hello, Mrs. Cashman. It's very nice to see you.



1 A. You, too.

2 Q. So a bunch of the data you have submitted -- you  
3 have provided, goes -- goes back to -- the DPMRP, goes  
4 back to 2012 or 2013.

5 Before that, NASS generated data that was used in  
6 the formula; is that correct?

7 A. Yes.

8 DR. CRYAN: I would like to ask just that the  
9 published -- the published -- I'm not sure -- I think --  
10 again, I'm not an attorney. I think -- I would like to  
11 ask that the published NASS data -- the published NASS  
12 reports with dairy products prices products reports from  
13 20 -- from 2000 -- from 2000 until they were superseded by  
14 the NDPSR be recognized on -- on the record of this  
15 hearing.

16 How do I do that? Is that -- is that the right --  
17 is that the right way to do it, to ask that?

18 THE COURT: I'm --

19 DR. CRYAN: That published reports, I'm asking  
20 that they be recognized.

21 MR. HILL: Can you get those reports so we can see  
22 what they are?

23 DR. CRYAN: They are available on the internet, on  
24 the NASS website.

25 THE WITNESS: Well, I mean, it's on [nass.usda.gov](http://nass.usda.gov).

26 DR. CRYAN: We can talk about it. Yes, I'm happy  
27 to talk about it. All I'm asking is that that be  
28 recognized.



1           Also, one of the things that AFBF requested was --  
2 was some sort of data on unsalted and salted butter, and  
3 the indication was it is not available, that breakdown is  
4 not available.

5           And I would request of AMS -- AMS collects -- I'm  
6 sorry -- AMS grades AA butter that's in high demand for  
7 the retail trade. The retail trade asks for it to be  
8 graded. It is the one product that is graded in very  
9 large volumes. AMS -- AMS grades AA butter, both salted  
10 and unsalted. And I'm not asking you to confirm that you  
11 will do this, but I'm requesting that you provide -- that  
12 AMS provide data on the volume of unsalted butter and  
13 salted butter graded AA for the entire year, just the  
14 annual number for 2022, and the annual number for 20 --  
15 for 2000 -- if that's available. I understand that --

16           THE WITNESS: For 2000 and 2022?

17           DR. CRYAN: Right. So just four numbers. That's  
18 the request.

19           THE COURT: Sounds like it's in the nature of a  
20 data request. Does AMS have any objection with this or --  
21 you can take it over lunch.

22           By the way, I'm not keeping track of all these  
23 housekeeping things. If something falls through the  
24 cracks, you can blame me, but I can't -- I just -- I'm  
25 here by myself. I can't take responsibility.

26           DR. CRYAN: That's it. That's all I have got.

27           THE COURT: Very well.

28           DR. CRYAN: Thank you. Thank you very much.





1 THE COURT: Thank you, Counsel.

2 Okay. With that, it's -- that's right, Doctor.

3 Okay. No further cross, I take it? We have a few  
4 minutes.

5 All right. So it is 12:20. Let's come back in an  
6 hour at 1:20. And this witness will come back on the  
7 stand at that time for redirect by AMS.

8 Any other housekeeping we need to take care of  
9 before --

10 MR. HILL: No, your Honor.

11 THE COURT: -- we take lunch?

12 Okay. Thank you, everyone. See you back at  
13 1:20 p.m.

14 (Whereupon, a luncheon break was taken.)

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1 WEDNESDAY, AUGUST 23, 2023 - - AFTERNOON SESSION

2 THE COURT: Let's come to order. Back on the  
3 record. Ms. Cashman, I guess, should take the stand. No?

4 MR. HILL: Your Honor, we are proposing to have  
5 the next witness come on and then recall Ms. Cashman with  
6 that witness to testify dually afterwards.

7 THE COURT: Okay. Is that okay with everybody?

8 So your redirect will take place at some point in  
9 the future?

10 MR. HILL: That would be correct.

11 THE COURT: All right. Let's call your next  
12 witness, Mr. Hill.

13 BRIAN RIORDON,

14 Being first duly sworn, was examined and  
15 testified as follows:

16 THE COURT: Mr. Hill, your witness.

17 MR. HILL: Thank you, your Honor.

18 DIRECT EXAMINATION

19 BY MR. HILL:

20 Q. Can you please again, for the second time, state  
21 your name and spell it for the record, please?

22 A. Yes. My name is Brian Riordon, B-R-I-A-N, last  
23 name R-I-O-R-D-O-N.

24 Q. And your occupation, please?

25 A. I am the supervisory agricultural economist in the  
26 Northeast Federal Milk Market Order.

27 Q. And for how long have you been doing that?

28 A. I've been in that position since 2019, in the last



1 four years.

2 Q. So can you describe your duties, please?

3 A. Yes. I supervise the economics and research  
4 section in that Northeast Market Order. I supervise the  
5 dissemination of statistics, any publications from our  
6 office and price announcements, that type of thing.

7 Q. All right. So in preparation for this hearing,  
8 did you prepare any documents?

9 A. Yes, I did.

10 Q. And do you have those with you right now?

11 A. Yes, I do.

12 Q. All right. And under your supervision -- were  
13 these documents created under your supervision or were you  
14 part of preparing them?

15 A. Yes, both. I was -- supervised the preparation,  
16 and I also directly worked on the documents.

17 Q. And to your knowledge, were -- did you receive a  
18 request for the data that you are presenting? Is that how  
19 you came about --

20 A. Yes, the data I'm presenting were requested by the  
21 proponents.

22 Q. So the data presented does not in any way reflect  
23 your views, but is simply fulfillment of their request  
24 pursuant to the regulations?

25 A. They do not at all.

26 Q. All right. And none of these are offered in favor  
27 of or against any of the proposals?

28 A. Excuse me. Repeat the question, please?



1 Q. None of these are offered in favor of or against  
2 any of the proposals; is that correct?

3 A. No, they -- that is correct, they are not in favor  
4 or opposed.

5 Q. Okay. So let's look at the first document. I'm  
6 missing a little bit of the title on mine, but it's  
7 Exhibit 37 -- there you go. Thank you.

8 It starts the title -- the title starts as  
9 Advanced Class III and Class IV Skim Milk Pricing Factors.

10 MR. HILL: I would like to mark that for  
11 identification as Exhibit 37.

12 THE COURT: Yes, so marked.

13 (Thereafter, Exhibit Number 37 was marked  
14 for identification.)

15 THE WITNESS: Yes. Exhibit 37 -- and those  
16 viewing online, that's Table 12 on the website -- that is  
17 showing the Advanced Class III and Class IV Skim Milk  
18 Pricing Factors, in a dollars per hundredweight, and  
19 Comparison of the "Higher-Of" and "Average-Of" Methods of  
20 Calculating the Base Skim Milk Price for Class I.

21 The data are shown for January 2000 through  
22 current.

23 I'm going to skip to footnote on the title. The  
24 footnote in the title the "'Higher-Of' refers to the  
25 method determining the base skim milk price for Class I by  
26 setting it equal to the higher of the Advanced Class III  
27 and Class IV skim milk price factors implemented in  
28 January 2000 and used through April 2019. 'Average-Of'



1 refers to the method used under current regulation to  
2 calculate the average of the Advanced Class III and  
3 Class IV skim milk pricing factors and adds \$0.74 to  
4 determine the base skim milk price for Class I."

5 Now I will explain the columns in the table.

6 So the first two columns, year and month.

7 Column 3 is the Advanced Class III skim milk pricing  
8 factor. The next column over, column 4, is the Advanced  
9 Class IV skim milk pricing factor. Class 5 -- I'm sorry  
10 -- column 5, not class five -- column 5 is the base skim  
11 milk price for Class I using higher-of method. And the  
12 next column over, column 6 is the base skim milk price for  
13 Class I using the average-of method.

14 The next column over, column 7, is the average  
15 Advanced Class III and Class IV skim milk pricing factors.  
16 And that's essentially adding columns 3 and 4 together.  
17 The next column over, column 8, is the higher-of method  
18 less the average-of method. That would represent  
19 columns 5 minus column 6.

20 BY MR. HILL:

21 Q. Can you go back -- can you go back one second --

22 A. Yes, go ahead.

23 Q. -- to the averaged -- the average Advanced  
24 Class III and Class IV skim milk pricing factors. I see  
25 there's a footnote there.

26 Could you explain that footnote for us?

27 A. Yes, certainly.

28 So the footnote on that column is "the average-of



1 the Advanced Class III and IV skim milk pricing factors  
2 calculated in this column does not include the \$0.74  
3 adjuster added under current regulations to compute the  
4 base Class I skim milk price," meaning it is just the  
5 average of the two factors. Yes, thank you.

6 And the next column, which is the second to the  
7 last column, so column 8, higher-of method less average-of  
8 method.

9 There's also a footnote there, footnote 3. I'll  
10 read that for you. All right. The footnote states, "This  
11 calculation depicts the difference between the 'Higher-Of'  
12 method implemented in January of 2000 and used through  
13 April 2019 and the 'Average-Of' method used under current  
14 regulation including the \$0.74 adjuster."

15 The final column is showing the higher-of method  
16 less the average Advanced Class III and Class IV skim milk  
17 pricing factors.

18 So there's another footnote. I'll read that  
19 footnote that explains that column. "This calculation  
20 depicts the difference between the 'Higher-Of' method  
21 implemented in January 2000 and used through April 2019  
22 and the average of the Advanced Class III and IV skim milk  
23 pricing factors without the \$0.74 adjuster used under  
24 current regulation."

25 BY MR. HILL:

26 Q. And so that just continues from 2000 to the  
27 present, basically?

28 A. That's correct. 2000 through August of 2023 is



1 presented on the table.

2 Q. Okay. Thank you.

3 Let's move forward to the next exhibit. I'd like  
4 to have -- it's Difference Between the Federal Order  
5 Statistical Uniform Milk Price.

6 MR. HILL: And I would like to mark for -- that  
7 for identification as Exhibit 38.

8 THE COURT: So marked.

9 (Thereafter, Exhibit Number 38 was marked  
10 for identification.)

11 THE WITNESS: Exhibit 38 -- and for the online  
12 viewing audience, that's Table 13 on your website -- this  
13 is showing the Difference Between the Federal Order  
14 Statistical Uniform Milk Price and the Announced Class IV  
15 Price Multiplied by the Class IV Utilization, by Order and  
16 Month. The time period is shown for January 2010 through  
17 April 2023.

18 So I can explain again. Here we have those  
19 values. We have the year and month for all the months  
20 reported in the title, January 2010 through April '23.  
21 And we do have orders spread across left to right and a  
22 total at the far right column.

23 The Order 51 column that at the top is blank,  
24 that's due, obviously, to the non-existence at the earlier  
25 period of the California Order, Order 51, until November  
26 2018 when we should see those values in the table.

27 Q. Thank you very much.

28 So let's move ahead to the -- to the one entitled



1 Adjustments to Federal Order Performance Standards.

2 MR. HILL: And I would like to mark that for  
3 evidence as Exhibit Number 39.

4 THE COURT: So marked.

5 (Thereafter, Exhibit Number 39 was marked  
6 for identification.)

7 BY MR. HILL:

8 Q. You may proceed.

9 A. Exhibit 39 is Table 31 on the website. The table  
10 covers Adjustments to Federal Order Performance Standards,  
11 and specifically the shipping requirements and diversion  
12 limits on these orders from 2010 through the current  
13 period.

14 The table on the left-hand column identifies the  
15 order by number, and then the next column over are the  
16 pool months that an adjustment was granted, basically  
17 either of the two adjustments. And it -- it -- it  
18 identifies -- it gives a little detail about the period of  
19 time that that was granted.

20 The next two columns are showing the reduction in  
21 shipping standards. And we have got the -- the "from"  
22 column is presenting what the orders originally stated  
23 percentage should be, and the "to" column is showing what  
24 was granted, the adjustment level.

25 The final two columns are showing the increase in  
26 diversion limits, and the same "from" and "to" definition  
27 from what's originally stated in the order language and  
28 that may have been to.





1 Q. Thank you very much.

2 A. There's a note on the bottom, as was asked also,  
3 but "no order received any call for or had any issuance of  
4 milk to be shipped to Class I plants in their order."  
5 That's not a footnote. That is just a note related to  
6 what the requester had also asked.

7 Q. Thank you.

8 A. You're welcome.

9 Q. So let's move to head to the next document,  
10 Requests to Change Performance Requirements by Order.

11 MR. HILL: I would like to mark that for  
12 identification as Exhibit Number 40.

13 THE COURT: So marked.

14 (Thereafter, Exhibit Number 40 was marked  
15 for identification.)

16 THE WITNESS: Okay. So Exhibit 40, this exhibit,  
17 I don't have a table number on the website. So I'll  
18 describe. It's titled Requests to Change Performance  
19 Requirements by Order, from 2010 through the current  
20 period. This table is similar to the immediately --  
21 immediate prior exhibit, Exhibit 39. This exhibit does  
22 also include some requested performance requirement  
23 adjustments that may have been denied.

24 The table is going to show on the left-hand column  
25 the different orders by their order number. And then the  
26 next column over, the only other column, is just policies  
27 and decisions, as they are called here.

28 So as example in Order 1, in the very first --



1 well, second row, but Order 1 had -- we stated "numerous  
2 instances occurred during the time period requested. All  
3 request, approvals, and denials can be found at," and then  
4 we presented the website there for folks to go to for the  
5 record.

6 This table does acknowledge there are some --  
7 there are some of these policies and decisions that may  
8 not be found on a website, and they are included in the  
9 exhibit following as attachments to be viewed.

10 Q. All right. So let's move ahead to the next  
11 document, Cooperative and Nonmember Producer Count.

12 MR. HILL: I would like to mark that for  
13 identification as Exhibit Number 41.

14 THE COURT: So marked.

15 (Thereafter, Exhibit Number 41 was marked  
16 for identification.)

17 THE WITNESS: Exhibit 41 does have a table number  
18 on our website, and it is Table 20. This table is  
19 covering -- titled the Cooperative and Nonmember Producer  
20 Count and Producer Milk Volume for December 2015 through  
21 December 2022, and includes April 2023.

22 The column -- the columns would be left to right.  
23 The first two columns, again, are year and month. You  
24 will notice that it is year and each month December. And  
25 then the very last at the very bottom you will find 2023,  
26 and then the April is the month that we did for that, this  
27 year.

28 The third column, you will see the categories for



1 each year, where we categorized cooperative,  
2 non-cooperative, total, and then presented our -- the  
3 associated or related cooperative share and  
4 non-cooperative share. That's basically taking the  
5 cooperative and non-cooperative figures under pounds and  
6 producers that we'll get to a minute and displaying those  
7 as share, so dividing the -- those numbers by the total.

8 So the next column -- so the next column over, you  
9 will see -- so under Federal Order 1 there's two columns,  
10 and it is the same style for each of the Federal Orders  
11 you will see across the top of the table. Federal Order 1  
12 presents pounds and producers and the related shares for  
13 those. And then we go across -- so this is a table that's  
14 spread across a little bit wide, left to right. So  
15 there's a second page.

16 So the first page, we get over there to Federal  
17 Order 32, and the second page starts with Federal  
18 Order 33, and moving from left to right, you know, going  
19 Federal Order 51, 124, and so forth. And we have a final  
20 column for all Federal Orders where we total the pounds.

21 Federal Order 51, I'll start with that, Federal  
22 Order 51, obviously, is not shown for Decembers 2015  
23 through '17 as that order did not exist during that  
24 period. It -- we will pick that up in 2018 where that  
25 order began.

26 There is a footnote for restricted data. And you  
27 will see restricted data anywhere there's a letter --  
28 capital letter R.



1           And then lastly, let's see, we got -- "all Federal  
2 Orders calculations do not include restricted data in  
3 totals or shares." So that would be a footnote on the  
4 final all Federal Orders column. Again, that was that  
5 "all Federal Orders calculations do not include restricted  
6 data in the totals or shares."

7           Q. Let's move ahead one more to one titled --  
8 beginning Number of Nonmember Producers and Volume  
9 Shipped.

10           MR. HILL: I would like to mark that for  
11 identification as Exhibit Number 42.

12                     (Thereafter, Exhibit Number 42 was marked  
13 for identification.)

14           THE WITNESS: Exhibit 42 is labeled as Table 21 on  
15 the website. This table is showing -- is titled Number of  
16 Nonmember Producers and Volume Shipped to Pool  
17 Distributing and Pool Supply Plants. The period of time  
18 covered is December 2017 through 2022 and the month of  
19 April 2023.

20           The first two columns of this table are also year  
21 and month. This table also shows the month of December  
22 for each of the years. In column 3, we break out the  
23 plant type and total. So you'd see, distributing plants,  
24 pool supply plants, and total for each year. And the  
25 final two columns are the sum of all Federal Orders, and  
26 we show the pounds in the second to last sub column and  
27 then producers in the final column.

28           Q. Thank you.



1 So on to your final exhibit I believe.

2 A. Yes.

3 Q. I would like to -- it's titled Protein Test Range  
4 by Order, 2022.

5 MR. HILL: And I would like to mark that for  
6 identification as Exhibit Number 43.

7 THE COURT: So identified.

8 (Thereafter, Exhibit Number 43 was marked  
9 for identification.)

10 THE WITNESS: So Exhibit 43 will be shown on the  
11 website as charts 1, 2, and 3 on the website. There are  
12 three charts that make up this exhibit. I'll explain the  
13 first chart, and then we'll -- the other two charts are  
14 similar, but we'll get into those.

15 So this chart is titled Protein Test Range by  
16 Order for 2022, the year 2022. The footnote on range is  
17 simply stating the range here is the difference between  
18 the maximum and the minimum of protein tests.

19 So, Protein in Skim Utilized in Class I For  
20 Distributing Plants With 10 Million Pounds Or More of  
21 Total Class I Use for Multiple Component Orders. So this  
22 title is also reflecting that the request was for multiple  
23 component orders, and that's what's shown here.

24 The order -- I guess the vertical column is the  
25 degree of range over the months on the bottom, and then  
26 the Federal Order by number is shown at the very -- just  
27 underneath the chart.

28 We move on to the second chart. It's exactly the



1 same structure of exhibit. This is for other solids.  
2 This is the Other Solids Test Range by Order, again, for  
3 the year 2022. And it is also the Other Solids in the  
4 Skim Utilized in Class I for Distributing Plants With  
5 10 Million Pounds Or More of Total Class I Use for  
6 Multiple Component Orders. Similar footnote on the range,  
7 similar setup.

8 The third chart, final chart of the exhibit,  
9 presents Nonfat Solids Test Range by Order, again, for the  
10 year 2022. And the title continues with Nonfat Solids in  
11 Skim Utilized in Class I for Distributing Plants with  
12 10 Million Pounds Or More of Total Class I Use for  
13 Multiple Component Orders.

14 MR. HILL: I think that concludes our direct, your  
15 Honor.

16 THE COURT: I had a -- one question. I had a note  
17 to myself that the regs required that witnesses provide an  
18 address for themselves in my opening remarks, no personal  
19 addresses, please, if that's all you've got. But I take  
20 it for both your witnesses it is just AMS at United States  
21 Department of Agriculture, Independence Avenue or --

22 THE WITNESS: I would really like to handle this.

23 THE COURT: Go ahead. Yeah, please.

24 THE WITNESS: I work at the office 302A Washington  
25 Avenue Extension in Albany, New York, 12203.

26 THE COURT: That would not be the headquarters.

27 How about Ms. Cashman, just while I'm thinking  
28 about this?



1 MR. HILL: She'll be back, so if she wants to give  
2 that. Yeah, she's at headquarters but...

3 THE COURT: Okay. That's not that important. I'm  
4 not sure why the regs require that, but I'm persnickety.

5 Okay. So that completes direct examination.

6 Any cross for this witness?

7 Yes, Mr. English, your witness.

8 CROSS-EXAMINATION

9 BY MR. ENGLISH:

10 Q. Chip English, Milk Innovation Group. Good  
11 afternoon, sir.

12 A. Good afternoon to you, sir.

13 Q. So I'm going to focus on Exhibit 43, and I may or  
14 may not quickly get myself back to where I was this  
15 morning.

16 What is the source of the data for Exhibit 43?

17 A. The source of these data, these -- this is pool  
18 data, I believe. Yeah.

19 Q. I understand that.

20 But are there any tables in the record --

21 A. Oh.

22 Q. -- or exhibits in the record, or tables that may  
23 be in the record tomorrow, from which this data was -- can  
24 be found as opposed to just looking at this chart?

25 A. There is nothing additional in the record.

26 Q. So when you say protein and skim utilized in  
27 Class I for distributing plants --

28 A. Uh-huh.



1 Q. -- I would like to know what the underlying data  
2 is and see if it can be provided, assuming it is not  
3 Table 1.

4 A. I'm not sure I understand specifically what you  
5 are asking for.

6 Q. Okay. So in order to do a range, you had to know  
7 the actual number for each month, correct?

8 A. Correct.

9 Q. And I'm asking what -- where is that actual data?  
10 And I'm not questioning, you know, the fact the charts are  
11 accurate. But I am wondering whether the chart is derived  
12 using the same data that is in Table 1 that is not yet an  
13 exhibit, but I believe it will be Exhibits 44, etcetera.

14 A. No, I don't believe that the data are -- what is  
15 coming from Table 1. Now, these -- these were data that  
16 were requested separately --

17 Q. Well, I understand it's -- but it'd have to come  
18 from somewhere, right, sir?

19 A. Yes.

20 Q. Okay.

21 A. Yes.

22 Q. So --

23 A. This is a -- sorry. This is separate request --

24 Q. I understand it is a separate request.

25 A. -- for all information. And it represents -- so  
26 it represents the highest maximum of the plants that  
27 qualified under this -- at how it defined, and the lowest  
28 minimum, and that provided us the range. There is that --





1 that number does exist, obviously, to create the chart.

2 MR. ENGLISH: Okay. I think -- so I'm requesting,  
3 having not known this request -- you know, this chart was  
4 going to be in there necessarily, what the request was,  
5 I'm requesting the underlying data for this.

6 THE COURT: Okay. What say you, AMS?

7 MS. TAYLOR: We'll look into it. We --

8 THE COURT: Yeah.

9 MS. TAYLOR: We have to look and see what might be  
10 confidential or not to release, but we can certainly look  
11 into it.

12 THE COURT: Okay. Very well.

13 BY MR. ENGLISH:

14 Q. So let me -- I'm getting ahead of myself  
15 because -- okay, I get it, Table 1 is all milk and not  
16 just plants with 10 million pounds or more because,  
17 obviously, there are smaller plants in the Table 1.

18 USDA knows the total test of milk received at a  
19 plant defined in this Class I plant, correct?

20 A. Correct.

21 Q. But it assumes that the usage of the components by  
22 class will track by percentage, that is to say you are not  
23 actually following how a plant might use components in the  
24 plant, correct?

25 A. I'm -- I'm not exactly confident on that answer to  
26 say that's correct, sir.

27 Q. Okay. Okay. All right.

28 MR. ENGLISH: I -- I would like to see if we can



1 look into whether that data is available. I mean, I get  
2 it, if there's an order where there's fewer than three  
3 separately owned facilities of 10 million pounds, it might  
4 affect what we get, but I would like to get the data if  
5 possible.

6 MS. TAYLOR: Can I clarify the request?

7 THE COURT: Yes.

8 MS. TAYLOR: I just want to clarify.

9 THE COURT: Ms. Taylor, you may clarify. I have  
10 not enforced talking through me, and I don't think it's  
11 been necessary at all. But, yeah, please go ahead. And  
12 I'm -- and I'm not fully -- doesn't matter whether I fully  
13 understand the situation or not.

14 MS. TAYLOR: It doesn't matter if I know either  
15 because I'm not the one who pulls the data, but for the  
16 people in the back who will have to work on this.

17 First, you are asking for the min and the max,  
18 basically, that gave us the range. That's my first  
19 question was I think you have asked for that?

20 MR. ENGLISH: Give me one second.

21 MS. TAYLOR: That's fair.

22 MR. ENGLISH: Since the chart shows a range, it  
23 does seem to me that the data I'm asking for would be the  
24 minimum and the maximum.

25 MS. TAYLOR: Okay.

26 MR. ENGLISH: I believe that is correct.

27 MS. TAYLOR: Okay.

28 And the second request I think is you wanted to



1 know if we can release -- and maybe it's just for this  
2 chart of Class I plants with 10 million or more pounds or  
3 maybe it is for every class, how the components are used  
4 in the plant?

5 MR. ENGLISH: Well, this gets back to Table 1.  
6 We're -- we're -- we're back at Table 1 in no time.

7 MS. TAYLOR: Yes. And that one is to be put on  
8 tomorrow.

9 MR. ENGLISH: So it may be that we have to revisit  
10 this issue once I get answers to Table 1.

11 MS. TAYLOR: Okay. So how about you hold off on  
12 that second piece, but we can look into the first piece --

13 MR. ENGLISH: Thank you.

14 MS. TAYLOR: -- if that makes sense.

15 MR. ENGLISH: And that is all the questions I have  
16 of this witness.

17 THE COURT: Thank you, Counsel.

18 Any additional cross-examination?

19 A couple of volunteers here? Yes.

20 MR. VETNE: John Vetne for National All-Jersey.

21 THE COURT: Your witness, Mr. Vetne.

22 CROSS-EXAMINATION

23 BY MR. VETNE:

24 Q. Going back to this exhibit that Chip asked you  
25 about the range. As I understand it -- let's see if you  
26 understand the same thing -- at a high number and a low  
27 number for plants, not -- this is not individual  
28 producers, this is a measure of milk used at plants.



1 A. That is correct.

2 Q. Okay. And I understand what he's looking for is  
3 the high number and the low number, not just a line that  
4 chose shows the range.

5 A. That's correct.

6 Q. All right. Okay. So we both understand what he's  
7 looking for.

8 A. Uh-huh.

9 Q. For distributing plants that both receive milk and  
10 divert milk, there are plants that do that, correct?

11 A. Yes.

12 Q. And diverted milk, so that there's no confusion  
13 from those listening, means the plant operator makes  
14 arrangement for a producer that normally supplies the  
15 plant to have that producer not send the milk to the  
16 distributing plant, but rather to send it some place else,  
17 to a manufacturing plant, for example.

18 Is that your understanding of diverted milk?

19 A. Yes.

20 Q. Okay. So again, looking at the exhibit and the  
21 range, do you know if what was measured in the range is  
22 the composition of milk used in Class I versus the  
23 composition of producer milk reported by the plant in all  
24 uses, including diversions?

25 A. Used in Class I.

26 Q. Used in Class I.

27 So if during a month a distributing plant with  
28 milk going to diversion found it advantageous to send high



1 composition milk to a diverted plant, would you expect the  
2 composition of what is retained for Class I to go down?

3 A. I wouldn't be able to state what I would expect to  
4 happen.

5 Q. Okay. Would you agree that there are economic  
6 circumstances from month to month which make it  
7 advantageous for a plant with milk available for diversion  
8 to divert either its high composition milk or its low  
9 composition milk?

10 MR. HILL: Objection, your Honor. This witness is  
11 here to present data. He's not here to give opinions on  
12 how this works.

13 THE COURT: Counsel?

14 MR. VETNE: I'm exploring if this witness has  
15 knowledge of what may account for the range variation and  
16 the sharp increases or decreases. And if the witness  
17 doesn't know, he can let me know.

18 THE COURT: What do you think about that,  
19 Mr. Hill? It doesn't sound like an opinion to me.

20 MR. HILL: Yeah, that's what it is. It's -- I  
21 don't think he should be testifying to this. He's here to  
22 present data. He came here for a data request. He's  
23 supplying that data. And anything besides that is outside  
24 the realm of his testimony.

25 THE COURT: Well, I'm not sure. Let's hear from  
26 the witness.

27 I think the question is, you've worked with  
28 certain data. Do you know the limitations? Or the --



1 what that -- that seems like a legit question to me,  
2 Counsel. But if the witness knows. If the witness  
3 doesn't know, the witness can say so.

4 THE WITNESS: Yeah, I would agree with counsel  
5 that, you know, I see the data that I reported here. I  
6 wouldn't want to, you know, get into what may be the  
7 decisions at the plant or, you know, why they chose milk  
8 to go one way or the other. My -- my objective here is  
9 just to put on and present the data that was asked for,  
10 sir.

11 MR. VETNE: All right.

12 THE COURT: Does that work, Counsel?

13 MR. VETNE: Don't need to go any further. Thank  
14 you.

15 THE COURT: Oh, thank you. Are you through?  
16 Do we have one more cross?

17 There we go. You again, Mr. English, very well.

18 MR. ENGLISH: Chip English. Well, it is direct  
19 follow-up. I'm not bringing new stuff.

20 THE COURT: That's okay.

21 (CONTINUED) CROSS-EXAMINATION

22 BY MR. ENGLISH:

23 Q. Exhibit 43 -- so I'm -- I'm following up on  
24 Mr. Vetne, whom I should call John, but for the record  
25 I'll call Mr. Vetne.

26 For the data that's here, does it include all milk  
27 whether it's used as Class I, II, III, or IV, for this  
28 reporting handler?



1           A.    This report is showing -- this is -- it is giving  
2    you -- it is just skim utilized in that Class I plant.

3           Q.    Skim milk used -- utilized in that plant  
4    regardless of whether it's been used --

5           A.    Yes.

6           Q.    -- as something other than Class I, correct?

7           A.    That's my understanding.

8           Q.    Okay.  And going to Mr. Vetne's questions, if milk  
9    were diverted, it wasn't used in that plant, so you are  
10   saying it would not be included here?

11          A.    That is correct.

12          Q.    Thank you.

13                THE COURT:  I hesitate to weigh in here, but do we  
14   know -- I'll ask the witness first, but do we know whether  
15   any milk is diverted, in fact?  This is an awfully naive  
16   question, I'm sure.

17                THE WITNESS:  I wouldn't know that now without --  
18   no.

19                THE COURT:  Okay.

20                Do you know that, Mr. English?  You don't have to  
21   answer that.  I know you are not a witness.

22                MR. ENGLISH:  I -- I --

23                THE COURT:  I'm guessing you think there is some.

24                MR. ENGLISH:  I have an opinion, but I am not a  
25   witness, and I will not be on the witness stand, I assure  
26   you.

27                THE COURT:  Fair enough.

28                Yes, Counsel?



1 MR. SMITH: Is Mr. Riordon available to respond to  
2 my questions or did you have another plan for that?

3 MS. TAYLOR: Yes, he is going to respond to your  
4 questions.

5 THE COURT: Yes.

6 MR. SMITH: Dan Smith for Maine Dairy Industry  
7 Association.

8 CROSS-EXAMINATION

9 BY MR. SMITH:

10 Q. Mr. Riordon, do you recall the questions I asked  
11 earlier this morning or should I go through them again?

12 A. I recall the last question you did have. Yes,  
13 Mr. Smith. I can answer that.

14 Q. Okay. Do you want to repeat the question and  
15 then --

16 A. I believe you were looking -- well, maybe you just  
17 repeat it to make sure I'm answering the question that you  
18 think I remember.

19 Q. Briefly to recount, the press announcement for  
20 Order 1 reports organic milk pooled, the volume of milk  
21 pooled on the order, and the exhibit for mailbox prices  
22 indicates there is a confidentiality issue?

23 The question is, what's the distinction between  
24 the pool volume and the mailbox price --

25 A. Okay.

26 Q. -- reported?

27 A. Yes, I can address that for you, Mr. Smith.

28 The data I believe you are referring to that is





1 reported is off the monthly statistical report of the  
2 Northeast Order, not a price announcement that.

3 Q. Fair enough.

4 A. That data -- that data is showing route sales, so  
5 that does include Class milk, and it's one source of data  
6 that is different than the source of data that feed into  
7 the monthly mailbox price data we have. That data are --  
8 that's pool milk, and when we -- that pool milk we do not  
9 have -- where we do capture the characterization of the  
10 route sales as organic, we do not do that with the  
11 producer milk. That basically feeds to the mailbox price  
12 data. They're two different data sources basically.

13 Q. Okay. I get it. Thanks.

14 A. You're welcome.

15 THE COURT: Does that complete your cross,  
16 Mr. Smith?

17 MR. SMITH: Yes.

18 THE COURT: Yes.

19 MR. MILTNER: Ryan Miltner representing Select  
20 Milk Producers.

21 CROSS-EXAMINATION

22 BY MR. MILTNER:

23 Q. Mr. Riordon, I just have a few here just to  
24 clarify what I think I understand.

25 On Exhibit 41, it expressly states that this is  
26 producer milk volume, so it does -- this exhibit does  
27 exclude all milk that would have been depooled. It is  
28 only that if it's classified as producer milk within the



1     respective orders?

2           A.     Yes -- yes, that is correct, they should be all  
3     just pooled milk.

4           Q.     Great.

5                    On Exhibit 42 -- actually you will need Exhibit 41  
6     to look at this kind of in tandem.

7           A.     Uh-huh.

8           Q.     So I'm looking on page 2 of Exhibit 41 and the  
9     column for all Federal Orders, and I'm looking at  
10    December 2017. And on Exhibit 42 I'm looking at the row  
11    that includes December of 2017.

12                   So on Exhibit 41, for all Federal Orders, 3,701  
13    non-cooperative producers. And for the same month on  
14    Exhibit 42, I have 3,346 nonmember producers.

15                   What would account for that difference of 355  
16    producers?

17           A.     I'm sorry, I'm looking for -- what's the -- let's  
18    see, December -- on the Exhibit 41, you are looking at  
19    which --

20           Q.     December of 2017, it's non -- the row is  
21    non-cooperative all Federal Order producers, yeah, the  
22    3,701.

23           A.     Okay.

24           Q.     And maybe rather than focusing on the numbers,  
25    maybe the question should be: Are these two exhibits  
26    trying to convey the same information as far as the number  
27    of producers that are encompassed there?

28           A.     I would say the Exhibit 42 is -- looks like it is



1 the total of distributing plants and -- you know,  
2 associated with -- producers associated with distributing  
3 plants and pool supply plants.

4 Other than that I would have to -- I'd have to  
5 look further into it to see if there's a better reason for  
6 that.

7 Q. Just a follow-up question.

8 A. Yes.

9 Q. If you were a non-cooperative producer on the  
10 order, and you are not shipping your milk to a pool  
11 distributing plant or a pool supply plant, where else  
12 might your milk end up?

13 A. Yeah. I'd have to look at the --

14 Q. Okay.

15 A. -- total statistic and make sure these all add up  
16 correctly.

17 Q. And then we don't need to go through the same  
18 questions, but I note that if we look at the volume as  
19 well for the same months, non-cooperative share -- I'm  
20 sorry -- the non-cooperative volume in December 2017 on  
21 Exhibit 41 is -- let's just call it 1,076,000,000 pounds,  
22 and for the same month on Exhibit 42 it is 1,037,000,000  
23 pounds, so the same -- the same variance. If you are able  
24 to provide any more on that discrepancy, that would be  
25 great.

26 THE COURT: Is AMS all right with getting back to  
27 counsel on this point?

28 MS. TAYLOR: Yes.



1 THE COURT: Very well, thanks.

2 MS. TAYLOR: I'm not sure I got all the points I  
3 need to get back to you on.

4 MR. MILTNER: I can help you with that.

5 MS. TAYLOR: Yeah. We'll get to it.

6 BY MR. MILTNER:

7 Q. Exhibit 43, and all I'm trying to clarify --  
8 again, I think I know the answer to this, but I want to  
9 make sure that I do.

10 Your Y axis, the units there, those are just  
11 points on the protein count, right? So 3.10 to 3-point,  
12 you know, 25, would be 15 on there, right, .15?

13 A. That is correct.

14 Q. Okay.

15 MR. MILTNER: Thank you. I don't have anything  
16 else.

17 THE COURT: Any more cross?

18 Okay. The witness is yours, Mr. Hill, for  
19 redirect examination.

20 MR. HILL: One second, your Honor.

21 THE COURT: Yes.

22 MS. TAYLOR: Let's see if we can clarify one of  
23 the things, I think, between 41 and 42 in the  
24 discrepancies that Mr. Miltner just pointed out.

25 The title to 42 is Number of Nonmember Producers  
26 and Volume Shipped to Pool Distributing Plants and Pool  
27 Supply Plants.

28 THE WITNESS: Correct.



1 MS. TAYLOR: So would that include nonmembers that  
2 milk was diverted to a non-pool plant?

3 THE WITNESS: No.

4 MS. TAYLOR: So on Exhibit 41, the title is  
5 Cooperative and Nonmember Producer Count and Producer Milk  
6 Volume, that does not specify what type of plant it went  
7 to?

8 THE WITNESS: Correct.

9 MS. TAYLOR: So that would include nonmembers that  
10 were shipped or diverted?

11 THE WITNESS: Correct.

12 MS. TAYLOR: Okay. So that would account for why  
13 the numbers would be different?

14 THE WITNESS: Yes, that would.

15 MS. TAYLOR: Okay. If I remember, we were going  
16 to put Ms. Cashman up with Mr. Riordon to do cross  
17 together if anybody needed to ask additional questions.  
18 And I know there were some clarifications that Ms. Cashman  
19 wanted to put on the record as well.

20 THE COURT: Very well. I'll recall Ms. Cashman to  
21 the stand to join Mr. Riordon. It looks like we need  
22 another chair.

23 Off the record for a second.

24 (Off-the-record.)

25 THE COURT: Back on the record.

26 Ms. Cashman, welcome back. I remind you that you  
27 are still under oath.

28 MS. CASHMAN: Do you need my address?



1 THE COURT: Sure.

2 MS. CASHMAN: 1400 Independence Avenue Southwest,  
3 Room 2535 -- we just moved -- Washington D.C., 20250.

4 THE COURT: Thank you.

5 MS. CASHMAN: Okay.

6 THE COURT: Okay. So how are we doing this? This  
7 is -- we're going to have redirect basically for these two  
8 witnesses to draw out things we have agreed?

9 MR. HILL: That's the plan, your Honor.

10 MS. TAYLOR: Yes, your Honor, for things we can  
11 answer today.

12 THE COURT: That's a good plan.

13 MS. TAYLOR: Okay. Thank you for your indulgence.

14 THE COURT: Of course.

15 LORIE CASHMAN,

16 Having been previously sworn, was reexamined  
17 and testified as follows:

18 REDIRECT EXAMINATION

19 BY MS. TAYLOR:

20 Q. Okay. I wanted to start with Mr. Miltner I think  
21 had questions on Exhibit -- well, I didn't write it  
22 down -- the energy price exhibit, the diesel prices. Let  
23 me see if I have -- I don't know which one that was.

24 A. 32.

25 Q. Thank you. Those diesel prices are used in which  
26 orders?

27 A. 5 and 7. I misspoke earlier.

28 Q. And they are not used in Order 6?



1 A. They are not used in Order 6.

2 Q. Okay. Then on Exhibit 33, which was the listing  
3 of regulated distributing plants, there was a question I  
4 believe on whether that included partially regulated  
5 plants.

6 A. It does not include partially regulated plants.

7 Q. Just fully regulated plants?

8 A. Yes.

9 Q. Okay. There was another question on Exhibit 50,  
10 which was your other uses --

11 A. Yes.

12 Q. -- table. And I don't know if you got a chance to  
13 look up, but I think there was some discussion on is that  
14 definition in the regulations.

15 Did you look up where it was in the regulations?

16 A. Yes, I did. It is CFR -- 7 CFR, Part 1000.40(e)  
17 states: "Other uses. Other uses include skim milk and  
18 butterfat used in any product described in this section  
19 that is dumped, used for animal feed, destroyed, or lost  
20 by a handler in a vehicular accident, flood, fire, or  
21 similar occurrence beyond the handler's control. Such  
22 uses of skim milk and butterfat shall be assigned to the  
23 lowest priced class for the month to the extent that the  
24 quantities destroyed or lost can be verified from records  
25 satisfactory to the Market Administrator."

26 Q. Thank you.

27 Then there was another question, we'll skip to  
28 Exhibit 29, your mailbox price series. I think



1 Mr. Miltner asked about Idaho specifically, and that  
2 starts on page 10.

3 A. Yes. So Idaho was discontinued in 2004 when the  
4 Western Order was terminated.

5 Q. That's why there's no data after that --

6 A. Correct.

7 Q. -- date?

8 But before then it was in a Federal Order?

9 A. Yes.

10 Q. And I think on that same exhibit, there was the  
11 other question of Mr. English had on dealing with the  
12 background information on components that make up the  
13 mailbox price.

14 And so do you have an answer to that line of  
15 questioning?

16 A. Yes. There is no background included.

17 Q. So we don't publish any?

18 A. We don't publish any background information  
19 related to that.

20 Q. Okay. That's all the notes I had. I know there's  
21 a couple outstanding data requests that we're going to  
22 look into, so we'll have answers to those --

23 A. I had a couple other ones.

24 Q. -- later.

25 Ms. Cashman, please.

26 A. So one of the questions was what is a 9(c)  
27 plant -- or what does 9(c) mean. It is from 7 CFR  
28 1000.9(c), hence the 9(c). And that's "any cooperative





1 association with respect to milk that it receives for its  
2 account from the farm of a producer and delivers to pool  
3 plants or diverts to non-pool plants pursuant to .13  
4 section of the order. The operator of a pool plant  
5 receiving milk from a cooperative association may be the  
6 handler for such milk if both parties notify the market  
7 administrator of this agreement prior to the time that the  
8 milk is delivered to the pool plant and the plant operator  
9 purchases the milk on the basis of form bulk tank weights  
10 and samples."

11 Q. Thank you.

12 Do you have any other items?

13 A. One of the questions from Mr. English was on the  
14 auditing of the mailbox. The mailbox is verified as part  
15 of pooled milk, but we don't audit the premiums,  
16 deductions, all those other, etcetera, things. It's --  
17 it's basically as reported from the data pulled from the  
18 handlers' producer payroll as was requested by the  
19 industry many years ago.

20 And then one other difference that may be leading  
21 to the difference between the Exhibits 41 and 42 is that  
22 Exhibit 41 does not include restricted data and Exhibit 42  
23 includes all data.

24 MR. HILL: I think we're done with our questions  
25 for now. If anyone else has cross-examination, I think  
26 we'll leave them available for that now.

27 THE COURT: Okay. Any cross or re-cross? For  
28 either witness? Okay.



1 I guess that's it for these witnesses. It sounds  
2 like we have a couple of things AMS is committed to  
3 provide, and we'll figure out how to --

4 MR. HILL: Thank you very much.

5 THE COURT: -- address that.

6 You're very welcome.

7 You may -- Mr. Riordon, Ms. Cashman, you may step  
8 down. Thank you.

9 Okay. It is 2:15. It's a little early for even a  
10 break. What are we doing next?

11 MR. HILL: Sir, we do have one more witness.

12 THE COURT: Okay.

13 MR. HILL: That witness is not available until  
14 tomorrow morning.

15 THE COURT: Okay.

16 MR. HILL: Yeah, he will put the rest of the data  
17 on. I think we have like 13 more exhibits through him.

18 THE COURT: Okay. Well, I guess, we have got some  
19 things still outstanding, but this is witness by witness,  
20 I guess. I mean, is it appropriate to move into evidence  
21 the -- well, I don't know, you tell me, that 14 through 36  
22 for Ms. Cashman? Is it not -- we're not quite ready for  
23 that, or we are?

24 MR. HILL: I think we'll hold off until we get the  
25 last witness in and finish up.

26 THE COURT: Okay. And same thing for Mr.  
27 Riordon --

28 MR. HILL: Yes.



1 THE COURT: -- 37 through 43?

2 MR. HILL: Yes, that would be correct.

3 THE COURT: Okay. Is there anything else we can  
4 do to make use of this time? I'm impressed. I didn't  
5 know -- we're not going to make September 30th.

6 MR. HILL: We are going to try. But if National  
7 Milk is ready --

8 THE COURT: I don't mean we won't finish by  
9 September 30. I mean we won't be done -- I guess the  
10 next -- are you suggesting we put a National Milk witness  
11 on?

12 MR. HILL: If they're ready.

13 THE COURT: What do you think, National Milk?

14 MS. HANCOCK: Nicole Hancock with National Milk.  
15 Your Honor, if we could just take our break now, and I  
16 think we could be ready when we come back from the break.

17 THE COURT: Okay. Do you need more than ten  
18 minutes?

19 MS. HANCOCK: No.

20 THE COURT: Okay. It is 2:17. I don't know.  
21 Let's just come back at 2:30.

22 MS. HANCOCK: Thank you, your Honor.

23 MR. HILL: Thank you.

24 THE COURT: Off the record.

25 (Whereupon, a break was taken.)

26 THE COURT: Let's come to order. Back on the  
27 record.

28 We just completed our afternoon break. If the



1 hearing reporter needs another one as we go on, we took  
2 that one kind of early.

3 So as I understand it, we're following -- we have  
4 completed the AMS witnesses for the time being. We'll  
5 have another witness tomorrow. But in the meantime, we're  
6 going to start down the order of presentation set out on  
7 the web page by proposals.

8 Our first topic, as I understand it, is milk  
9 composition, and National Milk Producers Federation I  
10 think had two proposals with respect to this. We'll take  
11 up their first witness.

12 Ms. Hancock, counsel for NMPF, the floor is yours.

13 MS. HANCOCK: Thank you, your Honor. Nicole  
14 Hancock with Stoel Rives on behalf of National Milk.

15 Your Honor, did you want to swear in the witness  
16 or --

17 THE COURT: Yes.

18 Raise your right hand, please.

19 PETER VITALIANO,

20 Being first duly sworn, was examined and  
21 testified as follows:

22 THE COURT: You may take the stand.

23 DIRECT EXAMINATION

24 BY MS. HANCOCK:

25 Q. Good afternoon. Can you state and spell your name  
26 for the record?

27 A. Peter Vitaliano, P-E-T-E-R, V as in Victor,  
28 I-T-A-L-I-A-N-O.



1 Q. And is it Dr. Vitaliano?

2 A. It is, yes.

3 Q. Okay. And would you mind providing your mailing  
4 address for the record?

5 A. My business mailing address is 2107 Wilson  
6 Boulevard, Suite 600, in Arlington, Virginia, 22201.

7 Q. Thank you.

8 And, Mr. Vitaliano, where are you employed?

9 A. I am employed with the National Milk Producers  
10 Federation at that address.

11 Q. And I called you Mister right after I just said  
12 you were the doctor. I apologize for that.

13 Dr. Vitaliano, have you prepared a statement on  
14 behalf of National Milk?

15 A. I have.

16 Q. And is that identified as Exhibit NMPF-1?

17 A. It is.

18 MS. HANCOCK: And, your Honor, I don't know if you  
19 want to follow the same procedure and admit it at the end  
20 or for written statements if you are okay with us  
21 admitting that into the record now?

22 THE COURT: Well, let's just admit it at the end  
23 is the standard thing. And I guess we need an exhibit  
24 number, ad seriatim kind of exhibit number for this as the  
25 next one. What is our next exhibit number?

26 MR. HILL: This would be 62.

27 THE COURT: All right. The statement of  
28 Dr. Vitaliano is marked for identification Exhibit 62.



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

3 THE COURT: Does the -- does our keeper of the  
4 exhibits have this exhibit?

5 All right. So we're all set.

6 BY MS. HANCOCK:

7 Q. Dr. Vitaliano, would you mind reading your  
8 prepared statement into the record?

9 A. Certainly.

10 I am Peter Vitaliano, Vice President of Economic  
11 Policy and Market Research for the National Milk Producers  
12 Federation. This testimony is presented in support of  
13 Proposal 1, one of five proposals submitted by NMPF, the  
14 acronym, and NMPF is the national trade association that  
15 represents dairy farmers and the cooperative marketing  
16 associations they own and operate throughout the United  
17 States.

18 I have been employed by NMPF for almost 38 years  
19 essentially as chief economist, in which capacity I have  
20 been responsible for all economic and market analysis that  
21 supports the programs of NMPF.

22 NMPF is the voice of America's dairy farmers  
23 through its 25 dairy cooperative members, and NMPF  
24 represents two-thirds of the approximately 28,000  
25 commercial dairy farmers in the United States.

26 NMPF's member cooperatives reflect both the  
27 geographic and the product mix diversity of the dairy  
28 market -- dairy producer and cooperative sectors of the



1 United States.

2 NMPF's member cooperatives process a majority of  
3 the Class I milk pooled under Federal Orders and  
4 distribute it on routes within the 11 Federal Order  
5 marketing areas and include one of the largest fluid dairy  
6 ESL manufacturers in the United States.

7 NMPF members have significant Class II, Class III,  
8 and Class IV manufacturing operations and manufacture a  
9 majority of U.S. produced butter and nonfat dried milk  
10 product.

11 Given the diversity and breadth of its membership,  
12 NMPF is the dairy industry organization best able to  
13 undertake a comprehensive review of the Federal Order  
14 system and to weigh its impacts on both dairy farmers as  
15 well as processors and manufacturers.

16 NMPF's five proposals presented at this hearing  
17 represent a balanced and integrated program of needed and  
18 long overdue updates that are in the best interest of the  
19 entire U.S. dairy industry and which appropriately balance  
20 the economic interests of dairy farmers and dairy plant  
21 operators.

22 NMPF strongly supports the Federal Milk Marketing  
23 Order program, but also believes that the program requires  
24 several regulatory and technical updates to continue to  
25 operate in the best interest of dairy farmers, processors,  
26 and manufacturers of dairy products and the dairy  
27 product-consuming public.

28 The current system of Federal Order minimum class



1 prices, which has been in effect since January of 2000, is  
2 the hybrid product of Federal Order Reform rulemaking and  
3 Congressional action. The dairy product price formulas  
4 for determining Federal Order Class III and Class IV  
5 prices implemented in January 2000 replace the basic  
6 formula price of BFP, which used the survey of milk  
7 prices, as did the preceding Minnesota/Wisconsin price  
8 series as the basic means of price discovery for  
9 establishing milk prices to operate the Federal Order  
10 program.

11 Discontinuing the BFP represented a major change  
12 because it replaced this previous system of direct  
13 survey-based price discovery with a system that indirectly  
14 discovered raw milk prices entirely by calculation from  
15 market prices of the products manufactured from that milk.

16 The intricate product price formulas and their  
17 constituent coefficients that resulted took on the  
18 important function of accurately simulating the market  
19 realities of the complex transfer of price discovery for  
20 the markets for dairy products to the markets for  
21 unprocessed milk used to produce them.

22 At the same time, the Class I prices that were  
23 established by Congress updated the pre-existing Class I  
24 differentials by adopting an optional USDA-suggested price  
25 surface, which had been generated on the basis of 1990s  
26 milk market conditions and extended it coast to coast.  
27 All of the prices and price formulas of Federal Order  
28 Reform were premised upon the costs and realities of milk





1 production and dairy product manufacturing which prevailed  
2 at that time.

3 Those market realities have subsequently changed  
4 as the U.S. dairy industry has undergone dynamic  
5 structural change since 2000, while the critical Federal  
6 Order dairy product price formulas and Class I  
7 differentials have for the most part remained static.

8 For example, the location of U.S. milk production  
9 has shifted westward, manufacturing and transportation  
10 costs have increased significantly, and the southeastern  
11 states have been progressively more milk deficit. Also,  
12 the industry has seen the successful deployment of very  
13 large manufacturing plants, and yet, many smaller-sized  
14 manufacturing plants remain critically important to  
15 satisfying the domestic and export demands of the U.S.  
16 milk supply.

17 Additionally, the United States currently sells  
18 about 18% of its milk production as manufactured in  
19 export -- manufactured products in export markets compared  
20 to about 5% in 2000.

21 These realities and others necessitate a pricing  
22 formula review that incorporates the Class I mover,  
23 Class I differentials, manufacturing costs, or make  
24 allowances, and other factors in the class price formulas.  
25 The constituent parts of those formulas, including the  
26 products used, the make allowances, and the yield factors  
27 in the component formulas, the assumed composition of  
28 producer milk as well as the Class I differentials, have



1 become increasingly outdated, even those few that have  
2 been previously updated to the extent that the effective  
3 administration of the Federal Order program has become  
4 increasingly difficult.

5 NMPF has engaged in an almost two-year-long  
6 comprehensive study of needed updates to the Federal Order  
7 pricing formula provisions. NMPF has undertaken this  
8 important activity with the essential and dedicated  
9 assistance of dozens of marketing experts from the staff  
10 of its member cooperative marketing associations.

11 In a series of well over 200 mostly virtual  
12 meetings, this team has examined every detail in each of  
13 the current product pricing formulas of the Federal Order  
14 uniform pricing regulations in 7 CFR, Paragraph 1000.50  
15 through 52. The goal was to develop a comprehensive,  
16 integrated, and balanced program of updates to those  
17 formulas to realign them more fully with the structural  
18 realities of the current dairy industry, and to address  
19 the disorderly marketing conditions, which that growing  
20 misalignment has allowed to develop.

21 This effort included considerations of mechanisms  
22 for making further updates in the future as the industry  
23 continues to evolve. The comprehensive package which  
24 resulted includes seeking additional legislative authority  
25 for USDA to conduct mandatory studies of manufacturing  
26 costs and product yield factors, seeking a change via  
27 ordinary rulemaking to the regulations implementing the  
28 Dairy Product Mandatory Reporting Program, and five



1 recommendations for amendments to the uniform pricing  
2 regulations of all Federal Orders.

3 The NMPF Board of Directors unanimously approved  
4 this package of recommendations, including the five  
5 recommendations for proposed amendments to all Federal  
6 Orders, which NMPF has submitted as the following  
7 proposals:

8 One, Proposal 1: Update the milk component  
9 factors for protein, other solids, and nonfat solids in  
10 the Class III and Class IV skim milk price formulas;

11 Proposal 3: Discontinue the use of barrel cheese  
12 in the protein component price formula;

13 Proposal 7: Increase the make allowances in the  
14 component price formulas to the following: Butter, \$0.21  
15 per pound; nonfat dry milk, \$0.21 per pound; cheese, \$0.24  
16 per pound; dry whey, \$0.23 per pound;

17 Return to the higher-of Class I skim milk price  
18 mover, that's Proposal 13;

19 And then finally Proposal 19: Update the Class I  
20 differentials throughout the United States.

21 Implementation of all five components of NMPF's  
22 comprehensive proposal will require amendment of certain  
23 provisions of the Federal Order uniform pricing  
24 regulations in 7 CFR, Paragraph 1000.50 through 52,  
25 applicable to all Federal Milk Marketing Orders and 7 CFR  
26 paragraph 1005.51(b), Paragraph 1006.51(b), and  
27 Paragraph 1007.51(b). This testimony today is in support  
28 of Proposal 1, concerning milk composition.



1           Proposal 1, again, is to update the milk component  
2 factors in the skim milk pricing formulas. NMPF requests  
3 that the Secretary amend 7 CFR, Paragraph 1000.50(f), (i),  
4 (k), and (q), as well as 7 CFR, Paragraph 1000.51,  
5 applicable to all Federal Orders as specified at the  
6 conclusion of this testimony, which would increase the  
7 milk component factors in the Class I and Class IV skim  
8 milk price formulas and provide a method for updating them  
9 periodically to reflect anticipated continued increases in  
10 the average milk component compositions in the future.

11           The milk component condition -- composition  
12 factors in the skim milk formula. Federal Order skim milk  
13 price formulas were constructed in Federal Order Reform to  
14 be reflective of the content of the skim portion of  
15 producer milk. Over the course of 23 years, the milk  
16 component content has increased through improved genetics,  
17 better feeds, and feeding practices, and better cow  
18 comfort management, among other factors.

19           USDA's National Agricultural Statistics Service,  
20 or NASS, reports the average butterfat content of producer  
21 milk in the United States was 3.68% in calendar year 2000  
22 and 4.08% in calendar year 2022, an increase of 10.9%.  
23 Over the same period, USDA's Economic Research Service, or  
24 ERS, reported the average nonfat or skim solids content of  
25 producer milk in the United States rose from 8.72% in 2000  
26 to 9.03% in 2022, an increase of 3.5%. Based on this  
27 data, the average nonfat solids content of producer milk  
28 in the United States rose from 9.05% in 2000 to 9.41% in



1 2022, also an increase of 4.0%.

2 Note that the component content of producer skim  
3 milk increases just from higher butterfat tests as well as  
4 from higher skim solids tests because there are fewer  
5 pounds of skim containing the same pounds of nonfat solids  
6 in a given unit of higher butterfat testing milk.

7 For manufacturing class prices and Federal Orders  
8 with multiple component pricing, or MCP, these increases  
9 in milk component levels are reflected in Classes II, III,  
10 and IV prices and pool values because Federal Orders with  
11 MCP price every pound of skim components, not skim milk.  
12 However, the recognition of these higher component tests  
13 has not occurred in determining Class I skim prices in all  
14 orders and in determining Class II, III, and IV prices in  
15 the Southeast, Appalachian, Florida, and Arizona orders.

16 With Federal Order Reform, the component averages  
17 used to calculate the Class III skim milk price and the  
18 Advanced Class III skim milk pricing factor were set at  
19 3.1% protein and 5.9% other solids. Adding the protein  
20 and other solids values of those values resulted in the  
21 9.0% nonfat solids factor used in the Class IV and  
22 Class II skim milk prices and the Advanced Class IV skim  
23 milk pricing factor.

24 These original, and still current, component  
25 factors in the Federal Order skim milk class price  
26 formulas were based on the standard practice of using 3.5%  
27 butterfat composition for milk to quote class prices for  
28 producer milk, not the actual composition of producer skim



1 milk at the time of Federal Order Reform.

2 Disorderly marketing caused by the current milk  
3 component factors in the skim milk price formulas. Seven  
4 of the 11 Federal Orders, representing almost 90% of  
5 Federal Order producer milk, use MCP. Dairy farmers have  
6 responded to MCP's economic signals by significantly  
7 increasing not just the butterfat but also the protein and  
8 other solids levels in the skim portion of the milk they  
9 produce.

10 Based on AMS data for the MCP orders for 2022, the  
11 protein and other solids content of Federal Order producer  
12 skim milk have averaged 3.39% and 6.02%, respectively, a  
13 significant increase over the past 22 years. The nonfat  
14 solids content of Federal Order producer skim milk has  
15 therefore averaged 9.41% in 2022, thus matching the value  
16 derived from the previously cited NASS and ERS data for  
17 the entire United States.

18 Two major functions of Federal Orders are: One,  
19 to ensure consumers have an adequate supply of milk for  
20 fluid consumption; and two, to promote orderly marketing  
21 of milk.

22 In the seven Federal Orders with MCP, increased  
23 protein and other solids component levels have decreased  
24 the price difference between the Class I skim milk price  
25 and skim milk prices for Classes II, III, and IV, and have  
26 also caused skim milk prices to increase relative to the  
27 other four Federal Orders without MCP.

28 In the four orders without MCP, producers have



1 been increasingly unpaid for the true value of all their  
2 skim milk. In all orders the increase in component levels  
3 has resulted in producers being increasingly underpaid for  
4 the true value of their skim milk that is used in Class I.

5 This structural change in the U.S. dairy industry  
6 has made it increasingly difficult for Federal Orders to  
7 meet the two major functions for the following reasons.

8 One, in MCP orders the producer share of the  
9 generally higher Class I pool value was provided through  
10 the producer price differential. As previously stated,  
11 higher component levels increase manufacturing skim  
12 values. By contrast, and because the fixed formula  
13 factors for protein, other solids, and nonfat solids in  
14 the Class I formula, milk containing higher protein and  
15 other solids levels does not increase the Class I skim  
16 value. This, in turn, allows manufacturing milk prices to  
17 rise relative to the Class I price. As pooled components  
18 increased and revenue from Class I skim values remained  
19 static, more dollars have been paid out on all pooled milk  
20 components, which has diluted the dollars left to pay the  
21 PPD. Consequently, the potential to depool milk has  
22 increased, which has created disorderly marketing  
23 conditions.

24 Number two, three of these non-MCP orders,  
25 Appalachian, Florida, and Southeast, do not have an  
26 adequate supply of producer milk within their marketing  
27 areas to meet consumer fluid milk demand. Supplemental  
28 milk must be transported into those markets to meet this



1 demand. The supplemental milk is typically supplied from  
2 Federal Orders using MCP. The higher relative value of  
3 skim milk in MCP versus non-MCP markets increases the cost  
4 of supplemental milk for non-MCP deficit fluid milk  
5 markets and therefore decreases the incentive to move milk  
6 from reserve supply areas to deficit fluid milk markets,  
7 making it more costly and difficult to ensure consumers  
8 have access to an adequate supply of fluid milk.

9 The Proposed Solution: Update the current milk  
10 component factors in the skim milk price formulas to  
11 reflect current actual composition of producer milk and  
12 provide for further periodic updates as needed.

13 NMPF proposes that the skim component factors and  
14 the skim milk pricing formulas to be increased to equal  
15 the weighted average nonfat solids true protein and other  
16 solids factors for milk pooled in Federal Orders. The  
17 data to be used are USDA's average component tests of  
18 producer milk in all orders during calendar year 2022.

19 For producer skim milk, the average component  
20 factors are protein 3.39, other solids 6.02, and nonfat  
21 solids 9.41. Implementation of the new skim milk factors  
22 would occur 12 months after adoption of the order updating  
23 the skim factors.

24 Due to the significant use of risk management  
25 programs by dairy producers and handlers and the intricate  
26 nature of the transactions tied to the skim milk formulas,  
27 the new factors should not be implemented for a period of  
28 12 months to allow the hedge transactions established





1 prior to the change and the formulas to roll off.

2 To ensure this progressive misalignment in skim  
3 component factors does not recur, NMPF also proposes that  
4 the pricing factors be updated regularly, no less than  
5 every three years. However, no change shall occur until  
6 the weighted average of the nonfat solids component in the  
7 skim portion of milk pooled on Federal Orders for the  
8 prior three years changes by at least 0.07 percentage  
9 points.

10 The updated component values would be calculated,  
11 and if a change is warranted, it would be formally  
12 announced in February of such year, and the changes would  
13 be implemented 12 months later, with March being the first  
14 month of implementation. If this threshold condition is  
15 not met by the third year following the last update of the  
16 skim milk component factors, the calculation would be  
17 repeated in the fourth year, and subsequent years, until  
18 the 0.07 percentage point nonfat solids composition  
19 condition is met, and the factors consequently updated,  
20 whereupon the calculation would not be repeated until  
21 another three years have passed.

22 The proposed 0.07 percentage point threshold level  
23 is slightly less than the observed change in the average  
24 nonfat solids composition of Federal Order producer skim  
25 milk for three consecutive years compared with the prior  
26 three consecutive years as calculated for the years ending  
27 in 2018 through 2022.

28 Calculated just arithmetically, the initial update



1 from the current skim milk component factors to those  
2 based on the 2022 data would increase the Class III skim  
3 milk price by \$0.80 per hundredweight and the Class IV  
4 skim milk price by \$0.41 per hundredweight, using ten-year  
5 average product prices for 2013 through 2022.

6 Subsequent adjustments under Proposal 1 would be  
7 much smaller. An increase from the 2022-based skim milk  
8 component factors by the proposed 0.07 percentage point  
9 threshold, parsed between protein and other solids based  
10 on analysis of the data, would increase the Class III  
11 price by \$0.14 per hundredweight and the Class IV price by  
12 \$0.07 per hundredweight, based on the same ten-year  
13 average product price data.

14 This testimony provides an overview of our  
15 justification for adoption of Proposal 1. More detailed  
16 testimony will follow that supports all or key portions of  
17 Proposal 1, including testimony provided by Calvin  
18 Covington, representing NMPF member cooperative Southeast  
19 Milk, other members of the NMPF task force that developed  
20 our Federal Order modernization proposals. Also included  
21 will be several expert witnesses from other organizations  
22 testifying on particular parts of our Proposal 1, several  
23 aspects of it, and several producers who are members of  
24 NMPF member dairy cooperatives.

25 Shifting now to the economic and market impacts of  
26 NMPF's proposed changes. Dr. Scott Brown of the  
27 University of Missouri will testify later at this hearing  
28 on his analysis of the economic impact of adopting NMPF's



1 five proposals previously described. His analysis will  
2 show that these proposals will have a modestly positive  
3 impact on the average price of milk received by dairy  
4 farmers, which will dissipate fairly rapidly. The  
5 resulting average prices are expected to converge within a  
6 few years to their baseline levels, i.e., levels expected  
7 to be prevail in the absence of any order changes.

8 The changes provide -- proposed by National Milk  
9 will not affect the cost of producing milk nor constrain  
10 the supply of milk freely produced by the nation's dairy  
11 farmers in response to market price signals. Without  
12 either of these effects, the price of milk will continue  
13 to reflect the longer term costs of producing it, which  
14 are not directly affected by the Federal Order regulatory  
15 changes proposed by NMPF.

16 Any and all changes to the prices of individual  
17 dairy products, or to the Federal Order regulated costs of  
18 milk for processing individual dairy products generated by  
19 these proposals, will be limited to those necessary to  
20 reflect changes in the cost of manufacturing these  
21 products, changes in the cost of supplying milk to  
22 processors of those products, changes in the value of milk  
23 supplied by producers to those processors, or changes --  
24 other changes necessary to more closely align the  
25 regulated minimum value of milk with the market value of  
26 the products into which it is produced, as translated by  
27 the Federal Order product price formulas.

28 Such realignment is critical to the effective



1 functioning of the Federal Order program to ensure orderly  
2 market -- marketing given the fixed parametric nature of  
3 the product price formulas coupled with the rapid  
4 evolution of the basic structural features of the U.S.  
5 dairy industry that those parameters are intended  
6 accurately to reflect.

7 Figure -- give me a second here. My computer is  
8 normally set up for two-screen operation, so I don't have  
9 the presentation view, but this should be large enough.

10 Figure 1, as shown on the screen, provides a  
11 perspective on the key issue of the impact on consumers of  
12 the Federal Order program and potential changes to the  
13 regulatory provisions of that program. It charts the  
14 monthly Consumer Price Indices, or CPIs, reported by the  
15 U.S. Bureau of Labor Statistics (BLS) over the past decade  
16 and a half for, progressively, all items, also referred --  
17 which is the general measure -- most general measure of  
18 overall consumer price inflation, also referred to as the  
19 overall cost of living. That's shown in red on this  
20 chart.

21 Together with the aggregate CPIs for all food and  
22 beverages, shown in green; for all dairy products, shown  
23 in the sort of navy blue; and for all food milk products,  
24 the principal regulatory focus of the Federal Order  
25 program. These CPIs reflect actual retail prices paid for  
26 all U.S. cities -- in all U.S. cities, but they are  
27 expressed in the form of indices with their respective  
28 U.S. average retail prices during the 36-month period of



1 1982 to '84, each set to the value 100 to facilitate  
2 comparisons between them.

3 Figure 1 shows that the retail prices represented  
4 by all four of these measures had increased as of 2008 on  
5 the left-hand side of the chart by about the same amount,  
6 slightly more than doubling during the quarter century  
7 since the index base period. That's what index values of  
8 about 210 reflect, slightly more than doubling over that  
9 25-year period.

10 From 2008, the overall cost of living and the cost  
11 of all food and beverages have both continued to increase  
12 at a relatively steady pace, which accelerated during the  
13 recent bout of inflation, with food and beverage prices  
14 slightly outpacing the overall inflation rate,  
15 particularly in recent months.

16 The less aggregated dairy and fluid milk CPIs have  
17 shown a greater sensitivity to the price of producer milk,  
18 including the 2009 price plunge, the price spikes of 2014  
19 and 2022, and the stagnation of prices between those two  
20 peaks. This closer connection between farm and retail  
21 prices for dairy stems from the fact that the cost of raw  
22 milk has averaged about 31% of the retail value of dairy  
23 products since 2002, while the farm value of most fluid  
24 and beverage products represents a much smaller share of  
25 the total retail value of finished food products, which  
26 accordingly reflect more closely the main drivers of all  
27 overall retail price inflation, including such factors as  
28 energy, labor, and transportation.



1           However, these factors have also caused retail  
2   inflation for dairy products to outpace general food and  
3   beverage price inflation during the recent bout of general  
4   price inflation, shown in that steeper curve of the blue  
5   lines, but also to recover more quickly from it with dairy  
6   product retail prices actually dropping this year while  
7   the two more general CPIs -- that is overall CPI for all  
8   items and for all food and beverages -- continue to  
9   increase.

10           But, of particular significance for the current  
11   purpose, the overall cost to consumers of dairy products  
12   and fluid milk products in particular has declined during  
13   the illustrated period relative to both overall inflation  
14   as well as to general food and beverage price inflation.

15           One noteworthy datum is that the simple difference  
16   by which the monthly CPI for all fluid milk has fallen  
17   below the CPI for all food and beverages has reached its  
18   highest level ever in July 2023.

19           Agricultural production enjoys built-in  
20   productivity advantages due to its biological basis, which  
21   can generate increases in production per animal or  
22   increases in production per planted unit as a result of  
23   genetic improvements and other productivity enhancements  
24   unique to biological production processes. These advances  
25   generate unit cost reductions, which the competitive  
26   nature of farming passes on up the various agricultural  
27   and food marketing channels, eventually to consumers.

28           This consumer cost reduction aspect of agriculture



1 varies in direct relation to the proportion which the  
2 basic agricultural commodity represents to the total  
3 retail value of the resulting food products, which, as  
4 mentioned, is relatively high for dairy products. This  
5 aspect of agricultural production coupled with the great  
6 productivity of U.S. agriculture has resulted in the  
7 general cost of food representing one of the smallest  
8 proportions of total consumer income in the United States  
9 compared to that in all other countries.

10 It is, therefore, very difficult to consider the  
11 facts presented in Figure 1, which reflect the relative  
12 influence of all the economic factors at play in producing  
13 general, food and beverage, overall dairy product, and  
14 fluid milk product price inflation over the past decade  
15 and a half, a period that includes the continuous  
16 operation of the Federal Order program, it's very  
17 difficult to consider all of that, and conclude that  
18 Federal Orders have had a deleterious effect on consumer  
19 welfare via the retail price of fluid milk and retail  
20 prices of dairy products in general. And given the  
21 results of Dr. Brown's analysis, this will continue to be  
22 the case under the Federal Order modernization changes  
23 proposed by NMPF.

24 Another key issue is the impact of the Federal  
25 Order program and potential changes to the regulatory  
26 provisions of that program on small businesses. As stated  
27 in the notice for this hearing, most parties subject to a  
28 Federal Milk Marketing Order are considered a small



1 business. A large majority of these are dairy farm  
2 businesses, which for the purpose of the Regulatory  
3 Flexibility Act, 5 USC 601 to 612, or the RFA, are defined  
4 as a small business if they have an annual gross income of  
5 three and a three-quarters million dollars or less.

6 Table 1 provides simple estimates of the average  
7 herd size and average milk sales per herd of producers  
8 pooled on the individual Federal Orders in 2022. These  
9 estimates, which are mine, are weighted averages by herd  
10 size of the individual states that lie wholly or partially  
11 in the respective Federal Order Marketing areas. These  
12 estimates would indicate that most of the producers pooled  
13 in Federal Orders in 2022 would qualify as small  
14 businesses for the purposes of the RFA.

15 As previously mentioned, Dr. Brown's analysis  
16 will -- and testimony will show that the Federal Order  
17 modernization changes proposed by NMPF will have a modest  
18 positive impact on the average price of milk received by  
19 the mostly small businesses that are dairy farmers in the  
20 United States.

21 Also, as previously mentioned, any and all changes  
22 in the price of individual dairy products and to the  
23 Federal Order component of class prices resulting from  
24 these proposals and, therefore, to the uniform prices  
25 received by dairy farmers in individual orders and  
26 regions, will be limited to those necessary to reflect  
27 changes in the cost of manufacturing those products,  
28 changes in the cost of supplying milk to processors of





1 those products, changes in the value of milk supplied by  
2 producers to those processors, or other changes necessary  
3 to more closely align the regulated minimum value of milk  
4 with the market value of the products from which it is  
5 produced, as translated by the Federal Order product price  
6 formulas. This will also apply to any processors and  
7 manufacturers of dairy products which are also small  
8 businesses.

9 Concluding comment and proposed regulatory  
10 changes. NMPF sincerely wishes to thank Secretary Vilsack  
11 and the Department for holding this important hearing and  
12 for thoroughly considering adoption -- thoughtfully  
13 considering adoption of its proposed amendments to the  
14 Federal Milk Marketing Order regulations.

15 NMPF has devoted considerable time and resources  
16 to thoughtfully considering and recommending the important  
17 changes it considers necessary to correct the growing  
18 misalignment between the dynamic changes in the U.S. dairy  
19 industry since Federal Order Reform and the largely  
20 unchanged factors in the critical Federal Order component  
21 and class price formulas originally adopted at that time.

22 Together, NMPF is requesting the Secretary to  
23 amend certain provisions of 7 CFR, Paragraph 1000.50  
24 through 52, applicable to all Federal Milk Marketing  
25 Orders, and 7 CFR, Paragraph 2005.51(b), 2006.51(b), and  
26 2007.51(b). The changes to these regulations that  
27 Proposal 1 would entail are as follows:

28 In paragraph 1000.50, section (f), would be



1 amended by striking the Figure 9 with the words, "the  
2 applicable nonfat solids component factor described in  
3 Paragraph 1000.51."

4 To number (i), on the Class III skim milk price,  
5 strike the number 3.1 and substitute "the applicable  
6 protein component factor described in Paragraph 1000.51."  
7 Also strike the number 5.9 and substitute, therefore, "the  
8 applicable other solids component factor described in  
9 Paragraph 1051."

10 And then in (k), Class IV skim milk price, strike  
11 the number 9 and substitute, therefore, "the applicable  
12 federal nonfat solids component factor described in  
13 Paragraph 1051."

14 Under (q), advanced pricing factors, in number  
15 (1), Roman numeral (ii), strike again the 3.1 number and  
16 substitute "the applicable component" -- "protein  
17 component factor described in Paragraph 1000.51."

18 Roman numeral iii, strike the number 5.9 and  
19 substitute, therefore, "the applicable other solids  
20 component factor described in Paragraph 1051."

21 Then in (2), Roman numeral (ii) again, strike the  
22 number 9 by the applicable -- and substitute, therefore,  
23 "the applicable nonfat solids component factor described  
24 in Paragraph 1000.51."

25 We would also amend Paragraph 1000.51, which is  
26 currently reserved, by striking reserved and substitute a  
27 section entitled "Milk Component Factors."

28 (1): Upon implementation of this Order, the



1 component factor for protein, other solids, and nonfat  
2 solids should be the following: Protein, 3.1; other  
3 solids, 5.9; and nonfat solids, 9.0.

4 (2): Beginning the first day of the 12th month  
5 after implementation of this order, the component factors  
6 for protein, other solids, and nonfat solids shall be the  
7 following: (i), protein, 3.39; (ii), other solids, 6.02;  
8 and (iii), nonfat solids, 9.41.

9 (3): By February 28th of the third year following  
10 the announcement of any change in the protein, other  
11 solids, and nonfat solids component factors of producer  
12 skim milk under this section, those component factors  
13 shall each be updated to the simple averages of their  
14 respective three most recent calendar year weighted  
15 average component tests of producer skim milk in all  
16 orders, rounded to two decimal places, as calculated by  
17 AMS, if the resulting nonfat solids factor differs by at  
18 least 7 -- 0.07 percentage points from that currently in  
19 effect.

20 Roman numeral (i): Implementation of the updated  
21 component factors under this paragraph shall be announced  
22 no later than five days after the calculation that  
23 triggers the change and shall become effective the first  
24 day of March of the following year.

25 (ii): If a change in the component factors is not  
26 indicated by the calculation described by this paragraph,  
27 then the calculation shall be repeated the following year  
28 and any change in the existing skim milk component factors



1 shall be announced, as described in this paragraph.

2 Your Honor, this completes my testimony.

3 THE COURT: Thank you. Ms. Hancock.

4 MS. HANCOCK: Not quite.

5 BY MS. HANCOCK:

6 Q. Dr. Vitaliano, thank you for reading your  
7 statement into the record, Exhibit 62. I'd like to just  
8 learn a little bit more about your background before we  
9 turn you over.

10 Can you tell me about your educational background?

11 A. I have a Bachelor's degree in mathematics from the  
12 University -- Indiana University. I have a Master's  
13 degree in mathematics from the Pennsylvania State  
14 University. I have a Master's of science degree and a  
15 Ph.D. in agricultural economics from the University of  
16 Wisconsin at Madison.

17 Q. And what year did you obtain your Ph.D.?

18 A. 1979.

19 Q. Okay. And throughout the course of your career,  
20 can you give me an overview of the roles that you have  
21 held in the various organizations?

22 A. My first job after the -- earned my Ph.D. was on  
23 the faculty of agricultural economics at Virginia  
24 Polytechnic Institute and State University in Blacksburg,  
25 Virginia. In that capacity, I worked with the local dairy  
26 industry, including some of the local dairy cooperatives,  
27 and got -- got a lot -- basically built substan- --  
28 significantly on my education in agricultural economics.



1 And subsequent to that position I came directly to the  
2 position I currently occupy.

3 Q. Okay. And -- and the role that you have now, can  
4 you tell me what falls under the scope of your  
5 responsibilities?

6 A. National Milk is involved in a lot of policy  
7 issues, domestic pricing policy, formerly the Dairy --  
8 Dairy Price Support Program, now the basically two  
9 versions of Dairy Margin Protection Program, previously  
10 the Margin Protection Program, or MPP, currently the Dairy  
11 DMC, Dairy Margin Coverage Program, doing economic  
12 analysis, doing -- you know, preparing materials for our  
13 lobby staff and others.

14 We also do a lot of analysis on trade policy,  
15 particularly back in somewhat prior years when the United  
16 States was more active in promulgating -- in negotiating  
17 free trade agreements with other countries, both bilateral  
18 and multilateral.

19 I was responsible -- in addition to being the  
20 chief economist -- I was responsible for about ten years  
21 for the -- actually handling our eco- -- our policy  
22 advocacy during the year -- during -- during the  
23 development and -- and approval of the Uruguay Round  
24 multilateral trade negotiations that formed the World  
25 Trade Organization and also for the North American Free  
26 Trade Agreement. I was very active in developing  
27 proposals and was successful in implementing concepts into  
28 the -- into the U.S. scheduled concessions under those



1 trade agreements.

2 We also handle a lot of regulatory issues working  
3 with USDA on milk quality and things of that sort.

4 So anything that National Milk does that basically  
5 involves policy, mostly federal policy, both the  
6 administrative -- both legislative as well as the  
7 administrative implementation of the legislation, anything  
8 that has policy, I'm responsible for providing, if  
9 particularly asked, economic analysis showing how that  
10 benefits dairy farmers and our members. For policies that  
11 we are opposed to, we're also responsible for developing  
12 economic analysis that shows why it would be harmful to  
13 the interest of our members.

14 So it's a very broad range of responsibilities  
15 that, again, it covers primarily, again, economic  
16 analysis, but, you know, in all aspects that affect our  
17 member cooperatives and their dairy farmer members, you  
18 know, both in terms of Congressional legislation and  
19 administrative implementation of all the various policies  
20 that affect our members.

21 Q. Is there anyone at National Milk who has served in  
22 an economics role, analysis role longer than you?

23 A. Probably not. I haven't measured. But I have  
24 been with National Milk for more than a third of its  
25 entire existence, which is longer than a hundred years  
26 now. National Milk was founded in 2016 (sic).

27 Q. Thank you, Dr. Vitaliano.

28 MS. HANCOCK: Your Honor, I would offer this



1 witness as an expert in dairy policy and economics.

2 THE COURT: Any -- any objection? This is voir  
3 dire I guess.

4 Very well, yes. I find this witness to be  
5 qualified to testify on the -- as an expert on the subject  
6 matter of his testimony as contained in Exhibit 62 and  
7 otherwise.

8 MS. HANCOCK: Thank you, your Honor. No further  
9 questions.

10 THE COURT: Okay. We have time for  
11 cross-examination.

12 MR. ROSENBAUM: Steve Rosenbaum for the  
13 International Dairy Foods Association.

14 CROSS-EXAMINATION

15 BY MR. ROSENBAUM:

16 Q. Dr. Vitaliano, if I could ask you to turn to  
17 page 5 of Exhibit 62, which is the testimony you just read  
18 into the record.

19 Just to orient ourselves, Proposal 1 would  
20 increase the protein assumption in the calculation of  
21 class prices to 3.39, other solids would increase to 6.02,  
22 and the nonfat solids would increase to 9.41, correct?

23 A. That is correct.

24 Q. Okay. And the 9.41 is adding the other two  
25 together; is that right?

26 A. Yeah.

27 Q. Now, at the bottom of page 5, you state, and I'll  
28 quote: "The data to be used are USDA's average component



1 tests of producer milk in all Federal Orders during  
2 calendar area 2022."

3 Do you see that?

4 A. That's correct.

5 Q. Now, would it, in fact, be more accurate to state  
6 that, under your proposal, the data to be used are USDA's  
7 average component tests of producer milk in the seven  
8 multiple component pricing orders?

9 A. USDA obviously has a long published data series of  
10 the component factors in the seven multiple component  
11 pricing orders. But we are proposing, very clearly stated  
12 in this proposal, that it be -- it be extended to all  
13 Federal Orders, all classes, at which point it would seem  
14 to be far more appropriate to include the data from all  
15 orders, including those that don't have component pricing.

16 Q. But the numbers you are proposing, the specific  
17 numbers you are proposing, those are derived solely from  
18 the seven multiple component pricing orders?

19 A. That is incorrect.

20 Q. Okay.

21 A. Calculating them from the seven component pricing  
22 orders, you get those numbers. But USDA has subsequently  
23 basically given -- produced data for all 11 orders, and I  
24 double-checked those numbers, and you come to -- basically  
25 rounding to two decimal places, to come to the same -- the  
26 same numbers.

27 Q. Okay. Let me -- the numbers that are set forth in  
28 your proposal, those are to two decimal points --





1 A. That is correct.

2 Q. -- the numbers you get using the reported numbers  
3 by USDA for the seven multiple component pricing orders,  
4 correct?

5 A. Yeah. Because, again, the volume of milk, that's  
6 skim milk, represented by the seven component pricing  
7 orders, is like 90% of all the milk. So when you include  
8 the other 10% of the non-MCP orders, you -- you know, you  
9 will get a slightly different number, but rounding it to  
10 two decimal places. You know, in a sense, it doesn't make  
11 a big difference in the numbers, but in the sense that  
12 extending this to all classes of milk in all orders, it  
13 would seem to make sense that you use the data in all the  
14 orders.

15 Q. Well, so, what was -- what's the purpose, sir, of  
16 multiple component pricing?

17 A. Excuse me?

18 Q. Why does multiple component pricing exist?

19 A. Multiple component pricing exists to pay dairy  
20 farmers individually for the value of their individual  
21 milk.

22 Q. And that -- and that was adopted starting back in  
23 1994, correct?

24 A. Yes. But this testimony and this proposal does  
25 not deal with multiple component pricing. We do not have  
26 an advocacy position for multiple component pricing. We  
27 have an advocacy position that we are addressing in  
28 Proposal 1 that affects the existing price formulas for



1 the default values of the skim milk component composition.  
2 They are clearly stated in the -- in the Class III and  
3 Class IV and Advanced Class --

4 Q. And --

5 A. -- and pricing factors.

6 Q. And it is --

7 A. That's all we're addressing.

8 Q. And I'm addressing that very question as to  
9 whether that's an appropriate thing to do.

10 So my -- my question is as follows: What -- was  
11 there -- was there thought to be extra value being  
12 provided by farmers by having milk with higher component  
13 levels?

14 A. The value of Class III milk basically to farmers,  
15 on average, because the pricing formulas that we have  
16 in -- you know, particularly in Class I, reflects  
17 basically, you know, milk -- you know, prices that are  
18 paid, you know to -- ultimately to all dairy farmers.  
19 National -- USDA established the current 3.1, 5.9, and  
20 9.0% factors for a purpose, to reflect the average  
21 component composition for all producer milk for a number,  
22 basically, subsequent to that and --

23 Q. You are --

24 A. -- multiple component pricing was adopted --

25 Q. You are answering a question that has nothing to  
26 do with the question I asked.

27 MS. HANCOCK: Your Honor, if he could be permitted  
28 to finish his answer.



1 MR. ROSENBAUM: I'd like an answer.

2 THE COURT: Go ahead. What's the problem?

3 BY MR. ROSENBAUM:

4 Q. What purpose was served by establishing multiple  
5 component pricing?

6 A. Multiple component pricing was -- was -- basically  
7 the purpose was to -- after many, many years -- to pay  
8 dairy farmers individually for the value of the milk they  
9 were producing. And dairy farmers subsequently reacted to  
10 those economic signals by substantially increasing the  
11 rate at which they were increasing the composition of  
12 their milk, giving rise to the increasing disconnect that  
13 Proposal 1 is designed to address.

14 Q. And there are four orders that don't have multiple  
15 component pricing?

16 A. That's correct.

17 Q. And those are Appalachia, Southeast, Florida, and  
18 Arizona, correct?

19 A. That's correct.

20 Q. And in those four orders, there has been --  
21 there's -- there's not -- there's not the financial  
22 incentive provided, that multiple component pricing  
23 provides, that is to say, they don't get a higher price  
24 for their milk based upon components.

25 A. Under the current system, that's correct.

26 Q. And you are not -- okay.

27 Now, the -- your proposal, when it comes to  
28 Class II -- correct me if I'm wrong, but I think I'm



1 right. When it comes to Class II, III, and IV, your  
2 proposal actually has no impact on multiple component  
3 price orders; is that correct?

4 A. On Class II, III, and IV, that would be correct,  
5 because component values are paid into the pool by  
6 processors at those component values, and are paid back  
7 out to farmers --

8 Q. So just going to state what you said a little  
9 different way. In multiple component pricing orders,  
10 farmers are paid based upon the actual components in their  
11 milk, not upon any assumptions as to what the component  
12 levels are, correct?

13 A. That is correct. Except for the value that they  
14 derive from Class I in those pools.

15 Q. And I'm not talking about -- Class I is a  
16 different set of issues, which I'll get to in a minute.  
17 We're talking about Class II, III, and IV.

18 So when -- so just -- your proposal really has no  
19 effect on Class II, III, and IV in the seven MCP orders,  
20 correct?

21 A. It has no direct effect on the pool value of milk  
22 in those three -- II, III, and IV classes.

23 Q. But your proposal would have a material effect on  
24 Class II, III, and IV, in the four what I'll call the fat  
25 skim orders, correct?

26 A. That is correct, and that is one of the specific  
27 intentions of our proposal.

28 Q. Okay. Well -- okay. And what you're -- and just



1 so we're clear the term, fat skim orders, that's a way to  
2 describe the four orders I discussed a minute ago,  
3 correct?

4 A. I use those terms myself.

5 Q. Sometimes they are called the non-MPC orders, and  
6 sometimes they are called the fat skim orders.

7 Those terms are synonymous, correct?

8 A. Yes, we can -- there will be no confusion in both  
9 of our understanding of --

10 Q. Okay.

11 A. -- what you mean.

12 Q. Okay. So -- and on your proposal in the four fat  
13 skim orders, you are proposing to change the regulations  
14 so that they pay farmers, in those four orders, as if the  
15 milk components in their milk is equal to the average milk  
16 components in the MCP orders; is that true?

17 A. That's correct. But that is no different than how  
18 that -- those same things operated at the beginning of  
19 Federal Order Reform, where a uniform national set of  
20 assumed pricing factors was adopted and applied nationally  
21 to all orders.

22 Q. Well, sir, but at that time, MCP was already in  
23 place, indeed, it was expanded in 2000 to include  
24 additional orders, so that those assumed values actually  
25 had no impact in the MCP orders, just like they still have  
26 no impact, correct?

27 A. The question is what was the purpose of USDA  
28 establishing the current factors in Class III and Class IV



1 skim milk.

2 Q. But -- but I am correct that, under your proposal,  
3 farmers in the four fat skim orders will be paid as if the  
4 milk components in their milk was equal to the average  
5 milk component levels in the seven MCP orders. That's how  
6 it works, correct?

7 A. That's correct. But again --

8 Q. And even though those farmers have never been  
9 provided the financial -- let me -- strike that. Let me  
10 start something else.

11 In order to achieve -- I mean, in order to achieve  
12 the higher protein levels and higher solids nonfat levels  
13 that you have recited, I take it that farmers and MCP  
14 orders have undertaken a series of steps and efforts,  
15 correct? That's a yes or no.

16 A. Farmers in the MCP orders you say?

17 Q. Yes.

18 A. They apparently have because they have increased  
19 their component content.

20 Q. For example, changes in breeding perhaps?

21 A. Uh-huh.

22 Q. You need to answer yes or no. Sorry. You are  
23 shaking your head. The recorder needs to have  
24 something --

25 A. Yes, it included those things you mentioned.

26 Q. Changes in feed maybe?

27 A. That too.

28 Q. Feed might be more expensive as a result? I mean,



1 maybe it is more expensive feed, but you make it up  
2 through the -- getting paid more; is that fair?

3 A. Farmers are very good at reacting to the financial  
4 incentives that --

5 Q. Believe --

6 A. -- and reacting to them.

7 Q. Believe me, this is no criticism of the MPC  
8 system -- MCP system.

9 Okay. But farmers in the fat skim orders have --  
10 just have never had those financial incentives, correct?

11 A. They currently do not have those same financial  
12 incentives --

13 Q. Okay.

14 A. -- as -- as those in the MCP orders.

15 Q. Well, and they still won't have that incentive  
16 over -- under your proposal, correct? They will get it  
17 automatically, right? They will get paid under the  
18 assumption that their levels of components in their milk  
19 is equal to the average level of components in the MCP  
20 orders?

21 A. Under our proposal, farmers in the fat skim orders  
22 would be paid a price much closer to the value of the milk  
23 they produce than under the current regulations.

24 Q. Well, am I right that they will be paid as -- as  
25 if they were producing milk that had the average component  
26 levels that exist in the seven MCP orders?

27 A. They would be paid based on a uniform national  
28 pricing formula that reflects the average prices,



1 including data from their individual orders.

2 Q. And you have -- well, you have said 90% of the  
3 milk is in the MCP orders --

4 A. That's true.

5 Q. -- to begin with, correct?

6 A. It would have -- it would make a small difference  
7 but...

8 Q. Well, but -- have you tried to calculate actually  
9 what the -- how many -- what the financial impact is?

10 A. Subsequent testimony by -- as I indicated in my --  
11 my testimony, mine is just the first overview of this  
12 issue. We have many more witnesses, including expert  
13 witnesses, that will testify in more detail, including  
14 basically those answering those questions. So let me  
15 defer to other experts that are going to be testifying on  
16 behalf of Proposal 1.

17 Q. Okay. But just on a -- I appreciate what you just  
18 said.

19 There are seven MCP orders, correct?

20 A. Currently there are seven MCP orders.

21 Q. Okay. And if your proposal is adopted -- and we  
22 know -- strike that.

23 And we know what the average MCP levels are in  
24 those seven orders, correct?

25 A. Yes. But we -- USDA has data for the component  
26 levels of skim milk in all orders, but certainly in the  
27 seven MCP orders.

28 Q. They don't have actual -- I mean, they haven't





1 presented any actual data from the -- from the fat skim  
2 orders, correct?

3 A. I think that was -- that data was available in one  
4 of -- basically one of our data requests and --

5 Q. Actual data as opposed to estimated data?

6 A. I will defer that question to one of our experts,  
7 Mr. Calvin Covington, to follow me, who knows these  
8 numbers extremely well.

9 Q. Okay.

10 A. So he'll be able to answer your questions.

11 Q. In any event, doubtlessly, there are some MCP  
12 orders where the component levels are higher than the  
13 average and some where they are lower than the average,  
14 correct?

15 A. That's generally the way you would define an  
16 average.

17 Q. And under your proposal, the four fat skim orders,  
18 the farmers there will be paid more for their milk than  
19 the farmers in half of the MCP orders, correct?

20 A. Well, I don't know that it would be half. It  
21 could be, you know, somewhere -- somewhere above the  
22 lowest and somewhere below the highest.

23 Q. Everybody below the average is going to be -- in  
24 the MCP orders, is going to be being paid less than all  
25 the farmers in the four fat skim orders?

26 A. Could you repeat that question again, please?

27 Q. Sure.

28 So all of -- all of the farmers with average



1 component levels -- strike that again.

2 All of the farmers in the MCP orders with  
3 component levels less than the average will be being paid  
4 for their milk less than all of the farmers in the four  
5 fat skim orders, correct?

6 A. That is correct. Because they are paid in those  
7 orders -- in the MCP orders they will be paid for the  
8 value of their individual components.

9 Q. And that will not be the case for any farmer in  
10 the four fat skim orders, correct?

11 A. But the farmers in these orders will have the  
12 opportunity to consider whether or not they would want to  
13 adopt MCP. It is always -- it is always an option.

14 Q. Absent their doing that, and I'm not suggesting  
15 they shouldn't, but absent their doing that, what I -- my  
16 statement's correct, yes?

17 A. Well, let me -- let me put that in the context --  
18 those farmers have been paid from the get-go less than the  
19 value of their milk, and increasingly over time they have  
20 been underpaid progressively for the actual value of their  
21 milk. And that's going to continue. We have an expert  
22 witness who will testify to that effect.

23 So the fact that adopting our proposal may  
24 adopt -- you know, because we have to have a uniform set  
25 of class price formulas, there may be some farmers in  
26 those fat skim orders that will be paid more than the  
27 value of their milk, some will be paid less.

28 But the point is our proposal is designed to



1 address the fact that farmers in those orders have been  
2 progressively underpaid, more -- increasingly so, for the  
3 value of the milk they have been producing since Federal  
4 Order Reform.

5 Q. Well, so since -- the MCP system first came into  
6 effect in 1994 some places, correct?

7 A. I'm not -- I can't put that particular date on it,  
8 but I will -- I will accept your --

9 Q. Okay. And in 2000, it was extended to the seven  
10 orders where it currently exists; is that right? The  
11 California obviously was --

12 A. The legislation that mandated Federal Order Reform  
13 from Congressman Steve Gunderson specifically mentioned  
14 that multiple component pricing will be -- will be offered  
15 in all the Federal Orders, and it kind of -- to that  
16 extent kind of gave it a boost.

17 Q. And -- but the farmers in the four orders that are  
18 fat skim orders today determined they didn't want to be  
19 MCP orders, correct?

20 A. Apparently, or they would have asked to do so.

21 Q. Right. I may not, essentially -- well, and when  
22 MCP orders came into effect -- I'm going to give you the  
23 date 1994, you have to accept that as being the accurate  
24 date, I believe it is --

25 A. I'll accept your --

26 Q. -- in any event, extended in 2000 -- it was the  
27 anticipation that this would incentivize farmers in MCP  
28 orders to increase their component levels, correct?



1 A. I would say the intent was to pay farmers for the  
2 value of their individual milk.

3 Q. All right.

4 A. They could choose to consider that an incentive.  
5 If the cost of increasing the -- the content, and  
6 therefore the value of their milk, was less than the value  
7 of doing so, they would -- they would do so; if not, they  
8 would -- they would not increase. They would not change.  
9 But they had the opportunity to, again, be more fairly  
10 paid for the value of their milk.

11 Q. And the reality is it did incentivize them, and  
12 the component levels went up, correct?

13 A. That is correct.

14 Q. The class -- it was understood from the get-go,  
15 wasn't it, that Class I was not going to be tied to that?

16 A. I don't know what was understood, but the  
17 regulations made it clear that it was not tied, that --  
18 that basically the value of -- of skim milk in Class I was  
19 going to be at the regulated 3.1 protein, 5.9, and 9.0  
20 nonfat solids.

21 Q. And there was never a provision that said if -- I  
22 mean -- let me start that again.

23 The MCP orders provide that as component levels go  
24 up, the payments go up, correct, for Class II, III, and  
25 IV?

26 A. Yeah. The payments into the pool for Class II,  
27 III, and IV, but not Class I, could go up.

28 Q. Right.



1 A. And farmers would be paid basically the value of  
2 their components, plus or minus PPD.

3 Q. And the value of their components -- start that  
4 again.

5 Which components you're evaluating depends upon  
6 which class milk is being used in, correct?

7 A. To a great extent. But to dairy farmers, they  
8 produce -- they produce milk that could be used in any  
9 class.

10 Q. Right.

11 A. And when they -- when their milk is increased --  
12 has increased value in its components, they realize the  
13 value of those components -- or the value of those  
14 components are realized when that milk is manufactured  
15 into Class III or Class IV products.

16 If they -- if producers, including the fat skim  
17 orders, sell their milk as Class I and are not paid for  
18 the value of those components, there's an opportunity cost  
19 for them, that they could have received a higher --  
20 basically gotten a -- you know, a higher price could have  
21 been paid for their -- for their milk in the manufacturing  
22 classes.

23 And that gets back to the points that I was making  
24 in my testimony about, you know, the growing disconnect  
25 between the value of producer milk and what they are being  
26 paid for in -- in Class I in all orders, including the MCP  
27 orders, is leading increasingly to disorderly marketing.

28 Q. For Class IV, if the milk is going into Class IV,



1 which components count for increase --

2 A. Total nonfat solids.

3 Q. Okay. And for Class III, which components count?

4 A. Protein and other solids.

5 Q. Okay. And that's -- that's because components  
6 that you get paid more for in Class IV, those are the  
7 components you need to make Class IV products, correct?

8 A. Yes.

9 Q. And similarly, the components you get paid more  
10 for in Class III, those are the components you need more  
11 of to make Class III products, correct?

12 A. I think that's correct.

13 Q. You don't need more components to make Class I  
14 milk, do you?

15 I mean just that simple question. Those higher  
16 components are not needed to make Class I milk, are they?

17 A. In most states. In California, they are.

18 Q. That's -- California has a special standard,  
19 correct?

20 A. Last time I checked, they did.

21 Q. They are unique in that regard, correct?

22 Is that right, they are -- I'm just asking you, is  
23 California unique?

24 A. California has a -- basically has a higher  
25 standard for -- for fluid milk.

26 Q. Okay.

27 A. I have not done a survey of other states to know  
28 whether or not they might have a higher standard.



1 Q. Okay. You can't make more fluid milk, you can't  
2 fill more gallon jugs of milk because you have a higher  
3 other solids level, other higher protein level?

4 A. If the protein level of fluid milk goes up, it has  
5 a higher value for -- for consumers.

6 Q. You have seen people pay more for that milk?

7 A. I have not, but I have not done supermarket  
8 pricing surveys. But my understanding is that high  
9 protein is one of the -- one of the increasing focuses of  
10 marketing Class I milk.

11 Q. Do you have any idea what percentage of milk sold  
12 in this country are marketed on that basis?

13 A. No, I don't.

14 MR. ROSENBAUM: That's all I have, your Honor.

15 THE COURT: Thank you, Counsel. So let's take a  
16 further afternoon break at the request of our hearing  
17 reporter. It's 3:50. Let's come back at 4:00. Is that  
18 sufficient?

19 Okay. We'll be back at 4 o'clock. Off the  
20 record.

21 (Whereupon, a break was taken.)

22 THE COURT: Back on the record at 4:04 p.m.

23 Okay. Cross-examination continues. I remind you  
24 that you are still under oath, Doctor.

25 MR. VETNE: Thank you, your Honor. John Vetne,  
26 consultant for National All-Jersey.

27 CROSS-EXAMINATION

28 BY MR. VETNE:



1 Q. Dr. Vitaliano, thank you for your testimony.

2 You referred -- I'm going to page 2. I'm just  
3 going to go page by page. I made some notes here.

4 You referred to on page 2 to dynamic structural  
5 change since the year 2000. Are you referring there to  
6 Federal Order Reform when you are referring back to the  
7 year 2000?

8 A. Yes, the year 2000 was selected to indicate the  
9 initiation of Federal Order Reform, which is pertinent  
10 because that's when these component -- the -- you know,  
11 these end product pricing formulas were adopted. Prior to  
12 the adoption of those, where we had a direct survey method  
13 of determining basic prices for Federal Order operations,  
14 that issue of reflecting the dynamic and the changing  
15 structure of the industry was not so critical.

16 Q. Federal Order Reform, you were involved in that,  
17 part of your responsibility?

18 A. Yes, I was working for National Milk at the time  
19 the Federal Reform was developed.

20 Q. So the rules that were adopted in 2000 in Federal  
21 Order Reform followed a Federal Order Reform recommended  
22 decision in 1998.

23 Do you recall that?

24 A. All I remember about that was the Federal Order  
25 Reform was not -- was done more by informal rulemaking --

26 Q. It was.

27 A. -- and not by the official Federal Order -- normal  
28 Federal Order amendment process through a hearing.





1 Q. Do you recall that the Federal Order Reform  
2 economic data, including product price formulas,  
3 production, composition, were based upon the market in  
4 1997 and 1998? In other words, a year -- a decision in  
5 the year 2000 wasn't based on data in 2000, it was based  
6 on some prior?

7 A. I don't have an encyclopedic knowledge of all of  
8 those aspects. But as far as Proposal 1 is concerned, I  
9 specifically studied the -- the hearing record, it was  
10 basically the final decision, reflecting, you know, why  
11 they adopted the current 3.1, 5.9, etcetera.

12 Q. And do you recall --

13 A. And those -- those were based -- those were not  
14 based on actual composition data from what I have gathered  
15 from the record. That was basically developed based on  
16 the nominal 3.5% butterfat test and the associated protein  
17 tests and other solids tests for milk in 35, and that was  
18 done for the purpose of comparing the new Class III and IV  
19 prices to the existing prices to make sure there was  
20 continuity, namely the BFP, California, and the 3A price,  
21 and the California 4A and 4B prices. That's explicitly  
22 spelled out in the decision.

23 Q. So my question is, when you refer to structural  
24 change, do you recall the period of time in which the  
25 structure was examined?

26 You are talking about change since the year 2000,  
27 but if the data that they looked at was from 1997, it is  
28 not 23 years old, it is a quarter century old?



1           A.     That could be.  As I say, in terms of the specific  
2 data for the milk composition factors, it was not clear  
3 whether they referred to any particular year.  They were  
4 adopted in the year 2000.  So, all of my references to  
5 things happening since 2000 were with reference to the  
6 factors that were established that year, not necessarily  
7 based on data from that year because they don't seem to  
8 have been based on -- on specific data but on a comparison  
9 with existing analogous prices from pre-reform Federal  
10 Orders and the California orders to ensure that they were  
11 consistent with those -- those prices.

12          Q.     Okay.  You reference in the first full paragraph  
13 at the top of that page to the transfer of price discovery  
14 for markets for dairy products to markets for unprocessed  
15 milk used to produce them.  There you are referring to the  
16 transition from MW survey to -- to the product price  
17 method of reaching --

18          A.     You can consider that a capsule description or  
19 definition of end product pricing.

20          Q.     Okay.  And that end product price actually does  
21 two things:  It establishes a value of the components used  
22 to produce various manufactured products, correct?

23          A.     Valuing the components of milk used to produce the  
24 various products is a critical step in the -- in the  
25 operation of end product pricing.  In order to transfer,  
26 you know, pricing information from the sold products back  
27 to the value of milk, you have to do it through the  
28 components.



1 Q. Okay. And in your statement and in questions and  
2 answers up to this point, and probably for the next few  
3 weeks, you used the term value and you used the term  
4 price. What's the difference? When you use value, are  
5 you referring to something different than price?

6 A. Well, under the current system, you know, the  
7 price that farmers are paid for their Class III and  
8 Class IV milk and not MCP orders is different from the  
9 value that they -- that that milk actually has.

10 Q. Well, let's --

11 A. But --

12 Q. -- let's refer to all -- all circumstances. Let's  
13 say, include MCP orders. Does value mean something  
14 different than price?

15 A. In a perfectly competitive market that the  
16 economists often start their economic -- you know,  
17 economic 101 classes about, value equals price. But value  
18 does not necessarily equal price under -- in a lot of real  
19 world markets. You have to look at the particular  
20 circumstances.

21 Q. Okay. Is the objective of transferring this price  
22 discovery to determine, step one, the value of a product;  
23 step two, the value of the components used to produce that  
24 product; and then step three, transferring that to  
25 establish the regulated price reflecting that value?

26 A. That should be the whole purpose of end product  
27 pricing, and has been the objective of National Milk's  
28 very intensive effort to come up with recommendations to



1 modernize the system. As I have emphasized at several  
2 points in my testimony, it was to basically improve the  
3 accuracy of that transfer process, which is becoming, you  
4 know, with the static coefficients in many cases, becoming  
5 increasingly outdated and causing disorderly -- increasing  
6 disorderly marketing.

7 Q. Okay. And you are referring in the penultimate  
8 paragraph at the bottom of the page, "factors in the class  
9 price formulas." Again, you are referring to the factors  
10 of value that are examined to produce a class price; is  
11 that correct?

12 A. Are you still on page 2?

13 Q. I'm still on page 2, about ten lines up. The  
14 second -- the paragraph -- the last full paragraph on the  
15 page, second line, last words are "factors in the class  
16 price formulas."

17 A. That's correct.

18 Q. Okay. And there you are referring to those  
19 elements of value that are looked at to determine the  
20 class price?

21 A. And that includes the component price formulas and  
22 the skim milk price formulas.

23 Q. Okay. The class prices that are established  
24 through this process are a multiple component class price,  
25 correct?

26 There are two elements of multiple component  
27 prices. One is pricing to handlers when you have a  
28 Class III price that is based on protein, other solids; a



1 Class IV price that is based on solids and nonfat and  
2 butterfat; or for cheese, butterfat components, protein  
3 components, the other solids component. It's those  
4 elements together that make a multiple component class  
5 price.

6 A. Could you be more specific in how you are using  
7 the term multiple component class price, please?

8 Q. For cheese, three components: Fat, protein, and  
9 other solids. Those three components, you ascertain a  
10 value to come up with a Class III price, correct?

11 A. Yes. If you are not using the term "multiple  
12 component pricing" to refer to the multiple component  
13 pricing mechanism for paying producers, then by,  
14 themselves, the product price formulas are derived by  
15 working through the value of the components and building  
16 up to a -- to a milk price.

17 Q. Three components. Three is multiple, correct?

18 A. For Class III; three for Class II; and Class IV,  
19 it is two.

20 Q. So, a handler receiving -- that makes cheese,  
21 receiving 3.9% protein in milk, if that handler pays the  
22 same price as a handler receiving 4.2% protein, somebody  
23 has an advantage, somebody is not paying the full value,  
24 correct?

25 A. If the handler receiving 4-point whatever it  
26 was --

27 Q. 4.2% versus 3.9%.

28 A. -- presumably will -- will achieve a higher value



1 from the products produced. As he pays the same price,  
2 then he's getting a bit of an advantage over somebody's  
3 who is paying the same price for lower testing milk.

4 Q. Right. Those handlers, assuming they make  
5 identical products, do not have a uniform price for the  
6 components they receive, do they?

7 A. Yes. If they are not required to pay for the  
8 specific components they receive and are manufacturing  
9 products from that milk, yes, they are not -- there's not  
10 a uniform price being paid by processors under your --  
11 your assumptions there.

12 Q. Okay. When you used the term "multiple component  
13 price" in response to some questions from Mr. Rosenbaum,  
14 you were referring to the way producers are paid, not to  
15 the way handlers are charged; is that correct?

16 A. That's correct. Because that was the sense in  
17 which, Mr. Rosenbaum was using those terms --

18 Q. Okay.

19 A. -- that term.

20 Q. Maybe.

21 And to muddy the waters a bit further, I'm looking  
22 at page 3 in the paragraph that begins after the bold  
23 print, bold print paragraph, bold print line number 19,  
24 the first line says, "Implementation of all five  
25 components of NMPF's comprehensive proposal."

26 You don't mean this word component to have  
27 anything to do with milk component, do you?

28 A. No, I do not. You can substitute the word



1 constituents.

2 Q. Constituents. The English language is sometimes  
3 imprecise.

4 Okay. Going over to the next page, in the middle  
5 of the first full paragraph, right in the middle, there is  
6 a sentence that begins, "Over the same period, USDA's  
7 Economic Research Service" --

8 See that?

9 A. Yes.

10 Q. Reported skim solids content of producer milk rose  
11 from 8.72 to 9.03.

12 Is that the skim solids of milk at test?

13 A. Yes, because it's the average composition, and ERS  
14 also reports average butterfat tests, which they get from  
15 NASS. They use the same numbers as NASS.

16 Q. Okay. So if that's a rise in the skim solids of  
17 milk at test, presumably it would be even a greater rise  
18 in the skim portion of --

19 A. Yeah.

20 Q. -- producer milk?

21 A. That's covered in the rest of that paragraph where  
22 I say -- first of all, I give the raw reported numbers  
23 from NASS and ERS on the respective tests of producer  
24 milk, and then I translate that to the simple calculation  
25 to corresponding tests of producer skim milk. That's in  
26 the rest of that paragraph.

27 Q. Yes. Okay.

28 A. And I explicitly draw attention to the aspect of



1 that conversion from tests of producer milk at test to  
2 producer skim milk by pointing out that the butterfat  
3 content of the producer milk will affect the composition  
4 of the producer skim milk because it affects, effectively,  
5 the denominator. A lot of -- sometimes there's confusion  
6 in that because we're talking about the composition of  
7 producer skim milk; what does butterfat have to do with  
8 that? Well, it affects it, as explained.

9 Q. Okay. Next paragraph. Beginning with "For  
10 manufactured class prices." At the end of the second line  
11 of the next paragraph, you refer to Class II, III, and IV  
12 prices and pool values.

13 Again, my question has to be: Do you mean  
14 something different when you use the word values compared  
15 to when you use the word price in that context?

16 A. No. I'm simply referring to the Class II and III  
17 prices per unit of skim milk, and the pool values are the  
18 resultant total monies paid by processors for those three  
19 classes, paid into the pools, at those per unit prices.

20 Q. On the aggregate value of the pool, not the unit  
21 price for what goes into the pool?

22 A. The term "prices" refers to the unit values, and  
23 the "pool values" refer to the portion of the total pool  
24 value that is contributed by the processors of  
25 Class III -- II, III, and IV.

26 Q. Okay. So that would be the aggregate of the value  
27 of protein solids, nonfat, and other solids?

28 A. In those three classes.





1 Q. In those -- well, yes.

2 A. That's what that sentence is referring to.

3 Q. That's the only place that a contribution comes to  
4 the pool in the form of a value for -- or price for  
5 protein, solids nonfat, and other solids, would be in  
6 these three classes?

7 A. You are correct. There's none of that value paid  
8 in in the fat skim orders, and none of that is paid in on  
9 Class I in all in any order. So the only component value  
10 that's paid into the pools, as you are implying, on strict  
11 component levels, is Classes II, III, and IV, in the  
12 component pricing -- multiple component pricing orders.

13 Q. Okay. Turn the page, please, to page 5.

14 The first full paragraph beginning, "In the seven  
15 orders with MCP"?

16 A. Uh-huh.

17 Q. And it goes on to say, "In the four orders without  
18 MCP, producers have been increasingly underpaid for the  
19 true value of their skim milk."

20 Now, let me paraphrase what I think you meant, and  
21 you can tell me if I'm wrong in my interpretation.

22 The factors that evolved out of Federal Order  
23 Reform, almost a quarter century ago, represent less  
24 protein, less solids nonfat, less other solids, than are  
25 in average milk in the non-MCP orders; is that correct?

26 A. That's correct.

27 Q. And --

28 A. Today.



1 Q. And because of that, those producers have been  
2 underpaid for the value of their product?

3 A. That's correct.

4 Q. Which wouldn't make a difference if it's going to  
5 Class I. Or would it?

6 A. Well, we are proposing that the increased skim  
7 milk composition -- component composition factors be  
8 extended through the Advanced Class III and Class IV  
9 pricing factors, via the mover, to be extended to Class I.

10 Q. I understand that. But it makes a huge difference  
11 if it is going to Class II, III or IV, producers being  
12 underpaid.

13 A. Well, I guess it depends on what you mean by  
14 underpaid.

15 Q. Well --

16 A. If a producer is producing milk, it goes -- who  
17 knows where it goes. That milk when it leaves the farm  
18 has an objective value. And -- and basically you could  
19 say they are being underpaid for the value of all their  
20 milk.

21 Q. So are you aware that, on occasion, milk with high  
22 component levels originating in Appalachia or the  
23 Southeast moves up into non-pool plants in --

24 A. I don't know data on that, but since those markets  
25 are milk deficit, and increasingly so, I would assume that  
26 most of that milk stays in -- in that order, but if it's  
27 particularly high test -- I'll defer that question again,  
28 as I have done several, to Mr. Calvin Covington who has



1 great knowledge of those exact circumstances --

2 Q. You would --

3 A. -- like those you are asking.

4 Q. You would agree with me, however, would you not,  
5 that if a producer or marketer can make an extra buck by  
6 moving milk to a non-pool plant up north, a buck that  
7 would not be available if it stayed in the south, that --  
8 that that --

9 A. Theoretically, yes. Theoretically, the question  
10 is, how many options in that milk def- -- to producers in  
11 those milk deficit orders are there to ship their milk  
12 greater distances, out of order, you know, those orders,  
13 cover the transportation costs, and still make money by  
14 doing so.

15 Q. Yeah.

16 A. That -- that is a data question that even USDA is  
17 probably not collecting data for.

18 Q. The answer is, if they can make money, they will  
19 do it, that's human nature.

20 A. Farmers generally are good at taking actions that  
21 make them money.

22 Q. And that's true for any industry.

23 A. If they have the opportunity.

24 Q. Yes.

25 A. Now, whether or not there are cooperatives with  
26 enough milk of that sort is available to put on a truck to  
27 make an economic shipment to a distant plant, you know,  
28 those are -- you know, we're starting to get into a lot of



1 hypotheticals here.

2 Q. Okay. Let me go back -- back to this underpaid  
3 for true value. What else, if anything, did you mean when  
4 you used the term "true value," other than it is not a  
5 hardware store?

6 A. The true value is basically -- the true value  
7 would be -- and I think like an economist, not necessarily  
8 a marketer -- that milk that that farmer produces with  
9 higher components has a higher value.

10 Now, you know, I agree that in terms of realizing  
11 that higher value, you know, producers have an option, you  
12 know -- or don't necessarily have an option to magically  
13 be paid by some all -- you know, all powerful regulatory  
14 agency what their milk is really worth. But the fact is  
15 that the farmers are being underpaid in those orders under  
16 the current formulas, and we are proposing to increase  
17 them to where they should be now.

18 Q. Okay. In three or four places in your testimony,  
19 including at the end of the second full paragraph, the one  
20 that begins with number one on page 5, you use "disorderly  
21 marketing conditions."

22 And that's a term that we like to throw around in  
23 milk order hearings, but we almost never define it. So  
24 what do you mean by disorderly marketing conditions in  
25 this context?

26 A. Okay. I think number one pretty much describes in  
27 general terms what we're talking about. And I appreciate  
28 your -- you know, after a couple hours of



1 cross-examination finally leading to some of the -- back  
2 to some of our arguments for why we need to increase the  
3 skim milk component composition factors to achieve some of  
4 the fundamental purposes of the Federal Order program,  
5 which is to promote orderly marketing.

6 And when we have this growing disconnect between  
7 the values, and particularly of Class I, and the value of  
8 Class II, III, and IV, and multiple component pricing  
9 orders, we have, you know, basically that classic  
10 difference between Class I and the other class prices,  
11 which is designed to ensure that an adequate supply of  
12 milk is available for fluid consumption purposes. That  
13 gets progressively undermined, and you have more and more  
14 manufacturing milk being depooled, pretty much as I  
15 provide in the capsule explanation under paragraph one.

16 Q. So I'm still not clear. Are you stating that  
17 depooling milk is a disorderly practice?

18 A. That's the way it is generally understood.

19 Q. How do you -- how do you -- as an economist,  
20 explain how that is true and why that is true.

21 A. Well, let me explain that as a -- as an employee  
22 of a trade association that works for the benefit of dairy  
23 farmers and their marketing cooperatives, I hear a lot  
24 from dairy farmers that would indicate that depooling  
25 is -- creates a disorderly marketing condition, creates  
26 great unhappiness amongst dairy farmers where one, you  
27 know, farm gets paid a certain price, and the farm not too  
28 far away that ships to another handler in another order



1 that -- you know, where the pooling is different, that's  
2 disorderly marketing. That creates unhappiness with the  
3 Federal Order program. And --

4 Q. And how is depooling contributing to that problem?

5 A. One of the fundamental purposes of the Federal  
6 Order program, the fundamental reason we have pooling, is  
7 to take the use of milk in a given marketing area, that  
8 has different values in the different product production,  
9 particularly Class I versus the manufacturing price --  
10 uses, and ends up with a market-wide pooling where  
11 producers get paid the same price regardless of where  
12 their milk goes.

13 You know, I have taught introductory marketing  
14 regulation classes when I was at Virginia Tech about the  
15 fundamental reason for Federal Orders. You create  
16 market-wide pooling to create orderly marketing by  
17 removing the incentive from any one group of dairy farmers  
18 to try to undercut pricing in direct sales for Class I,  
19 particularly to get that higher price.

20 The whole purpose of Federal Order pooling, one of  
21 the foundations stones of Federal Orders, is to create  
22 orderly marketing by paying producers the same uniform  
23 price. Depooling undermines that fundamental purpose and  
24 thereby creates disorderly marketing because uniform  
25 pooling is designed to create orderly marketing.

26 Q. You are saying, I can paraphrase, that producers  
27 located in the same area, not receiving a uniform or same  
28 price, for the product of their labor, is disorderly?



1 A. It's been my experience that that is -- that  
2 creates disorderly marketing, yes.

3 Q. That --

4 A. And you will hear --you will hear other  
5 testimony --

6 Q. Okay.

7 A. -- following me on this issue that will make the  
8 same case.

9 Q. Okay.

10 THE COURT: Yeah, my question too, Counsel --  
11 actually, Mr. Witness, is that disorderly marketing, or is  
12 it creates something else that's disorderly? Let's cut  
13 through this a little bit.

14 MR. VETNE: Is it disorderly or does it lead to  
15 disorderly?

16 THE WITNESS: It is disorderly marketing.

17 THE COURT: Okay.

18 BY MR. VETNE:

19 Q. Okay. And I agree with you. The whole history of  
20 the program is history of one farmer cutting another  
21 farmer's throat for a better market and --

22 A. That's why we have Federal Orders.

23 Q. So we create -- we create -- we created these  
24 markets so that everybody would receive the same price and  
25 there would be no reason to slash anybody's throat.

26 One of the things that would be accomplished under  
27 NMPF proposal, as well as National All-Jersey's proposal,  
28 is raising the price -- the skim milk price in -- in



1 Class I.

2 Would you agree with me that one of the current  
3 disincentives for supplying milk from surplus markets to  
4 the Southeast or Appalachian market, is that the low skim  
5 value in the fat skim markets is a disincentive to provide  
6 fluid milk to bottling plants in the Southeast?

7 A. Yes. And I basically made that case on page 5,  
8 and others to follow me testifying to Proposal 1 will  
9 provide additional support for that.

10 Q. All right. In response to -- in response to a  
11 question from Mr. Rosenbaum, you said that a good reason  
12 for applying the NMPF skim formula to the Southeast for  
13 Class I, and maybe overpaying relative to half the  
14 producers in the MCP markets, is that producers in the  
15 Southeast markets have been underpaid for years.

16 Do you recall that answer?

17 A. Yes. Producers in the Southeast markets have been  
18 underpaid for all their milk based on the fundamental  
19 description, you know --

20 Q. Okay. So is one of the --

21 A. -- based on our proposal, yes.

22 Q. So is one of the purposes of your proposal to  
23 capture back past losses?

24 A. No. We are proposing to increase -- again, USDA  
25 has these formulas put in place during Federal Order  
26 Reform. They had a purpose. They are outdated. We are  
27 proposing to increase them to their currently appropriate  
28 levels, not to go back and recapture, but to -- also to





1 provide a more regular mechanism for keeping them updated  
2 in the future rather than having -- again, having to go  
3 for many years where -- where the values of actual milk  
4 increasingly outpace the static values that are in the  
5 formulas.

6 Q. Yes.

7 A. The -- basically the current Federal Order  
8 formulas do not really contain very many mechanisms for  
9 kind of keeping those important factors updated on a more  
10 regular basis without going through the -- you know,  
11 basically a formal hearing.

12 Q. Okay.

13 A. And that's what we're proposing. Not recapturing  
14 the past --

15 Q. In that case --

16 A. -- updating and continuing to update.

17 Q. In that case, maybe I misunderstood you, because I  
18 understood that you thought an important element of this  
19 was to -- for the fat skim markets, was because they have  
20 been underpaid for so long, it didn't matter if they were  
21 maybe overpaid a little bit now.

22 A. Well, the point is that they have been  
23 increasingly underpaid. We are proposing that a change  
24 needs to be made to address that.

25 Now, the Federal Order pricing formulas generally  
26 need to be adopted on a nationwide basis. USDA made that  
27 case very, very clear in the California promulgation  
28 decision. There will be no special exemptions for, you



1 know, regional -- regional considerations in individual  
2 orders. Federal Order will have -- in terms of the  
3 fundamental product price formulas, will have the same  
4 formulas nationwide. We accept that. We are not  
5 challenging that provision.

6 And so if you adopt a nationwide standard, based  
7 on nationwide data, you are going to have some situations  
8 where some farmers are going to be overpaid, some are  
9 going to be underpaid.

10 What I'm saying is that that issue compared to  
11 the -- you know, basically the years of being  
12 progressively underpaid, in my opinion, is a relatively  
13 minor issue by comparison. I'm not saying that it is  
14 designed to recoup those specific losses in the past, but  
15 they are designed to be -- our proposal is designed to be  
16 the best way to update those formulas. Again, USDA had  
17 those factors and those formulas. They mean something.  
18 We are proposing current values that make them mean the  
19 most -- you know, basically the most logical thing now and  
20 going forward.

21 Again, I was not implying that there's any  
22 recouping of past -- past losses.

23 Q. Okay. The second full paragraph in the bottom, on  
24 page 7, a little bit up, halfway up, more than halfway up,  
25 you talk about "changes in the value of milk supplied by  
26 producers to those processors."

27 What value has changed?

28 A. What we have been discussing all along, basically,



1 producers are producing consistently higher testing milk,  
2 and in the cases that we have been discussing, they have  
3 been progressively underpaid for that.

4 Q. Well, doesn't -- doesn't the marketplace take care  
5 of value?

6 A. Not under the current regulatory system in the  
7 Federal Orders where -- where basically producers are paid  
8 the same value based on the outdated component  
9 assumption -- skim milk component assumptions for their  
10 milk that is increasingly more valuable.

11 Q. Well, there's --

12 A. Maybe I'm failing to understand your question.

13 Q. No. Well, there's a regulated price -- if you  
14 read Federal Order Reform decision, there was an  
15 administrative determination that the regulated price  
16 should be something less than the market price. In other  
17 words, we don't regulate full value. We don't regulate  
18 more than full value. We regulate something, safety net,  
19 something to the close value.

20 A. If you are referring to the basic idea of minimum  
21 pricing --

22 Q. Yes.

23 A. -- that's correct. But I did not read that that  
24 specific idea was built-in intentionally into the skim  
25 milk component composition factors.

26 Q. Okay. But what -- what value to processors has  
27 been increasing that processors have not paid for?

28 A. Well, that refers particularly -- again, this is



1 one of several criteria, not -- not designed for each and  
2 every phrase in that thing to apply uniformly in all  
3 cases. Processors of Class II, Class III, and Class IV  
4 products in the class -- in the fat skim orders fit that  
5 definition. And so that phrase was designed to refer  
6 specifically to that part of the Federal Order system.

7 Q. Okay. So --

8 A. It is not designed to -- basically, if you look at  
9 that long sentence, it covers a series of misalignments  
10 that apply in different cases, not -- each one of those  
11 things I delineate is designed to apply everywhere to all  
12 classes in all orders.

13 Q. Okay. So producers supplying Class II, III, and  
14 IV processors in the fat skim Southeast Orders, three of  
15 them, really haven't been paying what the product is  
16 worth, and that's what you are referring to.

17 A. That's what that particular phrase in that  
18 sentence refers to.

19 Q. Okay. And you are not referring to Class I  
20 processors in that sentence?

21 A. Well, that's a more subtle question.

22 Q. That's -- that's a relationship between  
23 manufacturing and a Class I question?

24 A. To a great extent, yes.

25 Q. Okay. And where does competitive or over-order  
26 payments fit in this evaluation of underpayment or  
27 overpayment?

28 A. What competitive over-order payments are you



1 referring to?

2 Q. I'm asking you. There's a mailbox price, and  
3 there's a regulated price. There are competitive  
4 premiums. There are negotiated premiums. There are --

5 A. In the past there have been negotiated over-order  
6 premiums, in Class I in the Class I markets, Class III in  
7 the Class III markets. My understanding is those have  
8 largely disappeared in -- in all cases. So -- so hence my  
9 question, what -- what over-order payments specifically  
10 are you referring to?

11 Q. I'm asking you if you know -- if your  
12 understanding is that over-order payments have  
13 disappeared, do you or does the subsequent witness intend  
14 to put on any data suggesting that the only thing that's  
15 not being paid is the federal minimum?

16 A. I can't answer that question in detail, and I  
17 would refer that to the witnesses that are going to be  
18 presenting, you know, more data and more fuller  
19 explanations.

20 Q. Okay.

21 A. What I'm here to do is provide an overview of  
22 our --

23 Q. Thank you.

24 A. -- process and our general -- our general  
25 argumentation.

26 Q. Okay. At the bottom of that same paragraph, the  
27 last line, last full line, you use the word "structural  
28 features."



1           Are you referring to the changes in composition of  
2 producer milk at that point?

3           A.    Among many other things.

4           Q.    What are the other --

5           A.    I would --

6           Q.    What are the other structural features?

7           A.    Okay.  I would refer back to the middle paragraph  
8 on page 2.  The "market realities have subsequently  
9 changed as the U.S. dairy industry has undergone dynamic  
10 structural change since 2000, while the critical Federal  
11 Order dairy product price formulas and Class I  
12 differentials have, for the most part, remained static."

13                   And "for example," okay, "for example," of  
14 structural features, "the location of U.S. milk production  
15 shifted westward, manufacturing and transportation costs  
16 have increased significantly," "southeastern states have  
17 become progressively more milk deficit," and so on and so  
18 forth.

19                   It's a term referring to the panoply of structural  
20 features of the U.S. dairy industry that have changed that  
21 have affected all aspects of the end product pricing  
22 formulas.  It is a general term because that section that  
23 we're examining now is -- as you note, is headed by the  
24 heading "economic and market impacts of NMPF's proposed  
25 changes," and that refers to our whole package of proposed  
26 changes, not just to the particular Proposal 1 on milk  
27 composition.

28           Q.    Okay.



1           A.     This entire section is designed, again, to go back  
2 to what I was talking about in section -- in the first  
3 section, our overall process, our holistic approach to  
4 examine -- examining all of the Federal Order pricing  
5 formulas to determine what's working, what's not working,  
6 what's outdated, what can we do, what are the most  
7 important priorities to do to basically modernize those  
8 formulas.

9           Q.     Okay. And finally, believe it or not, in response  
10 to several questions, I think from Mr. Rosenbaum, you  
11 referred back to Federal Order Reform and said, for  
12 whatever reason they put in these factors, they are not  
13 working anymore, we need to update them.

14          A.     In many cases, yes.

15          Q.     I want to go back to the "for whatever reason"  
16 part. If -- if we didn't have whatever that was in  
17 federal reform, how would you approach it differently?

18          A.     Well, I'm not suggesting revolutionary changes  
19 here. I'm saying that during Federal Order Reform, there  
20 was a fundamental change to the price discovery mechanism  
21 of Federal Orders to relying on end product -- product  
22 markets to transfer value through -- through formulas that  
23 were to mimic the transformational process of raw milk  
24 into those end product prices. That was a fundamental  
25 change, and that's why I keep referring to Federal Order  
26 Reform as a starting place because that represented a  
27 fundamental change in how the Federal Orders operated and  
28 how the pricing took place.



1           And as I have explained many times in the  
2 testimony, those factors are generally static. They  
3 are -- I can't think of a single Federal Order price  
4 formula that has anything other than fixed coefficients.  
5 The make allowances are fixed numbers. The yield factors  
6 are fixed numbers in the formulas. The skim milk  
7 composition factors that we're talking about now are fixed  
8 factors. They have change- -- in many cases the Class I  
9 differentials are fixed factors, in many cases.

10           They have -- they are basically set as fixed  
11 formulas, with fixed numerical coefficients that are  
12 designed to capture these relationships in a dynamically  
13 changing industry, and therefore, those things need to  
14 change from time to time. Some have changed. Make  
15 allowances have been updated. Class I differentials have  
16 been updated in a few orders.

17           But what we're suggesting is we need a more  
18 fundamental update at this point, and where possible,  
19 to -- to create some more automatic mechanisms for keeping  
20 them updated in the future, such as that that we have  
21 suggested and proposed in Proposal 1 for the skim milk  
22 composition factors.

23           Q.    Which is what NAJ proposes, too, to update.

24           A.    We -- welcome your -- your support for the general  
25 concept.

26           MR. VETNE: Thank you.

27           THE COURT: Cross by anyone else for this witness?

28           Yes.





1 MR. MILTNER: Ryan Miltner, counsel for Select  
2 Milk Producers.

3 CROSS-EXAMINATION

4 BY MR. MILTNER:

5 Q. Dr. Vitaliano, I have to start with what I think  
6 are relatively simple questions about the construction of  
7 your statement that Mr. Vetne touched on, but I want to  
8 make sure that I have this understood.

9 The first three pages of your testimony are what I  
10 would describe as kind of an overview of National Milk's  
11 proposals, all five of them?

12 A. Yes. And including a couple of them that were not  
13 Federal Order regulatory.

14 Q. Okay.

15 A. Our process and the resulting package of  
16 proposals, yes, you are correct.

17 Q. Great.

18 And then -- so beginning at the bottom of page 3  
19 and really up through the bottom of page 6, that testimony  
20 speaks directly to Proposal 1?

21 A. Correct.

22 Q. And then, thereafter, your testimony is more about  
23 the totality of National Milk's proposal set up until the  
24 bottom part of page 10?

25 A. Yes. That's correct.

26 Q. And then 10, 11, and 12 go --

27 A. Go back to Proposal 1.

28 Q. Just the regulatory text for Proposal 1?



1 A. Yes.

2 Q. Okay. Great.

3 A. The purpose of that was to basically -- there was  
4 no overall, you know, overview, segment on the proposed  
5 agenda. But I did want to get some testimony in about our  
6 process, all the proposals together as a package. And  
7 there will be some testimony, again, by Dr. Scott Brown on  
8 the impact of this proposal. But you are correct in  
9 interpreting what my statement, how it was structured.

10 Q. Thank you. And as someone who's got a client with  
11 three proposals, I understand kind of that dance that has  
12 to be done.

13 Do you intend to testify at all on other proposals  
14 throughout the hearing?

15 A. Yes. I intend to be the lead-off, setup witness,  
16 whatever you want to call it, for the other four National  
17 Milk proposals at this proceeding. I will summarize those  
18 two sections, 1 and 4, and not -- they will be introduced  
19 in my testimony for those other four issues as they are  
20 here, but I will not take time in this proceeding to read  
21 those into the record. This -- this -- those two sections  
22 will be read into the record in this testimony one time,  
23 and they will be then just referred to briefly in passing.  
24 And my subsequent testimony will focus primarily on that  
25 section that will apply specifically to those other four  
26 proposals and the proposed regulatory language. And they  
27 will be much shorter testimony.

28 Q. Great. That will help me cull through some



1 questions, then, and we'll reserve those for the other  
2 proposal --

3 A. Yes, you will have opportunities to question me  
4 again on the other four proposals.

5 Q. All right. And just a few things here that I do  
6 want to touch on. I'm looking at page 2 of your  
7 statement, and it's -- it's toward the middle. The  
8 paragraph that begins with "Those market realities."

9 A. Yes.

10 Q. Okay. In the middle of that paragraph you have  
11 written and stated: "The industry has seen the successful  
12 deployment of very large manufacturing plants."

13 And I wondered if -- if you had any further  
14 context about how those large manufacturing plants and  
15 their successful deployment have -- have influenced  
16 National Milk's proposals?

17 A. They have basically altered the balance of --  
18 depending on the ownership of those plants, kind of what I  
19 as an economist would call kind of the market power  
20 balance between processors and groups of producers.

21 But again, this is basically a list put together  
22 by our group of people of all of the different factors  
23 that have resulted in change in the industry, that the  
24 industry -- the point is basically that the industry is  
25 changing structurally and the Federal -- the Federal Order  
26 end product pricing formulas and their coefficients have  
27 largely remained static and are increasingly not  
28 reflecting that change dynamic.



1           In our -- in National Milk's proposals and our  
2 test- -- my testimony and all of our other, you know,  
3 witnesses testifying in support of National Milk's  
4 testimony, they will be focusing only on the proposals we  
5 adopted and how those -- the specific structural changes  
6 have -- are pertinent to the proposed changes that we are  
7 bringing to this hearing.

8           We're not pretending to teach an introductory  
9 class on how the federal -- how the U.S. dairy industry  
10 has changed in totality over the years. This is basically  
11 a scene-setting statement. And we will be focusing in  
12 particular on our specific proposed testimony in support  
13 of our proposals on those features that have changed that  
14 are directly -- pertain directly to the proposals we are  
15 advocating.

16         Q.    In that same sentence when you use the term  
17 "manufacturing plants," are you -- are you restricting  
18 that definition to what I think most of the industry  
19 considers, manufacturing like Class III and IV plants,  
20 maybe II?

21         A.    It could be interpreted that way, but I would look  
22 at it more generally. Basically any -- any -- any plant  
23 that man- -- that produces a dairy product from raw milk.

24         Q.    Including a Class I plant?

25         A.    It could -- it could be extended to Class I  
26 plants. It is not a precise statement that has, you know,  
27 implications for particular products.

28         Q.    And in the following paragraph, you -- you refer



1 to the yield factors and the component formulas and state  
2 that they have become increasingly outdated.

3 Are there any particular yield factors that you  
4 are referencing in that?

5 A. No, it's a general statement. We looked at the  
6 yield factors. We looked at available studies. But we  
7 determined in our fairly comprehensive look at what  
8 information was available to bear on which factors have  
9 become outdated.

10 We found very little data on yield factors. So  
11 we're not proposing that they are necessarily outdated,  
12 but they -- we do not know. That's why in our interest in  
13 securing legislative authority on the Farm Bill, that's  
14 not a -- that's not an issue pertinent to this hearing  
15 but -- directly, we are proposing -- as I will testify  
16 later on the make allowances -- we are proposing to  
17 basically establish legislative authority for USDA to do  
18 mandatory audited cost studies so that we will basically  
19 get the kind of data on both make allowances and yield  
20 factors to, you know, basically, more effectively  
21 implement currently appropriate levels for those important  
22 component -- coefficients in the component pricing  
23 formulas.

24 Q. And I'll reserve more questioning on that for when  
25 the make allowances come up. But I want to make sure that  
26 I have understood.

27 In the statement, it says, "the yield factors in  
28 the component formulas, the assumed composition of



1 producer milk, as well as Class I differentials, have  
2 become increasingly outdated."

3 I think I heard you say that your task force  
4 concluded that they weren't certain if the yields were  
5 outdated. So --

6 A. We're not certain.

7 Q. Okay.

8 A. It is -- given the fact that manufacturing  
9 operations have become more efficient, we would suspect  
10 that with proper data we would find that those yield  
11 factors have -- have changed. And I'm aware that Select  
12 Milk has proposals that is, basically, substantiating that  
13 fact, in effect. But the point is that, as I will get to  
14 when we deal with make allowances and the yield factors,  
15 we need better data.

16 Q. I think my last question on this page, at least,  
17 and not to get too deep into particular word choice or  
18 things like that, but the paragraph in -- that follows the  
19 one we were just looking at, in the last line, says,  
20 "effective administration of the Federal Order program has  
21 become increasingly difficult."

22 Other than the -- your previous testimony about  
23 disorderly marketing and how we define that, is there  
24 anything specific you mean to reference there about how  
25 administering the orders has become difficult?

26 A. No. It -- it kind of refers to the general -- you  
27 know, the general sense of increasing disorderly marketing  
28 because of that fundamental disconnect, goes back to the



1 fundamental purpose of what we're doing. The industry has  
2 changed. The fixed factors in the pricing formulas have  
3 not. They need to be updated to conform to the current  
4 reality in the industry. That's what that refers to.

5 Q. But in terms of the mechanical operation of the  
6 order and things like that --

7 A. Yeah.

8 Q. -- okay, you weren't trying to -- to pull that  
9 concept in then.

10 On page 6, the paragraph at the top of the page,  
11 you describe the intent and then regulatory language in  
12 Proposal 1. They would delay implementation for  
13 12 months, and you cite risk management programs by both  
14 producers and handlers as the reason for doing so.

15 Will any of the other National Milk witnesses  
16 speak more to this issue of risk management and why the  
17 proposal is constructed in that manner?

18 A. Yes. We will have a witness that will speak  
19 exclusively to that issue in connection with Proposal 1.

20 Q. Are you aware of -- how many Federal Order  
21 hearings have you had the chance to testify at or be a  
22 part of?

23 A. This is my second one. National Milk rarely,  
24 rarely testifies in Federal Order hearings. Only those  
25 that are entirely national in scope. National Milk does  
26 not get involved in any regional, individual order  
27 hearings. We have -- you know, that is basically the  
28 responsibility of their member -- our members, and that's



1 their preference. We only get involved -- in all the  
2 years I have spent at National Milk, we have been --  
3 National Milk has only been involved in four national  
4 hearings. I have -- including this one.

5 I will have testified -- or already have --  
6 testified in two of those, and two of those were handled  
7 by somebody who was on our staff, Mr. Roger Cryan, who is  
8 in the audience, now the chief economist for the American  
9 Farm Bureau Federation. He handled the other two that  
10 came up while he was in our employ. And so, again, the  
11 set of Federal Order hearings that National Milk directly  
12 gets involved in is very small, four in almost 40 years.  
13 Once every ten years on average.

14 Q. And I realize that now I have been at all four of  
15 those. So I'm not sure how that makes me feel.

16 A. Join the club.

17 Q. Well, my question, which I'll slightly rephrase  
18 then, assuming -- or having assumed you had been to more  
19 of these hearings, are you aware of any other time where a  
20 Federal Order proposal or a Federal Order regulation was  
21 delayed in implementation for purposes of risk management?

22 A. I'm not aware of that. But I would say that the  
23 growing importance of risk management is something that we  
24 feel and -- well, I have a witness testifying to this in  
25 more detail -- is something that is increasingly  
26 intertwined with the effective operation of Federal  
27 Orders. And so this may be a first, but again, I would  
28 say that I -- I don't have an encyclopedic knowledge of





1 things of this sort in the past, but my guess is that this  
2 may be a first, yes.

3 Q. As an economist and your work with National Milk,  
4 are part of your duties monitoring the futures markets?

5 A. I monitor the futures markets. Not -- we do not  
6 market milk, obviously, so we have no need to -- to do  
7 practical risk management, you know, for bottom line  
8 purposes. But I closely monitor the futures markets for  
9 the purpose of making price forecasts, which are quite  
10 popular amongst farmer audiences and processor audiences.

11 Q. When you -- when you construct those price  
12 forecasts, how far would you be looking out when you are  
13 constructing those?

14 A. The open interest in the dairy futures falls off  
15 with time. I would say that there's -- it is still pretty  
16 robust out to 12 months and -- do you know the order --  
17 the futures go out 24 months. It tends to fall off more  
18 quickly after you get to a year out.

19 Q. And have you observed or studied the volatility of  
20 far-out futures versus close-in futures?

21 A. Not -- no, I'm not a detailed student of Federal  
22 Order -- of futures prices. I use the current futures  
23 prices for price and, you know, margin forecasting  
24 purposes, but I'm -- I don't consider myself an expert in  
25 understanding how the futures operate in -- in that sort  
26 of fine scale sense that you just asked.

27 Q. Do you -- do you find that the futures markets  
28 price in any amount of regulatory uncertainty, especially



1 in far-out contracts?

2 A. I assume that the -- that the futures markets take  
3 all the available information and -- and synthesize it  
4 into -- you know, into their forecast. It's a -- it is a  
5 joint process of all of the people who take positions.

6 I have -- the one thing I have studied is that the  
7 few instances that I have observed where the futures  
8 markets have not taken some important information into  
9 account are areas in which I have successfully outguessed  
10 the futures. Now, I don't -- I don't do that often  
11 because I don't consider myself to be -- have knowledge  
12 superior to all the people who are taking positions in the  
13 futures and, therefore, determining the futures prices.

14 But there have been a few instances in which a key  
15 piece of information, mostly having to do with the export  
16 markets, which had not been thoroughly followed in  
17 previous years -- that's changing, has changed -- where a  
18 key piece of information, such as China's massive  
19 purchasing of imported dairy product, particularly whole  
20 milk powder, in 2013-2014 period, following their massive  
21 restructuring in the -- in the wake of the melamine  
22 crisis, I was able to successfully outguess the futures  
23 markets at that point.

24 So they sometimes miss something important, but  
25 not very often. I will use the futures markets for my  
26 predictions in almost all cases because I think that  
27 distills the best wisdom of taking into account all  
28 factors, presumably including regulatory factors.



1 I'm not aware of any detailed studies that parse  
2 out the extent to which the futures markets countenance,  
3 regulatory issues versus weather issues versus, you know,  
4 other issues that affect prices. All I know is that in my  
5 limited experience I have had a few occasions when I have  
6 been able to notice that the markets have missed a  
7 critical piece of information and that has -- has badly  
8 skewed those forecasts. Doesn't happen too often.

9 Q. Information that would -- was available, just not  
10 recognized by the markets?

11 A. Available, if you knew how to use it, and not  
12 recognized by the markets.

13 Q. So our markets aren't perfectly efficient after  
14 all, huh?

15 A. Based on my experience, they are pretty good. But  
16 nothing is perfect in this world.

17 MR. MILTNER: I don't have anything further.  
18 Thank you.

19 THE COURT: Very well, Counsel. Thank you.  
20 Any further cross?

21 Okay. We've got two more cross-examiners.

22 How many minutes do we have here? It is ten  
23 minutes after 5:00, which is --

24 MR. ENGLISH: Your Honor, I mean, if we are  
25 starting at 8:00 a.m., I'm going to say we got to stop --  
26 if we're going to be efficient at all starting at  
27 8:00 a.m., we've got to stop today. I can tell you that  
28 using overnight my cross-examine will be significantly



1 shorter. But if you want me to start, I will start, but  
2 we're going a couple of hours.

3 THE COURT: Well, if you could make it shorter  
4 overnight, that is persuasive, Counsel.

5 MR. ENGLISH: I sort of thought it might be, your  
6 Honor.

7 THE COURT: I vote for the back, and the same  
8 thing. I think -- I think we've probably had enough  
9 today, so we'll carry this witness over for further cross  
10 and for Ms. Hancock to do some redirect if she chooses  
11 tomorrow.

12 Yes, Mr. English.

13 MR. ENGLISH: Your Honor, if I may --

14 THE COURT: You may.

15 MR. ENGLISH: -- and I know it was our first day,  
16 but at the California hearing we tried very hard, as  
17 collaborative people with some differences, to at least  
18 understand the schedule a little bit. And I'm not saying  
19 we need to do it every day, but since this is the first  
20 day, it would be helpful to just have an idea of how many  
21 witnesses as we try to get people. I know we have the  
22 USDA witness. I certainly know some of the submitted  
23 testimony, but I'm not sure how many of those witnesses  
24 are tomorrow or not, I mean, in terms of order.

25 So it would be helpful for us, I think, and I  
26 promise to do the same when it's, you know, when we're  
27 ready. So I think if we can share that information, we  
28 might have a better idea of what we need to do tomorrow



1 and Friday.

2 THE COURT: Are you proposing we have a discussion  
3 of that now?

4 MR. ENGLISH: I would like to -- we can do it off  
5 the record. We don't have --

6 THE COURT: I was going to suggest. I don't think  
7 this --

8 MR. ENGLISH: Yeah.

9 THE COURT: Does that work for AMS? I mean, since  
10 we're all in the same room, that obviates any ex parte --

11 MR. ENGLISH: Well, we're not talking about  
12 substance, we're only talking about who the witnesses are.

13 THE COURT: I understand.

14 MR. HILL: That works for us, yes.

15 THE COURT: Okay. So let's go off.

16 Ms. Hancock rises.

17 Did you have something to say?

18 MS. HANCOCK: We can go off the record.

19 THE COURT: We can go off the record now. I'll  
20 ask the hearing reporter to hang around in case we have to  
21 put something on the record at then end of these  
22 discussions, we may not.

23 (Whereupon, the proceedings concluded.)

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STATE OF CALIFORNIA )  
                                  )     ss.  
COUNTY OF FRESNO     )

I, MYRA A. PISH, Certified Shorthand Reporter, do hereby certify that the foregoing pages comprise a full, true and correct transcript of my shorthand notes, and a full, true and correct statement of the proceedings held at the time and place heretofore stated.

DATED:             September 1, 2023  
                                  FRESNO, CALIFORNIA



MYRA A. PISH, RPR CSR  
Certificate No. 11613

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