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 25, 2023

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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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THURSDAY, AUGUST 24, 2023 - - MORNING SESSION

THE COURT: Good morning. Day three of this hearing. It is August 25th, which will probably appear on the cover of the transcript.

I understand we have at least one piece of preliminary business.

You have the floor.

MR. VETNE: Thank you. John Vetne, consultant for National All-Jersey. As I progress in this, I find I have more frequent mea culpas.

So on Wednesday morning Mr. English and I both filed some objections on the scope of this hearing, and we submitted -- and I refer to a document that was submitted online that morning, which was signed by Wendy Yoviene and me.

But what was copied was not the correct objection version. It was a draft. I would like to submit to replace, to substitute for the Exhibit 61 that was marked and make this corrected final version that was submitted earlier that day, Exhibit 1. So substitute one for the other. It would be NAJ-8.

THE COURT: Any objection? AMS, I think would be -- or anyone else.

MR. HILL: No, I don't have any objection to that, your Honor.

THE COURT: Okay. I would propose, I think, since -- inasmuch as the correct version is on the website, I don't -- we could label this Exhibit 61A or

something like that. I think we'll just keep 61 and make sure we keep track of --

MR. VETNE: So what -- what was submitted online early Wednesday morning is what I hold in my hand and to which I referred in the argument. What was printed and marked as Exhibit 1 was not that version. That was the draft, an incorrect version. So I would like to rather than have A and B, just substitute this, make it 61.

THE COURT: Yes. That's fine. Fine with me. We have a new version of Exhibit 61.

While that's being handed out, I think we can move forward.

Is there any other preliminary business?

MR. VETNE: I would like to say also that the version I hold in my hand, that is now the substitute version of the correct one, is also one that I exchanged by e-mail with people, and if you didn't get one, I'll be glad to do that for anybody that asks.

THE COURT: Very well, sir. I think I need a copy.

Okay. With that, any other preliminary business?

Okay. With that, Witness Covington has again taken the stand, and I have reminded him that he remains under oath. I think we had interrupted at the end of the day, cross by AMS.

Ms. Taylor, was this yours?

Oh, I'm sorry, of course. Introduce yourself again. I'm getting to be bad with names.

MR. WILSON: Todd Wilson, USDA.

THE COURT: Mr. Wilson, the witness is yours.

CROSS-EXAMINATION

BY MR. WILSON:

Q. Good morning, Mr. Covington.

A. Good morning, sir.

Q. I'd like to clarify some items from your testimony.

On page 2 in the middle of the page, you make a statement that there is a tradition of publishing prices at certain percentage standards.

Upon the -- upon this proposal being modified, the Federal Milk Order, do you expect that those standards to change based on the proposal -- new proposal language?

A. I can't say -- I can't say for certain. That final decision would have to be left up to the people who -- who publish these numbers. But I would anticipate that when it comes to the components in the skim, if this proposal is accepted, they would be updated to the skim factors that we are proposing.

Q. Thank you.

Also, there's been a few times in the testimony, yours and Dr. Vitaliano's, that the Class II pricing is not being modified. I'd refer you to Appendix -- I've got too many pages. They are stuck together.

On Appendix 1, the top subparagraph F has language that appears to be modifying Class II solids nonfat pricing. Is that correct?

A. Yes, sir. That is correct.
Q. So Class II pricing from a solids nonfat perspective will be changing based on the new proposed?
A. Yes, sir. That is correct.
Q. Thank you.
The next page of that appendix is the order language. There's a subparagraph 2 and 3.
Is there -- in one paragraph you used the word "after" in describing how many months after, and in the next paragraph you describe the years as following year, third year.
A. Yes, sir.
Q. Are there different implications of using those two descriptors in your mind?
A. No, sir. I will point out that we -- we have flexibility here. Our -- our main objective is to have a 12-month lag from implementation. And also, if -- through our update procedure, if the numbers need to change to give the Dairy Division appropriate time to do those calculations, appropriate time to announce it to the industry. So we have flexibility if this proposal is implemented and the Dairy Division sees better dates to use in that time period.
Q. In referring to the 12-month lag, you expect there to be 12 full months before the next -- before the implementation of a new change?
A. Yes, sir.
Q. Thank you.

Also, I think you just referred to it, if -- if the calculations are not available upon February the 28th, let's say, and they are not available until, say, March or April, do you expect that then to be flexible enough to account for that?

A. Yes, sir. We -- we know it takes time to do calculations. So, yes, we are flexible.

MR. WILSON: Thank you.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good morning.

A. Good morning.

Q. I wanted to -- well, I'll first start on the first page of your testimony.

You list that SMI currently has 114 dairy farmer members?

A. Yes, ma'am.

Q. Could you give us a little idea of how many of those would be considered small businesses as the definition is less than $3.75 million a year in revenue?

A. Southeast Milk is very similar to most cooperatives. You know, it goes by the 80 -- you know, pretty much 80/20 rule, 20% of the producers producing 80% of the milk. Those would be small businesses, and I'm going on memory because I have calculated. It would probably be about two-thirds to three-fourths of those 114 would meet the small business definition.

Q. Thank you.

On page 4 of your testimony, towards the middle under the Challenges header, you talk a little bit about "failing to adjust" -- the paragraph starts "failing to adjust the skim milk component factors." And towards the bottom you talk about the marketing challenges that will continue if your proposal is not adopted.

So I wondered if you could just describe a little or expand a little for the record on what marketing challenges would be remedied if your proposal is adopted.

A. Again, this proposal, if -- you know, if it's adopted, and the skim milk component factors are updated, it would increase the Class I mover skim milk price. It would increase that. So that would give the spread or the difference between the Class I skim and the Class III and IV prices in the multiple component -- multiple component pricing orders back to a difference it was when Federal Order Reform went in.

And again, trying to serve the Class I market, especially in the area that's Southeast Milk markets, we have to go to some of those -- those areas for supplemental milk. So it would make us more competitive for supplemental milk as far as bringing that milk in, and plus the additional value will give us encouragement, also, to try to help maintain a local milk supply to serve the consumers in the area that we serve if we can increase the price of Class I milk.

Also, in the multiple component pricing areas, if we could increase the skim milk value -- or the skim milk

revenue that goes into the order pool, that will provide more money to increase the producer price differential and which should, at least, lessen the chances of milk being depooled, provide some more stability in the marketplace.

Q. Okay. Thank you.

And then another question, because I know we took a long and windy road yesterday, but I wanted to try to summarize. And I think you got there, but it is this difference that -- between the III, IV prices and the Class I skim, that kind of difference that existed in 2000 is different now.

And that's the misalignment of prices that you are talking about in your testimony?

A. Yes, ma'am. That's -- thank you. That's -- you're absolutely correct.

Q. Okay. Can you -- I know you covered in your testimony -- but I always like to get things reiterated a little bit -- the .07 percentage points. You talked about how you looked at -- and I can't -- I circled the word somewhere -- "it was determined" -- on page 10, in your testimony -- "it was determined by looking at the historical change in the nonfat solids level."

Can you talk about the time period you did a lookback?

A. Yes, ma'am, I can. The data that I had on components, as it is in my testimony, was from 2000 to 2022. Again, that's one of my charts. So that's the time period that I used.

And so what we did, we started at 2000, and if we assume we started with those factors that was put in in 2000, and if our proposal was accepted, just did that calculation from 2000 down to 2022. And we looked at those numbers, and it was a group of us, a part of the National Milk producers Federal Order task force. And, again, trying to keep in mind that we wanted to promote orderly marketing. We wanted to make a change if a change needed to be made, but we didn't want it to be a nuisance change.

And so pulling all that data together was both -- I would classify it as being both a science and an art. That's how we arrived at the 0.07 factor.

Q. So that would allow changes to happen but not all the time?

A. That -- that is correct. It would have to be, again -- and we want to do it just based upon nonfat solids, which is the sum of the two. So if it increases above that or above, you would make the change; if it didn't, you would not make the change.

Q. Okay. And in your proposal you talk about the initial change would happen to look at -- implement basically 2022 factors, and then after that the lookback would be over three years of data.

A. Yes.

Q. And so a question has arisen amongst us at USDA, is how come you didn't choose to do three -- a lookback of three years to get you the initial change as well?

A. We want to make the system as accurate as possible, and so we wanted to go ahead and start with what what's in place. Start with the exact -- exact number. Let's just go ahead and do it while we're here now and try to get it right the best we can, because we'd still been behind a little bit if we had gone back three years.

Q. Okay. And is there anything particular where you chose three-year, just --

A. Again, it was collectively, we talked about it. We know we need to make a change, but yet, we didn't want to make a change no more than necessary.

And also, you think about, we don't know what the future holds. There is volatility in the dairy industry. There could be some ups and downs in components. We just don't know. Again, on my experience, feed quality has a major impact on component level. And thank goodness we haven't had any major, major feed challenges in this country, but we could. And if we had a major feed challenge, we could see maybe a dip in components one year.

And then with all the technology that we have going on today, I mean, who knows through genomics and biotechnology and improved nutrition what might happen. You know, some feed additive might come out, could really jump up components. And by using the three years we just felt that was a reasonable number to average out any ups -- unexpected ups and downs.

Q. Okay. Thank you.

MS. TAYLOR: That's it from USDA. Thank you so much.

THE WITNESS: Thank you. I appreciate it.

THE COURT: Okay. There shouldn't be any further cross unless something came up in AMS's cross.

I guess we're ready for redirect, Ms. Hancock.

MS. HANCOCK: Thank you, your Honor.

REDIRECT EXAMINATION

BY MS. HANCOCK:

Q. Mr. Covington, yesterday we went through your credentials to qualify you as an expert in this proceeding. And Marvin Beshore was listening in and sent me a note that said, hey, we forgot a really important credential.

I'm wondering if you left off any credentials you could share with us today?

A. You might be referring to the one, also part of my education, I did receive completion of coursework in the ministry at Moody Bible Institute. And I -- I do some -- I'm an ordained elder in the church. I do some preaching. Also, I conduct some weddings and also funerals.

Q. And how long have you done that?

A. Oh, we're going to go back, I think I preached my first sermon in -- after being ordained back in the early 1980s.

Q. Okay. Long time then?

A. Yes, ma'am.

Q. Okay. Do you have your testimony in front of you?

A. Yes, ma'am, I do.
Q. And this is, just for the record, Exhibit 64.
A. Yes, ma'am.
Q. If you could turn to page 6 and page 7 of your report, I want to talk about your Tables 3 and 4 in your report.
A. Yes, ma'am. I have Table 3 in front of me.
Q. Okay. Yesterday you received some questions from Mr. English that suggested that -- in particular, I think he was referring to Table 4, but for both of your tables, that -- that somehow you might have been hiding the actual prices paid there or that you had somehow misrepresented the numbers and in a manipulative way.

I'm wondering if you could provide some clarity about that today.
A. Yes, ma'am, I can.

In Table 3, my title says Misalignment in Skim Milk Prices, Class III Skim Versus Class I Mover Skim. So the title, you know, tells me -- you know, states the prices I am comparing. And the purpose of this table was to show the misalignment. It goes back to answer a question I gave to Dairy Division.

And I used the current skim milk components, 3.1, 5.9, and compared it to the average in 2022, 3.39 and 6.02. And, again, I used 2022 prices.

And so the Class III price, skim price, based upon the current component levels, 10.92, which would be the announced price, and where actual price with increased

components of the average should be 11.75. And I compared that to the Class I mover and showed that that remains the same.

If -- for example, I could have taken the Class I mover skim price, and I could have added a Class I differential to it. For example, if I took the current Class I differential, for example, in Atlanta -- or excuse me -- Orlando, Florida, which is 5.40 hundredweight, I added 5.40 hundredweight to 13.03 under 2000 and 13.03 under 2010, again, the difference would still remain zero.

But, again, the purpose of this -- this table was to show the impact of increase in producer components on the average Class III price whereas the Class I mover skim was not changed because the increased components was not reflected.

And, again, I did the identical same thing in Table 4. Misalignment in Skim Milk Prices, Class IV Skim Versus Class I Mover. Again, Class I mover is going to be the same. And I could have done the same thing, added a Class I differential, but it would not have changed the results or the point I was trying to make from these tables.

Q. Is Proposal 1 looking at changing the skim milk components?

A. Proposal 1 entirely deals with updating the skim milk component factors.

Q. Is it looking at all the changes of Class I price?

A. It would -- it would increase the Class I mover

skim price.

Q. And is that why you didn't include that Class I?

A. Yes, because it did not add anything to -- to the testimony I was trying to provide to support the reason for a change.

Q. And yesterday, there was a discussion on the relationship between butterfat and protein. I'm wondering if you could provide some comments on that as well.

A. Yes. There is both a genetic and a phenotypic correlation between butterfat pounds and protein pounds, and also between butterfat percent and protein percent.

That correlation, in terms of genetic improvement, is considered to be a relatively high correlation. I don't have those numbers from memory, but in -- but testimony that's already been presented from Van Amburgh -- Amburgh from -- professor at Cornell University, he has that table in his testimony. It's already on the website, that has a table that shows those genetic corr- -- both genetic and phenotypic correlations.

Q. Okay. Thank you.

THE COURT: Pardon me. When you say correlation, you mean a positive correlation: One goes up, the other tends to go down?

THE WITNESS: That is correct. For example, if -- if you have a herd of cows and your butterfat percent goes up, high correlation that your protein percent is going up. It is not a complete 1 to 1. I think it's about .6 to .7, but --

THE COURT: Thank you. I just wanted to make sure it wasn't a negative correlation.

THE WITNESS: Yes, sir. Thank you.

BY MS. HANCOCK:

Q. And yesterday you also received some questions on a cooperative's ability to reblend and whether it gives it some competitive advantages over proprietary plants.

Would you mind explaining why a cooperative can reblend and why it's important that a cooperative has the authority to reblend?

A. Yes, ma'am, I -- I can.

First of all, let me give you my definition of reblending. You know, reblending would be when the price that the cooperative pays a dairy farmer is below the announced Federal Order uniform blend price. And there are times, many times at Southeast Milk, where the price we paid our producers would be below that uniform blend price.

The reason -- the reason for that is that the cooperative is serving the market. In our case, we are balancing a lot of Class I fluid handlers. Their milk needs are not the same every day, and they don't always match up with the production coming from the farms.

So at times we're going to have more milk than is needed, because we have to ensure we have supply -- max supply to meet when they need milk.

So there will be times that we don't have enough, so we would have to go out and purchase supplemental milk,

and that is an additional cost. And once we pay that cost and we pool our proceeds together to pay dairy farmers, it could bring that price down below.

Likewise, there's going to be times we're going to have too much milk. Okay. But we have to have that reserve supply. And generally, when we have too much milk, everybody's got too much milk, so we have to find a home for that milk. And generally the home for that surplus milk is going to be well below the Federal Order minimum class price, so we take a loss on it, plus the transportation. So, we have that cost. We pool all that in. So, again, the balancing cost is a big factor why sometimes we have to pay below the minimum.

Likewise, we have dairy farmer members that are in different locations -- different price locations within the area that we serve, and we're not always able to get their milk -- they might be lo- -- physically located in a higher location adjustment. We might not always be able to get their milk to a plant that has that same location adjustment. We have to do what's most efficient and to best serve our members.

So if we continue to pay that producer where he is located, but we can't get the money for his milk, that's something that we -- that lowers the total -- the total pool there.

So cooperatives serve a very important function in that they balance the market, and there's a cost in doing that. And that's -- to me, if I go back in history,

that's one of the reasons why we have that provision in the Agricultural Marketing Agreement Act of 1937, to allow cooperatives to do that to provide that service.

And also, we got to remember that the Act in the Federal Milk Marketing Order program looks at a cooperative as a producer. Yes, it might be made up of several producers, but it is treated as a -- as a producer as well. And then that producer, just like he's going to have expenses to produce that milk, that cooperative has expenses, which could end up lowering -- lowering that blend price it pays to farmers.

Q. So in your opinion, do you believe that reblending -- or the ability for a cooperative to reblend gives it a disproportional advantage over the proprietary plant?

A. No, sir, it doesn't -- excuse me -- no, ma'am, it doesn't give a disadvantage. It's a tool that's needed if cooperatives are to continue to provide their function of helping to balance the market.

Q. Okay.

MR. HILL: Thank you, Mr. Covington. I really appreciate your time and testimony.

THE WITNESS: Thank you, ma'am. Uh-huh.

THE COURT: Anyone think they are entitled to re-cross?

Very well.

Okay. Move to admit exhibits?

MS. HANCOCK: Thank you again for the reminder,

your Honor.

THE COURT: Not at all.

MS. HANCOCK: We'll move to admit Exhibit 64.

THE COURT: Any objection?

Exhibit 64 is received in evidence.

(Thereafter, Exhibit Number 64 was received into evidence.)

THE COURT: Yes?

Exhibit 65?

MS. HANCOCK: No objection, your Honor.

THE COURT: No objection from anyone else.

Exhibit 65 is received into evidence. Just making a note.

(Thereafter, Exhibit Number 65 was received into evidence.)

THE COURT: I think that's it for this witness, right? We didn't have any -- didn't leave anything open?

Okay. Mr. Covington, thank you for your testimony. You may step down from the stand. You are excused. I appreciate it.

Next witness?

Please raise your right hand.

ERICK METZGER

being first duly sworn, was examined and testified as follows:

THE COURT: Your witness, Counsel.

MR. VETNE: Thank you.

John Vetne, consultant representing National

All-Jersey. The witness is Erick Metzger.

DIRECT EXAMINATION

BY MR. VETNE:

Q. Mr. Metzger, can you state your name, full name, and business address for the record?

A. Erick Metzger, E-R-I-C-K, M-E-T-Z-G-E-R. Business address is 6486 East Main Street, Reynoldsburg, Ohio, 43068.

Q. And you have prepared some testimony and exhibits which we will refer to during the course of your testimony; is that correct?

A. That's correct.

Q. And you are here appearing as a witness for National All-Jersey in a milk hearing proceeding.

Can you describe, briefly summarize your experience in the dairy industry?

A. I was raised on a dairy farm in Northern Indiana, actually about an hour and a half north of where we are today. We had -- we had a herd of Guernsey cattle.

Milk marketing experience very early in that there were 40 to 50 Guernsey producers who farmed a cooperative and marketed our milk under a trademark of Golden Guernsey.

Back in those days, we had -- you know, the Federal Order system implemented -- had implemented individual handler pools, so our cooperative as an individual handler at that time was experiencing 85% Class I use and about 15% Class II use from the excess

cream off of our milk that was sold as a branded ice cream.

And as time went on the Federal Order system decided to eliminate individual handler pools and go to market-wide pooling. When that came in, our Class I utilization dropped from 85% to somewhere in the 60 to 65%, which had an impact obviously on producer pay prices.

About that time was when National All-Jersey, at that time I believe led by Calvin Covington, was exploring the opportunities of marketing high protein milk to cheese plants, demonstrating to cheese plants how the higher protein milk would make them more money and that the proceeds could be shared with producers. So it wasn't long until we started marketing our milk instead of for a fluid use to a cheese plant with a protein premium for higher protein.

I have got a -- received a -- earned a Bachelor's degree in animal science from Purdue University in 1982. I went to work with the Guernsey Association, who had relocated to Columbus, Ohio, in various capacities. I was there for ten years, the last five as its CEO.

Then I was presented an opportunity with the American Jersey Cattle Association, so I moved employment to AJCA, worked on the herd services side of the business for a while. And then when the general manager's position for National All-Jersey became available, I became general manager of National All-Jersey, a position I have held since, I think, 2005.

Q. Okay. You mentioned two Jersey organizations, American Jersey Cattle and National All-Jersey.

Can you describe the relationship between those two?

A. The relationship is they are two separate entities, both of them with their own Board of Directors. There is some crossover from board members that will serve on both boards. We have staff that will work, split their time, some on the AJCA side, some on the NAJ side.

The AJCA, the Cattle Association, provides traditional herd book services, recording ancestry, recording ownership, performance evaluation on cattle, working with genetic evaluations on cattle, promoting the breed, etcetera.

National All-Jersey focuses on marketing milk and marketing cattle.

Q. Your responsibilities with National All-Jersey, have you consulted with and advised producers on the marketing of their milk in one market or one use versus another based on component content?

A. We have.

Q. Can you describe that?

A. As has been described in this hearing, there are, you know, three orders in the Southeast that are priced on fat/skim where the protein content of the milk isn't -- isn't recognized in and of itself. We have done analysis for producers who had the opportunity to either have their milk pooled in a fat/skim order or in one of the

component -- multiple component pricing orders that borders the fat/skim orders.

We have done analysis as to what -- which pricing would be more advantageous for their milk and have either worked with their -- if their current handler had the opportunity to pool their milk, either in a fat/skim order or a component pricing order, worked with their handler to recognize which pooling arrangement would be more advantageous for the producer, or if they were currently with a handler who didn't have the option to pool in one market or the other, help them find a handler. If it was advantageous for their milk to be pooled in a component pricing order, find a handler who could do that for them.

Q. Okay. And as a result of those consultations, have you had members who have shifted from fat/skim order to component pricing order?

A. We have.

Q. Have you also done analysis, consulting, and advised handlers on their use of high component milk for certain purposes?

A. Yes, we have. One of our -- one of our classic examples involves cottage cheese, which is a Class II product. The cottage cheese yield is entirely protein dependent. And so we have shown, because it is a Class II product, the handler would pay for the components, the protein in that milk, at the solids nonfat price, but because the yield of cottage cheese is protein dependent, they would realize value based off of the protein price.

So we have done analysis with handlers saying, look, if you have the opportunity to direct high protein milk into your cottage cheese operation, this is profitability gain that you could expect to realize, and then encourage them to share some of that profit back with the producer.

Q. And you have been involved in the Federal Milk Order regulatory system during the course of your employment with National All-Jersey; is that correct?

A. That is correct.

Q. Can you describe, briefly, what your functions have been with respect to the Federal Order program?

A. Many conversations, with either the Dairy Program staff in DC or Market Administrator offices. We have -- I have participated in at least four Federal Order hearings as a witness.

Q. And in those appearances, has the issue that you have discussed primarily been component and component value in milk?

A. Yes, it has been.

MR. VETNE: Your Honor, I offer Mr. Metzger as an expert in milk and milk component marketing.

THE COURT: Any objections?

I find this witness to be competent to testify to the matters set out in the statement that you have discussed on voir dire.

MR. VETNE: Okay.

We have a number of exhibits, your Honor. The

exhibits have been previous- -- except for one, have previously been submitted to Dairy Program, and they begin with NAJ-1 and go through NAJ-6 for exhibits. The testimony is labeled NAJ-7.

And then there are -- Mr. Metzger will not read his prepared testimony, but simply ask that it be marked and received as if read. But he will go over it with bullet points, which is a new exhibit, which is now NAJ -- been marked for this purpose as NAJ-9 and was submitted to Dairy Programs through their website --

This morning?

THE WITNESS: Last evening.

MR. VETNE: -- last evening.

So everything has been submitted electronically. I propose to keep the exhibit numbers in the same order as the NAJ number. We're going to start with the exhibits, go on to the testimony and the bullet points in that order, before he presents his summary.

Is that all right?

THE COURT: Yes.

MR. HILL: It appears that we don't have the actual physical exhibits. I know that they are on the website. But do you have copies for --

MR. VETNE: I do. That's my next step.

MR. HILL: Okay. Thank you.

THE COURT: Oh, I see. You are going to hand out hard copies of these things.

Yes, I -- a number of things to unpack there.

Instead of reading the statement, I like that, that we'll -- as far as I'm concerned, we can accept that as if it's read unless someone else has an objection to that. We will have the hard copy.

MR. VETNE: You will have the hard copy. It's already been submitted --

THE COURT: And we're going to read the bullets -- oh, I had one question. I missed -- is there an NAJ-8?

MR. VETNE: NAJ-8 would be the objection that --

THE COURT: Oh, okay.

MR. VETNE: -- the substitute was --

THE COURT: All right. That we have already --

MR. VETNE: So we have got NAJ-1 through -9.

THE COURT: Yes. And 8's already come -- has come in. Not --

MR. VETNE: Yes.

THE COURT: -- into evidence, but it is admitted for purposes of this proceeding.

Yes, I'm okay with that procedure. If anyone else has an objection, so state it.

MR. VETNE: Let's get this done as quickly as possible. Start with number 1. Somebody give me instructions here. I give one to the judge, one to the reporter, four over there, and I'll give Erin the rest, and Randale is distributing to the audience.

THE COURT: Yes. Let's go off the record while we're handling this administrative task.

(Off-the-record.)

THE COURT: Is the next exhibit 66?

All right. I guess I shouldn't go off the record. We'll label -- back on the record.

Document labeled Exhibit NAJ-1 will be marked as exhibit -- hearing Exhibit 66.

(Thereafter, Exhibit Number 66 was marked for identification.)

THE COURT: Document marked Exhibit NAJ-2 will be marked for identification as Exhibit 67.

(Thereafter, Exhibit Number 67 was marked for identification.)

THE COURT: Document marked Exhibit NAJ-3 will be marked Exhibit 68 for identification.

(Thereafter, Exhibit Number 68 was marked for identification.)

THE COURT: Document marked Exhibit NAJ-4 will be marked Exhibit 69 for identification.

(Thereafter, Exhibit Number 69 was marked for identification.)

THE COURT: Document Exhibit NAJ-5 will be marked hearing Exhibit 70 for identification.

(Thereafter, Exhibit Number 70 was marked for identification.)

THE COURT: Document marked Exhibit NAJ-6 will be marked as hearing Exhibit 71 for identification.

(Thereafter, Exhibit Number 71 was marked for identification.)

THE COURT: Identified as NAJ-7 will be marked

Exhibit 72 for identification.

(Thereafter, Exhibit Number 72 was marked for identification.)

THE COURT: Document top right-hand corner NAJ-9 will be marked as Exhibit 73.

(Thereafter, Exhibit Number 73 was marked for identification.)

MR. VETNE: All right. Your Honor, all of the NAJ exhibits and testimony have been marked.

I have a request that NAJ-7, which is Exhibit 72, I think, the testimony, that that be not only marked and received, but it be incorporated -- the instructions to the reporter -- to put it in the transcript as if read, so that the context of the testimony will be in one place that it has been for all of the testimony.

Is that okay?

THE COURT: Seeing no objections, yes.

MR. VETNE: Thank you.

THE COURT: Ms. Reporter, if you will -- it shall be done.

(Testimony of Erick Metzger as per Exhibit 72, NAJ-7:)

THE WITNESS: My name is Erick Metzger, and I serve as the General Manager of National All-Jersey Inc. (NAJ), a position I have held for 16 years. NAJ's business address is 6486 E. Main St., Reynoldsburg, Ohio, 43068.

I was raised on a dairy farm in Indiana, earned a

Bachelor of Science degree in Animal Science from Purdue University in 1982 and an MBA from Franklin University in 1999. I was employed by the American Guernsey Association for 10 years, including five years as its CEO. I have been with the Jersey organizations for the past 31 years.

During my tenure with NAJ, I have written numerous newsletters and articles for industry publications, provided economic analysis for producers and processors, and participated in industry discussion panels. I have testified as an expert witness and filed comments in conjunction with previous Federal Order hearings.

NAJ is a national membership organization of over 900 milk producers and other people interested in supporting milk pricing that recognizes the value of milk components. Approximately 20% of NAJ members own dairy cattle other than Jerseys. It is this policy that compels NAJ to propose and testify in support of Proposal 2 to annually update the skim component factors used in the skim milk price formulas for Class III and Class IV milk.

Purpose of Updating Skim Component Factors. The current Class III and Class IV skim milk price formulas are:

Class III skim milk price = (protein price * 3.1) + (other solids price * 5.9);

Class IV skim milk price = nonfat solids price * 9.0.

The current skim component factors of 3.1% protein, 5.9% other solids, and 9.0% nonfat solids

substantially understate the skim components in average producer milk. Updating the skim component factors will make the Class III and IV skim milk price formulas more accurate in relation to actual components in producer milk and will impact Class I prices across all FMMOs and Class II, III, and IV prices in the fat/skim FMMOs, 5, 6, 7 and 131.

NAJ contends that updating the skim component factors generally and more regularly will help to reduce incentives for manufacturing to disassociate from FMMOs and will reduce disorderly marketing associated with the uneconomic movement of milk that occurs when manufacturing prices in non-MCP orders and Class I prices in all orders are not in alignment with the pricing of manufacturing milk in MCP orders where the actual value of those components play a role and have been on the rise.

Updating skim factors more regularly will reduce the burden on the pool when Class I contributes less component value to the pool than it draws out in component value, thus contributing to incentives for manufacturing milk to depool. Updating skim factors more regularly will improve the alignment between manufacturing prices in skim-fat orders and manufacturing prices in MCP orders as well as Class I prices in all orders and manufacturing prices in MCP orders.

In addition, updated skim component factors will reduce the incentive for uneconomic milk movements by suppliers to move higher component milk away from outdated

fat/skim priced outlets in fluid deficit regions to locations with higher value MCP pricing.

Furthermore, updating skim component factors will reduce the current disincentive to move milk from reserve supply areas that are priced on MCP to deficit fluid milk markets that are priced on fat/skim.

FMMO data shows the current skim factors are much lower than the skim components in average producer milk.

The current skim component factors of 3.1% protein, 5.9% other solids, and 9.0% nonfat solids substantially understate the skim components in average producer milk. NAJ Exhibit 1 shows that skim milk pooled in the seven MCP orders during 2022 averaged 3.39% protein, 6.03% other solids, and 9.41% nonfat solids. Skim solids data from MCP orders includes 100% of the pooled milk and is audited and verified by Market Administrators.

Furthermore, NAJ Exhibit 1 shows that the rate of increase for skim protein has accelerated in recent years, indicating that the factors should be updated regularly to keep the price formulas accurate. Just two years earlier in 2020 skim components averaged 3.30% protein, 6.01% other solids, and 9.31% nonfat solids in the same orders.

Increases in both protein and butterfat account for the accelerating trend. In 2020 milk pooled in the MCP orders averaged 3.17% protein and 3.94% butterfat which equates to 3.30% protein in skim milk (3.17/(100 – 3.94)). By 2022 protein increased to 3.25% and butterfat

jumped to 4.08% making skim protein 3.39% (3.25/(100-4.08)).

Increasing protein and butterfat tests can be expected to continue due to several dynamics. The first factors are the combined impact of improving genomic evaluations for both males and females along with increased use of gender-selected semen. Gender-selected semen allows dairies to produce their herd replacements from the best cows in their herds.

Secondly, numerous milk buyers have implemented production quotas or base/excess programs. Virtually all these programs are volume based. When producers are limited on the volume of milk they can market, they logically increase the component content of their allowable production.

Third, the use of automated or robotic milking systems is increasing. Each automated unit collects approximately the same volume of milk per day. Therefore, producers can maximize revenue by increasing the component content of the milk gathered by each automated unit.

The case for annual updates. The NMPF proposal calls for the skim solids factors to be updated every three years using the preceding three-year average. NAJ Exhibit 1 calculated annual and three-year averages beginning with milk pooled in 2014. Based on that scenario, the first three-year average calculated following 2016 would have been 3.24% protein, 5.97% other solids, and 9.21% nonfat solids. These factors would be

used for milk marketed in 2018, 2019, and 2020.

The next three-year average would be calculated following 2019. Milk pooled in 2019 averaged 3.29% protein, 6.00% other solids, and 9.29% nonfat solids, which were 0.05% protein, 0.03% other solids, and 0.08% nonfat solids greater than the skim factors in effect at the time.

Furthermore, the updated three-year average calculated following 2019 was 3.27% protein, 5.99% other solids, and 9.27% nonfat solids, an increase of only 0.06% nonfat solids, which did not meet NMPF's proposed threshold of a 0.07% increase in nonfat solids needed for the factors used in the skim milk price formulas to be updated. Therefore, the three-year skim factors calculated from 2014-2016 (3.24%, 5.97%, and 9.21%) would still apply to milk marketed in 2021 (3.35%, 6.01%, 9.36%).

NMPF's proposal states that when the updated three-year average does not meet the 0.07% NFS minimum threshold, the three-year average will be recalculated the following year. The three-year average following 2020 was 3.29% protein, 6.00% other solids, and 9.29% nonfat solids, an 0.08% increase over the skim factors in use at the time, so the skim component factors in the price formulas would be updated and used for milk pooled during 2022, 2023, and 2024. However, actual skim had increased to 3.39% protein, 6.03% other solids, and 9.41% nonfat solids in 2022, and is projected to be higher for 2023 and

2024.

Updating the skim component factors annually will keep the price formulas more accurate, and in better alignment with pricing available in MCP orders, than using three-year averages that are updated every three years. This is particularly true considering the recently accelerated pace of component increases which are expected to continue.

Updating skim factors more regularly will reduce the circumstances that contribute to manufacturing milk disassociating from FMMOs.

Producers in MCP orders are paid for all pooled pounds of protein, butterfat, and other solids. However, Class I skim value is based on the average of Class III and IV skim values, plus $0.74/cwt., using the standard skim component factors of 3.10% protein, 5.90% other solids, and 9.00% nonfat solids. When Class I skim contains higher protein and other solids than the standard factors, Class I skim can draw more skim value from pooled revenue than it contributes.

Furthermore, Class III and IV handler obligations to FMMOs are based on the actual components pooled: Protein and other solids for Class III, and nonfat solids for Class IV. Class III and IV actual component levels typically exceed the standard skim component levels used to value Class I. Depending on the price relationship between protein and nonfat solids, Class III skim value can exceed the skim values of both Classes I and IV, or

Class IV skim value can exceed the skim values of both Classes I and III.

In those instances, handlers of Class III or Class IV would be obligated to contribute to pooled revenues instead of drawing from pooled revenues. When those value relationships occur, Class III or Class IV handlers often opt to disassociate their milk from the FMMO, a practice commonly referred to as depooling. Two results of depooled milk are that it increases non-uniformity of pricing among handlers as well as non-uniformity of pricing among producers.

NAJ Exhibit 2, “Comparison of Classes I, III, and IV Skim Values (at test)," illustrates skim component values and price relationships for 2021 and 2022 along with Class III and IV pooled volumes. In 2021 Class III skim value exceeded both Class I and IV skim value. As a result, only 37.5 billion pounds of Class III was pooled. In 2022, Class III skim value was less than both Class I and IV skim value, and 81.7 billion pounds of Class III was pooled.

However, Class IV shows the exact opposite scenario. In 2021 Class IV skim value was less than both Class III and Class I, resulting in 37.2 billion pounds of Class IV pooled. However, in 2022 Class IV skim value exceeded both Classes I and III, and the volume of Class IV pooled dropped to 14.6 billion pounds.

NAJ Exhibit 2 also shows Class I skim value in 2021 would have been $11.26/cwt. based on NAJ’s proposed

updated skim component factors of 3.29% protein, 6.00% other solids, and 9.29% nonfat solids. The Class I skim value would have exceeded both Class III and IV skim value and discouraged Class III depooling. In 2022 NAJ's proposed updated skim component factors of 3.30% protein, 6.01% other solids, and 9.31% nonfat solids would have generated a Class I skim value of $13.55/cwt., higher than both Classes III and IV, and would have discouraged Class IV from depooling.

In April 2021 Dr. Marin Bozic and Dr. Christopher A. Wolf published Working Paper 21-01 in conjunction with the Program on Dairy Markets and Policy (https://dairymarkets.org). Included as NAJ Exhibit 4, that article entitled "Negative Producer Price Differentials in Federal Milk Marketing Orders: Explanations, Implications and Policy Options," analyzed six factors that contributed to negative PPDs including increasing component tests.

In brief, PPDs represent the difference in an order's total pooled milk value and the value of the order's protein, other solids, and butterfat. Beginning on Page 16, the authors describe the impact of increasing component tests on PPDs:

"Increases in protein test reduce total producer price differential. The reduction is higher in orders where more milk is utilized in Class I. Since the value of Class I skim milk depends only on pounds of skim milk used, not protein test, increase in the protein test does

not increase handler obligation to the pool for Class I skim milk. The negative impact on PPD will also be more pronounced the wider the spread between protein price and nonfat solids price."

The research found that the outdated skim component factors contributed an average of -$0.14/cwt. to PPDs during 2020 (Table 6, page 37). Furthermore, the research analyzed the impact of adjusting the skim protein standard to 3.4% from the current 3.1% and found that the change would have added an average of $0.38/cwt. to PPDs from 2015 through 2020 (Table 8, page 39).

Adjusting the standard component factors in the skim price formulas will keep Class I skim value more nearly aligned with manufacturing skim value, thereby reducing the current negative impact on PPDs and reducing the incentives for handlers of Class III and IV to depool.

Given that handler pool obligations are based on actual components, and given recent rapid increases in skim components, updating the skim component factors annually will align Class I skim value more closely with manufacturing skim value in MCP orders than implementing a three-year average updated every three years.

Impact of updated skim component factors on Class I in all orders and Classes II, III, and IV in fat/skim orders. NAJ Exhibit 6, Impact on Class I Skim Values 2019 – 2022, compares Class I skim values using current skim component factors, NMPF's proposed three-year averages that are updated every three years, and NAJ's

proposed annual updates.

Using a starting date of 2014 as shown in NAJ Exhibit 1, the three-year skim component average in effect for 2019 would have been based on years 2014-2016 (3.24% P, 5.97% OS, and 9.21% NFS). NAJ's proposal to update skim component factors annually would have used 2017 averages of 3.27% P, 5.98% OS, and 9.25% NFS. NMPF's proposal would impact Class I skim value by $0.24/cwt., and NAJ's proposal would impact Class I skim value by $0.29/cwt., a $0.05/cwt. difference.

Going forward, NMPF's three-year average from 2014-2017 would continue to be used for 2020 and 2021 because the next scheduled re-calculation of the three-year average following 2019 resulted in an increase of 0.06% NFS, less than NMPF's proposed minimum threshold of a 0.07% increase. By 2021, the spread in Class I skim value between the NMPF proposal and the NAJ proposal widened to $0.11/cwt.

NAJ Exhibit 3, Impact of Updated Skim Factors on fat/skim Orders, utilized data provided by USDA's data "Milk Components by Class and Order – 2008-2023." NAJ focused its analysis on Orders 5, 6, and 7 only because USDA's footnotes to the dataset stated that Order 131 components were simply based on Order 124, whereas component data for Orders 5, 6, and 7 represented over 70% of milk pooled in those three orders.

NAJ's Exhibit 3 compares Class II, III, and IV values for Orders 5, 6, and 7 from 2019 through 2022 based

on: Current fat/skim pricing; fat/skim pricing using NAJ proposed updated skim component factors; MCP pricing (including NAJ proposed updated skim component factors impacting Class II).

In broad terms, the weighted average skim component content for Classes II, III, and IV for orders 5, 6, and 7 mirror national skim component factors. In all four years (2019-2022) the skim components in manufacturing milk exceeded the current skim component factors of 3.10% protein, 5.90% other solids, and 9.00% nonfat solids.

Proposal 2 will ensure that manufacturers in Orders 5, 6, and 7 will pay prices for their milk needs that more accurately reflect the value of that milk. Furthermore, Proposal 2 will more nearly equalize manufacturers' skim costs between the fat/skim orders and the MCP orders. The current skim component standards afford manufacturers in the fat/skim orders a cost advantage over manufacturers in MCP orders. NAJ firmly believes that the analysis would hold true with Order 131 if the data were available. I am aware of no reason why it would not.

Updating skim factors to stay in alignment with current component. Levels nationally will reduce the incentive for uneconomic milk movements that make it difficult for fluid milk plants to attract nearby milk.

NMPF’s proposal to update skim component factors included the following justification: "Three of the

non-MCP orders, Appalachian, Florida and Southeast, do not have an adequate supply of producer milk within their marketing areas to meet consumer fluid milk demand. Supplemental milk must be transported into these markets to meet this demand. The supplemental milk is typically supplied from Federal Orders using MCP. The higher relative value of skim milk in MCP versus non-MCP markets increases the cost of supplemental milk for the non-MCP, deficit fluid milk markets. In addition, it decreases the incentive to move milk from reserve supply areas to deficit fluid milk markets. Both make it more costly and difficult to ensure consumers have access to an adequate supply of fluid milk.

NAJ agrees with this statement. Updating the skim component factors will impact the skim milk price of all four classes in the three fat/skim orders in the Southeast thereby raising the statistical uniform price by the full amount of the update. Updating the skim component factors will only affect the Class I price in the surrounding MCP orders supplying supplemental milk, and the resulting impact on their statistical uniform price will be limited to the extent of each orders' Class I utilization. The result will be to minimize the differences in skim value between the MCP and skim-fat orders, thereby increasing the incentive for milk to move from the MCP orders to the Southeast orders.

Impact on Risk Management Programs. Risk management programs have become increasingly important to

dairy producers. Various risk management tools allow producers to limit their exposure to future milk price fluctuations and milk price-feed costs margins.

Consideration of risk management tools is important when considering changes to FMMO price formulas so that a regulatory change does not create disorder in the marketplace. Sufficient time is needed between the announcement of a price formula change and when the change is implemented. Participants utilizing risk management tools need to know if and when price formulas underlying the risk management contracts are going to change and the magnitude of the change.

The annual updates to the skim component factors can be known by mid-January each year following the calculation of December Statistical Uniform Prices for the MCP orders. Each month's Statistical Uniform Price calculation includes the component content of pooled milk. NAJ proposes the updated factors become effective with milk marketed January the following year. This provides an 11-month time lag between announcement of the updated factors and when the updated factors become effective.

However, if that time lag is deemed not to be in the best interest of the industry, NAJ is open to a longer time delay between the announcement and implementation. However, NAJ also asserts that instituting a longer delay increases the imperative that the updates be done annually instead of every three years to keep the skim component factors in stronger alignment with actual components.

CME Group lists monthly dairy futures contracts for 24 consecutive months. The number of outstanding contracts is called the open interest. The Class III Milk Futures contract is the most utilized dairy risk management tool. Open interest in Class III Milk Futures contracts on August 11, 2023, was 21,029, with open interest as far in the future as March 2025. However, the heaviest open interest existed for contracts expiring in the next five months (16,923, 80%), and 93% of the open interest was for contracts expiring in the next ten months (20,023).

However, NAJ also observes that potential updates to skim component factors can be tracked monthly as FMMO data is reported through MPR Data Mart (usda.gov). NAJ Exhibit 5, Monthly Skim Components January 2019 – December 2022, shows that the average skim components reported in the MCP orders for January through June each year are very predictive of that year's final skim components.

From 2019 through 2022 average skim components reported from January through June were within 0.01% of each year's annual skim components. Therefore, it follows that concerns for the use of risk management tools in conjunction with annual updates of skim factors are greatly exaggerated.

In closing, NAJ thanks the Department for the opportunity to participate in this national public hearing to consider proposals to amend the pricing formulas in the 11 FMMOs. NAJ urges the adoption of its proposal in its

entirety because it will contribute to greater order within and among FMMOs and among milk uses.

For the reasons outlined in this testimony and supporting documentation, NAJ believes that annual updates to the skim component factors in the Class III and Class IV skim milk price formulas best achieve the objective of increasing their accuracy, thereby better aligning skim values more closely to manufacturing skim values in all orders for Class I and for Classes II, III, and IV in the fat/skim orders.

BY MR. VETNE:

Q. Mr. Metzger, in your prepared testimony, which has been marked but which you will not read, you refer to the various exhibits, NAJ-1, 2, 3, 4, 5, and 6, and you have prepared a bullet point summary, which is NAJ-9, of your testimony and the importance of the exhibits.

Is that correct?

A. That's correct.

Q. And you are going to present your oral testimony by referring to the bullet points, which we've marked as the last exhibit, and hope that the participants will follow along.

Is that correct?

A. That's correct.

Q. Okay. Are you prepared to proceed with that?

A. I am. Thank you.

Q. Thank you.

A. Thank you, Mr. Vetne.

We appreciate the Department's modified procedures with the advanced submission of testimony and exhibits, and then rather than reading -- you know, having the option of rather than reading prepared testimony to present an opening statement, and so that's what I have opted to do.

I find it difficult to write text that -- that describes data that is in spreadsheets, and so I have decided to take a different approach than is normally done at these hearings and present the spreadsheets, where the data came from, our analysis of the data, and why we think it is pertinent to these proceedings.

Shortly after the Dairy Programs announced which additional proposals were going to be noticed for the hearing, I was having a conversation with Ryan Miltner about the proposals. And I thought Ryan made a very astute observation, and that was the objective of the proposals at this hearing should be to improve the accuracy of the pricing formulas used to derive minimum pricing.

And that struck me as that is essentially the crux of National Milk Proposal 1 and our Proposal 2. We need to -- we want to increase the -- or improve the accuracy of the skim pricing -- skim component pricing formulas for Class III and Class IV.

Mr. Covington did an outstanding job of outlining how those skim components have changed over time. I was gratified to see the data that we had pulled together

matched with Mr. Covington. NAJ Exhibit 1 gets to the crux of the matter as to why NAJ is proposing these updates be made annually instead of on a three-year basis.

If we were having this hearing three years ago, NAJ Proposal 1 probably -- or Proposal 2 probably would not have been submitted because, as Mr. Covington's testimony demonstrated, as well as NAJ Exhibit 1, if you follow with my cursor, from 2014 down through about 2020 -- 2018, the skim protein content of producer milk had not -- had not changed much.

If we started at 2014, for example, National Milk's proposal, their first three-year average would have been calculated following 2016. That calculation would have been one in 2017 and applied to milk marketed in 2018.

That three-year average if we look at nonfat solids of 9.21 compared to milk marketed in 2018, which would have been the first year it would have been used, there's a bit of a difference there, but perhaps not -- not substantial. But that three-year average then would have been used, not only for 2018 milk, but also 2019 milk and 2020 milk, which by that time we were up to 9.31 on nonfat solids.

The next calculation on using National Milk's proposal would have been done after 2019. We can see what those three-year averages would have been. And in the far right-hand column, it says -- shows that the three-year average for nonfat solids would have changed by zero -- or

.06%, which would have not met National Milk's threshold of 0.7.

So we would have recalculated after 2020, and at that point, we would have come up with .08% change, which would have triggered a change in the formulas. That 2020 three-year average would have been calculated in 2021 and applied -- first applied to milk marketed in 2022.

By that time, producer milk would have been averaging 9.41% nonfat solids as compared to the formula using 9.29. Furthermore, that three-year average would have not only been used for 2022 milk, but also milk marketed in 2023 and next year in 2024.

As we can see here recently, the producers have increased their component content substantially. We believe there are three reasons for that.

One is genetic. I have reviewed Dr. Van Amburgh's written testimony that's posted on the website. He does a superb job of outlining the reasons for genetic change, and the only thing I can add to his testimony is a big old advance amen.

We believe there is general knowledge in the dairy industry, there are two other factors that are contributing to the increase of skim components. One is numerous handlers have implemented production quotas or base/excess plans for their producers whereby producers are allowed to market a certain volume of milk, and any milk they market over their allowable volume is discounted substantially. Any producer who is limited on the volume

of milk they can market in order to increase their revenue is going to increase the component content of that milk that's -- that they are allowed to market for full value.

Another reason we believe skim component factors are changing -- changing rapidly is the increased use of automated milking systems, commonly referred to as robotic systems. A robotic -- once you put in that robotic unit, it is set up, more or less, to harvest a certain volume of milk in a 24-hour period.

If each unit is limited on how much milk they can harvest from the cows, producers logically are going to increase the component content of that milk to maximize their returns.

So for those reasons, we believe that annual updates are more appropriate, because as we can see, if we move in 2020, from 3.3%; in 2021, 3.35; in 2022, we're up to 3.39; on the nonfat solids side we have moved .1 -- from 2019 to 2022, we have moved .12%.

Which if the objective is to increase the accuracy of these pricing formulas, then we believe updating annually will be more appropriate.

The question can come up, all right, how far can these skim component values go? What's the limit?

Dr. Van Amburgh in his testimony refers to Holstein production that is routinely now approaching 5% butterfat, 3.4% protein, which increases that skim protein content to somewhere I think in about 3.5 or 3.6% range.

Speaking for Jerseys, our national average,

according to the Dairy Herd Improvement Association, which Calvin described yesterday, our national average for Jersey skim protein would be about 3.9%, and our top herds are approaching a skim protein content of 4.3 to 4.4%.

So we have not maximized the skim protein capability of the national dairy herd yet. There's more room to go.

Why -- now I'm going to move to Exhibit 2.

Why is it important to keep -- to adjust those skim protein factors in the price formulas?

Well, here's a case study. Looking at 2021, the skim price through the Federal Order system was 10.83. If we -- I'm going to skip the next line for now, but if we look at Class III milk marketed or pooled that year, it averaged 3.22% protein, other solids was 5.78. If you combine those percentages with the prices for 2021, we come up with a Class III skim value of 11.13. Nonfat solids test was 9.01, nonfat solids price of about $1.09, the Class IV skim value was $9.83. And in 2021, 37 and a half billion pounds of Class III were pooled, and a little over 37 billion pounds of Class IV were pooled.

Now, let's fast forward to 2022, the reverse situation happened. Class I skim price was 13.03 -- and I apologize, these two numbers, these two decimal numbers, for protein and other solids percent, did not get converted to a percent basis. We will submit a correction of this exhibit to change that.

But it shows that in 2022 Class III protein

percent was 3.28 and other solids is 5.79. If you combine that with the protein and other solids prices for 2022, you come up with a Class III skim value of 11.36.

Now if we look at Class IV, we have a nonfat solids value of 8.19, a price of $1.50, and a Class IV skim value of 13.40. The Class IV skim value exceeds the Class I skim value, the Class III skim value, and this year is less than the Class I skim value.

And so what happened?

Now we have over 81 billion pounds of Class III pooled, and we drop Class IV pooled down to 14.6 billion pounds. So it's obvious, it is very apparent that given one of the -- that a lot of Class III milk was depooled in 2021, a lot of Class IV milk was depooled in 2022.

It is our contention that a contributing -- significant contributing factor to the depooling of Class III in one year and the depooling of Class IV in the other year is the price relationship between the Class III skim values and Class IV skim values and the Class I skim values.

MR. HILL: Mr. Metzger, can I interrupt for just one moment here?

THE WITNESS: Yes, you may.

MR. HILL: The witness has identified this as Exhibit 2. It is actually Exhibit 67 at this point.

THE WITNESS: I'm sorry, NAJ Exhibit 2. Thank you. I apologize for that.

THE COURT: No worries. We can -- I -- I was

going to say something to you, but it's probably clear in the record since we -- but thank you --

THE WITNESS: Thank you.

THE COURT: -- Witness Metzger.

THE WITNESS: Under NAJ's proposal, in 2021, the Class I skim price would have been 11.26, which is higher than either the Class III skim value or the Class IV skim value.

In 2022, under NAJ's proposal, the Class I skim price would have been 13.55, which, again, is higher than either the Class III skim value or the Class IV skim value. We believe that would provide a disincentive for manufacturing milk to depool.

Why is depooled milk of concern to these proceedings?

Depooled -- there are three reasons: Depooled milk increases the non-uniformity of prices paid by handlers; depooled milk increases non-uniformity of prices paid to producers; and depooled milk is never available to serve the Class I market. And that's why we should be -- these proceedings should be concerned with depooled milk.

NAJ Exhibit 3 examines -- changing the skim component factors will impact the Class I price in all orders, it will impact the Class II, III, and IV prices in the skim/fat orders. We did an analysis of what will be the actual impact on the skim value and in the fat/skim orders for Classes II, III, and IV.

I'm going to take some time to walk through some

detail on this first example, and then after that, I think, we can walk through the other examples rather quickly.

But what we did, from NAJ -- from USDA data in Table 1 on the website is, in 2019, we calculated the total pounds of skim that were pooled as Class II for the Appalachian, Florida, Southeast, and Arizona orders. We also totaled the nine nonfat solids that were pooled as Class II in the Appalachian, Florida, Southeast, and Arizona orders.

Then we calculated a weighted average of nonfat solids from Orders 5, 6, and 7. We excluded 131 from our -- from this analysis because the footnote on USDA Table 1 stated that the component levels in Order 131 were restricted, and so they simply applied component levels from 124.

We just made a decision that was a little less imprecise than -- or a little more imprecise than we cared to use in this analysis, so we limited it to the Orders 5, 6, and 7 because the footnote said that in 5 and 7 it represented over 70% of milk pooled, in Order 6 it was over 80%.

So in this column we believe there are several important points.

First of all, the pooled nonfat solids average 9.2%, which is well above the current standard of 9.0. The current pricing using the 9.0 standard would have valued Class II milk at 8 -- the skim of Class II milk at

8.24. NAJ's proposed updated factors would have valued that skim Class II milk at 8.46.

If this -- if multiple component pricing were implemented in Orders 5, 6, and 7, the value of that 9.20 nonfat solids based on a component pricing basis would have been $8.42.

So here is the analysis.

The actual value based on component is 8.42. We compare that to the current fat/skim price, which values that milk at 8.24, well under its true value based on components.

The NAJ proposal, using 9.24, is slightly higher than the actual 9.20, so NAJ's proposal would overvalue that compared to component pricing by $0.04 a hundredweight.

As everyone's aware, NAJ had submitted a proposal to convert all Federal Orders to multiple component pricing. That proposal was declined.

And so now the decision that the Department has to make is which will lead to more uniform price -- pricing paid by handlers and more uniform pricing paid to producers. Do we maintain the current fat/skim pricing scenario, which would undervalue this milk by $0.18 a hundredweight, or do we update the standards and potentially overvalue that milk by $0.04 a hundredweight? That's the decision we have to make, which is better.

Now, I'll try to walk through, cognizant of my time, so I'll try to walk through the rest of these a

little more quickly.

In 2019, the weighted average protein for Class III milk pooled in 5, 6, and 7 averaged 3.22, above the current standard of 3.1. Other solids was 5.98, above the current standard of 5.9. When we combine that with the prices, the current fat/skim pricing would value that Class III skim at 8.48, which is about $0.29 below its actual component pricing value.

The NAJ proposal would overvalue -- would value that Class III skim at 8.87, which is $0.10 above the component value.

Again, which is the better option, to underprice it by $0.29 or to overprice it by a dime?

Class IV of that year, nonfat solids averaged 9.20, again, well above the current component standard of 9.00. We look at the fat/skim pricing comparison. We either undervalue that milk by $0.18 a hundredweight or we overvalue it by $0.07.

I'll move a little more quickly. The next page is 2020. Again, Class II at 9.22 is above the current standard of 9.0. Class III protein, Class III other solids, well above the current component standards that are being used. In Class IV, 9.25, nonfat solids again above the current standard of 9.0. The same pricing scenarios apply for 2020 that applied in 2019. We either undervalue it by a lot or we overvalue it by a little.

2021, same scenario. Nonfat solids in Class II averaged 9.22, above the current standard. Protein and

other solids in Class III, above the current standard. Nonfat solids in Class IV, above the current standard. Multiple component pricing would have valued -- done the best job of valuing that milk. Since that's not an option for consideration, we either undervalue it by a lot or we overvalue it by a little.

2021, same scenarios. There is more nonfat solids, there is more protein other solids, and nonfat solids in Class IV than the current standard.

And 2022, again, same scenario, we have got more nonfat solids in pooled milk than the current standard. Same with protein. Same with other solids. And the same scenario with -- with using either current fat/skim pricing or updated fat/skim pricing.

So that -- that's our analysis of what the impact of updating the standards would mean to Class II, III, and IV in the four fat/skim orders.

NAJ Exhibit 4 is a paper written by Dr. Marin Bozic, who is with us today, and also Dr. Christopher Wolf from Cornell, which examined the causes of negative PPDs in the year 2020.

THE COURT: If I may, Exhibit NAJ-4 has been marked for identification, hearing Exhibit 69.

THE WITNESS: Thank you.

THE COURT: Please continue.

THE WITNESS: Thank you.

I'm not going to -- you know, this, as noted, is a 46-page research paper. I'm not going to delve into all

the details of it, particularly because I might misstate something. And the -- one of the co-authors is with us today.

But they examine, you know, in 2020, producer price differentials went to record negative levels, and so they decompressed the causes of that and they identified of reasons. One being the drop in Class I utilization, but one of those reasons was the component test, the fact that we are still valuing class -- pricing Class I on component test levels that are not reality with components that are actually being pooled, particularly in Class III and IV where those components are valued fully.

Quick summary. Because the component test standards are out of alignment with actual producer components, Table 6 shows that that misalignment contributed an average of negative $0.14 to PPDs for that year.

And then they also, as we go to Table 8, they had -- they ran a scenario where they adjusted the skim protein level from its current 3.1 up to a more realistic standard of 3.4, more in line with actual producer components. And they said, if that updated protein factor of 3.4 had been used from 2015 through 2020, it would have increased PPDs by an average of $0.38. This is important because increasing PPDs would lessen the incentive to depool milk and the negative consequences that markets realize when manufacturing milk is depooled.

Exhibit Number 5, NAJ Exhibit 5. This strikes

directly to the issue of risk management and what should be the lead time between announcing updated component standards that will be used in the pricing formulas, the lag time between that announcement and when those updated factors are actually implemented.

THE COURT: NAJ-5 is hearing Exhibit 70 for identification.

THE WITNESS: National Milk has an expert in risk management that will be testifying. Our purpose -- our proposal is that from the up- -- an annual updated skim components can be announced -- quite frankly, it can be calculated in January each year after the Market Administrators publish their statistical uniform price for December milk.

The National Milk proposal says, well, we figured, you know, a little more lag time, it could be calculated by the end of February each year and then implemented the following March instead of implemented the following January.

Folks, we are not picking this hill to die on. Okay? Whether it is implemented in January or implemented in March is not the critical factor in -- in our estimation.

However, no one who has an interest in what the updated skim component factors should be surprised by the announcement of the annual update, and that is because the skim component content of milk can be tracked on a monthly basis.

And in fact, in our case study here, looking at 2019 to -- through 2022, at the end of June each year we basically knew what the -- that year's annual skim component factors would be. In 2019, at the end of June, skim component -- skim protein averaged 3.31. At the end of the year, it was 3.30. In 2020, at the end of June, we were at 3.29 skim protein. At the end of the year, we were at 3.30.

And then here's where it gets interesting. In 2021, and 2022, when we took substantial advances or increases in skim components, it was predicted or forecasted by the end of June, because at the end of June we knew we had moved to 3.34 skim protein. And, yes, at the end of 2020 -- at the end of the year, we were at 3.35. The next year, the end of June, we were at 3.39; at the end of the year we were at 3.39.

So simply tracking the monthly skim component content of milk, essentially adds a six-month additional advance on what that announced annual skim component content will be.

And then, finally, NAJ Exhibit 6, which was marked as -- your Honor, help me out.

THE COURT: Hearing Exhibit 71.

THE WITNESS: Thank you.

There has been concern and comment in this hearing so far that will Class I handlers be paying -- essentially the argument is, will Class I handlers be paying for more protein than exists in the actual Class I milk that they

receive?

And so based on USDA Table 1, we did analysis looking at just the Class I that was pooled each year for each order, from 2019 through 2022.

Now, I'll take some time to walk through the detail on one order, which then is applicable to the analysis of the other orders in the other years.

In 2019, the Northeast Order pooled just over 8 billion pounds of Class I skim. That Class I skim contained 260 million pounds of protein, which computes to a skim protein content of 3.21. It contained 448 -- 484 million pounds of other solids, which computes to an other solids content of 5.98. And then you combine those, you have nonfat -- Class I nonfat solids total of 744 million pounds of milk and a nonfat solids skim content of 9.19.

So, now, let's look at four pricing scenarios for Class I.

The current Class I skim price results in a Class I skim price of $8.40. Using the National Milk proposal of a three-year annual update, it would have priced that Class I skim at $8.64 across all orders. NAJ's proposal to update those skim component factors annually would result in a skim -- Class I skim price of 8.69 across all orders.

Now, if we calculate the value of the Class -- of the skim components that were pooled as Class I for the Northeast Order, the actual component value would have

been 8.61. That is well above the current standard. It is a little bit below National Milk's proposal. It is a little further below NAJ's proposal. That -- you know, that's the scenario in the Northeast Order for 2019.

If we look at the Appalachian order, again, it would -- either proposal, National Milk or NAJ -- would somewhat overprice Class I skim value compared to component value. The same is -- is true for the Florida order.

But once we get past those three orders and get into the remaining eight orders, the actual component value is either equal to or greater than NAJ's more aggressive approach of annual updates to the skim component factors.

And so in summary, in 2019, yes, there would have been three orders that would have paid for more skim components than they received, but that would be counterbalanced by eight orders that received more skim component value than was -- would be priced in the NAJ proposal.

If we go forward to 2020, the same scenario holds true. We have three orders that would have skim price above the component value in Class I skim. We would have eight orders where the skim components value is actually higher than the Class I skim price, even using NAJ's more aggressive annual updates.

The same holds true for 2021. The three orders separate themselves; the other eight orders would receive

more -- would not be -- the Class I price would not exceed Class I skim component value. And also, the same holds true in 2022.

NAJ, when we saw that there would be a proposal to update skim component factors, we recognized there could be an inequity between Class I components received and Class I components how they were priced. So we submitted a proposal to be -- for this hearing, to price Class I on the actual components received. That proposal was declined as an additional proposal for this hearing. But -- but that would have been an option had our proposal been received.

And I think with that, I have covered what I care to cover in regards to why skim component factors -- first of all, why they need to be updated, and second of all, why we believe that annual updates would provide more accuracy to this -- to the skim pricing formulas and, therefore, provide more orderly marketing through the Federal Order system. Thank you.

BY MR. VETNE:

Q. Thank you, Mr. Metzger.

For context and reference, when you say annual updates, you are referring to an update at the current time based on component content of milk two years or more previously, correct?

A. That will be the practical application. For example, we are in 2023. The skim components of -- the skim components of pooled milk in 2021 would have been

calculated in early 2022 and applied to milk marketed in 2023. So, yes, there is a two-year lag between the calculation of those components and their application.

Q. Okay. And the two-year lag is what you are referring to when you refer to your proposal as more aggressive, it's already two years outdated when it is put into effect?

A. Correct.

Q. Okay. And -- and the National Milk proposal, would on occasion result in lags of five years or more?

A. Up to five years, yes.

Q. Okay. You were present for the testimony by Mr. Covington.

A. I was.

Q. Okay. And you reviewed his -- his statement and listened to his testimony.

A. I did.

Q. He has a couple of comments on SMI's qualified preference for the NA -- National Milk versus NAJ proposal. One of the comments he makes is an annual update might be a small change, not worth the effort.

Are you aware of any extra effort involved in an annual update versus an update when it reaches .07?

A. I'm not.

Q. Okay. During the 15 years or so that was -- that was analyzed -- well, actually, 22 years -- Mr. Covington referred to ups and downs.

There was -- are you aware of any down in the ups

and downs during that period?

A. Do I, relying on memory? I believe Mr. Covington's -- had a -- Mr. Covington's table showed that on nonfat solids, in that 22-year time period, there was one year where there was a decline in nonfat solids from the preceding year. And all the other years either -- nonfat solids either remained the same as the previous year or increased.

Q. Okay. And I'll show you -- I'll show you a copy of the -- Cal Covington's testimony on page 5 of 13 to see if that's what you are referring to.

A. Yes, I'm referring to Table 2 in -- in Mr. Covington's testimony.

THE COURT: That's Exhibit 64, page --

THE WITNESS: Page 5.

THE COURT: Page 5.

BY MR. VETNE:

Q. And that was a .01 drop from year to year, correct?

A. That is correct.

Q. And that's the only down --

A. In that timeframe, yes.

Q. In that timeframe. And the rest have been all ups, correct?

A. Either ups or even.

Q. Mr. Covington used the term "orderly marketing" in contrasting the NAJ proposal to the National Milk proposal.

Are you aware of any orderly marketing or disorderly marketing that could occur with respect to annual updates versus updates every three to five years?

A. No, I am not.

Q. Okay. Other than using the term, did you hear Mr. Covington refer to any marketing disorder that could result by adoption of the NAJ proposal versus the National Milk proposal?

A. I don't believe so.

Q. Okay. And finally, Mr. Covington referred to the National Milk proposal as involving a more orderly process than the NAJ proposal.

Is there any substantive difference in the process as you understand it?

A. No.

Q. Okay.

THE COURT: Between this witness's proposal and Mr. Covington's proposal?

MR. VETNE: Yes.

THE COURT: You asked if there's a difference. A difference between what?

MR. VETNE: Is there -- is there a difference in the process of updating annually and updating every three to five years other than the frequency of updates.

THE COURT: Thank you.

THE WITNESS: No.

MR. VETNE: That's all I have. The witness is available. Thank you.

THE COURT: Okay. Who's got cross? We'll wait for AMS to the end.

I was thinking at 10:00 because it's about four hours, but if now is a good time -- okay, let's take a break. Let's take ten minutes. We'll come back at 9:50.

Off the record.

(Whereupon, a break was taken.)

THE COURT: Okay. We're back in session. On the record.

THE WITNESS: Your Honor, if I --

THE COURT: Yes, Witness Metzger.

THE WITNESS: Before -- before we go to cross, I would like to interject one comment. And I have been very remiss in not recognizing my colleague, Randale Lowe, R-A-N-D-A-L-E, last name L-O-W-E, who has done yeoman's work over the last several months constructing these -- these spreadsheets that I used, and certainly needed on the record, and publicly, to thank him for all his work on behalf of National All-Jersey. Thank you.

THE COURT: And -- but they were prepared under your supervision?

THE WITNESS: Yes, they were.

THE COURT: Very good, sir.

All right. Cross-examination?

Mr. English, your witness.

MR. ENGLISH: Good morning, your Honor.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Good morning, Mr. Metzger.
A. Good morning.
Q. My name is Chip English, attorney for the Milk Innovation Group.
To try to be efficient, if we could have a copy of Exhibit 43 and Exhibit 44 that I may -- once the judge gives me permission to approach the witness, hand to the witness.
THE COURT: Of course.
MR. ENGLISH: I'm not going to start with those, but I thought it would be more efficient rather than interrupting.
THE COURT: Good plan. Thank you.
BY MR. ENGLISH:
Q. So I'm trying to keep these to a minimum, Mr. Metzger, on your Exhibit 73, which is your summary of your testimony, which I greatly appreciate, page 9, paragraph 5, H. I'm sorry, it's page 4. It's page 4 of -- yeah, I got the 9 off of the top. Sorry. So page 4 of Exhibit 73, paragraph 5, H.
Do you see that paragraph?
A. Yes, if the statement begins "Class I skim only" --
Q. Yes. "Only contributes."
A. Yes.
Q. So you have a statement there in the third line, "Class I skim can draw greater value from pooled revenue than it contributes."

Your statement presumes that there is value to Class I plants from those higher components, correct?

A. This refers to how the pool is constructed. And when the pool value is assembled, the Class I skim value is based on those current factors of 3.1, 5.9, and 9.0. And when -- so that handler would pool obligation based on Class I skim values; however, when that handler gets the pool draw, it is based on all the components provided in Class I milk.

Q. So does that mean your statement there is referring to pool value, not actual value to a Class I plant?

A. Correct.

Q. Thank you.

So now, Exhibit 71, which is also Exhibit NAJ -- or it was table I think -- or Exhibit NAJ-6. This is your comparison of Class I skim values.

And you have based this off of Table 1, correct?

A. Correct.

Q. I'm sorry, Exhibit 44?

A. Correct.

Q. Now, you understand because there is -- you were here yesterday, correct?

A. I was.

Q. Okay. You understand that there are a fair number of materials in Exhibit 44 where the numbers are estimated, correct?

A. Correct.

Q. Do you understand that for other solids and protein that the methodology for estimating the Class I pound protein is literally taking -- you subtract for III, the protein, and then you apply the protein across the other three classes, per order.

Do you understand that to be the case?

A. I believe that's what the witness testified to.

Q. Yes. And so similarly for class -- I get it backwards, what did I just say, other solids or protein -- for protein, you subtract the Class III and then just allocate across the other three classes, correct?

A. Correct.

Q. And for other solids you take it for Class IV and then allocate across the other three classes, correct?

A. Other solids? Or nonfat solids?

Q. Nonfat solids. Thank you.

A. Well, you would have nonfat solids for II and actual values for nonfat solids for II and IV. And actually, Class III, because nonfat solids in III would be the addition of other solids and protein.

Q. All right. Let me just try to keep it brief.

So the footnote, Class III and total other solids are reported in MCP orders. To estimate the pounds of other solids -- so maybe I got -- I didn't -- I shouldn't have talked about nonfat solids -- to estimate the pounds of other solids in Classes I, II, and IV, the non-Class III other solid pounds were multiplied by the percent of nonfat solids in each of the respective

classes. There is just -- it is just an estimate, correct?

A. Correct.

Q. Okay. And similarly, for protein, correct? It is an estimate for Class I, correct? Using the order values, correct?

A. Correct.

Q. Okay. So given National All-Jersey's long history in presenting and supporting and doing its best for multiple component pricing, rational actors in multiple component prices -- pricing orders, have an incentive to provide higher protein or solids milk to Class III and IV plants, correct? There is a financial incentive to do so, right?

A. Correct.

Q. Okay. And doesn't that suggest that if rational actors are doing that, that as opposed to being -- doing a calculation of an estimate as USDA has done based upon the best data they have, that it is likely to be the case, at least in MPC orders, that Class I plants are not receiving the order average?

A. That is possible. But it is also my understanding that in the MCP orders, the Market Administrators have the option to require pool plants to file two pool reports. One pool report would be for milk processed at the pool plant, and the other pool report would be for diverted milk. And so if a pool plant is diverting higher component milk to manufacturing use, those separate pool

reports would capture that.

Q. But it wouldn't be captured in this estimate, would it? It would be summarized in the estimate. And it would actually all be merged together because these estimates are across the order, correct?

A. I believe those separate pool reports would provide a more accurate accounting of the protein and other solids going to a Class III plant and the nonfat solids going to a Class IV plant. And so with a more accurate accounting of those actual components in those classes, when the subtraction is done and it is applied to the other classes, there would be fewer pounds allocated to Class I skim than if it were simply one pool report applied across all four classes.

Q. And you said the Market Administrators have the option to do that. So not all Market Administrators do that, correct?

A. I -- that was my understanding, and I confirmed that with -- in conversations with two Market Administrators.

Q. But nonetheless, if you read footnotes 2 and 3, that's not what they did. They actually estimated rather than trying -- if there's a separate pool report, that doesn't appear to be what was used for footnotes 2 or 3, correct, because it was an estimate?

A. The separate pool report would account for the actual pounds of components that were in diverted milk from that plant.

Q. I understand that. But -- but what footnote 2 and 3 says is, we took the others solids and then we estimated across the others. So you wouldn't know, actually, based upon that, what Class I plants actually got.

I mean, if you actually knew, they wouldn't be estimated, correct?

A. That is correct. But I think the separate pool reports would result in a more accurate estimate.

Q. Let me look at Exhibit 71, which is NAJ-6.

And I apologize, I was trying to prepare as I was going along. You mentioned I think that there were three orders that don't reach your proposal level. Is that correct?

A. That's correct.

Q. Which three orders were those?

A. Those would be Northeast, Appalachian, and Florida.

Q. Okay. Now, these are annual averages, correct?

A. Correct.

Q. And annual averages, by definition, there's some months that were higher and some months that were lower, correct?

A. That would be correct.

Q. So when you look at what was provided, which is the Exhibit 43 -- which thank you for asking for the data -- it certainly reflects, one, that within order there is seasonal variation, correct?

A. Yes.

Q. And two, the variation varies from order to order, correct?
A. Yes.
Q. Given that, you agree that Federal Orders provide for a minimum pricing system, correct?
A. Yes.
Q. Well, given the fact that Federal Orders provide for a minimum pricing system, why shouldn't USDA look at the lowest month for the lowest order for Class I so that no one is overpaying as opposed to a minimum price?
A. Because it would underprice milk substantially for many other orders, many other months.
Q. But this is a national system, correct?
A. Yes.
Q. And it is a minimum pricing system, correct?
A. Yes.
Q. So isn't the program designed with minimum pricing to allow then premiums and other market forces to price above that, correct?
A. Yes. Premiums should be available to -- for providing balancing services, for meeting quality standards that are perhaps more stringent because a particular handler wants that, to cover transportation costs. The Federal Orders also provide for any producer who meets the requirements of an order's requirements to serve the Class I market of that order, should share in the Class I revenue of that order. And if a substantial portion of that Class I revenue is paid out in premiums,

it is not available to all producers who are eligible to receive and share in Class I revenue.

Q. But that's necessarily true about any time you have a premium, isn't it? Nobody -- not -- everybody is not sharing in a premium. If it is a minimum pricing program, then shouldn't it be a minimum price based upon the lowest month for the lowest order for these components, otherwise you are overcharging somebody for that milk?

A. That is -- I do -- I do not agree with -- with that assertion.

Q. Okay.

MR. ENGLISH: I have no further questions. Let me get the -- unless another witness wants to look at those, I want to return those to USDA.

THE COURT: Yes.

Mr. Rosenbaum?

CROSS-EXAMINATION

BY MR. ROSENBAUM:

Q. Steve Rosenbaum for the International Dairy Foods Association. Good morning, Mr. Metzger.

A. Good morning.

Q. If the four fat/skim orders were to adopt multiple component pricing, then that would solve any alleged underpayment for milk used for Class II, III, and IV purposes to the extent that the nonfat component levels there are higher than those assumed in the current formula; is that correct?

A. Yes.
Q. And in fact, you submit a proposal to implement that very solution, correct?
A. Correct.
Q. And without wanting to suggest that I necessarily agree with the figures you provide, you do indicate the fact that component levels in those four orders do, in many cases, fall below the levels that are proposed by Proposal 1 and 2, correct?
A. They fall below Proposal 2. I have not done an extensive analysis as to whether they would fall below the National Milk proposal.
Q. Okay. Now, you testified that you have gone in your role at National All-Jersey to Class III handlers to explain why it was advantageous for them to use milk with high nonfat solids components levels, correct?
A. Yes.
Q. And that's because, as an example, if the protein level is higher, then you can -- in the milk, then you can produce more cheese, correct?
A. That is correct.
Q. Okay. Have you ever gone to a Class I handler and tried to convince a Class I handler that they should seek out milk with higher nonfat solids component levels?
A. I haven't exactly gone to a Class I handler and encouraged them to recruit higher protein milk. However, we do have a number of producers who are marketing Class I milk as -- as producer handlers. And one of the features

that is part of their marketing program is based on the fact that their milk does have higher protein value -- or protein levels.

And they -- they will do nutritional testing on their milk and compare it to what's on, you know, the standard nutritional label. They will go to retail outlets where their milk is sold and buy gallons and jugs of their competitors' milk and do nutritional testing on their milk compared to their competitors.

And part of their marketing program and marketing that Jersey milk for a premium as a fluid product is based on the fact that that milk has higher protein and higher calcium levels than competitor milk.

Q. And do you know what percentage of milk sold in fluid format in the United States is sold as having more than the standard 8 grams protein?

A. I do not.

Q. Surprise you if it is in the single digit?

A. It would not.

Q. If you could look at here in Exhibit 71.

A. Which is NAJ exhibit?

Q. 6.

A. 6, okay. Thank you.

Q. You -- do you have that?

A. I do. It is in front of me. I have it on my computer.

Q. Okay. So there is -- there are series of -- this is the document entitled Comparison of Class I Skim

Values.

A. Correct.

Q. And in the last section you have under the heading Skim Price, several columns, current, National Milk Producer Federation three-year average, annual and actual component, correct?

A. Correct.

Q. And your reference to current is that's the current price, correct?

A. Yes. Based on the 3.1, 5.9, 9.0.

Q. That's the price under the current regulation, correct?

A. Yes.

Q. The National Milk Producer Federation three-year, that's a reference in that column to Proposal 1 --

A. Correct.

Q. -- what is resulting from Proposal 1?

And then the annual, that column reflects what the price would be under Proposal 2, your proposal, correct?

A. Correct.

Q. Okay. And then Actual Comp, I think you sometimes refer to that in your testimony as actual component value. Is that -- I think that's the term of art you used?

A. Yes.

Q. Okay. So, now, that that value, what you call the actual component value, to the extent that there's a difference between actual component value and a -- and the current value, you're simply reflecting that the protein

level, for example, 3.21 in the Northeast in the first example, first row, is higher than the 3.1% assumed in the current formula, correct?

A. That is correct.

Q. Okay. And -- and that's how you get the actual component value number, correct?

A. Yes, by using the 3.21 --

Q. Okay.

A. -- times our calculated advance protein component price.

Q. But I take it you have done no analysis as to whether that -- well -- and -- so -- you have done no analysis as to whether that actually -- that extra protein has any value whatsoever to a Class I handler, correct?

A. I think that would depend on your -- on the definition of the word value.

Q. Okay. Well -- okay. Well, whether a Class I handler can charge more for its product based upon that extra protein, let's start with that one.

A. Depending on their marketing strategy, they may be able to. On a small scale, we have producers that are marketing that -- the extra -- the value of that -- of that extra component.

Q. You used the term "small scale." What does that mean?

A. Producer handler.

Q. I see. Okay.

What -- okay. And what percentage of production

in this country is producer handler at this point in time?
A. I do not know.
Q. And obviously, the calculation of protein value is based upon the way the formulas work, the price of cheese, right, not the price of fluid milk, correct?
A. Correct.
Q. And similarly, just to complete the others, the value of other solids in the formula is based upon the value of dry whey --
A. Correct.
Q. -- the finished product?
And the value of nonfat solids is based upon the market value of nonfat dry milk, not fluid milk, correct?
A. Correct.
Q. Now, you have talked about concern about depooling. One way to address depooling is to have tougher requirements like in Order 1, correct?
A. Yes. There are various ways to address depooling. I like to characterize them as, you know, carrots and sticks. Carrots are through price relationships and sticks are through regulation.
Q. And by -- and by --
A. And we should use all the tools available to us.
Q. And by "sticks," I'm going to simplify, but basically in Order 1, if you want to participate in the pool, you sort of have to stay in the pool; is that more or less a fair way to put it?
A. My understanding of Federal Order 1 is that a

producer must be pooled, I believe it is in the month of July, in order to be eligible to be pooled in the subsequent months. And if a producer disassociates from the pool during any of those months, they can't reassociate with the pool until the following July. That's -- that's my understanding. If it's not correct, I hope someone will correct me.

Q. Okay. Well, I'm not going to take that at this point.

But that's -- that's one way to address the concern over pooling, that's one real world way to address pooling, correct?

A. Yes.

Q. And another way I suppose to address depooling is, I mean, obviously, if you raise the Class I price high enough, you are going to make it advantageous for everybody to be in the pool to participate in that higher Class I price, correct?

A. If you can eliminate or reduce inverse price relationships, that will encourage manufacturing milk to be pooled.

Q. Okay. To -- I'm sorry, to --

A. To be pooled.

Q. To be pooled. Okay.

And -- but ultimately, I mean, doesn't the Class I price have to have some relationship to the actual value of the milk as opposed to simply its ability to keep people in the pool?

A. The Class I price needs to account for the opportunity cost of milk serving manufacturing markets.

Q. But that's --

A. What -- I mean, later in this hearing there will be numerous proposals to address the Class I price formula. Whether we return to the higher-of III or IV, whether we retain the average of but modify the adjuster, whether we eliminate advanced pricing and only use announced pricing, do we price it only off of Class III. All of the proposals that were noticed to deal with the Class I price have two underlying tenets, and those two tenets are the Class I price should be priced off of manufacturing prices and that the Class I price should be set higher than the manufacturing prices.

Q. Aren't Proposals 1 and 2 really Class I pricing proposals, in the sense that MCP orders govern 90% of the milk pooled in the Federal Order system, 89%?

A. 89%.

Q. And in an MCP order, the assumed formula of --

(Court Reporter clarification.)

BY MR. ROSENBAUM:

Q. -- the assumed formula levels really aren't relevant because farmers are paid based upon the actual component levels.

A. The assumed formula levels are not reflective of producer milk --

Q. Right.

A. -- which causes -- I can't think of the term --

but -- boy, I -- it causes a -- the price relationship between Class I and the manufacturing classes -- golly, I don't know what the term is. Calvin knows.

Q. I think I -- I'm not sure I know what word you are searching for. I'm not going to be able to help. It probably wouldn't be proper for me to do so anyway.

A. Misalignment, that's the word I'm looking for. Misalignment. And if it's not -- if it's -- there's a misalignment now, and looking at what producers are doing on the farm level, if we don't modify the skim component factors, that misalignment is only going to get larger.

Q. Well, but I'm -- I'm not talking necessarily so much about the rationale behind the proposals but what their practical effect is.

I mean, as a practical matter, Proposals 1 and 2 really, as a practical matter, have nothing to do with the price received by farmers for a Class II, III, and IV milk, at least with respect to the 89% of milk that's in the MCP orders; is that --

A. That would be correct.

Q. Okay. And so -- and -- and then you would agree that it will have an effect on the price received by farmers in the four fat/skim orders, and there is a bit of a tussle over whether given the component levels in their milk, they deserve that higher price, right? But that's a pretty limited issue, right?

A. Yes.

Q. Okay. So in the end, Proposals 1 and 2, what they

really do is increase the Class I price. That's really the point.

And I'm not asking you -- I know you think that's a good idea for a good reason. I'm really not, in this question at least, trying to explore that. I'm just trying to explore in the real world what the impact of Proposals 1 and 2 are. And their impact really is to increase the Class I price?

A. That will be the effect of making the formula more accurate.

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

THE COURT: Mr. English rises again.

MR. ENGLISH: Your Honor, I promise this is directly related to one question and answer from Mr. Rosenbaum I think should be clarified in the record.

THE COURT: That's the nature of recross.

RECROSS-EXAMINATION

BY MR. ENGLISH:

Q. Last name -- I'm sorry, the name is Chip English again.

So in answer to a question from Mr. Rosenbaum about small entities that are selling, you know, basically Jersey milk, as I understood it, and you used the phrase "producer handler?"

A. Yes.

Q. Yes?

So a producer handler, under the regulations, is an entity that, in its simplest terms, is both a farm and

a handler, and with very limited exceptions, has to have all its own milk and has to be less than 3 million pounds a month, correct?

A. That is correct.

MR. ENGLISH: That's all I had, your Honor.

THE COURT: Thank you, Counsel.

CROSS-EXAMINATION

BY MR. BYLSMA:

Q. Good morning. My name is Dick Bylsma, D-I-C-K, last name is B-Y-L-S-M-A. I am the national director of dairy sales for the National Farmers Organization.

Mr. Metzger, good morning.

A. Good morning.

Q. Thank you for your testimony.

My questions this morning are going to focus on a very narrow part of your testimony this morning. I'd like to refer to your exhibit, NAJ-2, which I believe is court document 67.

My understanding of what you are presenting here, you are indicating that a significant volume of milk was depooled in the country; is that correct?

A. There was significant Class III depooled in 2021 and significant Class IV depooled in 2022.

Q. Okay. It was also your testimony, if I heard you correctly, that depooling causes disruption in the marketplace. Is that correct?

A. That's correct.

Q. You are aware that one of the functions of the

Federal Order system is to produce orderly marketing; is that correct?

A. Yes. Everyone seems to have perhaps a little slight different definition of what comprises orderly marketing.

Q. Okay. On the issue of depooling it is my understanding, and correct me if I'm wrong, that both USDA and other groups have indicated that depooling should be a regional issue, not a national issue and, therefore, will not be addressed at this Federal Order hearing. Is that correct?

A. That is correct.

Q. I believe this witness is qualified to answer a theoretical question for me.

Theoretically, if I have a cheese factory operating in the Northeast, which you have already testified in the previous line of questioning that it's extremely difficult for somebody to depool milk in the Northeast Federal Order because, if you do, you may be subject to not having that milk pooled for the remainder of the pooling season.

So theoretically, if I have a cheese factory in the Northeast making the exact same product as a cheese factory in, let's say, the Midwest who can easily depool, isn't it true that during times of rapid increases in cheese prices where the option to depool is very advantageous for a Class III manufacturer, that by virtue of where the factory is located in the Northeast, he has a

disadvantage over a cheese factory in, let's say, the Midwest who can easily depool his milk. Is that true?

A. That -- that -- that could be true. I don't know that it would be true in every situation.

Q. But theoretically, it could be true?

A. It could be true.

Q. So is it correct for me to state that by virtue of where the factory is located, Federal Milk Order system has created a disadvantage for one manufacturer over another?

A. I'm not sure I would exactly agree with that, because when the cheese plant manufacturer in the Northeast is making a decision whether to pool or depool, they are looking -- they are balancing the potential costs of remaining pooled in the short run versus the potential gain of remaining pooled in the long run in the anticipation that Class I prices will -- you know, that the current price inversion will no longer exist, will get back to a quote/unquote normal pricing relationship and, therefore, the pool -- that cheese manufacturer would have a pool draw from remaining pool instead of a pool obligation.

And so that cheese manufacturer, if they say, okay, I'm going to take the short-term loss now because I have an obligation to pay the pool, my expectation is that my pool draw in the future months will more than offset my short-term loss. And if their projections are that for the rest of -- for the reminder of that pooling season, it

does not project that my pool draw will be more -- greater than my current pool obligation, then they would rationally depool and be on the -- on the same footing as the cheese manufacturer in the Midwest.

Q. I appreciate your understanding of the way this works. But as you said, with the volatility of pricing, there is the possibility that a certain month, one manufacturer will have a disadvantage over another because of the sheer fact of their ability to easily --

A. In a particular month, yes.

Q. Okay. Is it your opinion that there should be uniformity in the ability to depool across the Federal Orders?

A. It is my opinion that that issue deserves a thorough examination.

Q. Would there be a methodology that you can think of that could create uniformity on depooling regulations in the Federal Order system?

Let me rephrase that. Would it be -- would the Federal Order system be able to establish rules that would either make uniformity or discourage depooling?

A. I believe it would be possible to establish, on a basic level, a more uniform pooling policy across all Federal Orders, while still leaving room for some individual pooling standards for individual orders. I think perhaps I believe it would be, you know, Part 900 could -- pooling standards for all Federal -- some basic pooling standards for all Federal Orders could be

addressed at that level of federal regulation while still leaving -- for example, on component pricing, some component pricing have a somatic cell adjustment, and others don't.

And so we -- I believe -- I don't think a rigid, one-size-fits-all would be appropriate, although I would be willing to examine those options. But I think perhaps some more basic rules that would apply to all orders deserves an examination.

Q. One final comment or question. You're the third witness, the third expert witness, who has already mentioned that depooling causes disruption in the marketplace. I believe Dr. Vitaliano mentioned it, Reverend Covington mentioned it, and now you are.

So, again, your comment is this should be addressed; is that correct?

A. Yes.

MR. BYLSMA: Thank you.

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. COVINGTON:

Q. Calvin Covington representing Southeast Milk.

Mr. Metzger, we sure appreciate your testimony this morning. And I have a couple questions just to clarify some things to make sure we're all on the same page with the same numbers?

A. Very good.

Q. But my first question is, is it correct if I said

that the National Milk Producers Federation Proposal 1, and National All-Jersey's Proposal 2 are identical except for the National All-Jersey proposal calls for updates every year and updates based upon any change in -- in any of the skim milk components? Is that a correct statement?

A. That's a correct statement.

Q. Thank you.

And earlier in your opening statement, you emphasized accuracy. Again, we appreciate that. And I want to refer back to some of your exhibits on checking some numbers to make sure we're all on the same page of some numbers and make sure we have the proper numbers in the record.

A. Very well.

Q. Okay. I'd like to go to your -- it would be the hearing's Exhibit Number 70.

A. Which is NAJ exhibit?

Q. Number 5.

A. Thank you.

Q. Okay. And down at the bottom you have month by month by 2022. And we come over on the right-hand side, down under '22, you have got 2023 average.

Is that a '23 -- are you thinking ahead for 2023, or should that be 2022?

A. That is a mistake on our part. That should be 2022.

Q. Okay. And then also, you have in 2022 average there, you have got other solids 6.02, protein 3.39, and

9.41 nonfat solids. I mean --

A. Yes.

Q. -- am I reading that correct?

A. That is correct.

Q. And if you remember from the testimony I presented earlier, those were identical component levels to what I had based upon the Dairy Division data presented?

A. That is correct.

Q. Okay. In your written -- I know this is just small, but again, I want to make sure we're all on the same page with the same numbers.

In your written comment submitted as Exhibit 72, and it would be the NAJ Exhibit Number 7, your written comments.

A. Yes, sir.

Q. In that you state that the 2022 averages are 3.3, 3.9 protein, but 6.03 other solids and -- but, again, 9.41, nonfat solids.

And then likewise over in your Exhibit 1, which is the hearing's record 66, you also use a different other solids. I don't know if that's just a -- a typographical error or a rounding error, but I wanted to see if the one on Exhibit 70 is the -- is the correct number in your record.

A. Yes. We -- while we were waiting on data from the Dairy Division, we also went out to another USDA source of data known as data mart, that has -- which is -- which are referenced in the footnote on page 1 of NAJ Exhibit 1. So

we were able to pull Federal Order bat data from data mart. I believe that 6.03 is a rounding based on a slightly different data source. We're more than happy to correct that -- to update that to 6.02 for nonfat solids in 2022 across all our exhibits.

Q. Well, again, I know it is just a small number. I just want to make sure we're all on the same page.

A. I appreciate that.

Q. Okay. And then my last question is in your Exhibit 1, but the hearing's Exhibit 66, and down toward the bottom there you have 2023 projected.

Could you tell us how you went about projecting the skim milk components for 2023?

A. Basically that is just looking at what happened from 2020 to 2021 and then from 2021 to 2022. It is strictly an assumption that the same rate of increase will continue.

Q. Okay. Did you use any of the actual data for 2023 that has been entered as an exhibit from the Dairy Division as a part of those projections?

A. We did not.

Q. Okay.

MR. COVINGTON: Thank you very much, Mr. Metzger.

CROSS-EXAMINATION

BY DR. BOZIC:

Q. Good morning. Marin Bozic on behalf of Edge Dairy Farmer. Good morning, everyone.

If USDA were to decide to implement your proposal,

but use the same methodology that you are proposing to -- for updating protein and other solids, if they were to apply that to butterfat as well, so update annually with a one-year lag, how would you -- what would you estimate to be the impact on dairy farmers?

A. The -- the impact on pooled -- there would be no impact on pooled revenue because butterfat is accounted for in all four classes of milk. There would be no -- I don't -- I don't believe there would be any impact on prices -- there would be no impact on prices paid by handlers or prices paid to producers.

Q. Will there be any other consequences for dairy farmers, positive or negative?

A. If -- from -- from a transparency standpoint, it would make the announced prices more in line with what producers see in their -- in their -- in -- in their actual pay, because right now, the announced prices are based on 3.5% butterfat. If that were to be updated to 4.1, it'd more closely resemble what they are actually paid.

I know that a number, several of the MCP orders, on their monthly statistical uniform price, they publish two prices: One is the statistical uniform price, and then there's a second price of what the value of pooled milk in that order would be at test, which takes into account the actual pooled butterfat level, protein level, other solids level.

Q. What would be the impact of increasing butterfat

test, standard butterfat test, on ability of producers to hedge their price risk, if any?

A. Off the cuff, I believe it would narrow the basis that they deal with in their hedging program because currently -- and I'm defining basis as the imprecision between two prices for the same commodity.

Q. So basis risk? Would it be fair to say basis risk?

A. Basis risk, yes. Because currently, if they have -- if they're marketing milk that's 4.1, 4.2% butterfat and their risk management program is based off of a Class III contract that's on 3.5% butterfat, the difference between their actual butterfat and the butterfat used in the hedge contract, that difference is not Hedged or is not to say -- you know, in the vernacular is not protected.

Q. Would you think -- does anything come to mind as a negative impact of increasing butterfat test, either in terms of initiating or engaging or creating disorderly marketing or -- or other adverse consequences on dairy markets?

A. Right now, I cannot think of any.

DR. BOZIC: That's all I have. Thank you.

CROSS-EXAMINATION

BY DR. CRYAN:

Q. My name is Roger Cryan with the American Farm Bureau Federation.

Hello, Erick.

A. Good morning.

Q. We support what you are doing. We support Proposal 1 and Proposal 2.

But -- but I want -- and I appreciate some of the -- some of the testimony by Calvin and you and some of the clarifying questions about just the general issue of alignment between the -- between the Class I price and the manufacturing prices in actuality.

There's another issue I think that is related to that that is important to -- to bring up. And because you talked about your expertise in dealing with -- talking to clients and producers about how prices line up depending on skim and butterfat pricing and -- and -- I want to ask about a hypothetical.

If -- if there is, for example, a -- and I want to -- this is hypothetical. I'm not talking about anybody in particular. If there is a cheese plant pooled in Missouri -- if there's a cheese plant in Missouri and they have a choice to -- to receive Class III milk pooled in Order 32, which is a multiple component market, or Order 5, which is a skim/butterfat market, and they are receiving that milk at an average test, national average test, where -- what would their -- would -- what would be the differences in their obligation on those two choices? Right now. Right now.

A. In the component pricing order, their obligation would be for all of the pounds of protein that they received.

Q. Right.
A. And in the fat/skim order, their obligation would be on the standard component in the Class III skim milk price formula, which currently is 3.1.
Q. So they -- they would have a lower obligation?
A. In the fat/skim order, if they are receiving milk that is above 3.1 skim protein.
Q. So does that create an incentive to -- to pool more milk on a skim/butterfat market?
A. If it's above the component standard, yes.
Q. Okay. Does that -- would that -- is that an economic decision, or does that -- is that an -- is that a regulation driven, uneconomic decision?
A. Well, that's a decision -- well, it actually is both, because the regulation creates an economic decision.
Q. Okay. By the plant, right --
A. Yes.
Q. -- I mean -- yeah. So would that tend to lead to more milk to be pooled on a skim/butterfat market without any particular economic value being accrued to anybody?
A. Well, in -- in reality that -- that cheese plant in a fat/skim order would have to attract the milk supply.
Q. Right.
A. And they would be competing with Class I plants in the fat/skim order who are pricing milk, not just off of the Class I base price, but they also have the Class I differential, so that that cheese plant in a fat/skim order would have to be competing not only with the Class I

base price but the high Class I differentials that exist for the Class I plants --

Q. Sure.

A. -- in that order.

Q. But does that difference in Class III price contribute to their incentive to pool milk on -- on a skim or --

A. It would, yes.

Q. Beg your pardon?

A. It would, yes.

Q. Okay.

DR. CRYAN: Thank you. That's it.

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Ryan Miltner representing Select Milk Producers.

You frightened me a little bit there when you started out.

A. I'm sorry.

Q. No, that's great. I quickly realized where you were going with it, and I appreciate you sharing that.

You talked early on in your testimony about base/excess programs, and I wanted to kinda connect dots there if I could.

A. Very well.

Q. So you referenced base/excess programs and how they would be implemented -- or they are administered in many cases based on the volume of milk produced.

How -- how does that tie into Proposal 2 and --

and what was your -- and not -- just tie that together for me if you would.

A. It actually ties in to both Proposal 1 and Proposal 2. If you have a producer who is marketing to a handler, and the handler based on whether it's their own -- they have their own processing plants, whether they are marketing to proprie- -- milk to proprietary plants, this handler has determined they have a market for X million pounds of producer milk per month.

And if their membership or if their producers produce more milk and expect the handler to take more milk than they have a market for, then they have to do something with that extra milk, which is usually market it at a substantial discount.

And so in order to align the handler's needs with their clients' or their customers' desires, they will assign producers, okay, you can -- we will accept X amount of milk from you at our full price, and if you go over that, our expectation is we will have to market that as a severely discounted price. Therefore, instead of sharing that discounted -- you know, that discount among all our producers, we're going to assign that discount to you for exceeding your allowable volume.

However, in response, producers say, okay, if I can market 50,000 pounds of milk a month or 500,000 pounds of milk, if that's all my handler is going to take, and I'm on a component pricing order, I'm going to increase the components in that order to increase the value of each

hundredweight that I market.

Q. And in fact, in some orders the base/excess programs have been adopted in that manner, correct?

A. Correct.

Q. All right. I want to move on to Exhibit 70, which is your Exhibit 5.

And you were referencing this in terms Of -- of risk management, correct?

A. Correct.

Q. Am I correct that kind of the takeaway from your testimony on Exhibit 70 was that the market is aware of the particular component values and those fluctuations, generally increases, with sufficient time to make rational hedging decisions?

A. Based on our case study, yes.

Q. And I think it was in response to Mr. Covington you said that your Proposal 2 is the same as Proposal 1 but for the frequency of the updates.

Did I get that -- get that correct?

A. Yes.

Q. Does Proposal Number 2 contemplate a delay in implementation of one year if it were to be adopted?

A. The way we submitted our Proposal 2 is that it would be -- it would become effective with milk marketed the following January, as opposed to Proposal 1 where they would have it become effective with milk marketed the following March. And we are -- National Milk indicated flexibility in the implementation timeframe. We have

flexibility as well. As I said, we're not picking this hill to die on.

Q. In your work with National All-Jersey, do you talk with producers at all about risk management?

A. Yes.

Q. Does your membership -- in developing Proposal 2, did your membership offer you any guidance on what type of risk management decisions they make that would be effective if Proposal 2 were to be adopted?

A. No.

Q. Mr. English -- shifting gears again -- asked you about -- he was referring to Exhibit 44. I don't think we need to look at that for my questions. But he was asking you about what rational actors will do in terms of where they direct their milk.

Do you remember those questions?

A. Yes.

Q. Okay. Part of those questions suggested that the financial incentive to producers is to provide their high solids milk to manufacturing plants, correct?

A. Correct.

Q. In your experience with NAJ and talking with handlers and producers, is it common that a producer will have the ability to select their market to the extent that Mr. English alluded to?

A. In -- in -- I would say in some markets, yes, and in some markets, no. It depends on competition for milk and available -- quite frankly, available processing

plants.

Q. So when we talk about what a rational actor would do if, in fact, they had a choice between two plants, one which would price their milk based on their high components and one which would not, that rational decision would be to sell their milk to those that pay on components, correct?

A. Correct.

Q. But aren't there a bunch of other factors that go into that decision for a producer or to a handler?

A. Well, sure. I mean, one would be, like, transportation costs, what is the location of the two plants. You know that one strikes me initially. If there's others you would like to volunteer, I could try to agree or disagree.

Q. Well, you mentioned transportation costs, but you also mentioned the availability of the market itself.

In many markets, plants simply aren't available for a producer or a cooperative to go offer milk to, correct?

A. Yes.

Q. In fact, some -- some plants, many plants, have a -- what would be called a full supply agreement with a cooperative, correct?

A. Correct.

Q. And if that were the case, would another cooperative or another producer have the ability to go and sell their milk to that plant?

A. No.
Q. In some markets, the types of plants that would be available are limited, too, correct?
A. Yes.
Q. In some -- some parts of the world there might be a plethora of Class II facilities and not a lot of Class I facilities, correct?
A. Hypothetically, yes.
Q. And in other areas, the Class I plants might be more geographically advantageous to supply to rather than a Class IV plant, correct?
A. Yes.
Q. And so a rational actor isn't simply going to be able to move their milk to the plant that might pay them based on their components, correct?
A. Correct. There are other factors that come into play.
Q. The rational actor is not going to simply base it on one of those factors, correct?
A. Correct.
Q. So my client, Select Milk Producers, they operate primarily in Order 33 and Order 126, and I wanted to ask about Order 126, and perhaps your experience with Jersey herds and processors in that part of the country.
Are you familiar with a bottler, Promised Land Dairy?
A. I know they exist.
Q. Okay. Maybe we'll move on, then.

Are you -- are you generally aware of, or do you have familiarity with some of the large cheese plants that have been built in Texas and New Mexico in the past 20 years or so?

A. Yes.

Q. Are all of those plants affiliated with the order, do you know?

A. I don't believe all of them are.

Q. So if there -- if those plants -- any of those plants were not affiliated with the order -- well, let me back up one step.

For those large cheese plants in that area, do you know if -- if many of them source, or seek to source, Jersey or other high-component milk?

A. Yes. Some of them do.

Q. If those plants were sourcing high-component milk and they were not affiliated with the order, would the components of those producers be included in the data that USDA provided to us in this hearing?

A. If the milk is not associated with the order, it would not be included in the data.

Q. And would you expect, based on your experience and knowledge of those plants, that those components would be higher than the averages reported by USDA?

A. Yes, they would be.

Q. And so if we want to talk about average components and we're -- we would exclude, then, a substantial volume of milk that has a higher component than what's already

reported, it could mean that what the Class I handlers in that area receive is actually higher than might otherwise be anticipated.

A. I'm sorry. I don't follow the question.

Q. Well, a series of questions that have been asked of you and Mr. Covington is trying to figure out if the average components in USDA's data is an appropriate measure for what Class I handlers are receiving, correct?

A. True. Yes.

Q. Okay. So if we know that there's a bunch of milk in the order that has higher components than what's already reported, would we -- would that not necessarily skew lower the components in USDA's data? And we know that milk goes to Class I handlers, correct?

THE COURT: Is that an objection, Mr. English? Sounded like it.

MR. ENGLISH: Objection. I thought there were two separate questions, and I think the answers may not be --

MR. MILTNER: I'll try to do that again.

Actually, let's go about this a different way.

THE COURT: Question's withdrawn.

MR. MILTNER: Thank you.

BY MR. MILTNER:

Q. Based on the availability of the data that we do have, is there any real way to know specifically what any Class III plant or Class I plant received in terms of its components?

A. Exactly?

Q. Yes.
A. No.
Q. And so when you prepared your exhibits, I assume you were basing your estimates on what you believed to be the best data that was available?
A. Correct.
Q. Having been questioned by me and by others, do you have a different belief as to what is the most accurate data you might have used to develop your testimony?
A. I -- I do not have a different opinion, no.
Q. Mr. -- I forget if this was Mr. Rosenbaum or Mr. English that asked -- actually I, do recall, it was Mr. English. He was asking you questions about, in setting minimum prices, where do you draw the line, so to speak.

Do you remember that line of questioning?
A. I do.
Q. Would you agree that that's a policy decision that USDA has to decide where that line is drawn?
A. Yes.
Q. In that policy decision, what rule do you think efficiency of operations should play in figuring out where we set a minimum?
A. Efficiency of operations, I don't -- I'm not understanding.
Q. That's all right.
A. I'm sorry.
Q. Let me draw an analogy to make allowances, because

you acknowledge we're going to have some make allowance discussion later in this hearing.

A. Yes, we will.

Q. If we have to figure out, and USDA has to determine what is the cost to manufacture cheddar cheese, do you believe it would be prudent to take the manufacturing costs of the least efficient or most expensive plant to set that make allowance?

A. That would not be appropriate.

Q. Would you agree that if you did so, that would make it so every plant purchasing milk to manufacture cheese would -- would be in -- the price would not be set too high for those plants?

A. That is correct.

Q. And so similarly, should we take a -- would you advise taking a similar approach as we look at Proposals 1 and 2 to set -- should we be setting the level that necessarily guarantees a price for everybody?

A. No.

MR. MILTNER: I don't think I have anything else. Thank you very much.

THE COURT: Anything else? Any cross-examiners other than AMS?

Seeing none, AMS, you're up.

MS. TAYLOR: Judge, I know yesterday we discussed in the efforts of keeping our court reporter with us, two breaks in the morning and two in the afternoon.

Is now the appropriate time perhaps before lunch,

or is she okay?

Okay. I'm just checking. It's our utmost importance that you stay with us for six weeks.

THE COURT: Off the record briefly.

(Off-the-record.)

THE COURT: Back on the record.

MS. TAYLOR: Thank you, Judge.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good morning, Mr. Metzger.

A. Good morning.

Q. I'm going to ask you a few questions, and then I'm going to turn it over to my colleague to really get in the weeds with you.

I think there's been a few questions asked just to make sure we have the overall idea of the proposal that National All-Jersey is bringing forth, and I just want to make sure we're clear. It is to update the components every year regardless of the -- if it's a positive or a negative change; is that correct?

A. That is correct.

Q. And as your proposal stands, USDA would announce the average components sometime soon after the first of the year, and then those would be effective starting January 1 of the following year, but you are not wed to that kind of implementation schedule necessarily?

A. That is correct.

Q. Okay. I'm going to focus first on your

Exhibit 70 -- hearing Exhibit 72, which is your written testimony that was submitted earlier.

A. Okay.

Q. On page 2, the second full paragraph talks about "updating skim milk factors more regularly will reduce the burden on the pool when Class I contributes less," and then "draws out."

Is that -- are you alluding to negative PPDs?

A. I'm alluding to the depression on PPDs in the MCP orders that occurs due to the misalignment between the standard component levels that are assigned to Class I milk and the actual component levels that producers are paid for through the statistically uniform price.

Q. Okay. I like the word depression rather than just negative PPDs. That's more accurate. Thank you.

On the next page when you are talking about kind of the causes for increased factors, and you talk about genetics and quota programs and then robotic milkers. And I know you answered some questions I think from Mr. Miltner on base/excess programs.

Can you inform the record on how much of the -- an estimate of how much of U.S. Milk production kind of falls under a base/excess plan?

A. I don't --

Q. Like are they frequently used, etcetera?

A. I don't believe I could give an accurate estimate.

Q. Okay. And then I had the same question on your statement on robotic milkers, just trying to see how

common that is in the industry.

A. I don't have an estimate on the percent of milk that is currently harvested by robotic milkers. I do have an estimate that it is continuing to grow and at a steady pace.

MS. TAYLOR: I'm going to turn it over to Mr. Wilson for a moment.

CROSS-EXAMINATION

BY MR. WILSON:

Q. Good morning, Mr. Metzger.

A. Good morning, Mr. Wilson.

Q. I have a couple of questions on Exhibit 71. It's NAJ-6.

The -- kind of in the middle of the document, it has advanced component values in a row.

A. Correct.

Q. Those are a yearly average; is that correct?

A. That is correct.

Q. Okay. The columns of Class I percentage, protein other solids and nonfat solids?

A. Yes.

Q. Those are yearly averages as well?

A. Yes.

Q. Okay. So the source of this document is indicated USDA Milk Components by Class and Order, January 2008 through April 2023. I believe that's Exhibit 44.

A. I believe that's correct.

Q. Okay. However -- and there's also additional to

that footnote is announcement of class -- announcement of advanced price and pricing factors is also a document source.

Some of the data on here seems to come from 44, Exhibit 44, while others seem to be maybe calculated values. And I would like for you if you can go through that calculation. For example, the last column, actual components.

A. Yes.

Q. Can you go through that calculation so that we have that on the record, please?

A. Yes. That calculation uses the current Class I price formula, which is the average of the Advanced Class III and Class IV advanced prices, plus the $0.74 differential.

However, instead of using the standard component factors of 3.1, 5.9, and 9.0, we substituted the actual skim protein content for each order. For example, in -- well, let's just go to the -- go to the first row, in 2019, in the Northeast Order, that actual component value was calculated by using 3.21 skim protein and 5.98 skim other solids in the Class -- Advanced Class III skim price calculation instead of the current factors of 3.1 and 5.9, and then the nonfat solids factor of 9.19 was used in the Class IV skim milk pricing formula instead of the current standard of 9.0.

Q. That is what I assumed. Thank you very much for that clarification.

There's also possibly the data that's in the pounds columns, skim pounds, protein pounds, OS pounds, NFS pounds. That is coming from Exhibit 44?

A. Yes.

Q. If Exhibit 44 has different numbers, maybe there was some advance information to you --

A. Yes, we had -- when we first understood that as part of National Milk's modernization proposal 1 of the factors was going to be updating the skim component factors, we wanted to start analyzing just how much that change might be. And so we put in a data request to Dairy Programs early this year for essentially is what the -- what is the data in -- in Exhibit 44, we requested for year -- just years 2019 through 2020.

We received the dataset. We did analysis. We shared it with -- within the -- you know, throughout the industry, including Dairy Programs. There were some what we would term anomalies in that -- in that initial dataset. With discussion with Dairy Programs, they then made an update to our original dataset and provided an updated dataset a couple of months later. And we made the assumption that the dataset -- that the second dataset we received would be included in what was 44. So our -- we didn't look for differences between the second dataset that we received and Exhibit 44.

Q. So 44 was a bit different?

A. If it was a bit -- well, we did not rerun our analysis. We -- we made the -- we made the assumption

that the two data sets would be equivalent for those four years.

MR. WILSON: Thank you, Mr. Metzger.

MS. TAYLOR: I think that's it from AMS. Thank you.

THE COURT: Are you done.

MS. TAYLOR: Yes.

THE COURT: Oh, I'm sorry. I thought you were getting ready to ask something else.

Anyone else? We're ready for redirect.

MS. TAYLOR: Sorry, I missed a sticky note. We did have one more question. I apologize.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. I want to turn to hearing Exhibit 66, which is NAJ Exhibit 1.

A. Yes.

Q. Okay. So on the first page you have got average protein, other solids, annual averages, for percent protein, other solids, and nonfat solids, and you have the source as data mart, a USDA source. But I don't believe we publish annual numbers on -- on skim components.

So I -- we wanted to get on the record if you used monthly averages and then computed the annuals from that?

A. Actually what we pulled from data mart is for -- for the current year -- if -- if -- my experience in using data mart is, that for the current year it would provide monthly data. But when I would use previous years, and I

would say, all months equal to 2022, it provides the totals for the year, not each month -- provides the yearly totals for each order. And that's what -- you know, essentially on -- on NAJ Exhibit 1, the pages 2, 3, and 4 are where we show your work.

MS. TAYLOR: Okay.

CROSS-EXAMINATION

BY MR. WILSON:

Q. So clarification, Mr. Metzger. So AMS publishes percentage or -- percentage of components on a volume basis --

A. Correct.

Q. -- whereas Exhibit 66 is on a skim basis?

A. The page 1 is a skim basis. How we obtained the -- well, how we calculated the skim basis is shown on pages 2, 3, and 4.

For -- for example, on page -- page 2, if we look at year 2014, those totals, you know, the butterfat is of 3.8%. Yes, it is on total volume of milk. From that, we calculated butterfat pounds. Protein percent was provided by data mart. We calculated protein pounds, etcetera.

Then down below, what's highlighted in yellow, that's -- we -- we decided to base our analysis on just the MCP orders. And so the first line that's highlighted in yellow is the totals from the MCP orders, and then the second line that's highlighted in yellow is the MPC order's weighted average on a skim solids basis. So the protein percent in producer milk was 3.12, but when you

convert that to a skim basis, it becomes 3.24.

Q. Thank you.

MR. WILSON: Thank you.

MS. TAYLOR: Okay. Thank you.

THE COURT: Okay. Redirect?

REDIRECT EXAMINATION

BY MR. VETNE:

Q. This is John Vetne, consultant representing NAJ.

Mr. Metzger, let's go back just to a couple of the cross-examiners and make sure the record is clear on what your understanding of the question is in the context of your answer.

Mr. Miltner asked you some questions concerning manufacturing plants, cheese plants, in the Southwest, Texas, and New Mexico, and terms used about those plants being affiliated or not affiliated with a marketing order.

Do you recall that series of questions?

A. I do.

Q. Okay. Was it your understanding in the question that -- and in providing the answer, that affiliated as you used it in the answer and as you understood was used in the question meant whether they were regulated under the order?

A. Correct.

Q. Okay. So if a plant is not regulated, it would not be included in the list of plants and the dots on the map in the -- in the Dairy Programs exhibit?

A. Correct.

Q. Okay. Do you understand that plants that are not regulated, non-pool plants, do in fact receive milk that is pooled from pooled marketers?

A. They can, yes.

Q. Okay. So you -- and that milk would be sent to a non-pool unaffiliated plant, by diversion --

A. Yes.

Q. -- by either a handler or a cooperative, correct?

A. Yes.

Q. Okay. And that milk then would be included in the reported totals of Exhibit 44, USDA Table 1?

A. Yes.

Q. Okay. So you did not intend to suggest in your answers that milk -- that all milk received by unaffiliated non-pool plants is non-pooled milk?

A. Correct.

Q. Okay. And is it -- is it your understanding that there are a number of manufacturing plants, not only in the Southwest, but elsewhere in the country, that are not on the list of regulated plants that receive large volumes, if not exclusive volumes, of pooled milk by diversion?

A. That would be correct.

Q. Mr. Covington asked you a couple of questions for correction on the difference between testimony and exhibit, which is 72, NAJ-7, and Exhibit 70, and reference was made in particular to 6.02.

And can you look at that, at the bottom of the

page of Exhibit 70?

A. Which is NAJ exhibit is it.

Q. NAJ-5?

A. Yes.

Q. My note of your response to Mr. Covington's question was you referred to 6.02 as a correction of nonfat solids; would it be correct?

A. For the year 2022, yes.

Q. Yes. And -- and what I believe to be an error, maybe reinforced at this point, 6.02 actually is not nonfat solids, it is other solids?

A. Oh, yes.

Q. Okay. So any -- any prior reference to that and reference now to the correction of that number should be understood to mean other solids, rather than nonfat solids?

A. That's correct.

Q. Okay. Mr. English had a series of questions which were premised on the concept of minimum price regulation.

Do you recall that?

A. Yes.

Q. Okay. You have referred in your testimony to uniform price regulation. That is uniform prices received by producers, uniform prices paid by handlers.

Is improvement of uniformity of prices paid by one handler versus another handler an important feature and objective of your proposal?

A. Yes.

Q. Okay. And if prices were based on the lowest common denominator, non-uniformity in handler prices and handler costs would increase, not decrease; is that correct?

A. That's correct.

Q. And the same thing with producers, uniformity is an important -- prices paid to one producer versus another is an important feature of your proposal?

A. That's correct.

Q. And if prices were based on the lowest common denominator, non-uniformity of one producer price versus another would be aggravated, not improved?

A. That is right.

Q. And then, finally, if you could turn to your Exhibit 68, NAJ-3?

A. Yes.

Q. Okay. Do you have that?

A. I do.

Q. In the third to the last column on the right in bold, there are three entries that say 5, comma, 6, comma, 7 on MCP.

Do you see that?

A. Yes.

Q. MCP being abbreviation for multiple component price?

A. Yes.

Q. Okay. You are referring here, not to the way money is distributed among producers in multiple component

pricing, but rather to the way money is charged to handlers?

A. Yes.

Q. Okay. And in fact, under the current skim component factors, handlers receiving Class II, III, and IV milk in the fat/skim market for those component are paying considerably less than their competitors in the MCP orders, correct?

A. Yes.

Q. And your Proposal Number 2 would bring those competitive values -- competitive minimum prices closer together?

A. That's right.

Q. Okay. But if you were to make them uniform so that all handlers are paying the same, you would have to at least price -- make the handler price a multiple component price, one that is derived from price formula?

A. Yes.

Q. And apply it to protein, nonfat solids, and other solids?

A. Right.

Q. And then the handler part of this where there would be non-uniformity would go away without -- without even addressing how the money is distributed among producers, correct?

A. Yes.

Q. Thank you.

Do you have any other comments that you wish you

had made but didn't have a chance to?

A. I don't think so. I think we have been through this pretty thoroughly.

Q. Okay.

MR. VETNE: Your Honor, I think we have marked Exhibits, what, 66 through 73?

THE COURT: First, let me ask, any -- anyone think they are entitled to further cross, that any door's got open on that redirect?

Seeing none.

Okay, Counsel, yes, let's admit some --

MR. VETNE: I would offer for admission Exhibits 66 to 73. I think you have all of them.

THE COURT: That includes the request to admit to, bring up certain evidence too, right?

MR. VETNE: Yes.

THE COURT: Are we putting that in now? I mean, I don't think it matters. It's not really --that document itself was not really evidence, correct? It is -- in the nature of a motion.

MR. VETNE: Well, the substitute exhibit.

THE COURT: Okay. Yes.

MR. VETNE: That was taken care of this morning.

THE COURT: Okay. So that one's --

MR. VETNE: So that --

THE COURT: That one's in already.

MR. VETNE: The testimony in Exhibits 66 to 73 I move for admission.

THE COURT: Any objection?

Exhibits 66 to 73 are admitted into the record.

(Thereafter, Exhibit Numbers 66 through 73 were received into evidence.)

MR. VETNE: I thank you, and everybody for their indulgence, and for the accommodations for the process.

THE COURT: Mr. Metzger, thank you. You are dismissed.

MS. HANCOCK: We're going to call producer Sam Schwoepee. We think that we can get this probably knocked out before lunchtime.

THE COURT: Very well.

MS. HANCOCK: Thank you.

SOMULA SCHWOEPPE,

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

THE COURT: Your witness, Ms. Hancock.

DIRECT EXAMINATION

BY MS. HANCOCK:

Q. Good morning, Ms. Schwoeppe. Would you mind stating your name and spelling it for the record?

A. Good morning. My name is Somula Schwoeppe, S-O-M-U-L-A, S-C-H-W-O-E-P-P-E.

Q. What is your mailing address?

A. P.O. Box 462, Huntingburg, Indiana, 47542.

Q. Did you prepare a written statement in support of a proposal?

A. I did.

Q. Great.

MS. HANCOCK: Your Honor, if we could mark what has been identified as Exhibit NMPF-65, with a hearing exhibit number.

THE COURT: Was that distributed earlier or --

MS. HANCOCK: It has been. Did you receive a copy?

THE COURT: I probably did. Carry on without me.

MS. HANCOCK: We have one coming.

THE COURT: Okay. I'm -- yes, I've got it now. Thank you, Counsel.

Okay. Now I have it, and we're marking this -- what was -- this is marked for identification as?

MS. HANCOCK: Exhibit NMPF-65, we're looking for a hearing exhibit number.

THE COURT: Okay. I think we're at 74.

MS. HANCOCK: Thank you.

THE COURT: NMPF-65 is marked as a hearing exhibit for identification as Exhibit 74.

(Thereafter, Exhibit Number 74 was marked for identification.)

MS. HANCOCK: Thank you.

BY MS. HANCOCK:

Q. Ms. Schwoeppe, would you mind reading your statement into the record.

A. Good morning, everyone. My name is Somula Schwoeppe, and my family operates Schwoeppe Dairy, LLC, which is --

(Court Reporter clarification.)

THE WITNESS: Good morning. My name is Somula Schwoeppe, and my family operates Schwoeppe Dairy, LLC, which is located in Dubois County, Indiana. Our farm is just outside of Huntingburg. And we milk approximately 110 registered Holstein cows.

Our cows are housed in a free-stall barn, and during favorable weather they have access to pasture at nighttime. We raise hay and corn for silage on 160 acres that we own, and we rent an additional 250 acres. We supplement our farm-raised feeds with purchased dry corn, and we raise all of our replacement animals.

Schwoeppe Dairy sells breeding stock to other dairy farmers, and we also sell hay. We do custom hay baling for other farmers as well, and these activities help us utilize our equipment and generate extra income for our farm.

Dairy farming is our family's heritage as well as its future. I am a fourth generation dairy farmer, and my sons who are employed full time on our farm are fifth generation farmers. We now have a sixth generation who was just born this spring on the farm, and hopefully he will continue our family's legacy.

The Schwoeppe family homesteaded our farm, and the family has been milking cows continuously since 1874 on this location. The first Grade A parlor on our farm was built in the early 1920s, and we are currently in the farm's third milking parlor, and we have plans for its

replacement, for our fourth milking facility, which are now in place.

However, those plans are on hold until the financial outlook for improved component pricing and just better milk pricing overall points to a more secure future for our family's business. Our milk goes to the Prairie Farms plant in Holland, Indiana, and our pay price is based on the Order 5 skim milk and butterfat pricing.

I have worked off the farm for additional income. Currently I'm the senior manager of Agri-Engagement at Feeding America. Earlier in my outside farm life and work career, the Indiana State Dairy Association, our state DHIA, employed me for nine years as a dairy herd improvement or milk testing supervisor.

In this role, I provided support to 62 dairy farms in 12 counties in Indiana, and this involved weighing and sampling individual cow's milk production, helping farmers maintain their production records, which include milk weights, components, health and reproductive information, income over feed costs for individual cows, etcetera.

This experience provided insight to the changing component levels among various dairy cows. Currently, I serve on the Board of Directors and as treasurer for Prairie Farms Dairy, Incorporated. I am also on the Board of Directors of the Professional Dairy Producers Foundation, the American Dairy Association Indiana, and I serve the Indiana Farm Bureau Women's Leadership Committee as the District 9 education and outreach coordinator. I'm

also a member of the Holstein Association USA and president of the Southwest Indiana Holstein Breeders Club.

Through my involvement with these organizations, I interact with many dairy farmers, and a common topic of discussion is how improved genetics and better feeding of the dairy cow has increased milk production and improved component levels in the milk.

On our farm, we focus on increasing the components in the milk, just as other farmers across the United States have done. Proceed high quality forage for our cows is key to high component milk production. And forage quality can vary from year to year, and it's influenced to a great degree and dependent upon the weather.

For example, changes in hay and pasture growth and nutrient quality levels are driven by the weather, and these changes in forage and pasture quality affect milk components. No matter how hard we try to overcome times of poor forage quality, we cannot control the weather. This is certainly true in our area and on our farm, and the increasing components is not a straight upward trend line, but it is an uneven upward trend line filled with peaks and valleys.

Breeding cattle for higher components does not show up in the bulk tank immediately. It takes patience and about three years for the results of a mating decision to show up in the bulk tank. From a genetic standpoint, a dairy farmer is looking at multiple generations to see sustained progress and component increases.

The chart that's included -- that is included in my written testimony shows Schwoeppe Dairy's annual average butterfat and protein tests for the year ending in September 2022 and September 2006.

So the annual average year ending in September of 2022, our butterfat percent was 3.9, and our protein percent was 3.2. When you compare that to the average year ending September 2006, our butterfat was 3.6, and our protein was 3.0 percent. So our average test increase was .3 percent of butterfat and .2% of protein.

So in recent years we have really been placing a greater emphasis on increasing our butterfat in the Federal Order, such as Order 5, that prices milk on butterfat and skim. A farm receives additional money for producing additional butterfat pounds. Butterfat generally accounts for over 50% of the Order 5 milk value on our farm.

As an example, in June 2023, butterfat accounted for 51.7% of the Federal Order 5 value on our milk check. The announced Federal Order 5 butterfat price accounted for 47.7% of the Federal Order uniform price.

In November of 2022, our butterfat accounted for 53.6% of the Federal Order 5 value on our milk check, and the announced Federal Order 5 butterfat price accounted for 47% of the Federal Order uniform price.

In November of 2018, our butterfat production was 57.6% of the Federal Order value, while the Federal Order butterfat was 49.5% of the Federal Order uniform price.

There may be times that butterfat is less than 50% of our milk value, but they are not numerous.

And no matter how much you increase the protein and other solids, there is no additional money received on the skim milk portion. The Federal Order skim milk price formulas have neither changed to reflect the increased protein in skim milk nor do the formulas attach any more value to that added protein. There is a need to update the skim formulas for the additional protein produced.

The northern two-thirds of Indiana is in the Order 33 marketing area which is a multiple component pricing order. The southern one-third of Indiana is in the Order 5 area, and that is where my farm is located.

Order 5 is a skim and fat pricing order, and my farm is approximately 125 miles from Indianapolis. If the farm was located further north, our market would be in Federal Order 33, and we would be paid for the increase in our milk components through Order 33's multiple component pricing. As it is, we're paid for the increased butterfat in the Order 5 butterfat pricing but not for the increased protein and other solids in the skim milk.

I am not proposing milk component pricing for Order 5, but merely pointing out the inequitable treatment producers in Indiana and elsewhere receive supplying a fluid market when the skim pricing is not updated for the added protein in the skim milk.

And furthermore, since the skim milk price formula does not reflect the protein increase in the skim milk, it

is also unfair to producers in milk component pricing orders. Since these producers have a protein price component in the order milk pricing, the protein shortfall in the skim pricing is not as noticeable in their milk check.

In conclusion, I want to thank USDA for the opportunity to present my views today. And I am supporting Proposal Number 1, increasing the protein and other solids in the skim milk pricing formulas. This will increase values used in determining skim milk prices and benefit all dairy farmers. And thank you for allowing me to share my thoughts with you today. Your consideration time, and help are appreciated.

BY MS. HANCOCK:

Q. Thank you, Ms. Schwoeppe.

I want to just briefly chat about your role as Board of Directors and as the treasurer for Prairie Farms Dairy.

How long have you served in those roles?

A. I have been on the Board of Directors for 11 years, and I have been the treasurer for nine.

Q. As a Board of Director member, what is -- what is within the scope of your responsibility?

A. At Prairie Farms we lean on our management for recommendations. It is our job to review and support decisions or bring new ideas to the table for management to maybe think and include, like the voice of the members. Because it is -- it is our goal and like our duty as board

members of Prairie Farms to represent our membership, which is the owner of the company.

Q. And what is Prairie Farms? Can you describe that organization?

A. Prairie Farms is a cooperative.

Q. And how many members?

A. We have 640 members. I would have to defer that exact number to Chris Hoeger, who is in charge of our milk procurement.

Q. Okay. And we'll hear from him hopefully today.

As a board member, do you have any policies on whether the cooperative can reblend?

A. Yes, we do. Our board in -- our board believes that it is our job to return the highest value on our member owners' equity, and we have policy, we do not reblend milk.

Q. And why is that?

A. In order to return the highest value to our member owners.

Q. Are you aware of whether Prairie Farms has ever reblended?

A. Our policy has always been to not reblend milk.

Q. Okay.

MS. HANCOCK: Thank you for your time. I appreciate it.

THE COURT: Cross-examination for this witness, other than AMS?

CROSS-EXAMINATION

BY DR. CRYAN:

Q. My name is Roger Cryan with the American Farm Bureau Federation.

Hello, Mrs. Schwoeppe, it is nice to see you again.

A. Hello.

Q. You were at our Federal Milk Marketing Order reform last October.

A. I was.

Q. I understood you had an active role in helping us develop our consensus, so I appreciate that. And I appreciate your service through the Farm Bureau. That wasn't in your written testimony, but I appreciate you mentioning it up here.

Prairie Farms is -- has a close connection with Farm Bureau as well; is that right?

A. That is correct.

Q. It's a very well run co-op that serves its members well, and I appreciate all that.

Could you just let me just boil down what I understood from your testimony, that the difference between the Class III value in Federal Order 5 and Federal Order 33 matters, that -- is that right?

A. Absolutely.

Q. Yeah. Can you summarize that?

A. Can I summarize that? Everything that we produce on our farms is of value, and we are at the bottom of the food supply chain. And we talk about added value products

that our processors do for us, and when we talk about the base price, we as farmers need to focus on our retained value.

So when we have an inequity like this, it allows -- it allows there to be advantages. We have heard different testimony where one region may have an advantage over another. And what is so powerful about the Federal Order system is that they level that across the country for all of us.

Q. That's great. That's well put, very well put. I wouldn't have thought of that. Thank you.

Could you, if you -- if you care to, share some thoughts about the impacts that depooling and negative PPD has on your operation and your -- and your co-op.

A. So depooling and negative PPDs is a very unique situation for a fluid milk cooperative like Prairie Farms because there are different sets of rules.

So Prairie Farms is primarily a fluid milk cooperative. So with the rules on depooling, they are very different for a fluid milk processing entity than they are for a cheese production facility.

So let's just say, we're all playing the game of baseball, and some of us have the rules of softball, and some of us have the rules of baseball, but we're all playing the same game. And there's no equity in that.

DR. CRYAN: Wonderful. Thank you. Thank you very much. That's all I have. Thank you. Thanks for testifying. I appreciate it.

THE COURT: Anyone else have any cross other than AMS for this witness?

Seeing no one, does AMS have any cross of this witness?

MS. TAYLOR: We do, your Honor.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good morning.

A. Good morning.

Q. Lovely to see you today. Thank you for coming to the hearing to testify.

Ms. Schwoeppe, you indicated your farm, you have 110 registered Holsteins. It is our job at AMS to make sure the record gathers information on small businesses that are impacted by our regulations. For dairy farmers that's a gross revenue of $3.7 million or less annually.

Would your farm be considered a small business under that definition?

A. Yes.

Q. In your testimony, you talked about the impact that forage and genetics have on components in your herd. And I wanted to take this opportunity, you know, there's a lot of people that testified at the hearing that work in the industry, but it's important to get this information from dairy farmers who experience it personally.

So on your farm would you say that one of those has more influence on component levels than the other?

A. That is a very layered question. You can breed,

you can make genetic decisions based upon fat and protein levels, and those things take time. And when you -- when you make a mating decision and you breed a cow, the gestation is nine months, then you have the maturity of the cow two years. And then like her full production, though, is you are not going to learn that until she's at least in her second lactation. So that's a decision four years down the road.

Now, there are different hybrids of corn you can plant. There are different hybrids of alfalfa you can grow. You can manage your cutting time to create your highest value of hay. And -- and the nutrition that a cow eats, you know, like you are what you eat, correct. And that makes a difference on the component level in the milk.

But -- so you can feed to increase component levels, but without breeding to increase the component levels, you are not going to maximize those opportunities. So really it takes both.

Q. So would it be safe to say then, if we see -- if you see like a long-term trend in increasing components, that's probably based on genetic -- breeding decisions, and the fluctuations you see year to year is more based on forage impact?

A. Absolutely.

Q. Okay.

A. Genetically speaking -- like, furthermore on that, genetically speaking, like, we should see a 2 to 3%

increase every year just because the research is out there to support -- and, like, everything we do has to get better every day.

Q. You put in the testimony, and I appreciate this, your butterfat and protein percentages in your milk volume for 2022 and then for 2026 (sic) for comparison. I know that you are paid in Order 5, which is the fat/skim order.

But I'm curious to know if you saw other similar increases, you know, in your other solids components or your nonfat solids totals?

A. So we aren't tested for other solids in Order 5.

Q. Okay.

A. I would love to know that, though, because I know the other orders get a little bit of bonus money on that.

Q. And, lastly, we all know there's -- you know, everyone talks. Farmers talk to each other, generally.

So would you say, you know, your increases in component levels are reflective of other farms that might see similar increases?

A. Absolutely. Just to reiterate, like, we have to get better every single day to be able to stay competitive.

Q. Okay.

MS. TAYLOR: That's it for AMS. Thank you for coming to testify today.

THE WITNESS: Thank you.

THE COURT: Redirect? Or -- you have some cross to come after AMS. Okay. If it's okay with AMS, I guess,

I don't -- something came up in AMS's testimony that; is that correct?

MR. MILTNER: It had nothing to do with AMS, it was just me being slow to realize I had some questions.

THE COURT: I don't think anyone here objects. If they do, they better tell me right now.

Go ahead, Counsel.

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Ryan Miltner with Select Milk Producers.

Mrs. Schwoeppe, thank you again for coming today.

I was curious about what type of hedging or risk management activities you and your -- what you do at your dairy farm.

Do -- do you participate in the Dairy Revenue Protection program? Do you use that?

A. We do.

Q. How about Dairy Margin Coverage?

A. No.

Q. Livestock Gross Management for Dairy?

A. No.

Q. Do you forward-contract anything either with your grains or your feeds?

A. We forward-contract soybean meal. We forward-contract our protein base mix. And we forward-contract fuel. We prepurchase seed, fertilizers.

Q. Do you forward-contract your milk through any other programs --

A. No.
Q. -- that I didn't talk about?
A. No, we do not.
Q. Do -- one of the elements of Proposal 1 would be to delay its implementation for a period of time to -- to accommodate risk management decisions that may have been made.

Is that important for you and other farmers like you?
A. Are you asking my opinion?
Q. Yes.
A. My personal opinion would be that I would love us to go back to the higher-of milk pricing immediately because that is what our risk management tools were designed to support.
Q. Okay.

MR. MILTNER: All right. Thank you. I don't have anything else. I appreciate your answers.

THE COURT: Ms. -- I'm not seeing anyone wanting any further examination, re-cross.

Redirect, Ms. Hancock?

MS. HANCOCK: Your Honor, I have no further questions. I just move to admit Exhibit 64 -- or 74.

THE COURT: 74.

Seeing no objection, Exhibit 74 is admitted into the record.

(Thereafter, Exhibit Number 74 was received into evidence.)

THE COURT: Off the record.

(Off-the-record.)

THE COURT: Back on the record.

We'll take lunch. Be back at 1:05 p.m.

Off the record.

(Whereupon, a luncheon break was taken.)

FRIDAY, AUGUST 25, 2023 - - AFTERNOON SESSION

THE COURT: Let's reconvene. We're on the record.

I understand we have at least one piece of housekeeping before we get started with the witness.

MS. TAYLOR: Thank you. I just wanted to alert everyone in the room and those listening, we have uploaded all of the USDA exhibits -- data exhibits with the proper official exhibit number on the exhibit hearing page. So there's no longer a data request page. That's been removed. They have moved over to the exhibit page where they are numbered problem properly, if anyone's looking for them. And they do contain ones that where maybe a footnote was -- two footnotes were marked as 2 instead of 1 and 2. We did make those changes. We did it in the hearing, but the Excel files show those changes.

THE COURT: Very well. Ms. Taylor, thank you.

Are we ready for our witness?

Raise your right hand.

DR. MARIN BOZIC,

being first duly sworn, was examined

and testified as follows:

THE COURT: Your witness, Counsel.

MR. SJOSTROM: Thank you, your Honor.

And for the record, again, I'm Lucas Sjostrom, managing director of Edge Dairy Farmer Cooperative. If it's all right, I'll give a brief background on that and then have the witness introduce himself.

THE COURT: Very well.

MR. SJOSTROM: Edge is a verification cooperative with over 800 member farms located in Illinois, Indiana, Iowa, Kansas, Minnesota, Nebraska, Ohio, South Dakota, and Wisconsin.

(Court Reporter clarification.)

MR. SJOSTROM: About two-thirds of those would be considered small businesses under the regulations defined for this hearing. Edge Dairy Farmer Cooperative, based in Green Bay, Wisconsin, is the third-largest dairy cooperative in the county based on milk volume.

In addition to milk verification services, Edge provides dairy farmers throughout the Midwest with a voice in Congress, with customers, and within our communities.

We'd like to -- and we can wait until the end, your Honor -- move Edge 1 as an exhibit. We can do it now also. It has been uploaded to the site. We do also have Edge 2 uploaded. We're not ready to put that into the record just due to printing, and we'll do that at a later time, unless someone wants it recognized now.

Would you like to do that later?

THE COURT: Well, let's mark it for identification now, and then we'll move it into the record after the examination.

I mean, the idea being is if anyone brought anything on cross-examination, whatever that would challenge the admissibility of the exhibit, they could cite that as they object to something like that.

So I have that this would be Exhibit 75 for

identification.

MR. SJOSTROM: Thank you, your Honor.

THE COURT: It's labeled Edge-1 in the top right-hand corner.

(Thereafter, Exhibit Number 75 was marked for identification.)

DIRECT EXAMINATION

BY MR. SJOSTROM:

Q. Dr. Bozic, thank you for being here today. You haven't had an opportunity to introduce yourself at this point. Could you please state and spell your name?

A. My name is Marin Bozic, M-A-R-I-N, B-O-Z-I-C.

Q. What's your address and employer for the record?

A. I represent -- I'm here representing Edge Dairy Farmer Cooperative. The headquarters for Edge is 2763 Manitowoc Road, Suite B, or letter B, Green Bay, Wisconsin, 54311.

Q. Thank you.

And did you provide this written testimony today?

A. We have included written testimony. I will be reading parts from it in the interest of time, will summarize the rest.

Q. Thank you.

And before you provide your testimony, could you start with your background and education?

A. I'm a president of Bozic, LLC, advisor to the Board of Directors of Edge Dairy Farmer Cooperative. I hold a doctorate in agricultural economics from University

of Wisconsin. I have worked as a faculty at University of the Minnesota Twin Cities since 2011.

In my academic career, I have extensively researched dairy markets and policy and dairy risk management.

Since 2018, I have participated with American Farm Bureau Federation and other partners in creation of Dairy Revenue Protection, and today my company manages both DRP and Livestock Gross Margin for Dairy Cattle.

Q. Thank you very much.

And have you had works published in peer-reviewed journals or been invited to speak at professional organizations? And a reminder to go slow for our reporter.

A. Yes. My work has been published in a variety of journals, some I think 13, 15 articles altogether. I have participated in numerous scholarly conferences, and over years, given probably 150, 160 public speaking events.

Q. And finally, how -- do you work with processors and producers outside of Edge Dairy Farmer Cooperative today?

A. Yes, I do. My company has several product lines. One of them is a data aggregation service. We have close to 100 clients on four continents. A lot of them are here in the room -- many of the people here in the room are clients, I mean to say. And as part of that business line, we -- we aggregate and summarize Federal Milk Marketing Order data, as well as many other sources

published by USDA and other around the country.

My interaction with producers also comes through several channels. I'm proud to be an advisor to Edge and participate in your Board of Director meetings, but I also field a lot of calls directly from producers on risk management policy matters and other topics.

Q. Thank you.

MR. SJOSTROM: Your Honor, I'd like to present Dr. Bozic as an expert witness on dairy economics and agricultural commodity hedging today.

THE COURT: Yes. I find Dr. Bozic qualified to testify on those matters as an expert witness.

MR. SJOSTROM: Thank you.

BY MR. SJOSTROM:

Q. That's all I have, except for Dr. Bozic, would you please share a summary of your testimony?

A. Thank you, Lucas.

The central organizing theme of what Edge will present, both today and later in this hearing, is a focus on effective data risk management for dairy producers.

Today, our testimony will be constrained to just the Proposals 1 and 2, so the first topic on milk composition. In a few weeks we'll be here again on topic, I believe, 4 on Class I, and we might opine on other issues. But our central topic is dairy risk management.

Fundamental pricing principles in Federal Orders is to establish Class I price to be high enough to reflect the opportunity cost of using that milk in manufacturing

products. As component tests have increased over the years, so has the opportunity cost of using that milk in Class III or Class IV products instead of Class I. In MCP orders, Class I handlers' obligations to the pool are based on standard milk component tests.

When I refer to standard tests -- they told me to slow down -- when I refer to standard tests, I'm referring to standards 3.5, 3.1, 5.9, that we can find in the Federal Order formula. So whenever I speak of standard tests, that's what I'm speaking of.

So Class I handler contributions pay to the pool based on standard tests, yet draw from the pool based on actual component tests in producer milk. And producer receipts in MCP orders in 2022 were some 88% of total pool pounds across all 11 Federal Orders. So that justifies, in my opinion, including this in a national hearing. This is truly the vast majority of the orders.

I published a paper last year with my colleague, Chris Wolf from Cornell, where we looked at the impact -- or, rather, causes of negative producer price differentials. As part of the paper, we looked at the particular impact of contribution of this growing discrepancy between standard component tests and actual milk component tests.

And what we have found is that this rising discrepancy has led to lowering of statistical uniform prices between 2010, which a year we took as baseline, and 2020, the last year that we analyzed.

The impact on PPDs, or statistical uniform price, differs by order. In Order 1, Northeast, it was $0.08 negative; in the Upper Midwest, $0.05 negative; in the Central Order, $0.16 negative; in the Mideast Order, $0.14 negative; in the Pacific Northwest, $0.12 negative; in the Southwest, $0.29 negative.

And unless a regulation is promulgated that considers this rising opportunity cost of milk used in Class I due to rising protein and other solids tests, this spread will continue, the spread between actual and standard component tests, will continue to contribute to negative trend in producer price differentials.

This lower baseline PPD, or producer price differential, will then make it easier for other price shocks to induce depooling, which is, in my opinion, a symptom of disorderly marketing.

For these reasons, Edge supports and here is testifying in support of Proposals 1 and 2 by National Milk and National Jersey.

That said, we do believe that National Milk's proposal -- and in the rest of my testimony, just for simplicity, I will refer to National's proposal when I'm referring really to both of them.

We believe that National's proposal can be improved by two design changes. First, we believe the methodology used to update a standard protein and standard other solids test should also be used to set the standard butterfat test, so the same one-year delay lookback of

12 months. Whatever AMS decides to use as a protocol for updating protein and other solids for purpose of pricing, we believe the same methodology should be used to update butterfat test.

If the standard is 0.07 as proposed in National Milk before the changes are implemented, we don't -- we believe that no changes in butterfat tests, standard butterfat tests, should be done unless at the same time protein and other solids are changing. If there are no changes needed to protein and other solids, don't change the butterfat at the same time.

While updating standard butterfat tests would not affect pool obligations, which, I assume, is why Proposals 1 and 2 do not consider it, it would ensure that producers can effectively use Class III and Class IV milk futures, as well as other risk management tools, based on class prices to manage their price risk.

Second, we believe that implementation delay is needed, it's critical -- not just needed, it's critical. However, we would propose that it be 15 and a half months, rather than about 11 or 12 months in Proposal 1 and 2.

This, as I will elaborate in a little bit, is needed to make sure that we can legally continue to offer data revenue protection for the fifth quarter out, and I'll elaborate what that means.

In my written testimony, I have provided two thought experiments, two exercises, two examples of a producer or representative producer trying to use

Class III milk futures in the first example or -- well, in both examples -- to manage their price risk.

And in both of those examples, we find that not updating butterfat test leads to basis risk. Basis risk meaning that a decline in the producers' gross pay price has not been fully offset, or not as fully as possible offset, by the hedging gains on their Class III futures positions. I will not go into details unless I'm cross-examined, just with the interest of time.

This perhaps considered is a good summary. The National proposal, as well as All-Jersey proposal, leaves the standard butterfat test at 3.50 pounds of butterfat per hundredweight of milk, and their -- National's proposal initial standard protein is 3.36 per hundredweight of skim milk. This would result in a butterfat-to-protein ratio of 1.08, and that's a decline from the current butterfat to protein ratio of 1.17.

When we look at what happened in the MCP orders in terms of butterfat-to-protein ratio in actual tests between years 2000 and 2022, it actually went up. It used to be 1.23 in year 2000, and now it's 1.27. So while National Milk proposal will have this ratio reduced, the industry has this ratio increased. They are moving in two opposite directions, and that's not good for risk management.

So without belaboring the point, if we want to have effective risk management, we should increase the standard butterfat test using the same protocol as is

adopted for increasing standard protein and other solids test. That's my first big point.

The second design change that we are offering as beneficial to dairy producers is to increase the advance notice to the industry, or the delay, I'll call it really speaking delay, in implementation.

We are proposing that 12-month period be used in determining what the new standard component test should be. However, that 12-month doesn't have to be calendar year. We would offer that it -- perhaps it's September through August, so that in early September we know what the 12-month average is, and then before September 15th, for example, before September 15th, 2024, USDA announces the revised standard butterfat protein and other solids test for January 1, 2026, so the year after the next year.

That timing is not arbitrary. It's not capricious. On September 16th of each year, Dairy Revenue Protection starts offering sales for the first quarter of the year after next. So on September 16th, 2023, DRP will start offering sales for the first quarter of 2025. On September 16th of 2024, we will start offering sales for the first quarter of 2026.

And this may not be a fact that's widely known among the dairy industry participants, but DRP has to follow the regulations under the Federal Crop Insurance Act.

And I'm going to quote from the Act: "To qualify for coverage under a plan of insurance, the losses of the

insured commodity must be due to drought, flood, or other natural disaster, as determined by the Secretary. Over years, this has been interpreted to include natural supply and demand shocks, but this does not include regulatory shocks."

In the basic provisions for Dairy Revenue Protection, it is stated in the Section 4: "This policy provides insurance only for the difference between final revenue guarantee and actual milk revenue times the actual share protection factor caused by natural occurrences in market prices and yields in your pool production region."

Pool production region means something different in their context than the pool as used in this hearing.

"This policy" -- the quote continues -- "this policy does not insure against the death or other loss or destruction of dairy cattle, or against any other loss or damage of any kind whatsoever."

This is pretty serious. If we do not have regulatory certainty, then we may have to delay the start of the sales for that first quarter of 2026. In other words, if we know that we will only find out standard component tests in February of 2025, we may not be able to start offering that last -- that first quote of 2026 under DRP until those components are known.

So for these reasons, the Edge will propose that -- is proposing that the delay be 15 and a half months, and -- and to underline, our request is that any changes follow the same delay. Some changes benefit

producers; some benefit processors more than producers, at least in short-term. And our request is that any changes be delayed in such way to allow us to continue offering DRP for the fifth quarter out.

What's so special about the fifth quarter out?

My academic research that preceded the design of Dairy Revenue Protection suggested that effective risk management means that you place hedges before the crisis starts, so far out that you can cover the entire potential client crisis.

Think about COVID-19 prices for Class IV products. They started falling in February, March of 2020. They didn't really recover until May 2021 to their pre-pandemic levels. It took about 15 months for prices to come up.

If you are only hedging three or six or nine months out, you will be covered for the inception of the crisis, but not for the entire crisis. And over the years we have seen that utilization of Dairy Revenue Protection has been slowly growing in those deferred months, and we are actually right now in talks with industry stakeholders as well as our partners at Risk Management Agency about offering higher subsidies for deferred poolers to truly encourage producers to hedge further out.

However, if we are -- if my company as a responsible what's called submitter, like, colloquially owner of intellectual property rights on DRP, if we become aware there is a known regulatory risk that is being covered by DRP, then I have legal responsibility to advise

Risk Management Agency that the sales are postponed. So we could really mess up risk management if we are not careful with the delay.

So with that, in conclusion, these are good proposals. They make sense. We believe that they should be implemented, either National Jersey or National Milk. However, there are these two design changes that we believe should be strongly considered.

And with that, Edge thanks the Secretary and the Department for your hard work, opportunity to testify, and I look forward to any questions.

THE COURT: Any direct besides that?

Any cross? Anyone other than AMS, I guess?

Yes, Mr. English, your witness.

MR. ENGLISH: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Dr. Bozic, my name is Chip English, attorney for the Milk Innovation Group. Good afternoon.

A. Good afternoon.

Q. So I want to focus on your written testimony. I think one statement that you read into the record, and then also it's appropriate, your study, at least a couple comments that I think are related?

And so I want to start on Exhibit 75, page 1, with your statement, "A fundamental pricing principle within Federal Milk Marketing Orders is to establish Class I price high enough to reflect the opportunity cost of using

that milk in manufactured products."

Now, a statutory standard is to bring forth an adequate supply of milk and to avoid disorderly marketing, correct?

A. I believe when you say that.

Q. And in fact, there is an adequate supply of milk correct, fluid use?

A. At present time, I'm not aware of any empty shelves.

Q. And in fact, fluid milk plants are not having trouble getting milk, are they?

A. I cannot speak on their behalf.

Q. How familiar are you with the actual provisions of the Federal Milk Marketing Orders?

A. Enough to be dangerous.

Q. Well, let's -- let's test that. So you agree that Class I processors are the only entities that are required to pool their milk, correct?

A. That is correct.

Q. And if there's a quid pro quo within the system, that is that if -- in return for that obligation to pay a higher Class I price, in order for milk to be producer milk, as that term is used in the Federal Orders, those producers must meet minimum performance standards, correct?

A. Correct.

Q. And those performance standards are largely set out in the definitions for handler in each of the

individual orders, correct?

A. That's right.

Q. And the point is, you're paying the higher Class I price. We're not going to guarantee you a supply, but we're going to help you get a supply, because we're going to make people who share in the pool at least provide the milk, correct?

A. That's right.

Q. That is to say, a dairy farmer doesn't get to stand up and say, "I want to pool my milk." He has to do something, correct? Or she has to do something, correct?

A. Or their cooperative.

(Court Reporter clarification.)

THE WITNESS: Or their cooperative.

BY MR. ENGLISH:

Q. And that's fine, cooperatives are deemed to be producers for this purpose, correct?

A. Sure. Sure. Yes. When you said he or she, that involved a physical person.

Q. I understand that. I wasn't trying to -- I mostly wanted to get out of the fact I said he.

So -- and the -- so through the series of hearings, first the Federal Order Reform, and the series of hearings between 2000 and 2008, USDA set and then reset the performance standards in order to address pooling and depooling issues, correct?

A. That is my understanding.

Q. And in addition to having those standards,

industry asked or USDA thought it would be a good idea for each individual Market Administrator to, within the regulations, have the power, if requested, and if the evidence established it, the power to increase those performance standards, correct?

A. That is my understanding.

Q. And at the same time, the Market Administrator has the power to decrease those performance standards, correct?

A. And they have exercised that right.

Q. I'm sorry?

A. And they have exercised that right.

Q. Yes. They have, at least since January 1 of 2010, not exercised the right to increase performance standards, correct?

A. I -- I don't have the full document in front of me, but I do not contest what you said.

Q. But in fact, since January 1 of 2010, for at least five Federal Orders, they have repeatedly or repeatedly and then to further notice, or just further notice, reduced shipping percentages in five orders, correct?

A. I don't have the document in front of me, but I do not contest what you are claiming.

Q. So if Class I plants needed to pull milk away from manufacturing products, would we not have seen an increase in the performance standards or at least not a decrease in the performance standards?

A. I think that's speculative.

Q. Well, given the fact the Class I plants are paying the highest price, if they were having trouble getting milk, wouldn't you think as rational actors they'd hold up their hand and ask the Market Administrator, "Help me"?

A. My understanding is they could also call for milk from any pooled handler.

Q. Yeah, I think that provision is gone. I don't think calls exist anymore. If they are there -- Order 1 definitely had a call at one time. I am not aware if they -- if I'm wrong, I'm wrong. But assuming for a moment they do have that right somewhere, they haven't exercised that either, right?

A. Not that I'm aware of. I was just trying to say that increasing performance standards is not the only way to secure that milk.

Q. Well, whatever methods handlers have had, Class I handlers, from Exhibit 39, they apparently either didn't ask or the Market Administrator, after investigation, thought they didn't need it, correct?

A. I do not contest that.

Q. So where in the statute does it say "a fundamental pricing principle within Federal Milk Marketing Orders is to establish a Class I price high enough to reflect the opportunity cost of using that milk in manufactured products"?

A. I did not claim that it says in the statute.

Q. So what is the basis for your saying it?

A. Well, for example, if you look at the record from

the 2000 hearing, and the setting of the higher-of of III and IV, the idea was, behind it, that their price needs to be high enough so that it reflects where else that milk may go to incentivize others who do not have to participate in the pool, to participate in the pool.

Q. Were you here yesterday when Mr. Rosenbaum asked the question, it wasn't the overall policy of USDA in Federal Order Reform to reflect existing regulated prices as best they could?

A. I do not recall specifics.

It would be fair to interpret this paragraph that you cite from federal pricing principles is my interpretation of the statute, which may or may not be correct, and anybody can contest it.

Q. So you have discussed hedging to some significant extent, and so you believe that a series of proposals, and certainly at this moment Proposal 1, in your view, would improve the efficiency of hedging efforts, especially if your modification was adopted, correct?

A. My testimony does not speak to that. My testimony refers that if the -- if the Proposal 1 is adopted, that increasing butterfat standard at the same time would enhance hedging effectiveness versus only implementing Proposal 1.

Q. Thank you for the correction. I appreciate that.

So hedging is important to dairy farmers, correct?

A. As evidenced by their actions, yes.

Q. And it is important to processors, correct?

A. As a -- I would assume, yes.
Q. You don't know -- you don't -- I don't want names, but you don't have clients who are on the processor side of the hedge?
A. Fair point. It is important for them as well.
Q. Including Class I processors?
A. Yes.
Q. That was a pretty emphatic yes. Yes, Class I is important for -- to be able to hedge.
A. Emphatic because in what's going to come in a few weeks, Edge's proposal on Class I more specifically looks to address the concerns of your clients as well, Mr. English.
Q. So I now want to discuss --
MR. ENGLISH: And I -- I apologize, I -- did we not mark for now, or are we treating, because it's a footnote, the study as an exhibit? There were two documents that were uploaded, Edge 1 and Edge 2, and I was trying to pay close attention.
I don't know, was Edge 2 not marked for now?
THE COURT: Edge 2 has not been marked for identification. We were waiting for printing, I think, and counsel can correct me.
I don't know whether you are really a lawyer, but for this purpose, you are counsel to me.
MR. ENGLISH: Your Honor, I don't think the rules require people to be lawyers to be --
THE COURT: Could be representative --

MR. SJOSTROM: No, I'm not counsel. Yeah, it's only a printing issue, so we would plan to have it next week. If you want to identify it as such with future physical inclusion, I don't know the rules of waiting or not. You are welcome to include it as far as we're concerned. It's only a printing logistics issue.

THE COURT: We have a cross-examiner that wants to ask questions about it, and we don't have the -- well, I guess I would ask you this, Mr. English, do you have a copy of this document?

MR. ENGLISH: I was able to down- -- I mean, we -- we have been very closely monitoring USDA's very uploading, and Dr. Bozic, you know, followed the rules and uploaded it this morning, and it came shortly after 8:00 a.m. So I do have a copy.

But on the other hand, if not everybody does, my understanding, and if the representation is that Dr. Bozic will be here at a later date, I am prepared to examine on that statement, so everybody has it at the same time, because otherwise, you know, I would have an advantage, and I think that's -- I don't need that.

But if the representation is he's going to appear again, and I have the opportunity to ask about the document, which is referred to in footnote 1 on page 2, I'm perfectly happy to reserve the questions on that document.

THE COURT: Yes, Mr. Hill?

MR. HILL: Yes, your Honor, I think it would be

preferable if we waited for everyone to have the document, it would be easier to follow.

THE COURT: Yes. Absolutely. I think that I want to reward diligence. It's good to be checking on the website and all that, but I do think that it would be more orderly -- that's important.

THE WITNESS: Mr. English, I'll be back.

THE COURT: So you will reserve on the questions you have for --

MR. ENGLISH: What is not marked, what is right now known on the website as Edge 2, but that's on the website only as a submitted document.

THE COURT: I'm wondering if we -- let's reserve Exhibit 76 for -- for identification for that document when we get it, if that makes sense. That will at least keep the Edge exhibits together in one of the virtual or physical folders.

(Thereafter, Exhibit Number 76 was reserved for identification.)

MR. ENGLISH: I'm perfectly fine with that, your Honor.

THE COURT: And when we get it, we'll identify it as that, and then we will have further cross by you, and other people don't have to get up and reserve for anybody on that document.

I guess the question I have -- I mean, I guess we'll go ahead with other cross now, but should -- well, we can decide then. I assume we can have redirect come

after we do all the cross.

MR. ENGLISH: In that case, your Honor, I am done with this witness until he appears with copies of reserve 76.

THE COURT: Very well, Mr. English.

Further cross-examination?

CROSS-EXAMINATION

BY MR. VETNE:

Q. John Vetne, V-E-T-N-E, appearing for National All-Jersey.

Dr. Bozic, I just have a couple of questions. Starting on page 2 of your prepared testimony, Exhibit 75, Edge 1. The heading at the bottom of the page is Adjusting Standard Butterfat Test.

A. Yes, sir.

Q. You don't intend by that to mean anything of the testing procedure needs to be changed, do you?

A. No, sir. As I qualified before, I'm referring to the -- what is currently listed as just 3.5 pounds of butterfat per hundredweight of milk in announcing the Class III or Class IV price.

Q. Okay. You are referring to a fairly long history of announcing USDA announced prices be based on 3.5% butterfat and the value of 3.5% five pounds of butterfat in a hundred pounds of milk?

A. That's correct.

Q. Okay. And the portion that is not butterfat is skim, protein, other solids, or total solids nonfat, and

water.

A. That's correct.

Q. Okay. So when there is -- when USDA announces on the basis of 3.5% butterfat, would it be correct to say that the announcement reflects the true value of a hundred pounds -- in a hundred pounds of skim, of 96.5 pounds of skim milk and 3.5% pounds of butterfat?

A. Mr. Vetne, I have a Ph.D. That means I cannot do math on the fly.

Q. Okay. I think you used the term in here someplace --

A. I -- I get scared every time we hear a phrase "true value," so -- so that's why I --

Q. Okay. Got it. I think you used the term statistical uniform price?

A. Statistical uniform price would also include the producer price differentials in addition to the standard Class III milk.

Q. Statistical uniform prices is price -- is a term that is used to announce USDA announced prices both in fat/skim orders and in multiple component orders?

A. No, I don't believe that's technically correct. In the skim/fat order, there was actually uniform price, and the MCP statistical uniform price, just to be pedantic.

Q. The statistical uniform price, how does that compare to what you just referred to as the uniform price? Is it supposed to be so you can compare apples and --

apples and apples?

A. We're definitely in the same fruit bowl there. But it -- that's the attempt, but like --

Q. That's the attempt. Okay.

So a -- the purpose of your proposal for modification is to have the announcement be based on measured butterfat content as well as protein and other solids in producer milk?

A. That is correct. It is very difficult to envision a future in which protein continues to rise, protein tests, actual protein tests continue to rise, without corresponding increase in the actual butterfat test. Which means that if we keep on adjusting protein over time and not the butterfat, we will be increasing the basis risk that would be present in hedging with the standard Class III or Class IV milk futures, which are settled, cash settled against the announced Class III and IV prices announced by AMS.

Q. Okay. Proposals 1 and 2 addressed to the nonfat solids portion of producer milk would change handler obligations on various classes of milk --

A. That's correct.

Q. -- in different ways, in different market areas, but it would change handler obligations.

A. It would change handler obligations, yes.

Q. Okay. Adding butterfat to the components that are updated, would that change any handler obligation?

A. There would be no impact on either money due to

the producer settlement fund or any draws from producer settlement fund. The handler obligations would not be affected by that.

Q. It would be simply a different way to announce data that has been observed and statistics drawn from that data?

A. To the chagrin of many dairy economists, including Peter and myself, we will have to do some more work to iron out our time series. But, yes, producers come first. Their risk management is more important than our Excel sheets.

Q. And further down the road in this hearing there will be -- butterfat will be addressed on a different technical issue as what's the yield that should be applied to get an ultimate price for per pound of butterfat, and your proposal to update would not be affected by that part of this hearing either?

A. Our -- our current testimony is silent on those issues.

Q. Okay.

A. Does not comment on any of that.

Q. So you see your proposal to include an adjustment in the announced price as one applying to all components, correct?

A. To -- specifically to butter -- the Proposals 1 and 2 already envision updating the protein and other solids and nonfat solids. We are just saying, let's not forget about butterfat.

Q. Okay. It would not increase an obligation. Do you see it as a logical outgrowth of Proposals 1 and 2?

A. I do believe it's a logical outgrowth. It prevents proposals that are fundamentally good and beneficial for the dairy industry from having adverse unintended consequences on basis risk.

Q. Thank you.

A. Thank you.

THE COURT: Further cross for this witness?

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Ryan Miltner representing Select Milk Producers.

Dr. Bozic, how are you?

A. Good afternoon. How are you?

Q. Great. Thank you.

MR. MILTNER: Your Honor, if I could approach the witness, I wanted to hand him this pamphlet that I would like to refer to as I question him.

And for the record, it's a USDA publication. There's a stack of them on the back table there. It's titled Federal Milk Marketing Order Program: Understanding the Milk Order Amendment Process. It's also available on USDA's website. I don't think we need to make this an exhibit. We could just take official notice of its existence.

THE COURT: I'm sorry, Mr. Hill, what did you say?

MR. HILL: We don't have a problem with that being taken official notice of.

I want to say, in the California hearing, a lot of the documents that we had, we took official notice at the end of the hearing in -- well, actually in briefing, but it's fine to do that now for such a small --

THE COURT: Not worth a whole lot of discussion on the record, but official notice is an interesting concept. It doesn't mean what it used to. But this is a document, Federal Marketing Order Program: Understanding Milk Order Amendment Process. It's a shiny pamphlet. It's available on the website. So if anyone wants to take a look at it, it's -- it's there.

We're not -- well, we'll see what the -- what the cross is. We're really using this as a way of avoiding getting an exhibit into the record that everyone can reach anyway. It's nothing quite to say what use is made of it.

But go ahead, Counsel, official notice is hereby taken.

MR. MILTNER: It is glossy and shiny, you have that correct.

BY MR. MILTNER:

Q. Dr. Bozic, have you seen this document before on the web or otherwise?

A. Yes, I'm familiar with it.

Q. Okay. The reason I wanted to have it in front of us is to talk about the timeline that it sets out for amending a Federal Milk Marketing Order. So I think you have folded it out the way I have here where you are looking at the map in the right corner.

A. Yes, I have.
Q. Okay. So if you look at number 5 there, it says, "USDA holds a public hearing."
That's what we're doing right now, right?
A. The fun has just started.
Q. Yes. We have a ways to go.
So I want to go through the timeline from 5 to 12 and see if -- if we can put into the record kind of an anticipated date when this proceeding will be completed theoretically.
So AMS has said they would like to conclude the hearing here by September 30th. So let's use that as the end of the hearing.
A. Uh-huh.
Q. And the chuckles behind me should be noted for the record.
So number 6: "The hearing record is available two weeks after the completion of the hearing."
And I did my best to figure in 31-day months and 30-day months, but that one should be pretty easy, October 14th, right?
A. 14th.
Q. Then the parties file corrections to the transcript 30 days after the record is available. That would get us to November 13th, I think.
A. No contest.
Q. Okay. Post-hearing briefs are next 60 days following that. I believe that would be January 12th or

pretty close to that.

A. Happy New Year.

Q. A recommended decision 90 days following. So I think April 12th, depending on what we count February for, I think that's a leap year next year, but we're close any way, right?

A. Yes.

Q. Comments and exceptions to the recommended decisions 60 days after that. That would be June 11th, I think.

A. Yes, sir.

Q. A final decision 60 days following takes us to August 10th, I think.

A. I'm tracking.

Q. Okay. You are tracking that.

And then a referendum to implement the amendments -- and this is where I -- you know, there's no -- it gets a little squishy, but if we have a final decision August 10th, and I'm going to assume 30 days to get ballots in, so September 10th would be that. And then it usually would be effective the first day of the month following the referendum.

So maybe October 1st we could have operative regulations from this hearing, at least for this hypothetical. Can we go with that?

A. Yes.

Q. Okay. This hearing -- the petition from National Milk was submitted on May 2nd. And so from May 2nd of

2023 to October 1 of 2024, that's how long we're going to go from proposal to a potential change in regulations.

A. Yes, sir.

Q. Okay. Given that timeframe, when are you advocating the effective date for any changes that would be in that final decision?

A. Can you give me a little latitude in answering?

Q. Absolutely.

A. So we -- we should recognize that we are not addressing only one-off changes here. Some of the changes that -- that the organization will be proposing soon will presumably be one-off changes, yields, shrink, losses, etcetera.

But standard component tests, make allowances, standard component tests -- even these proposals contemplate periodic updating, and make allowances, while they are here proposed as a one step up in some proposals, other proposals several steps up over a number of years, there is -- there are already actions afoot to create a system where they would be regularly updated.

So what we -- how we handle make allowances in any potential implementation timeline here sets the precedent for how they will be handled once we have mandatory surveys, regular hearings, etcetera.

I am, frankly, less concerned about 2025 than I am about setting precedence for managing the Federal Order system for years, potentially decades to come. And my company has already worked with Risk Management Agency to

address availability of the risk management programs that I'm responsible for in 2025, and I'm pleased to say that we anticipate to promulgate some rules before September 15th of this year to ensure uninterrupted delivery in 2025.

So I'm less concerned about 2025 than precedence for something -- for things that will be regularly updated going forward. With that said, my preference would be that all changes take effect January 1, 2026.

Q. So 15 months after what the effective -- well, 15 months after the referendum on the order, essentially.

A. Yes. And there also has to be some elegance in regulation. It would be kind of awkward to implement December 1 or February 1 where people budget for calendar years. Every year is considered to be its own book, if you speak -- if you will. So -- so that's why January 1 seems like a natural starting date rather than some other time in the year.

Q. That you said that would be your preference. Would that be your preference for any of the proposals in this hearing that would be adopted?

A. Anything that could create hurdles for either hedgers or market makers on Chicago Mercantile Exchange Markets. If there are changes that are reasonable -- a reasonable observer with no credentials would consider as not material for effective operation of risk markets, I see no reason to delay those.

Anything that can create hedging gains for one

side of the transaction and hedging losses on another, that is not -- for a transaction that has taken place before regulations have been promulgated, if we don't start this hearing from the outset thinking about that, what we are doing is already reducing liquidity in 2025 on CME.

And 2025 is going to be a difficult year for dairy producers who will have a cheese volume probably increase by 7% year over year. The last thing we need right now is to hamper risk management markets.

Q. That difficulty on the CME, that's completely independent of anything that happens with this hearing, right?

A. Not necessarily. If we, for example, promulgate changes to make allowances in a way that the industry cannot properly anticipate, if I was a market maker -- and I'm not -- but if I was a market maker of CME, I would probably try to stay clear from dairy futures for the foreseeable future. That means that there is not liquidity to help either producers or processors execute their orders, market orders on CME, which increases cost of transaction, transactioning.

I understand that CME will also be testifying soon, so there will be more opportunity for cross-examine on that.

Q. DRP, the -- if -- as I understand the program, the underpinnings of DRP are the actual contracts on the CME; is that correct?

A. Dairy Revenue Protection uses the end of day prices on Class III, Class IV, butter, cheese, dry whey, and nonfat dry milk futures, to inform expected prices, and we use end-of-day option premiums, both puts and calls, at the money puts and calls, to inform or calculate volatility -- measures of risk so that we can properly set the premiums that are generated each afternoon.

So, yes, DRP heavily depends on CME.

Q. DRP would be -- I realize this is an oversimplification, but would it be correct to state that DRP provides dairy farmers a crop insurance program that mimics what they could accomplish trading on the CME?

A. We believe that it provides them some benefits that they could not accomplish on CME. Particularly, Dairy Revenue Protection also provides coverage against unanticipated shocks to cow productivity, milk per cow yield.

In addition, due to federal regulation, DRP is designed to be affordable. It is designed to be easily scalable. There are no fixed contract sizes. You can -- whether you have 50 cows or 5,000 cows, you can design a contract to your size. You cannot always easily do that through CME. So we believe that DRP is a tool that is not redundant given that CME exists.

Q. Make allowances were last updated in 2008, correct?

A. That is my understanding.

Q. The issues that you described related specifically

to the CME.

Would those issues about liquidity and pricing of contracts have existed in 2008?

A. Yes. However, we should look at the magnitude of impact. And that depends -- and the magnitude of impact on the dairy industry is going to be much bigger now than it was before, for two reasons.

First, direct utilization of CME products has gone up tremendously. I don't have the numbers, so I'm going to wave my hands -- tremendously -- since 2008. And also, we did not have Dairy Revenue Protection in 2008. Loss of gross margin was just getting off the ground, it was barely used in 2008.

So we are truly in a different territory now than we had been in 2008 when it comes to the attention that we need to pay to the proper operation of dairy risk markets.

Q. I forget the exact word you just used, but the importance of the CME, the scale of use of the CME today is much greater than it was in 2008?

A. That is correct.

Q. Wouldn't that mean that their liquidity is actually increased now rather than what we had in 2008?

A. But that is not an irreversible process. If we work hard here in this room, we can really screw that up if we don't pay proper attention. Just because it has gone up over years doesn't mean that we can believe that this is going to continue to rise irrespective of how the regulations are set here.

Put differently, the liquidity in CME over the last, what would that be, 15 years, has risen because there was regulatory stability. Prices are volatile. Regulations are stable. We should not induce regulatory uncertainty going forward. It's okay to regularly update make allowances, yields, etcetera, but they should be done in a way that it doesn't induce regulatory uncertainty for holders of either long or short positions on CME or users of products derived from CME prices.

Q. I'm glad you mentioned LGM Dairy. That product was offered for sale when the make allowances were last updated, correct?

A. I believe that's the case, yes.

Q. Did LGM Dairy have to suspend any of its contracts or any of its offerings when make allowances were offered in 2008?

A. LGM was not regularly offered for other reasons. There was a limit to subsidies, so there were many months where LGM just would be offered at all. LGM was offered once per month; DRP is offered about 20 days per month.

And also, I don't want to -- as a submitter, it is -- as a quote/unquote "owner" of DRP, and LGM now, it is my responsibility to follow the letter and spirit of the law, whether my predecessors have done so or not. In other words, the precedent of LGM, either being suspended or not, is not sufficient to guide actions going forward in a way that stare decisis would be sometimes in Supreme Court.

Q. Do you know if they suspended it in 2008?
A. I do not believe they have suspended it for the reason of changes in make allowances.
Q. And the same restrictions or guidance that you cite in your statement, that was in place in 2008?
A. That is correct. The Federal Protection Act provision were still in place back then.
Q. I'd like to go back to the timeframe we talked about at the beginning. And so let's -- let's talk about an effective date, potential effective date of October 1.
If a producer has purchased DRP coverage for, say, the first quarter of 2005 --
A. Could we use a later year, for example, something that is in the future rather than in the past, if it doesn't --
Q. I'm sorry, 2025. Thank you. That's great. I was like, that is in the future.
They purchased it for the first quarter of 2025.
A. Yes.
Q. And the regulations change on October 1. They will still be paid any -- any indemnity on the contract that's already been purchased, correct?
A. That is correct.
Q. On October 1, assuming that there is no delay in implementation, on October 1 of 2024, which quarters of DRP would you expect to be made available, according to your outlook?
A. Assuming no delays.

Q. Yes.

A. Probably all four quarters of 2025. I -- I would -- I don't know with certainty about the first quarter of 2026.

Q. So -- so let's just say on October 2nd, rules are in effect. I'm a producer. I want to cover my milk for the first quarter of 2025. I could purchase that contract?

A. For the first quarter of 2025, you probably will be able to, yes.

Q. The market -- wouldn't the market impact of the new regulations affect the first quarter of 2025 in the same manner it affects the first quarter of 2026?

A. That is the case, but here is me now taking your side. The market has known about National Milk's make allowance proposal for a year and a half, so presumably has been priced in already in those quarters.

We have just -- two weeks ago, I petitioned the Federal Crop Insurance Corporation Board of Directors to approve changes in the dairy regulation that would allow to us continue offering the DRP in 2025 under this assumption that the regulatory changes that have been discussed for, look at how many months we have listed here, would have been properly priced in.

Again, my bigger concern is the precedent that we set for future years for changes that will be recurringly made, make allowances, and the standard component tests.

Also, if USDA does come out with the proposed rule

or the final rule that is wildly at odds with the -- what has been proposed, then there -- there could be some indemnities driven by the regulatory change. And we are in a rather challenging territory at this point, you know.

To put it differently and more plastic, I could get sued, you know, for -- for recommending to RMA to not suspend DRP for 2025. So I'm kind of taking the risk here in -- because I -- I do want DRP to stay open in 2025.

Q. And I think we can -- in the room, there's a general consensus that we would like you not to get sued.

A. Sometimes I'm my own biggest enemy when it comes to that.

Q. You talked about the markets having priced in for this coming year, the possibility of these changes, right? I mean, the people on the CME that are transacting there, they are quite sophisticated in their market knowledge, are they not?

A. Yes. To go into more weeds, if you will allow me. So what we will do every day, we will monitor the spread between the actual Class III futures and the Class III futures implied by the butter, cheese, dry whey futures, and if the implied Class III futures resemble the regulatory changes that have been proposed and we can assess indirectly that the market is indeed pricing in that regulatory changes will occur. But you can only carry those kind of exercises so far.

Q. But the markets do price in a certain amount of volatility in the markets, weather risk, political risk,

regulatory risk, and -- and that knowledge is available to the market, correct?

A. Yes, sir. The other side of the coin of what you just stated is that unless we design regulatory process in such way that there are proper delays in implementation, we are going to force dairy producers to pay more for risk management because they will be paying for regulatory uncertainty.

Q. Do you, or have you, done any analysis to -- to estimate the additional cost to producers of that additional risk?

A. It's -- that -- that's something that we will know probably by middle of first quarter of 2024. It's still too early. The volume for the -- nobody anticipates that anything will be affected before the first quarter of 2025. The first quarter of 2025 is very thinly traded right now. It's just too early to say.

Q. If you had to suspend the sales for first quarter of 2026, when would you expect that you would be able to offer those contracts for sale?

A. If the -- as soon as we know the -- what make allowances and standard components will be in effect for the first quarter of 2026, or any other changes that may or may not happen.

Q. Okay. So let me make sure I understand that.

If on October 1st of 2024, the regulations are in effect --

A. Right.

Q. -- we know what the make allowances are going to be at that point, correct?

A. If -- if -- yes. Like, if we -- if we know with certainty what's going to be enforced for the first quarter of 2026, then, yes, we can offer the sales for the first quarter 2026. It is the regulatory uncertainty that may cause suspension of the program. If there is no regulatory uncertainty, then there is no reason to suspend.

Q. How long of a period of suspension do you think there would be?

A. Well, I wish there was a manual on these things. The way it works in practice is that we monitor the situation on a daily basis, and if we notice any abnormalities that jeopardize the credibility of prices or volatilities or the program integrity, then we have to alert Risk Management Agency, and then they have to make a decision. They can make decisions sometimes within hours, and sometimes within months, depending on what kind of authority they require to make a change. But, you know, there is no blueprint that I can offer to you today.

I can only commit and promise that we will do everything in our power to ensure uninterrupted delivery of all risk management programs for which we are responsible for.

Q. In your experience, of those farmers that participate in DRP, what percentage of them are buying five quarters out?

A. Currently, about 10% of sales typically are the fourth and the fifth quarter out combined. That may increase in future years. We are in the process of gathering stakeholder feedback right now about potentially increasing subsidies for the fourth and the fifth quarter out. So if that change transpires, we would anticipate higher share of the sales to be in those quarters.

Q. The 10% you said was fourth and fifth quarters combined?

A. Yes. I don't recall off the top of my head just the fifth quarter.

Q. Okay. Thank you. So I'm thinking about precedence as well. And from the time a petition was submitted here to what we think could be regulations is 17 months.

If we were to then delay implementation for another 15 months, it's two and a half years from somebody saying, USDA, I think we need to look at making a change to it being effective.

A. So you are referring to Proposals 1 and 2?

Q. I'm referring to -- sure. Proposal 1 and 2 fit that bill.

A. Because both proponents are already asking for about 12 months delay.

Q. Okay. Well, let's talk about another proposal then.

Any other proposal, if -- if -- if -- if it's proper to delay implementation of a Federal Order change,

say Proposal 11, which is one of my client's proposals to change yield factors, and you say -- I think you said a yield factor change, you would advise the same delay.

A. If it has a material impact on price, yes.

Q. Okay. And materiality would be how many cents per hundredweight?

A. Well, let's put it differently. If they are going through the efforts of making a change, then it's probably material.

Q. Okay. So there are material proposals here, and it's going to be 17 months from, let's take a look at things, to we have made a decision, and then another 15 months until it becomes effective, that's two and a half years for producers or handlers to get a fix to an economic problem.

Is that -- would that be a typical expectation, then, if USDA agrees with your position?

A. I believe in future hearings there will be -- if the hearings are held regularly, they can probably go faster than what we are doing it now. There will be less to discuss, and the hearing probably won't take 40 days.

Q. Mrs. Coale is not looking over here.

A. And also, like, let's recognize that it's been 15 years since the last change. If something is so urgent, wouldn't you anticipate that it would have been submitted earlier?

Q. I think you could ask the people in this room, and there would be lots of people that would agree with you

and lots of reasons why it was not. But let's take this to -- let's ask another hypothetical.

Let's assume my clients came to me and said, we have a new problem, and we need to make it a change to the Federal Orders, draft a petition. And we expedited that process. And this 18 months, 17 months gets compressed to maybe ten, okay? So now it's ten months, plus 15 months, that's two years for what would be considered, in industry parlance, an emergency.

Is that -- would that be --

A. None of the emergency hearings held in the past, that have actually been held, not that have been requested, had an effect on pricing formulas; is that correct? They are, you know, in the aftermath of hurricanes or other national disasters, maybe you change the performance standards, make other tweaks. Any change that does not affect the performance of risk markets has -- there are no reasons that I'm aware of to delay that.

Q. Would a change to a Class I differential fall into a category of substantial?

A. It would be a substantial change, but it won't affect the performance of futures or options market, so there would be no reason to delay a change to Class I differential, a change to performance standard, a change to repooling. Let me tell you, there's a number of things that you can change without waiting, you know, 15 months to implement.

Q. But really -- so -- so if we exclude all of those, any change to the price formulas of the Federal Orders, you would advise a 15-month delay in implementation?

A. That would be my recommendation, correct.

Q. Which under regular procedures puts us out two and a half years from petition to implementation?

A. Again, let's recognize that market has other ways to address delay changes to pricing. Most everybody would agree that make allowances are out of whack, technical term, that they are lower than they need to be. The market has not waited to provide a correction for that. There are -- you know, some processors have depooled; some processors have had the ability to reblend; cooperatives have reblended; and -- and other private processors are paying negative premiums -- quote/unquote "premiums," so paying below the -- what would have been their regulated price had they been pooled.

Markets will find a way to correct most things, even in the short-term, even if the regulation is not rushed forward. It's -- if you look at how our republic is designed, we have designed the system of government, bicameral, with the signature of the President to slow things down, not to expedite them. Not that we should necessarily see that there's a mandatory guidance here.

Q. Did you -- you have been in the room most of the hearing so far, correct?

A. Most of the time.

Q. Did you hear the testimony from several witnesses

that called depooling a disorderly marketing condition?

A. I did hear that, yes.

Q. Do you agree with that connotation?

A. I think we all want to go on the weekend on time, so I will probably pass on that question.

In certain -- in certain circumstances it can be, but it not always is.

Q. Are negative premiums disorderly?

A. Not necessarily. I mean, they are undesirable. But, you know, it -- it is -- it's a symptom that the system should be fixed. But are they driving milk to be used in an inefficient way? No. They merge because market is trying to direct milk where its highest value is and pay properly for it. It's an attempt to make the market be efficient, you know, given the regulatory constraints.

Q. Do the producers that should receive the income from the sales of the milk, receive it in the right way?

A. For -- could you please specify what's the right way? What do you mean by right way?

Q. Are the objectives of the Agricultural Marketing Agreement Act achieved when we -- when we have excessive depooling or negative market premiums?

A. I mean, I think that's open for debate. If you look at the coverage of milk production 60, 70 years ago, which would be a few decades after the Act was enacted, it only covered, you know, less than half of milk produced in the country. So -- so if we go that far back, we could

conclude that covering all of the milk produced may not have been considered an important parameter by which to judge whether the law was effectively implemented or not.

Q. I appreciate you answering my questions.

A. Thank you. This was interesting.

MR. MILTNER: I don't have anything else. Thank you.

THE COURT: Nothing further?

Mr. Rosenbaum -- off the record.

(Off-the-record.)

THE COURT: All right. Let's take a break. Ten minutes. Let's be back at 25 of 3:00.

(Whereupon, a break was taken.)

THE COURT: We are back on the record.

And Mr. Rosenbaum has the floor, and it's your witness, sir.

CROSS-EXAMINATION

BY MR. ROSENBAUM:

Q. Dr. Bozic, I'm Steve Rosenbaum, appearing for the International Dairy Foods Association.

You obviously are familiar with the general method in which the Federal Order system sets skim milk prices, I take it?

A. That is correct.

Q. And you are aware that for Class III products and Class IV products -- I may be oversimplifying slightly -- but fundamentally, you take the price at which the finished product is sold, you subtract the cost of making

that product, and the rest you, the processor, are required to turn over to the farmer.

Is that a reasonable way to summarize the system?

A. At a high level, that only applies to bulk, unbranded, undifferentiated commodities. Many of the members that you represent make value-added products. They do not have to share any of that value with the dairy producers.

Q. And of course, they have to bear whatever cost they incur in --

A. Take the risk.

Q. -- in making that a value-added product to begin with, correct?

A. Yes. That's correct.

Q. They being --

(Court Reporter clarification.)

BY MR. ROSENBAUM:

Q. I think we're talking over each other, so we'll try again.

If there is a value-added product at issue, the processor has to, on its own, bear whatever the cost is of making that value-added product, above and beyond the value of the bulk commodity product, correct?

A. That is correct. And they also bear any risk of not finding the market for that.

Q. And so at least with -- and -- and there are -- there's a substantial amount of production of the bulk commodity products themselves; is that correct?

A. That is correct.
Q. Okay. So the system is geared to make the processor turn over -- I'm talking about here, a producer -- start the question again.
A processor of bulk commodity products, the ones that are used to set the class prices, is required to pay over to the farmer everything he receives for selling the product minus the cost to manufacture as set by regulation, correct?
A. That would be for privately-held processors.
Q. Yes. That's correct. For privately-owned processors, correct?
A. Which are pooled, yes.
Q. Okay. And as an example, right now, when we talk about cheese, the make allowance is 20.03 cents per pound, correct?
A. Yes.
Q. Okay. And are you aware that -- I'm not asking you to tell me whether you think it's right or not -- but are you aware that my client's proposal to increase that make allowance is based on the proposition that the actual average cost is 28.4 cents?
A. Don't have the exact numbers in front of me, but I'm in general familiar with the process that you have followed to propose those numbers.
Q. Okay. And so I just -- and essentially under your approach to timing, you are asking my client to absorb that loss for an extra year, correct? That's the effect?

A. No, I'm not asking them to do that.
Q. Well, you are refusing to allow -- let me just take a step back.
Let's just assume hypothetically that at the end of these hearings, and after all the briefing, that USDA agrees that the actual average cost to manufacture for cheese, commodity cheese, is 28.4 cents, which is what we assert. Okay?
A. Okay.
Q. So let's assume they agree with that.
Let's assume that they -- and you recognize that's a figure that we're providing them based on existing cost data surveys, correct?
A. Not audited.
Q. Yes. Well, we can get into that when the time comes. I'm just assuming that -- I'm just asking for the time period for which these costs have been gathered.
A. Sure.
Q. You are aware that these are the costs that have been gathered for the period up through 2022, at the most recent, right?
A. Yes, sir.
Q. Okay. So under your approach, the revised minimum price requirements, based upon an assumed recognition by USDA that my clients are correct that the right number is 28.4 cents, that would not go into effect until January 1, 2026, correct?
A. That is correct.

Q. I mean, you recognize that a delay of that nature of a year for my clients, collectively, you are talking about hundreds of millions of dollars, if you multiply that $0.08 times how many pounds of cheese, commodity cheese, are made in the United States.

A. Mr. Rosenbaum, your clients are perfectly free not to participate, not to pool their milk during the time if they believe that pooling would cause them damage rather than benefit.

Q. Well, but there are other aspects of the program that are designed to make participation beneficial, correct?

A. And again, if they choose to participate and they are rational actors, we can infer that despite the delay in make allowances, benefits outweigh costs.

Q. Well, if you are saying they might lose even more money if they didn't participate; is that what you are saying?

A. No, I'm not saying that. If they do not participate, they are perfectly free and legal and have fiduciary responsibility to their shareholders to set the milk price so they don't lose the money.

Q. They can't set the milk price. How can they set the milk price? They have to compete for milk with other -- with -- against other buyers, correct?

A. The same way that dairy producers who can say -- don't set the price, and sometimes they lose money. The market will find a way. The market will find the price

that's appropriate for commodity.

Q. But -- but the market price for cheese is being set by the market dynamics for supply and demand for cheese, correct?

A. That's correct, but --

Q. But -- but right now -- but it's impossible -- it's impossible for my clients to drive down the price of milk. It's a regulated price.

A. Your clients are free to pay whatever the market will bear if they choose not to be pooled in Federal Milk Marketing Orders.

Q. And not to be pooled in Federal Milk Marketing Orders is to give up all the benefits that exist of being in the order.

A. If your clients choose not to pool.

If your clients choose to pool, by their decision, they are revealing that the benefits outweigh the costs, which means that they garner net benefit despite the regulated make allowance not being yet modified before it's -- because it's not yet January 2026.

Q. Okay. And so they would, what, have to be giving up the incremental value of having their suppliers share in --

A. I'm not sure what --

Q. -- the difference between the class -- between the Class III price and the blend price?

A. Sir, I'm not sure why you deny your clients their agency. They have the opportunity to choose whether to be

pooled or not. They do not have to stay pooled, unlike Mr. English's clients, they have to stay pooled.

Q. They are my clients, too.

A. Well, yes, but like, we are specifically talking about your cheese-making clients right now, in this context.

Q. You are not, through your proposal, attempting to encourage depooling, are you?

A. The purpose of the proposal is to ensure effective risk management which would benefit your clients as well. If the standard component tests are implemented without proper delay, you know, then, you know, your clients could also be hurt by that, could they not?

Q. I believe we support immediate implementation of the changes, period, whatever they may be.

A. Well, I should talk with your clients then.

Q. You have made no proposed -- have you seen any proposal by my clients to delay implementation?

A. I believe that your clients are not -- have not put any proposal on the -- there are no proposals noticed by IDFA on the milk composition; is that correct?

Q. Well, we have proposed that the make allowances be implemented as soon thereafter as a final decision is made.

A. My comment was specifically on the standard components.

Q. Have we ever suggested the implementation would not be uniform for all revisions? Have we said anything

like that?

A. I have not seen any proposal from your clients that would ask for immediate implementation of higher standard component test.

Q. But you have -- we don't have a proposal for higher standards, of course, we don't think they are warranted, so why would we?

But in terms of the proposals we have submitted, they are all based upon the assumption of immediate implementation. Isn't that true?

A. Again, to go back to questions you asked, whether we would -- whether we are proposing what we are proposing would intend to encourage depooling, that is not what we are proposing. Our primary focus is on effective risk management progress.

Q. And just to answer my question, you have seen nothing to suggest that my client, A, is not proposing implementation as soon as possible after final decision, and is not proposing make allowances be implemented sooner than anything else. You have seen nothing?

A. On the first question I can answer in the affirmative. To the extent that you are silent on standard component test, I cannot assess what you would have said on that.

Q. Have there been any examples you can point to where the -- where the insurance obligation was not fulfilled on the ground that a change in price was actually a result of regulatory action?

A. In land, LRP, land has been suspended after the USDA has ceased publishing certain prices that were necessary to settle that program. So land producers are still now petitioning the government to create something new. They have lost what they had. There were other instances where we had to change rules for beef and cattle to make sure that there is program integrity. Some of that -- most recent changes were not related to regulatory changes. But the best example of -- related to regulatory changes in effect in at least, would have been elastic risk protection for land.

Q. Did people actually end up paying premiums and then not get paid the insurance that related to those premiums?

A. Mr. Rosenbaum, the problem is that people at some point lost the ability to pay the premium because the program was no longer offered.

Q. You are pointing to a different issue. I'm asking a very straightforward question as to whether or not you can point to any example where premiums were actually paid, and when time was ripe to pay, the insurer said, oh, we're not paying for that loss, that loss was the result of regulatory action?

A. I cannot point to a specific case at this point.

MR. ROSENBAUM: That's all I have.

THE COURT: Thank you, Counsel.

CROSS-EXAMINATION

BY MR. VITALIANO:

Q. Peter Vitaliano, National Milk Producers Federation.

Dr. Bozic, I just have a few questions to seek some additional clarification given the previous lines of questioning, your assertion that a regulatory implementation lag should -- should accompany any change in regulations, that that might be affected by the degree of regulatory uncertainty, and some comments you made about the markets have already maybe priced in some proposals.

And very specifically, could you comment on what sort of regulatory implementation lag you would recommend for, for example, Proposal 3 on eliminating barrel cheese from the protein component price calculation?

A. Dr. Vitaliano, thank you for your question.

Eliminating barrel cheese could affect the pricing for cheese futures, and therefore, indirectly affect the pricing for Class III futures. And, therefore, we believe the same principle should be applied to that one as what we have requested for standard components and what we are suggesting be done for make allowances as well. So January 1, 2026.

Q. And how would you answer the same question with respect to, say, Proposal 13, or by extension, other proposals for making changes in the Class I price mover?

A. Class I price mover does not affect, directly or in any immediate way indirectly, Class III or IV futures, or the commodity futures. So from the risk management

perspective, for producers at least, that would not have to be delayed. I'm thinking on the fly here.

However, to the extent that the processors may have already budgeted based on the current regulatory regime, maybe there's some further thinking that we should put into that. But at least for dairy regulatory protection, loss to gross margin, or the utilization of CME by producers, there would be no need to delay those changes.

Q. So in that sense, that would -- changes to the mover would then fall into the same category as changes to the Class I differentials that you have already spoken to?

A. That's correct.

Q. How would you answer that same question with respect to any changes in the make allowance? There's been some discussion on that, but you made a comment that the markets may have already priced in make allowance proposals.

A. Would you allow me two minutes to offer a thought experiment on this to elaborate my point?

So, yes, markets may have already priced in, or will be pricing in over the months to come, the anticipation that, for example, your organization's proposal would be adopted by AMS.

However, it is possible that, you know, once the recommended decision comes out, that we will find out that AMS has indeed found the evidence provided by the National Dairy Foods Association is more compelling and has --

or -- or the Milk Innovation Group, and that they would set different numbers. If that happens, there could potentially be losses incurred by the insurance companies warehousing the risk in dairy reputation in 2025.

Now, to Mr. Rosenbaum's point, the losses will still be paid, the producers will still be indemnified, but the question is, what happens next?

When we have mandatory survey, 2026, 2027, whenever that happens, when the survey results comes out, I would be fully expecting that those insurance houses that have lost money on the regulatory change in 2025 would petition very passionately to Risk Management Agency that DRP has to be suspended until that kind of regulatory uncertainty is resolved.

So what we do for 2025 will impact what will happen in 2028, 2030, and later. We are setting a precedent now. We can get away -- fool me once, shame on you; fool me twice, shame on me, is the American adage.

We could potentially even get away, in 2025, without delay in make allowances. I don't want to engage in false pretense that that's not the case. In fact, the changes that we just promulgated two weeks ago through Dairy Revenue Protection would enable that.

However, if we are not responsible with that, the time will come that we will regret that because those same insurance companies that may have incurred losses in 2025 will make sure that they don't incur those losses again in 2028 or whenever the next time comes to update make

allowances.

I hope that helps. Thank you for your patience with a little bit longer answer.

Q. And then finally, would you support National Milk's recommendation for a 12-month implementation delay for Proposal 1, or for that matter, by Proposal 2, on updating the skim milk component composition factors?

A. It's -- it's not terrible. I think 15 and a half months is better.

MR. VITALIANO: Okay. Thank you. No more questions.

THE WITNESS: Thank you, sir.

THE COURT: Further cross for this witness?

Seeing none, redirect?

I'm sorry, AMS, I keep --

MS. TAYLOR: That's okay. Thank you.

THE COURT: Ms. Taylor.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Thank you, Dr. Bozic, for being here today.

I have to say, I have managed to make it through my career so far not having to learn about risk management, so bear with me as we kind of go through some questions.

I think some other lines of questioning has helped clarify this, but just to make sure it is clear to us at USDA. What you indicate is Edge supports updating components, since you support Proposals 1 and 2.

A. That is correct.
Q. You have no position, as I read, on whether it should be a three-year average update or an annual update.
Would that be correct?
A. Edge has no official policy on that.
Q. Okay. You'd like two modifications: One, you would also like the butterfat standard to be updated, if --
A. Yes.
Q. -- there's also, at the same time, a corresponding change in protein or other solids?
A. That is correct.
Q. And then you would want the implementation change as has been discussed in other lines of cross?
A. That is correct. Slightly longer delay that has been proposed.
Q. Okay. And that implementation change is not for just a first-year implementation, that would be any change into the future would be that 15 and a half months?
A. Particularly any change later, yes.
Q. Okay. Did you have a proposal for what the initial change to butterfat should be?
A. Whichever methodology AMS ends up adopting for calculating the -- the -- or whichever methodology has been used by proponents to calculate the protein and other solids for -- I believe, for National Milk, it is 2022, all markets combined; is that correct? Yeah.
So it's -- I think it's 406, that's all market

combined, 2022 average.

Q. Okay.

A. So that would be, you know, consistent with what the rest of the proposal.

Q. Okay. And you talk about 15-and-a-half-month lag, but Federal Order prices are monthly, so there's not a price that applies in a half of a month.

But the half -- I would -- if you indulge me for a second -- the half a month should be taken in that you think, you know, once September or once August ends, we would run September pools, that new calculation for that previous year could be announced by, like, the middle of September, and that's why your 15 and a half months start --

A. That is correct.

Q. Okay. And you have used implementation of January 2026 as an example for how this would work, and you have also explained how DRP insures based on quarters.

A. That is correct.

Q. So let's say that January 2026 wasn't feasible for who knows why. You would advocate a change not happening in the middle of a quarter, but on a quarter because of the way DRP is structured.

Would that be accurate?

A. That would be a logical consequence of what I have presented before, yes.

Q. Okay. So in your testimony, I think on page 3, you list that DRP, in 2022, had covered milk -- oh, be

specific -- total declared covered milk of 56 billion pounds?

What does total declared covered milk mean?

A. When a producer wants to protect 10 million pounds -- if a producer -- let me say differently.

If a producer wants to protect 15 million pounds, they have two ways to do that. They can declare on an endorsement, I am covering 15 million pounds. And when we sum up all such endorsements across all of the producers, the number we arrive at for the calendar year 2022 is 56.7 and change billion pounds.

However, that number is conservative insomuch that a producer can cover -- can protect 15 million pounds by declaring only 10 million pounds, and choosing sometimes that's called a protection factor of 1.15, and then they effectively cover 15 million pounds.

So this number here is 56.7 to be conservative. In reality, it's probably another 15 billion pounds more. Didn't want it to go there because it's an informal way to calculate.

But to be conservative, we can say that producers have protected 56.7 billion pounds of milk through their revenue protection for calendar year 2022.

Q. Okay. And if I wanted to figure out how much of U.S. milk production that would be, do I just take what U.S. milk production was in 2022 and --

A. That is correct.

Q. Okay.

A. So about a quarter.

Q. That's what was my calculation, so thank you. Let's see.

Okay. I want to get into a little bit -- and, again, this might be a little elementary -- but how your current contracts operate.

And as I looked at a fact sheet on DRP that's on the RMA website to help me. So as I gather, they choose a contract -- they pick a contract option, and they use CME's future prices to help -- as the price they use, I think that's expected revenue. Is that how that works?

A. Expected price. That's correct. Yes.

Q. Okay. Can you just kind of walk us through the process of how that works? Because I think at the end there's some AMS prices involved, and I kinda want to make clear for the record how that all works.

A. Sure. So the way it works currently, today, this Friday, is today's futures prices that will be -- that were available anywhere between 1:30 and sometimes 4:00 in the afternoon, so end-of-day futures prices, for let's take the first quarter of 2025, for example, for January, February, and March 202- -- in the four -- let's use the October, December '24. Futures prices for October, November, and December 2024, we would calculate a simple average of Class III futures for those three months. That becomes an expected Class III price for the fourth quarter of 2024.

We would also collect the end-of-day settlements

for options, option premiums for both puts and calls. From those options we would calculate something that's called implied volatility, and then we would publish that in the RMA -- we publish to RMA, then RMA picks it up from our servers and publishes it to the industry.

We publish actuarial records. There is a cookbook, if you will, a special document that actuarial houses and insurance companies use to calculate the premium based on the actuarial documents that we publish. So the premium is always actuarially fair, plus a loading factor. So now we have set the price for the fourth quarter of 2024.

And now assume that we have too much cheese, Class III price goes down, and it's January 20th or so, 2025. The milk production and milk per cow productivity for the fourth quarter of 2024 is now known, revealed, there's an actual number out there. Now comes the time to publish the actual DRP prices and actual milk per cow yields.

The current procedure in effect today is to use the make allowances in effect today to calculate the actual butterfat price, actual protein price, actual other solids price, actual nonfat solids price, and then combine the actual butterfat, protein, and other solids, times standard component tests to determine the actual Class III price for the monthly and then average to quarter for the fourth quarter of 2024.

Does that answer your question so far?

Q. Yes.

A. So the problem with that methodology that we have just got approved to change literally two weeks ago by the Federal Crop Insurance Corporation, is that notice that I have said that the method to convert the butter price that you publish into butterfat uses the make allowances on today, August -- what is today, 27th or something like that, you know -- whatever was in effect today.

In other words, if you promulgate make allowances changes in -- I know it's unrealistic -- but let's say that you promulgate them November 1, we would not use the make allowances for November and December 2024 for calculating what butterfat and protein prices have to be in that fourth quarter.

And that actually works fairly well for what's called a component pricing option, because other than some survey changes on barrel cheese or maybe salted, unsalted butter, 30 to 45 days, there won't be a -- the regulatory changes that we do here in this hearing and what your team decides to implement will not affect the commodity prices, published commodity prices, which means that we can use the make allowances on the date when the endorsement was purchased to calculate actual butterfat protein and other solids price.

Class prices are a much bigger problem because class prices -- we anticipate that the industry will start anticipating, not for the fourth quarter 2024, but once you get into 2025, that the market will start anticipating

regulatory changes. So using the outdated, at that point, outdated make allowance, could result in program that is no longer actuarially fair -- I know that I have lost probably everybody but one person at this point, but there's a court reporter, so you can read it later.

And so what the change that we just promulgated is that we will publish as actual Class III and IV, simple quarterly average of whatever AMS publishes with new make allowances.

What we are betting on, and this is the quicksand in which -- quicksand in which I stand currently -- is that we are betting on that all regulatory changes will be fully predictable so that no insurance company will be able to claim that they have paid losses induced by regulatory change.

Because if they can demonstrate that losses they have paid were due to regulatory change, we would be in technical violation of -- or at least it will be contested in court -- of the Federal Crop Insurance Act that says that the crop -- elastic insurance can only cover against natural disasters, natural causes, not regulatory changes.

So, you know, to be on the safe side of the law, it would really be good if we make sure that no indemnities under these programs are paid due to regulatory changes, hence the delay in make allowances.

Q. Okay. So you have made changes for 2025 by essentially locking in the makes that we have now. Is that what I heard?

A. I have unlocked the makes for class. They were locked before. Now we are saying whatever you publish, that's going to be the actual.

Q. And so if you were able to do that for 2025, why couldn't you do that for 2026? You are talking about the possible loss based on regulatory change. That's -- that's the problem.

A. This decision that the board has approved can be contested by the authorized insurance providers. My counterargument for them, is for 2025, the industry has strong expectations of what will happen. However, we have no expectation -- meaning that, like, if I was a betting man, I would probably guess that you will adopt National Milk's proposal. And I'm not saying that you should, I'm not saying that I support it. I'm just saying, like, in terms of probabilistic outcome.

Q. I do not advise anyone to take a bet.

A. No. But the insurance companies can challenge this. And the first time they provide the challenge, the first time there is a loss, the first time they challenge this, DRP can be severely suspended going forward.

So I'm doing everything I can as a submitter to -- to travel these troubled waters that we are now in, but the voyage would be much safer if there was proper advanced notice on any substantive -- of any regulatory changes that affect make allowances.

So it's not 2026 versus 2025. It's, like, the uncontested period versus the first time there is a

serious complaint by one of the major insurance companies that carry the risk for DRP.

Q. Okay. Kind of along that lines, then, and obviously we're here to talk about Federal Orders, but I mean, are there other types of policy changes that could happen that would make DRP illegal, as you have described it?

We only talked about one set of regulations, but there's a lot of government regulations, so --

A. If there were some major substantive change to how NASS conducts the surveys, that could potentially be seen as a regulatory change. However, that's merely a theoretical possibility, not something that is imminent, unlike Federal Order changes that are imminent.

Q. And Mr. Miltner went over our wonderful amendment brochure with all our timelines. And, you know, from when we issue a recommended decision, which is the Secretary's recommendation on changes, there's a 60-day comment period. And while I love the thought of a 30-day vote and issuing an order within another 30 days, it doesn't move quite that quick.

But let's just say, you know, if you issue a recommended decision, it would give the industry a good idea of what the Secretary thought would be the final set of regulations he would recommend, right?

We get comments in, and he can make changes to those based on what he receives. But let's just say they are generally the same. You know, that six-month

notification period is not kind of a medium -- a middle place for giving the industry the ability to kind of price in the risk of those regulatory changes?

A. Is it true that you're not bound by recommended decision, that you can actually modify what you've put in the final decision?

Q. Yes. So a recommended decision is issued. The public can comment on that. And then a final decision is issued. And we have to address all of the public comments received, and the Secretary can make modifications to the initial recommendation based on those public comments. I don't know if that happens very often, but it certainly is allowable.

A. In other words, there is no regulatory certainty until there is a final decision.

Q. If you need 100% regulatory certainty, sure.

A. Well, I have made everything I can to actually leverage what you just described to get the changes promulgated that we just did.

I -- I, again, implore your team to consider what you do for 2025, not just -- not to see it as a one-off decision, but setting a precedent for how these things will be handled going forward. We'll probably have mandatory surveys. We'll probably have more frequent make allowances updates. We will have more frequent, if you adopt Data Proposals 1 or 2, we'll have more frequent standard component tests. But the eyes of the insurance world is upon us now, and how are we going to behave for

2025, that will set their expectations for the next ten years and longer.

Q. Let's see.

A. And also, it's not just about DRP. It's also about CME and open interest on CME.

MS. TAYLOR: I think I have a few to end, but I'll let Mr. Wilson go.

CROSS-EXAMINATION

BY MR. WILSON:

Q. The contracts that are offered at the class price, the 3.5 butterfat price --

A. Yes, sir.

Q. -- are those contracts, are they cash settled?

A. Are you referring to CME contracts?

Q. Yes.

A. They are cash settled.

Q. Are there -- you mentioned in your --

A. Mr. Wilson, can I correct you for a second -- or to correct my answer? The contracts are not offered at 3.5. The contracts are offered at whatever USDA announces. So if you announce something that has a different protein test, that's what the final CME price for that contract will be.

Q. Okay. The monthly Class III price we announce --

A. As announced, yes.

Q. -- at -- at a test or at a --

A. Exactly as you announce it. So if you announce it at 3.5 and 3.1 and 5.9, that's the Class III price, and

that's what the Class III futures will settle against.

Q. Okay. Thank you.

Does a producer enter into a hedge, you mentioned this in your testimony, the exhibit, that would protect 100% of their expected marketings?

A. Is your question do they do that or --

Q. You had a scenario that -- that that was the scenario. Yes. My question is, do they do that?

A. The scenario in the testimony was deliberately simplified to drive point a specific point -- to illustrate a specific point. There are producers that protect 100% of their marketings in -- I'm familiar with Dairy Revenue Protection. There are no public data available, to my knowledge, that would allow us to examine whether producers -- how many producers have protected 100% of their marketings through Chicago Mercantile Exchange.

In general, by just observing the open interest on CME, you could say that a distinct minority of milk is directly hedged on CME.

Q. So going over to the risk management company, the insurance side of things, not the CME side of things, you mentioned that the 56 billion pounds of milk. Is there a way we can know how much that was their marketings?

A. I believe that's a protected information. What we can know is that their marketings were -- it's -- in other words, like, what do those -- what was total milk marketings of those producers that have hedged that. I

don't believe that -- you know, I might be able to get that information.

Q. Maybe I can ask a different type of question or different wording.

Does a producer have to -- can a producer enter into an insurance side with more than 100% of their marketings?

A. There are penalties involved. If they cannot demonstrate that they have produced at least 85% of what they have protected, then the indemnities will be prorated. So you can go 117%, but not too much.

Q. All right. That helps.

MR. WILSON: Thank you very much.

THE WITNESS: Thank you, sir.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. I have a couple of follow-up questions. I forgot to ask one of them.

I know we talked about how DRP covers about 25% or so of U.S. milk production in 2022. Can you talk about -- I mean, that's on a production number, but what about on a farm number?

A. Probably 4,000 farms.

Q. And would you say those are larger farms or smaller herd-size farms?

A. I would say that the size varies, but the smaller farms -- is this in the context of small versus -- small business? Is that what you are trying to track?

Q. Well, that's $3.7 million in revenue, if you want to be specific, but you could also just talk about generally herd size, you know.

A. In general, a farm that has less than some 250 cows, if their actual production history is commensurate with what they are actually producing, can get a really effective coverage through Dairy Margin Coverage, the Title 1 program. DRP becomes particularly relevant when farms cannot cover majority of their milk through Title 1 through DMC.

So from that, it would be logically -- it would be logical to infer that larger farms would be more interested in dairy protection, but we have no data that I can offer as definitive proof of that claim.

Q. Okay. So along that line, then, I can infer that the smaller farmers would not necessarily benefit from your delayed implementation plan because they don't necessarily use your program?

A. I believe the smaller farms would likely benefit from delaying implementation of make allowances.

Q. Okay. That's fair on the negative side. But any positive change?

A. Again, like, we are making a speculative assertion that they are not really using Dairy Revenue Protection. That may be logically internally consistent, but it's not corroborated by indisputable facts.

We don't have -- we go through great pains to enumerate exhibits and do data requests, etcetera, and we

have not gone through such discovery to arrive at the conclusion that you are offering as a fact.

Q. Okay. And then at the bottom of page 6 you mention LGM Dairy may also need to be suspended. But that's not your product, so you are not speaking on behalf of that program, right?

A. That is actually, as of February of last year, also my product.

Q. Okay.

A. I'm a co-owner there, I'm buying into equity. And LGM is not as nearly as heavily used today, but give me a few years, I think that we can make LGM really popular going forward.

Q. Okay. And then my last question, because I want to make sure the hearing record's clear, because your testimony was written on behalf of Edge, but obviously you are the owner of these products that you do have a personal interest in their viability going forward, so -- but Edge is the one who supports your position on what we talked at the beginning of my cross-examination on the changes you are seeking?

A. That is correct.

MS. TAYLOR: That's it. Thank you. Thank you so much.

THE COURT: Okay. Thank you, Ms. Taylor.

I take it no re-cross before we get to redirect?

REDIRECT EXAMINATION

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BY MR. SJOSTROM:

Q. Lucas Sjostrom, Edge Dairy Farmer Cooperative. Thank you, Dr. Bozic.

Just two follow-up questions. Mr. English, and I'm sure -- or I'm guessing he knows this, but mentioned at one point, dairy farmers stand up and raise their hand to pool or depool their milk.

To your knowledge, can dairy farmers individually pool or choose not to pool their milk?

A. To my knowledge, most dairy farmers don't even know whether they have been pooled or not on behalf of their handler.

Q. Are you familiar with situations where half of a dairy farm's milk would be pooled and half would be not pooled, or a portion, not exactly half?

A. Not -- not to the level that I would feel comfortable entering on the record.

Q. Thank you.

And then, finally, now, to the previous questions from USDA and in terms of small business being 3.75 million, depending on land and other entities, I would estimate that that could be anywhere from 300 to 600 cows, doing some math. I'm -- we didn't talk about whether you are an expert on balance sheets, but could you take that as a reasonable range for the top level of a $3.75 million farm, somewhere in that 350 to 700 cow range?

A. I would have to do further calculations, but just

hearing it now on the fly, I don't find it implausible.

Q. And if that's the case, and with what you've said about the 250 cow farms in DMC, would you say that that 250 to whatever that top range is, depending on other business entities of what a small business farm is, would they -- if DRP, Dairy Revenue Protection, was suspended, would they have a harder time hedging than larger sizes of farms?

A. Particularly. They would -- those farms would be particularly challenged, because for a really large farm, their production is many multiples of the size of the futures contract. But if you -- if you are not a very large farm, but you are large enough to exceed Dairy Margin Coverage levels, then you might have problems with the bulkiness or the limit on contract size in CME, and that's where LGM and DRP really help.

Q. Thank you.

MR. SJOSTROM: No further questions, your Honor.

THE COURT: Okay. As I understand, we're going to call this witness back for Edge-2, which we're going to identify when we get it as 76; is that right?

MR. SJOSTROM: Yes, your Honor.

THE COURT: Well, I ask. I mean, is there any -- no further re-cross based on the direct, I take it?

Seeing none.

So do we have -- I'm trying to figure out whether it might be further cross that would involve Exhibit 75. Why don't we just hold 75, I guess. We'll -- you can move

that into evidence when we wrap up this witness's testimony, if that works for everyone. A little unorthodox.

But with that, you are dismissed for now, subject to recall, as discussed.

Off the record.

(Off-the-record.)

THE COURT: Back on the record.

Call your witness.

Raise your right hand.

CHRIS HOEGER

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. HANCOCK:

Q. Good afternoon, Mr. Hoeger. Would you mind stating and spelling your name for the record?

A. Chris Hoeger, C-H-R-I-S, H-O-E-G-E-R.

Q. And would you provide your mailing address?

A. 3744 Staunton, S-T-A-U-N-T-O-N, Road, R-O-A-D, Edwardsville, E-D-W-A-R-D-S-V-I-L-L-E, Illinois, 62025.

Q. All right. And have you prepared a statement on behalf of National Milk Producers Federation?

A. Yes.

Q. And is that in support of the milk components Proposal Number 1 that's being offered by National Milk?

A. Yes.

MS. HANCOCK: Your Honor, we have previously

marked this as Exhibit NMPF-5, and if you would so indulge, we would take an exhibit number for the hearing.

THE COURT: Yes. That would be Exhibit 77 for identification.

(Thereafter, Exhibit Number 77 was marked for identification.)

BY MS. HANCOCK:

Q. And, Mr. Hoeger, is Exhibit 77 the testimony that you prepared?

A. Yes.

Q. Would you mind reading that into the record?

A. Sure.

My name is Chris Hoeger. This testimony is presented in support of Proposal 1: Update the milk component factors in the skim milk price formulas as proposed by National Milk Producers Federation (NMPF). This testimony is presented on behalf of Prairie Farms Dairy, Inc. (Prairie Farms), a Capper-Volstead cooperative. My career in the dairy industry covers over 22 years working in various roles, from sales representative to several executive level roles. I currently serve in the role as Vice President of Procurement and Member Services. I have served on various committees within many different dairy industry organizations. I have been on the National Milk Federal Order Task Force the last two years, and have been an active member of the National Milk Economic Policy Committee for the last decade.

As of June 30th, 2023, Prairie Farms' membership is 668 conventional dairy farms located in Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Prairie Farms has 680 members that make up our milk supply. Prairie Farms is the second largest fluid bottler, milk bottler, in the U.S., with bottling plants located throughout the Midwest.

Through wholly-owned subsidiaries or joint ventures, we operate 30 pool distributing plants that are located throughout the Midwest, from the Canadian border to the Mexican border and the Gulf of Mexico. We also operate over 20 other manufacturing facilities that produce cheese, ice cream, and cultured products. Prairie Farms purchases about 20 to 30% of its raw milk from other entities and under various arrangements. Prairie Farms has pooled distributing plants in six Federal Milk Marketing Orders (FMMOs), but the majority of our plants and milk supply are located in FMMO 32.

The nonfat solids, i.e., protein and other solids, components along with the butterfat component in milk have steadily increased over the last 20-plus years. Other witnesses have previously testified in detail about these increases. In the multiple component (MCP), FMMOs, the increased components have meant some increased revenue for producers because a portion of the producer milk payment is based on the pounds of various dairy components contained in the producer's milk.

Formulas used to calculate skim milk prices have

not been updated despite the obvious and well-documented increases in the dairy components contained in producer milk. Because the nonfat solids and components have not been updated in over 20 years, the Class I skim milk price has lost comparative value and producers have lost much-needed income. Producers in the four FMMOs using skim/butterfat pricing have lost even more value than the producers in the MCP orders because the skim price is calculated for each of the four classes of milk, not just Class I as is done in the FMMOs with MCP.

FMMO 32 is a reasonable proxy for the FMMO system because its milk utilization is similar to the national average. Updating the nonfat solids components would impact the Class I skim milk price the same for all 11 FMMOs. However, the impact on each associated PPD would vary because of the relationship with the Class I skim value and the total pooled milk volume by FMMO.

In April of 2023, the announced FMMO 32 Class I skim price was $11.66 per hundredweight. This price was calculated by averaging the class -- Advanced Class III and Class IV skim milk prices, then adding the fixed differential of $0.74 per hundredweight:

Advanced Class III skim: (5.9 x $.2297) + (3.1 x $2.2925) = $8.46;

Advanced Class IV skim: 9 x $1.0414 = $9.37;

Class I skim milk price mover: (($8.46 + $9.37)/2) + $0.74 = $9.66;

Order 32 Class I skim price: $9.66 + $2 = $11.66.

By substituting into the calculation the proposed updated nonfat solids component values, the April 2023 Order 32 skim price increases appropriately:

Advanced Class III skim is (6.02 x $.2297) + (3.39 x $2.2925) = $9.15;

Advanced Class IV skim is 9.41 x $1.0414 = $9.80;

Class I skim milk price mover would then be (($9.15 + $9.80)/2) + $0.74 = $10.21;

The Order 32 Class I skim price would then be $10.21 + $2= $12.21.

From this example, the updated component formula would add $0.55 per hundredweight to the April 2023 Class I skim price. In April 2023, there were 340,868,325 pounds of Class I skim milk pooled in Federal Market Order 32. By properly valuing the Class I skim milk, $1,874,755 in additional producer revenue would -- was added to the pool. The updated nonfat solids component values also would have added $0.12 per hundredweight to the PPD.

Without going into the stepwise details, the results from May would have been similar. The updated nonfat solids component values would have added $0.63 per hundredweight to the May 2023 Federal Market Order 32 Class I skim price. The pool value would have increased the pool -- would have increased the pool value by $2,190,925, and added approximately $0.16 per hundredweight to the PPD.

The updated nonfat solids components would also be

beneficial to producers whose milk is pooled on Federal Market Orders utilizing skim milk and butterfat pricing. As an example, using the $0.55 per hundredweight Class I skim price increase for April, the Federal Market Order 7 pool value would have increased by $1,100,031. This would result in a $0.35 per hundredweight increase in the uniform skim price, increasing it from $12.44 per hundredweight to $12.79 per hundredweight.

Similarly, the May 2023 Class I skim price increase of $0.63 per hundredweight would have added $1,314,952 in pool revenues. This would result in a $0.44 per hundredweight increase in uniform skim milk price, increasing it from $13 per hundredweight to $13.44 per hundredweight.

Fairness and Equity in Accounting for Components. By using the proposed updates for nonfat solids components, the pounds of calculated components in Class I skim are closer to the actual components in the Class I skim milk. This is especially important in MCP FMMOs where the value of the total component pounds is subtracted from the total pool dollars in Class I, II, III, and IV.

As an example, in May of 2023, FMMO 32 reported 11,633,532 pounds of protein and 20,969,034 pounds of other solids, for a total of 32,602,566 pounds of nonfat solids in Class I.

Using the current nonfat solids component values, generates 10,780,744 pounds of protein and

20,518,189 pounds of other solids, for a total of 31,298,933 pounds of nonfat solids.

Using the proposed nonfat solids component updates, there would be 11,789,264 pounds of protein and 20,935,508 of other solids, for total of 32,724,772 pounds of nonfat solids.

These results are shown in the table below, which clearly shows updating the component values in the class formula yields results that are much closer to reality than the current nonfat solids component factors.

Again, I can read the chart:

Fat was 7,695,710 for May of 2023, protein 11,633,532, other solids was 20,969,034, for a total nonfat solids of 32,602,566.

The current formula calculated, nonfat solids of 31,298,933, protein of 10,780,744, other solids 20,518,189, for total nonfat of 31,298,933.

The proposed, again, would be 32,724,772, protein would be 11,789,264, other solids would be 20,935,508, again, for a total nonfat of 32,724,772.

Reduce Negative PPD in the MCP Orders. Using the proposed updated nonfat solids component factors in the formula to calculate the Class I skim value will, as shown above, result in a higher price. This price increase will help alleviate the impact caused by negative PPDs.

The PPD for Federal Market Order 32 for the 24-month period from June 2021 through May 2023 averaged $0.81 per hundredweight. This period was chosen since the

disruptions created by COVID-19 had started to ease. During this same period, there were two months with a negative PPD and five months that the PPD was positive and below $0.30 per hundredweight. So for the seven months, or about 30% of the time, the monthly PPD was well below the average.

Other MCP FMMOs show results similar to Federal Market Order 32. The PPD for Federal Market Order 30 of the Upper Midwest averaged $0.24 per hundredweight for the 24-month period from June 2021 through May 2023. During this period, there was one month when the PPD was negative and three months when the PPD was positive and under $0.15 per hundredweight.

In Federal Market Order 51 (California) the PPD averaged $0.91 per hundredweight for the same 24-month period. During this period there was one month when the PPD was negative and five months when the PPD was positive and under $0.50 per hundredweight.

For five months of the 24, example, June 2021, September 2021, October 2021, May 2022, and April of 2023, all three FMMOs had low or negative PPDs. Updating the component values used in the Class I skim milk price formulas would help address the low or negative PPDs that lead to milk sales revenues to be depooled. While depooling is permissible in FMMOs, this activity adds to disorderly marketing when it becomes pervasive. The more milk participating in the pool, the fewer incidences of disorderly marketing will occur.

Attracting Milk from Other Uses to Serve the Class I Market. Updating the component formula used to the calculate the Class I skim milk price will result in an increased Class I skim milk price. This increased price would be reflected as an increase in the FMMO PPD or uniform skim milk price.

The Class I price and the PPD are adjusted based on the plant location. As an example, in the Federal Milk Marketing Order 32, the base zone is Kansas City with a $2 per hundredweight Class I differential. The FMMO 32 Class I differentials range from $1.70 per hundredweight in Sioux Falls, South Dakota (the low) to $2.60 per hundredweight in central Oklahoma (the high).

Fluid plants in Colorado have either a $2.45 per hundredweight or a $2.55 per hundredweight Class I differential. The Class I differential in Iowa/Nebraska area ranges from $1.75 per hundredweight in Dubuque to $1.85 per hundredweight in the Omaha, Nebraska area.

The Class I differential in St. Louis, Missouri area is $2.00 per hundredweight. This gives Sioux Falls a price that is $0.30 per hundredweight lower than Kansas City. Based on the 24 months from June 2021 through May 2023, the Sioux Falls price, in and of itself, would not be sufficient to attract additional milk for fluid use, about 30% of the time.

The same is true for the distributing plant in Dubuque, Iowa. The price there is $0.25 per hundredweight lower than Kansas City, so it is a nickle hundredweight

better position than Sioux Falls. Dubuque plant is located in a milk shed that has numerous manufacturing plants and that are very price competitive. Milk from Northeast Iowa and surrounding areas have become a reserve supply for the St. Louis market (which has the same Class I differential as Kansas City).

The Class I value in St. Louis is $0.25 higher than Dubuque, but that price advantage is quickly absorbed by the extra freight required to get the milk to St. Louis. This leaves distributing plants in the St. Louis area with a lower Class I price than the price necessary to attract reserve supplies if the additional freight costs are considered.

The Class I skim milk price formula does not create difficulties in only in Federal Market 32, but similar markets -- similar examples can be found in other Federal Market orders.

And the problem is not only found in the MCP FMMO. In fact, it's even worse in FMMOs using the skim/butterfat pricing. Non-MPC -- non-MCP FMMOs end up trying to attract milk from surrounding areas with MCP. FMMO 7 pulls reserve supplies from FMMO 126 and FMMO 5, depends on the milk being shipped from Federal Market 1 and 33.

The skim and butterfat pricing used in Federal Market Orders 5 and 7 compete poorly with the component values available in the MCP orders. The Class I price with the current formula results in FMMO prices that, adjusted for distributing plant location, do not

adequately compensate the reserve supply for pulling milk out of the manufacturing plants and delivering that milk for fluid use instead. This price misalignment can be partially solved by updating the nonfat solids component values used in calculating the skim milk -- Class I skim milk price.

The current skim milk component factors contribute to the difficulty of attracting milk for fluid use. Class I price is simply not adequate to pull the milk from reserve supply manufacturing uses.

Prairie Farms expresses its appreciation to the Secretary of Agriculture and the Dairy Division for holding this hearing. We strongly recommend the Secretary to adopt Proposal 1 from National Milk, update the milk component factors and the skim milk price formulas. This will promote orderly marketing of milk, along with ensuring an adequate supply of milk for the Class I operators to serve their markets.

Respectfully submitted, Chris Hoeger on behalf of Prairie Farms.

Q. Thank you, Mr. Hoeger.

Just a couple of questions. I want to follow up on some information that has evolved as we have heard some examinations this week.

You understand that Federal Orders allow cooperatives to reblend?

A. Correct.

Q. And does Prairie Farms reblend?

A. No. We are not -- as part of management, I'm not allowed, when I set the pay price for the producers, to reblend.

Q. What is your understanding of why you have that policy?

A. The board expects the management to operate the co-op to provide them the strongest price available as announced, and we're to pay that announced price. If I don't, I probably wouldn't be sitting here.

Q. And as far as you have been a part of Prairie Farms, are you aware of whether it's ever reblended?

A. Not in the -- not to my knowledge in the history of Prairie Farms.

Q. Okay.

MS. HANCOCK: Your Honor, I think consistent with the others, we'll wait to offer Exhibit 77 into evidence until cross-examinations are completed.

THE COURT: Yes. Cross-examination?

The hearing reporter requests another ten-minute break. Let's come back right at 4:00.

(Whereupon, a break was taken.)

THE COURT: Mr. English, do you have all the documents you need?

MR. ENGLISH: I do. I have notified Ms. Hancock about Exhibit 39 and 40. Thank you.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. So Exhibit 39 is what I was referring to when I

was having my conversation with Dr. Bozic. It is labeled Adjustments to Federal Order Performance Standards Shift Requirements and Diversion Limits 2010 to Current. And Exhibit 40 is labeled Request to Change Performance Requirements by Order 2010 to Current.

So as I discussed with Dr. Bozic, in order for milk to be producer milk under Federal Orders, it must meet minimum performance standards, correct?

A. Uh-huh. Correct.

Q. And that is, in order for dairy farmers to share in Class I revenues, it is important that milk be available under those performance standards, correct?

A. Correct.

Q. And that is one, if not the most significant way, that Federal Orders can assure that milk is actually available to Class I, correct?

A. Correct.

Q. So when we looked at Exhibit 39 -- I know you are under Order 32, so let's start with that.

According to Exhibit 39, there have been no adjustments made to the performance standards in Order 32, either upwards or downwards, correct?

A. That is correct.

Q. Okay. Now, are you aware there's -- whether there's been any requests made?

A. Not that I'm aware of at this point. One thing I will preface is that as being the VP of Prairie Farms, I have been in this role for three years, as I have served

other executive roles.

Q. So -- but if we look at Exhibit 40, Exhibit 40 is the Request to Change Performance Requirements by Order 2010 to Current.

A. Okay.

Q. And the cover sheet says, if you get down to Order 32, received two requests, both denied.

If you could turn to page 5 -- I'll represent to you the 5 is very hard to see, but it's the page between 4 and 6. It's easy to see 4 and -- the 5 is at the very cutoff at the bottom of the page, so -- but it's the only page labeled Central Order Number 32.

A. Correct.

Q. And I thank USDA for being maybe overly inclusive here, because it was 2010 to current, both of these are from '01 and '03 -- 2001 to 2003. So assuming that USDA's data request is complete, and I do, there have been no requests in Order 32 since 2003, correct?

A. Correct.

Q. So going back to Exhibit 39. I'm just going to briefly summarize. The Order 1, the shipping standard is 20%, correct?

A. Uh-huh.

Q. But it has been revised down periodically to various levels, but to 10% effective September through November of 2023, correct?

A. Correct.

Q. And in some timeframe like 2015 it was actually

5%, correct?

A. Correct, in June to August, yeah.

Q. So, yeah, for September, November 2023 it's been lowered from 20% to 10%.

Similarly, in Order 30 it was lowered from 10% to 8% in 2017 to 2019, correct?

A. Yes.

Q. And from May 2019 through July 2022 it was lowered to the 8% to 6%, correct?

A. Correct.

Q. And then from August 2022 to the current, so the most current timeframe, it was lowered from 6% to 4.5%, correct?

A. Correct.

Q. Okay. So similarly, Order 33 -- and, yes, there's different months -- but basically, all of those have been lowered as well, correct?

A. Correct.

Q. And similarly, so in Order 33 also, diversion limits have been increased, at least in the fall months, correct?

A. Correct.

Q. And then we have Order 124, which is Pacific Northwest, and effectively since July of 2019 through a request that was granted July of 2023, it -- it's been lowered from 20% to 15%, correct?

A. Correct.

Q. And finally, Arizona was lowered in February of

2015 until requested change from 20% to 15%, correct?

A. Correct.

Q. So since those are mechanisms for Federal Orders to assure milk gets to fluid plants, I must say I am quite confused by your comment, the Class I price is simply not adequate to pull the milk from reserve supply manufacturing uses.

A. The transportation -- the milk continues to get farther and farther away from the St. Louis market, as I have referenced. Northeast Iowa has been a strong supply, that is now continuing to shift. We have now started to pull some milk from other areas that are farther and farther away. Hence, the transportation costs are driving some of that.

In fact, I didn't -- I have -- people have noticed today that I have had to step out maybe a couple times this afternoon. I'm short five loads of milk that needs to be in St. Louis tomorrow night by 6:00, so --

Q. Will you, tomorrow, be making a request to the Order 32 Market Administrator to --

A. Todd, can I make that request right now?

No, I have not made that yet. We are -- we have -- we have got good supply partners who we're making arrangements to take care of that. We have not gone to that step.

I'll be perfectly honest, as many years that I have been working in 32, I wasn't aware that I could make the request there. I have always known 30 I could. But I

guess I'll have to --

Q. I'll help you out. It's under Section 1032.7(g), paragraph (g). Okay? I'm happy to provide that. Please submit.

MR. ENGLISH: Thank you. I have no further questions. Oh, let me have the tables back.

THE WITNESS: Sure.

THE COURT: Any further cross by anyone other than AMS?

MR. ENGLISH: I'm sorry, I'm done. I thought I made that clear.

THE COURT: No cross from anyone.

AMS, I take it you have some.

CROSS-EXAMINATION

BY MR. WILSON:

Q. Good afternoon, Mr. Hoeger.

A. Good afternoon, Mr. Wilson.

Q. Just for clarification, you reference many times in your testimony nonfat solids components -- nonfat solid components.

Are you -- is your description of that more than just what the Federal Order prices of Classes II and IV of nonfat solids?

A. No, just what the Federal Order.

Q. Let me rephrase.

A. Okay.

Q. Does that include protein and other solids?

A. Yes.

MR. WILSON: Thank you.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good afternoon.

A. Good afternoon, Ms. Taylor.

Q. I just have one question. If you could expand for the record about Prairie Farms' members. You have 668 dairy farms. Can you talk about the percentage of those that would be small businesses under the small business definition?

A. Well, our average dairy farm is about 175 cows, 175 to 200 cows. Average monthly production is about 325,000 pounds per month. So the majority, more than half, the majority do fall under the small business classification of $3.75 million in revenue.

Q. Thank you.

And we had some conversations this afternoon on risk management, and I know we'll have some more next week. And while you are an employee Prairie Farms, can you talk about the use of risk management that your members do or do not use?

A. Many of our members use a wide variety of risk management tools out in the marketplace. Many use DMC. Some use DRP. Some also use futures contracts. Prairie Farms does offer a forward-contracting program.

In fact, one of the unique things that we offer as far as the forward-contracting program for dairy producers is, is we have what we call a small producer

forward-contracting program, so they are able to hedge or use -- go call in and lock in a futures price based on less than 200,000 pounds, because the standard futures contract is 200,000 pounds, so if they only want to lock in 50,000 pounds, they are able to do that. And the co-op then takes on some of that risk until we get an accumulation of 200,000 pounds and we actually lock in the price ourselves as part of our forward-contracting program.

Q. Okay. And when it comes to implementation of any changes, your members are supportive of whatever those implementations are that National Milk has?

A. Yes, they are -- they are in support of National Milk's 12-month delay, because of the future risk management issues that have been discussed earlier today.

Q. Okay.

A. Or yesterday.

Q. Is it all running together? We're only on day three.

A. Yeah.

MS. TAYLOR: Okay. I think that's it. Thank you.

THE COURT: Is that it?

Re-cross? Redirect?

MS. HANCOCK: Your Honor, I have nothing further. I would just offer Exhibit 77 into the -- as an exhibit.

THE COURT: Yes.

Any objections?

Exhibit 77 for identification is received into the

record.

(Thereafter, Exhibit Number 77 was received into evidence.)

MS. HANCOCK: Thank you for your time, Mr. Hoeger.

THE WITNESS: Thank you.

THE COURT: So what's next? I think NMPF said that, if I understand Ms. Hancock, she said that was the last witness they had ready to go today.

MR. HILL: I believe that's the case, so I don't believe there is anyone left to go today.

THE COURT: Okay.

MS. TAYLOR: No. I do have one housekeeping item when we wrap up.

THE COURT: You have an item that we can discuss? Okay.

MS. TAYLOR: Well, I just wanted to let everyone know in -- Sean, can you put the webcast back on, actually? For the people listening, I wouldn't like them to think that that chair is talking to them.

I just wanted to let everyone know and those watching that this afternoon we did post on the hearing website producer testimony guidelines to give more information on how producers can register to testify virtually. The first time for them to do that is next Friday, and registration will open on Monday at 12:00 a.m. -- 12:00 p.m. Eastern, 9:00 a.m. Pacific. And there's information on the website that people can look at over the weekend to make sure they understand how that's

going to happen. So I just wanted to make everyone aware.

THE COURT: Thank you, Ms. Taylor.

Anything else in the nature of housekeeping or anything else that we left that's pending we need to talk about? Anything anyone needs to update me on?

Very well. With that, we will see everyone at 8:00 a.m. on Monday. Thank you. Have a lovely weekend.

(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 6, 2023

FRESNO, CALIFORNIA

MYRA A. PISH, RPR CSR
Certificate No. 11613

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