

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 30, 2023

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Reported by:

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

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A P P E A R A N C E S:
FOR THE USDA ORDER FORMULATION AND ENFORCEMENT DIVISION,
USDA-AMS DAIRY PROGRAM:

Todd Wilson
Erin Taylor
Brian Hill

FOR THE AMERICAN FARM BUREAU FEDERATION:

Roger Cryan

FOR THE INTERNATIONAL DAIRY FOODS ASSOCIATION:

Steve Rosenbaum

FOR THE MILK INNOVATION GROUP:

Charles "Chip" English
Sally Keefe
Ashley Vulin (Remote)

FOR THE NATIONAL ALL-JERSEY, INC.:

John Vetne

FOR THE NATIONAL MILK PRODUCERS FEDERATION:

Nicole Hancock
Brad Prowant
Peter Vitaliano
Calvin Covington

FOR SELECT MILK PRODUCERS, INC.:

Ryan Miltner

FOR DAIRY FARMS OF AMERICA:

W. Todd Miller

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1 WEDNESDAY, AUGUST 30, 2023 - - MORNING SESSION

2 THE COURT: On the record.

3 MR. MILLER: Good morning, your Honor. I would
4 just like to enter an appearance. I'm Todd Miller, Baker
5 Miller in Washington DC, representing Dairy Farms of
6 America.

7 THE COURT: Welcome, Mr. Miller. Thank you.

8 Okay. Where are we?

9 Ms. Hancock, good morning.

10 MS. HANCOCK: Good morning. Your Honor, we have
11 producer Ken Nobis here to testify this morning.

12 THE COURT: Let's welcome him to the stand.

13 I'll swear you in. Raise your right hand.

14 KEN NOBIS,

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

17 THE COURT: Your witness, Ms. Hancock.

18 MS. HANCOCK: Thank you.

19 DIRECT EXAMINATION

20 BY MS. HANCOCK:

21 Q. Mr. Nobis, would you mind stating and spelling
22 your name for the record?

23 A. I'm sorry, what?

24 Q. Could you state your --

25 A. Oh, state my name. My name is Ken Nobis.

26 Q. How do you spell that?

27 A. K-E-N, last name is N-O-B-I-S.

28 Q. Okay. Are you a dairy farmer?



1 A. I am a dairy farmer.

2 Q. And you are here to provide some testimony today
3 for the hearing?

4 A. Yes.

5 Q. Did you prepare a written statement?

6 A. I'm sorry.

7 Q. Did you prepare a written statement?

8 A. I did prepare a written statement.

9 MS. HANCOCK: Your Honor, we have identified his
10 written statement as Exhibit NMPF 61, if we could have an
11 exhibit number for identification purposes.

12 THE COURT: Let's mark the next one -- my notes
13 indicate we should identify that exhibit as 108.

14 (Thereafter, Exhibit Number 108 was marked
15 for identification.)

16 THE COURT: For identification.

17 BY MS. HANCOCK:

18 Q. And Mr. Nobis, can you provide your mailing
19 address?

20 A. My mailing address is 1513 Lowells Road,
21 L-O-W-E-L-L, St. Johns, Michigan, 48879.

22 Q. Okay. Thank you.

23 Would you mind sharing with us your written
24 testimony in Exhibit 108?

25 A. Yes.

26 Q. Thank you. Proceed.

27 THE COURT: We're going to have this witness read
28 his statement?



1 MS. HANCOCK: Yes, your Honor.

2 THE COURT: Very good.

3 Sir, you may read your statement. It's maybe --
4 well, I'll keep this on the record. It appears to be
5 human nature, observed here and other places, that we all
6 tend to speed up as we go along when we're reading
7 something. So in consideration of our reporter so she can
8 get everything down, I'd ask you to be mindful of that,
9 and I'll try to remind you if we speed up. It's not just
10 you.

11 THE WITNESS: I may need that reminder.

12 THE COURT: We -- I do myself.

13 Thank you, sir. You may proceed.

14 THE WITNESS: Thank you.

15 Well, I am Ken Nobis. I'm a dairy farmer from
16 St. Johns, Michigan. My farm is located 20 miles north of
17 Michigan's capital, Lansing. And we also are very near
18 the campus of Michigan State University in East Lansing.
19 Our farm is also located 65 miles of east of Grand Rapids,
20 Michigan, and just five miles from St. Johns.

21 Nobis Dairy Farms is a family partnership that
22 farms 2500 acres and milks 1,000 Holsteins. Since our
23 farm is just 20 miles from the MSU campus and because
24 researchers at MSU work on a lot of projects that they
25 need to apply in a practical application, we have worked
26 extensively with them over the years on their research
27 projects.

28 I also serve as a College of Ag and Natural



1 Resources shareholder at MSU, and I am especially proud of
2 the fact of being honored by MSU granting me Honorary
3 Alumnus status in 2019.

4 I served on the Michigan Milk Producers Board of
5 Directors for 27 years, 12 of those years I was Chairman
6 of the Board. And along with that service, I served on
7 the National Milk Producers Federation Board for 15 years.
8 I held positions of Treasurer and 1st Vice Chair on the
9 National Milk Producers' Board.

10 I appreciate the opportunity to testify at this
11 Federal Order Hearing, and I support all five of the
12 National Milk Producer Federation proposals. But my
13 testimony is directed more specifically at Proposal 1.

14 Because many factors have changed since 2000. For
15 one thing, producers deal with a lot more volatility today
16 than they did in the year 2000. On our farm, the
17 volatility in the year 2000, our pay price varied by just
18 \$0.52, from a high of \$12.95 a hundredweight to a low of
19 \$12.43 a hundredweight. In the last 12 months that
20 variance has been \$7.46, from a high of 22.50 to a low of
21 15.04.

22 Also back in the year 2000, we bought corn to feed
23 our cows for \$2.10 per bushel. Soybean meal was purchased
24 back then for around \$200 a ton. Today corn will cost you
25 over \$5 a bushel and soybean meal is over \$500 a ton
26 frequently.

27 It is important to highlight that producers are
28 compensated for only 9 pounds of protein and other solids



1 in Class I skim milk sales via Federal Order Number 33
2 pool. They are compensated for the actual protein and
3 other solids used in all other classes of milk.

4 Federal Order 33 is a very large Class I market,
5 routinely exceeding 500 million pounds per month. In
6 Federal Order 33 Class I utilization, the utilization
7 ranges from 33% to 41% depending on volume of milk pooled
8 each month. It is time the formula involved in pricing
9 Class I milk reflects the actual value of the milk being
10 produced on our farms today.

11 The changes made by farmers to produce a better
12 product will continue into the future. Our long research
13 relationship with MSU and seeing firsthand what results
14 could be achieved has been especially gratifying.

15 I think the first project we cooperated with was
16 the use of prostaglandin to synchronize estrus in heifers,
17 and that was in the mid-1970s. Since then, we have worked
18 with MSU on many things that include various cow comfort
19 adaptations which led to greater component values in
20 butterfat, protein, and other solids.

21 Cow comfort adaptations started with curtain-sided
22 barns and sand-bedded free stalls in the 1980s. We have
23 been working with Dr. Richard Pursley at MSU for over 25
24 years as he has been instrumental in developing successful
25 timed breeding protocols. Timed breeding lead to greater
26 efficiency and therefore greater cow comfort which leads
27 to higher milk production and greater component
28 production.



1 My objective in highlighting some of the research
2 projects is to show how we strive to improve our cow
3 comfort, nutrition, and genetics. This has led to
4 continued -- and will continue to lead to higher milk
5 production and higher component content of the milk
6 supply.

7 Our milk supply in our farm in the year 200, our
8 production per cow in the year 2000, was 24,930 pounds of
9 milk, 1,024 pounds of butterfat, and 769 pounds of
10 protein.

11 As of August of this year, 2023, our production is
12 34,992 pounds of milk, 1357 pounds of butterfat, and 1,054
13 pounds of protein. Those numbers are going to continue to
14 up. I know Michigan is the leader in production per cow,
15 but production per cow across the nation has grown
16 percentage-wise the same as it has in Michigan, pretty
17 much.

18 I support the request to have milk pricing formula
19 updated with a mechanism in place to update the formula in
20 the future every three years. Dairy farmers have done
21 their part, having recognized the marketplace's call for
22 increased protein and other solids and have made decisions
23 to meet the need. I don't think farmers have reached the
24 end of that road, and further improvements can be
25 expected. This formula update will help make certain that
26 producers are properly compensated for meeting consumers'
27 expectations.

28 Producers are facing serious cost of production



1 issues today. I know we are not unique in that respect.
2 But it adds to the reasons why we need to address the
3 issue today and allow for a method to assure that we stay
4 current as component production changes.

5 Now I would like to go into a little more detail
6 on some of the general things I have mentioned that has
7 led to higher milk production and higher component
8 production.

9 Greater cow comfort is very significant in leading
10 to these increases. We started probably back in the 1980s
11 with those open-sided barns, and the idea of an open-sided
12 barn is to keep the cows cooler in the summertime.

13 So they are curtain-sided. So in the summertime,
14 the curtains are up, which adds to greater air flow,
15 keeping the cows cooler. And then that wasn't enough.
16 The next step we took was to add fans to those barns to
17 increase the cooling and the cow comfort issue.

18 When you put fans in the barn, it keeps the cows
19 cooler on those quiet humid days in the summertime. But
20 then, even if it doesn't get that hot in the daytime,
21 having the fans in place cools that barn much cooler when
22 the sun goes down in the evening.

23 One other thing, I don't have it in my written
24 presentation here, but I think it's very significant.
25 When we did all that, opened those barns up and put the
26 fans in, one thing we quit using and have never used since
27 is fly spray.

28 Flies really do bother cows, and they do have an



1 impact on milk production, and the best fly spray around
2 doesn't keep them off all day. We have to use -- don't
3 use those chemicals anymore, but yet we never see a fly.
4 The only place we use fly spray in our farm today is in
5 the milking parlor, in the milk house.

6 So when we used to have the heat impact on those
7 cows in July and August, in Michigan, all of the Midwest,
8 that affect -- affected component production and milk
9 production, and you didn't see that returning to normal
10 until at least November, when it got cooler.

11 So overall, that's really helped add to annual
12 milk production on those cows because they don't have that
13 impact. And there's hardly a farm out there today that
14 doesn't have those measures in place.

15 One of the other things we have done is on barn
16 design. One thing is -- is higher eave heights today,
17 which allows for more airflow. And another one that
18 doesn't seem that important, but barns today are oriented,
19 at least in the Midwest, on an east-to-west axis, because
20 it takes full effect of the natural air flow.

21 Another issue is calf raising. We just have so
22 much better calf care today than we did years ago. We
23 understand what they need and don't need.

24 In fact, it's so good, the survival rates are so
25 good, the growth rates are so good, that we don't need to
26 keep all of our heifer calves anymore. On our own farm we
27 only keep half of them. They are from our best cows. And
28 my best cows, I'm talking about milk production and



1 component production.

2 And we select the best bulls, and the best bulls
3 are bulls that will match that production and -- and
4 component production for matings, which allows for an even
5 faster genetic improvement in the herd today. That's why
6 you are seeing some of the -- much greater, faster upticks
7 in milk production, component production than what we used
8 to see.

9 Feeding dairy cows is a lot more scientific today
10 than it was even in the year 2000. I think most all of us
11 are using professional nutritionists today than we did
12 even in the year 2000.

13 But just some things you don't think of. The
14 genetics of the food feed supply is different. Corn
15 silage is more digestible than it used to be. The
16 equipment we have today to harvest that, especially
17 alfalfa silage, is so much better than it was in the year
18 2000.

19 For example, in the year 2000, we could harvest
20 alfalfa maybe ten to 12 acres per hour. Now it's more
21 like 35 acres per hour, which allows us to get that crop
22 harvested at peak value and decreases the risk of weather
23 damage on that hay. So the base ration is -- excuse me --
24 is a forage, and the better job you can do with the
25 forage, the better job you are going to do with milk
26 production and component production.

27 Also, along the way, especially when you are
28 talking about components, there are products we can use



1 today that really didn't exist or were just coming on the
2 market in the year 2000 to enhance the production of
3 protein and other solids.

4 Those products aren't always economically viable.
5 In fact, I'm not using all of them on our farm right now
6 because it just doesn't pencil out. And every farm is
7 different. Every farm has a different feed supply. Every
8 farm is managed a little bit differently. For some
9 people, it works; in our particular case, right now, it
10 doesn't work. Although, I have asked my nutritionist to
11 review it again, and he's in the process of doing that
12 today. But the point is the products do exist to help
13 push that issue.

14 And along the pricing side, the current Class I
15 skim milk value is at 3.1% protein, 5.9% other solids, so
16 the total is 9%. It's been static calculation since the
17 year 2000. Meanwhile, the actual composition of the skim
18 milk produced is 3.39% protein and 6.02% other solids for
19 a total of 9.41%.

20 An imbalance of pool revenue versus producer
21 value, the 9 versus 9.41, dilutes the value of the
22 producer price differential. This does not promote
23 orderly marketing in the milk.

24 A PPD based on total actual component value would
25 provide an incentive for me as a producer to supply milk
26 to the Class I market in Grand Rapids, which as I stated
27 earlier is 65 miles away, versus sending all of it to the
28 cheese plant that's five miles away in St. Johns. So it



1 would help promote a more orderly marketing of -- for
2 Class I market.

3 But based on historic averages, the protein price
4 at 2.58 a pound and other solids price at \$0.21 a pound
5 and a 37% Class I utilization -- and this is averages,
6 this is what we're using here -- the PPD is reduced by
7 \$0.29 per hundredweight if the composition factor remains
8 at 9%. So this does not accurately reflect the component
9 value of the milk the producer is putting on the
10 marketplace today.

11 So I hope I have been able to highlight how dairy
12 farmers have been working diligently through the years to
13 improve the milk production and component makeup of the
14 milk that they produce. Dairy producers are very
15 innovative. They are willing to adopt new technology to
16 keep the business viable and to meet the expectations of
17 the Class I consumer.

18 But technology is becoming ever more expensive to
19 implement and producers need an economic signal from the
20 marketplace that provides the necessary incentive to
21 continue to be innovative.

22 And increasing the value of Class I skim milk in
23 the Federal Order pool will provide us some of that
24 incentive. This pricing formula change is necessary to
25 keep farmers in a position to continue to produce milk.

26 I would like to thank Secretary Vilsack for
27 holding this hearing and providing me the opportunity to
28 testify. And I would be happy to answer any questions



1 that people might have. Thank you.

2 BY MS. HANCOCK:

3 Q. Thank you, Mr. Nobis.

4 I just had a couple of questions. You said early
5 on in your testimony in Exhibit 108 that -- that you farm
6 and you have the dairy farmer operations; is that right?

7 A. Yeah. We -- we have a cash crop operation in
8 addition to the dairy operation.

9 Q. And you talked about some of the additional
10 expenses that -- that you have experienced over the years.
11 I'm wondering if you could talk about, to the extent you
12 are comfortable, the profitability of your dairy farming
13 operation.

14 A. In the last ten years there's been more than half
15 the time that it was difficult to justify milking cows
16 versus selling cash crops. Last year, 2022 was a good
17 year for the dairy farm; this year has not been so great.

18 But we just -- we have had this continual good
19 price for the corn and soybeans and wheat that makes it
20 difficult to justify milking cows, to be honest with you.
21 We have been in it for the long run. That's why we have
22 stuck with it.

23 But by the same token, all across the country, we
24 have lost a heck of a lot of dairy farms, and the primary
25 reason is because they have not been profitable.

26 Q. And how is it that you have been able to stay in
27 business?

28 A. I have a partnership. And I manage the dairy, and



1 my brother manages the cash crops. There's been some very
2 heated discussions about why are we milking cows anymore.
3 But as I said, we have been in the business. We both
4 started -- I came back from the military in '68, so I have
5 been on the farm ever since then. My brother came back in
6 '72, I think.

7 So there were a lot of years in there where the
8 dairy side of the business kept the cash crop side afloat.
9 It is just that in this -- we have had this switch in the
10 last few years due to a lot of outside factors, global
11 food supply, things like that that have given us -- given
12 the cash crop side of the industry a boost.

13 And when that cash crop side gets a boost, it's
14 good for the cash crop side, but it's that much worse for
15 the dairy side because we're -- we have to pay for that
16 feed that has a much higher value today than it did in the
17 year 2000.

18 Q. So is it fair to say that you have to have the
19 diversified operations that you have with both the farming
20 to -- to go hand in hand with your dairy farming operation
21 in order to survive?

22 A. It's helped us survive with more profits in those
23 lean years, yes. I mean, there's been other dairies that
24 have survived without the cash crop side. It is just that
25 we have been able to do a little bit better by having the
26 diversification.

27 And it's unfortunate because the dairy investment
28 is extremely high. It is labor intense, and that's what



1 makes the -- that's why people are leaving the dairy
2 industry today. You need an incentive to milk cows
3 because of the challenges that are involved in the dairy
4 industry with labor, with more management, with everything
5 that you have to do. So it's important that we get the
6 right value for the milk that we produce.

7 Q. Okay.

8 MS. HANCOCK: Thank you for your time.

9 THE WITNESS: Thank you.

10 THE COURT: Are there questions from other
11 parties? Aside from AMS?

12 Yes, Mr. Miltner.

13 MR. MILTNER: Thank you, your Honor.

14 CROSS-EXAMINATION

15 BY MR. MILTNER:

16 Q. Good morning, Mr. Nobis.

17 A. Good morning.

18 Q. My name is Ryan Miltner. I represent Select Milk
19 Producers.

20 I just have a couple of questions on your
21 statement under your pricing bullet points here.

22 Actually, I have one prior. You talk a lot about
23 the feed costs on the farm --

24 A. Right.

25 Q. -- and how that's really impacted margins over the
26 last year.

27 Are you aware that the Secretary is supposed to
28 take those types of costs into account when setting the



1 minimum prices?

2 A. For -- repeat your question?

3 Q. Sure. Maybe I should rephrase it a little bit,
4 too.

5 Are you asking the Secretary to take those costs
6 into account when they decide what to do with Proposal 1?

7 A. Well, there's two issues. I think the primary
8 issue is, is that the producers not -- in the Class I
9 market are not being properly compensated for the milk
10 that we are producing, because we're using that old
11 formula that was accurate in the year 2000, but it's not
12 accurate for the milk that we're producing today.

13 It is more an issue of fairness in getting out
14 of -- being paid for what we are producing than it is for
15 asking the Secretary to look at feed costs.

16 Q. Thank you.

17 On the last page of your statement, you -- you
18 say, "Imbalance of pool revenue versus producer value (9.0
19 versus 9.41) dilutes the value of the PPD."

20 That's an interesting concept and a good point.
21 Can you explain for us a little more about what you mean
22 by that statement?

23 A. For me, it's very simple. I'm not getting full
24 value for what -- excuse me -- for what I'm producing.

25 Q. And then the next point in your statement, you say
26 that a PPD based on today's actual component values, would
27 provide an incentive for you to supply milk to the Class I
28 plant in Grand Rapids versus I assume Midwest Cheese there



1 in St. Johns.

2 A. Right.

3 Q. Can you explain that a little more for everybody
4 here in the room?

5 A. The -- the issue is that when my milk hauler
6 leaves our farm, she drives -- actually it is 4.5 miles to
7 Midwest Cheese to unload the milk. So we're going to
8 get -- to haul it to the Class I market in Grand Rapids is
9 an additional 60 miles. It is a transportation issue in
10 that case.

11 Q. In -- in today's market, I have heard some people
12 suggest that it costs about a dollar a hundredweight to
13 move milk 100 miles.

14 Does that sound about right to you?

15 A. I have heard that same number, yes. Yeah.

16 Q. So for your farm, updating the PPD would be enough
17 of a benefit to incur that additional hauling cost to get
18 to that Class I plant?

19 A. It would help, put it that way.

20 Q. I'm curious, before Mid -- well, does your -- does
21 your milk go to Midwest Cheese right now?

22 A. Yes, it does.

23 Q. Okay. And Midwest Cheese, that's a relatively new
24 plant, right?

25 A. Yes.

26 Q. Do you know or recall where your milk was shipped
27 before Midwest Cheese opened?

28 A. So Michigan Milk Producers -- I'm a Michigan Milk



1 Producers member, obviously, we stated that -- has a
2 contract with Midwest Cheese to provide X number of pounds
3 of milk per day. Prior to that, I'm also 16 miles away
4 from Ovid, which is an MMPA processing plant. Our milk
5 went to that Ovid plant prior to Midwest Cheese.

6 Q. How far is Ovid from your farm?

7 A. Oh, I think it's about 16 miles, I think.

8 Q. Okay.

9 MR. MILTNER: Thank you very much for coming to
10 testify today and for answering my questions. I
11 appreciate it.

12 THE WITNESS: You're welcome.

13 THE COURT: Further questions for this witness?

14 Mr. Rosenbaum.

15 CROSS-EXAMINATION

16 BY MR. ROSENBAUM:

17 Q. Steve Rosenbaum for the International Dairy Foods
18 Association.

19 I have a question about the data that appears on
20 the bottom of the first page of your testimony, if you
21 could look at that. And I'm looking at specifically the
22 last sentence as to how many pounds of milk you produced,
23 how many pounds of butterfat, and how many pounds of
24 protein.

25 Now, am I correct that if one wanted to determine
26 what your protein levels were in skim milk, what you would
27 do is take your 34,992 pounds of milk, subtract the
28 1,357 pounds of butterfat, and then you would divide the



1 1,054 pounds of protein by that number, namely the pounds
2 of milk minus the pounds of butterfat.

3 Is that the math?

4 A. To get the percentages, yes.

5 Q. Okay. And as I do that math, I have 34,992 minus
6 1,357 is 33,634 (sic). And so when I divide the 1,054
7 pounds of protein by your 33,635 pounds of skim, I get
8 3.13367% protein; is that right?

9 A. That sounds right.

10 MR. ROSENBAUM: That's all I have.

11 THE COURT: Anyone else have questions for this
12 witness?

13 THE WITNESS: Could I add to that answer?

14 THE COURT: I'm sorry?

15 THE WITNESS: Could I add to that question --
16 answer?

17 THE COURT: Oh, please.

18 THE WITNESS: So I didn't -- I think what you are
19 getting at is that our herd does not test as high as the
20 average herd in the United States on -- on protein and
21 other solids, and it doesn't.

22 And part of that is genetics, but the major issue
23 is, as I explained, we are a diversified farm. We also
24 raise soybeans and wheat and some corn for cash crops. We
25 are not feeding the way most producers do to capture a
26 higher butterfat and higher protein average because we
27 have the cash grain sales.

28 For example, we harvest corn silage -- we have



1 1137 acres of corn silage this year -- or corn, excuse me.
2 We will harvest about half of that for roughage for the
3 cows. The other half will be harvested for grain.

4 In our case, we can make more money, when we look
5 at the whole farm, picture, by selling that excess corn
6 grain in the cash grain market and buying back a
7 commodity, a byproduct, to feed to the cows.

8 It's a complicated string of numbers you have to
9 put together. But even though we're getting less than
10 what the average producer is because of our protein and
11 butterfat isn't as high, but we have that we're selling --
12 we're buying back a commodity cheaper than what we could
13 feed the corn that we produce. We're making more money on
14 the corn by selling it and buying back a commodity, even
15 though we don't have as high of solids value in our milk.
16 So there's a reason why we do it that way.

17 Other producers are not in the same situation.
18 Most of them, obviously. And as I also stated, there are
19 products that we could be including in our ration that
20 would boost both our butterfat and our protein, but it's
21 questionable if it's economically viable at this point in
22 time.

23 In fact, my nutritionist, who is pretty sharp, we
24 work with Purina, he -- he says it's 50/50 whether it
25 works or not. And we -- we review those numbers, you
26 know, on a yearly basis.

27 But, again, there's volatility in everything that
28 we deal with today. Methionine, for an example, is a



1 product you can add that's going to boost those levels.
2 It's not a stably priced product. It is up and down. And
3 if you catch it when it is down, you get it locked in,
4 maybe it would work.

5 But I don't want to spend -- I have -- that's the
6 reason -- and I'm talking about our particular farm. When
7 I'm sitting up here testifying, I'm talk about the
8 industry as a whole.

9 MR. ROSENBAUM: Your Honor, if I could just ask a
10 couple of follow-ups on that.

11 THE COURT: No, of course. I mean, you sat down,
12 but your -- the witness answered after you sat down. So,
13 please. I'm interested.

14 BY MR. ROSENBAUM:

15 Q. So are you -- is your milk pooled on a multiple
16 component pricing order?

17 A. Is it what?

18 Q. Do you know what the term a multiple component
19 pricing order means? If you don't, you don't. It's a
20 technical term.

21 A. I'm not sure I understand your question.

22 Q. Okay. I mean, do you -- all right. Are you --
23 does -- does the -- does the money you receive, is that --
24 does that reflect the nonfat solids level in your milk?

25 A. The money that we receive reflects --

26 Q. When you receive a -- you know, a check for your
27 milk, is that -- is that -- is that amount affected by --

28 A. Yes. It's -- it is -- the butterfat, protein, and



1 other solids are highlighted, yes.

2 Q. Okay. So -- all right.

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

4 THE WITNESS: Yes.

5 THE COURT: Do we have another questioner for this
6 witness other than AMS?

7 Seeing none, AMS, Ms. Taylor?

8 CROSS-EXAMINATION

9 BY MS. TAYLOR:

10 Q. Good morning.

11 A. Good morning.

12 Q. Thank you for being with us today.

13 A. Thank you.

14 Q. The Small Business Administration defines a small
15 business for a dairy farm as those making \$3.75 million or
16 less in gross revenue a year.

17 Would your farm be considered a small business
18 under that definition? And this is whole farm revenue,
19 not just from the dairy side.

20 A. What was the number again?

21 Q. 3.75 million.

22 A. 3.75 -- in gross?

23 Q. Yes.

24 A. Yes. We would be just over that.

25 Q. Okay. Thank you.

26 And does your farm use any risk management tools
27 to hedge in for your milk price or, you know, your feed,
28 whatever? Do you use any risk management tools?



1 A. I'm sorry?

2 Q. Do you utilize any futures contracts on the CME or
3 do any type of forward contracting or DRP Dairy, any of
4 those kind of tools to help you manage your risk?

5 A. Yeah. We do, yes. Not all the time.

6 Q. Okay.

7 A. But we do, yes.

8 Q. Okay. You used to be on the board of MMPA.

9 Do you have any ideas about how much MMPA milk
10 goes into Class I plants?

11 A. MMPA itself?

12 Q. Yeah, the co-op as a whole. And if you don't
13 know, that's fine.

14 A. I -- I don't have it off the top of my head, so I
15 wouldn't be speaking with true facts.

16 Q. You indicate your pay price in the last 12 months
17 varied, had a variance of about \$7.46.

18 Is that a gross price or is that a mailbox price
19 that would net out, you know, hauling and other deducts?

20 A. That would be -- no, it would be gross.

21 Q. Gross. Okay.

22 On the last page of your statement, I just wanted
23 to go through some of your bullets just to make sure the
24 record's clear. And I think Mr. Miltner did some of that
25 to help clear it up, but just to be sure.

26 Your third bullet talks about the imbalance of
27 pool revenue versus producer value and it dilutes the PPD.
28 If I wanted to rephrase that, would I interpret that as



1 currently handlers of Class I milk gets paid in at the
2 current standard of 9 pounds of solid -- for 9.0 solid
3 standard. But -- and producers are paid on that -- let me
4 gather my thoughts for a second.

5 Let me just say it this way. If you want to
6 expand on that 9.0, 9.41, are you saying that milk gets
7 paid in at 9.0, but you get paid out on components, which
8 on average are higher than that, so that money gets paid
9 out in the Class III component value to everyone, and
10 there's not that revenue left over to pay out in the PPD.
11 Is that what you mean by imbalance?

12 A. Basically, yes.

13 Q. Okay. And so if the PPD was higher, and that
14 imbalance was corrected, in your opinion you would be able
15 to service the Class I market because the higher PPD would
16 cover your addition- -- some of your additional hauling
17 costs to get it to that further-away Class I plant?

18 A. Right.

19 Q. Okay. And then on your last bullet you say, based
20 on the historic average of protein price, you have a
21 protein price, other solids price. You say the PPD is
22 reduced by \$0.29 per hundredweight.

23 Can you give us the time period for that historic
24 average you used?

25 A. I don't remember --

26 Q. Okay.

27 A. -- how far back that went.

28 Q. Okay.



1 A. Yeah, I -- yeah, I don't -- I don't remember how
2 far.

3 Q. Okay.

4 CROSS-EXAMINATION

5 BY MR. WILSON:

6 Q. Good morning, Mr. Nobis. Todd Wilson from Dairy
7 Programs.

8 You answered Mr. Miltner -- or Mr. Rosenbaum a
9 little bit ago about the last paragraph on page 1, talking
10 about your milk per cow, pounds of fat per cow, those
11 numbers there. Are those the same -- if you were to
12 calculate the percentage as Mr. Rosenbaum went through the
13 math there, is that the same percentage that would be
14 applied to your gross price up in the upper portion of
15 where you -- where Ms. Taylor mentioned that there was a
16 variability of \$7.46? Is that -- that is at test. That
17 variance is at test. Is that correct, of the \$7.46?

18 A. It's \$7.46 at test is the gross value of the milk
19 check.

20 Q. And that's at your --

21 A. At --

22 Q. -- at your component levels?

23 A. That our -- that was our -- that was -- I was
24 quoting the checks that we received for our milk.

25 Q. Thank you very much.

26 A. Okay.

27 MS. TAYLOR: That's it for AMS. Thank you very
28 much.



1 THE WITNESS: You're welcome.

2 THE COURT: Any redirect?

3 MS. HANCOCK: Thank you, Mr. Nobis, for your
4 testimony today.

5 Your Honor, we would move to admit Exhibit 108.

6 THE COURT: Any objection?

7 Exhibit 108 is entered into this record.

8 (Thereafter, Exhibit Number 108 was received
9 into evidence.)

10 THE WITNESS: Thank you.

11 THE COURT: Mr. Nobis, I appreciate coming out,
12 too, for this.

13 MS. HANCOCK: Your Honor, at this time we would
14 call Ed Gallagher for our next witness.

15 THE COURT: Mr. Gallagher, please raise your right
16 hand.

17 EDWARD GALLAGHER,
18 Being first duly sworn, was examined and
19 testified as follows:

20 THE COURT: Your witness, Ms. Hancock.

21 MS. HANCOCK: Thank you, your Honor.

22 DIRECT EXAMINATION

23 BY MS. HANCOCK:

24 Q. Good morning, Mr. Gallagher.

25 A. Good morning.

26 Q. Would you mind stating your name and spelling it
27 for the record?

28 A. My name is Edward Gallagher, E-D-W-A-R-D,



1 G-A-L-L-A-G-H-E-R.

2 Q. And where are you employed?

3 A. I'm employed by Dairy Farmers of America.

4 Q. Would you mind providing your business address?

5 A. I have got two. One is -- I'll use this one. It
6 is my home -- it is my office address. 5001 Brittonfield
7 Parkway, East Syracuse, New York, 13221.

8 Q. Thank you.

9 Would you mind providing us with a little
10 information about your background, starting with your
11 education?

12 A. Sure. Well, first, I was raised on my family's
13 dairy farm in Central New York. I attended Cornell
14 University as an undergrad and received a Bachelor's
15 degree in agricultural economics and farm business
16 management.

17 After completing my Bachelor's degree, I was hired
18 by the Federal Order Number 2 Market Administrator's
19 Office and worked there for a few years. And was a Wilson
20 scholar. The Market Administrator's Office sent me to
21 graduate school. I went to the Ohio State University and
22 got a Master's of Science degree in agricultural
23 economics.

24 I completed 12 years of employment with USDA,
25 finishing up with the Market Administrator as its chief of
26 market research, analysis, and information.

27 In 1996, Dairylea Cooperative hired me to be their
28 economist and to help lead them through the Federal Order



1 Reform process. During that time at DairyIlea, I -- in
2 addition to my duties on Federal Order policy, I took on a
3 number of different management roles within DairyIlea,
4 including managing their milk price-forward contracting
5 program.

6 In 2010, I was hired by Dairy Farmers of America
7 to manage their milk price risk management forward
8 contracting program. My position at Dairy Farmers of
9 America is president of DFA risk management. And I also
10 am responsible now since January 2022 for their Federal
11 Order policy initiatives.

12 Q. When you say "risk management," what does that
13 mean to you?

14 A. So we operate -- Dairy Farmers of America
15 operates -- probably the leading dairy farmer forward
16 contracting -- milk price-forward contracting program
17 globally. We offer a number of risk management services
18 who are farmer-owners. They are widely used. We also are
19 -- my team of 19 people also support the dairy risk
20 protection insurance program, or agents that provide that
21 insurance program. We also operate risk management
22 programs for our 83 milk plants and their customers.

23 Q. Is it fair to say that you operate on both the buy
24 and the sell side of risk management tools?

25 A. I do. We do, yes.

26 Q. Okay.

27 MS. HANCOCK: Your Honor, at this time, I would
28 offer Mr. Gallagher to be qualified as an expert in



1 agricultural economics, Federal Milk Marketing Orders, and
2 risk management.

3 THE COURT: I find him so qualified.

4 MS. HANCOCK: Thank you.

5 THE WITNESS: Thank you.

6 BY MS. HANCOCK:

7 Q. Mr. Gallagher, did you prepare a written statement
8 in anticipation of your testimony here at this hearing?

9 A. Yes.

10 Q. And is that what's been identified as Exhibit
11 NMPF-4?

12 A. Yes.

13 MS. HANCOCK: Your Honor, I would ask to have
14 NMPF-4 identified as Exhibit 109.

15 THE COURT: Yes, so identified.

16 (Thereafter, Exhibit Number 109 was marked
17 for identification.)

18 MS. HANCOCK: Thank you.

19 BY MS. HANCOCK:

20 Q. And then, Mr. Gallagher, did you also provide a
21 brochure from Dairy Farmers of America that's been
22 identified as Exhibit NMPF-4A?

23 A. Yes.

24 MS. HANCOCK: Your Honor, we would ask to identify
25 NMPF-4A as Exhibit 110.

26 THE COURT: Yes, so marked for identification.

27 (Thereafter, Exhibit Number 110 was marked
28 for identification.)



1 MS. HANCOCK: Thank you.

2 BY MS. HANCOCK:

3 Q. Mr. Gallagher, would you mind providing us with
4 your testimony today.

5 A. Yes, thank you.

6 What I would like to do is provide a summary and
7 use my statement, which I'm projecting on the screen, to
8 show some of the charts that I want to explain a little
9 bit further, and hopefully we can get through this a
10 little bit quicker.

11 So specifically today, I'm here to talk about our
12 proposal -- the National Milk Producers Federation
13 Proposal Number 1, to update the factors in the skim milk
14 price formulas under the Federal Orders, to update them to
15 the current producer price -- or excuse me -- the producer
16 component test in Federal Orders.

17 Simply put, what we are doing is asking USDA to
18 re-establish the skim milk minimum price, skim milk
19 formulas to the same policy initiative that they
20 implemented under Federal Order Reform, to provide a more
21 accurate skim milk price formula for more accurate skim
22 milk prices, for minimum prices, across all Federal
23 Orders, for Class I, Class II, Class III, and Class IV.

24 I'm here to testify about the impact of this on
25 risk management programs in the dairy industry.

26 So changing the skim milk factors will change the
27 pricing formulas, and changing the pricing formulas will
28 have an impact on risk management transactions that were



1 entered into prior to the knowledge of what the change
2 will be and the timing of when the change will be
3 implemented.

4 Failure to recognize that change and delay the
5 change, we're asking for a 12-month delay in its
6 implementation, will create financial harm to dairy
7 farmers, milk plants, end users, and others who entered
8 into risk management transactions prior to the knowledge
9 of the change and the timing of it.

10 We -- we realize that we need to update the skim
11 milk factors. There has been ample evidence that has been
12 provided in prior witness testimony, undisputed evidence,
13 that the component tests and the producer supply that
14 increase significantly since the year 2000 -- well, the
15 late 1990s when the factors were determined that were
16 implemented on January 1, 2000.

17 We recognize the need for this change, but we also
18 recognize the impact that it will have on risk management
19 transactions, and because of that, we're asking for the
20 12-month delay, to let those transactions or most of those
21 transactions roll off before those skim milk price
22 formulas actually are effective.

23 So what the big concern is, from the producer
24 hedging side, is that we, with our proposal, updating the
25 skim milk components is going to update what I call the
26 standard milk test for announcing class prices.

27 So currently, that standard milk test will be --
28 is 3.5% butterfat, 2.9915% true protein, and something



1 like 5.6985% on the solids. When we -- when we make this
2 change, we are going to be changing that standard
3 component level, and they are going to be higher.

4 And the problem in risk management, especially for
5 dairy farmers who have made these transactions, is that
6 they rely on the component basis as an informed value in
7 making their risk management decision. When we make this
8 change, that component basis, a lot of it, sometimes all
9 of it, will be consumed in the class price and won't be
10 available for dairy farmers anymore as part of their risk
11 management transactions.

12 We work with a lot of DFA farmer-owners on their
13 risk management strategies. Our focus working with them
14 is to help -- to try to help them lock into a profit
15 margin. And oftentimes, when we are doing these
16 transactions, they talk to us about a profit margin that
17 they can lock in, their gross milk price all in, all
18 components, PPD, the whole nine yards, less what they
19 believe their costs of production are. A lot of times
20 they will lock prices in when they know they can get a 1
21 or \$2 per hundredweight profit margin.

22 As an example, in the fall of 2019, we worked with
23 a lot of our farmer-owners to manage their milk price risk
24 for the first half and the second half of 2020. And they
25 were telling us they were locking in profit margins of
26 around \$2 per hundredweight. Not all of them, but that
27 was a common theme.

28 When COVID hit and prices crashed, and the milk



1 prices fell to intolerably low levels, the dairy farmers,
2 farmer-owners that used our programs on the milk they
3 forward-contracted were able to earn a profit in cash flow
4 on that transaction.

5 Now, I say \$2. I'm going to run through my
6 statement once through some examples on the farmer's side
7 assuming a Class III hedge.

8 And so there's a term that's important, and the
9 term in risk management is called basis. Simply put, the
10 basis is what a farmer gets paid in their milk check in
11 this case, a dairy farmer gets paid in their milk check,
12 minus the hedge that they are transacting.

13 So on a Class III forward contract, their basis
14 would be the PPD, and also it would be the additional
15 components above the standard. As we have seen,
16 undisputed in the record, that the component levels -- the
17 component levels on dairy farmer-produced milk are now --
18 it's not unusual to see dairy farmers produce Holstein --
19 Holsteins produce 4% butterfat and about 3.25% protein.

20 And so that difference from the current standard
21 that the Class III price is now pretty significant. In
22 fact, for 2020, 2021, and 2022, I bet that component
23 standard for a lot of dairies was about \$2 per
24 hundredweight.

25 And so what's that risk that we're talking about
26 is that basis that they rely on that is what they look at
27 as their profit margin when they enter into these
28 transactions will be partly eroded and consumed in the



1 milk price and not available for them anymore.

2 And that gets explained later on in my testimony
3 on pages 11 through 16 about how component basis is
4 cannibalized.

5 And on page 3, at the top of page 3, there's a
6 chart that is the U.S. All-Milk Price, and you can see it
7 changes tremendously. This is the primary price that
8 influences the revenue for dairy farm families across the
9 United States. This is a key statistic that shows what
10 dairy farmers across the United States receive in their
11 revenue.

12 Most of us get a salary, and you know, we have
13 had -- we have seen over the last 36 months quite a bit of
14 volatility in our lives with inflation and other things
15 going on, but our salaries didn't go down because of some
16 economic event.

17 In the dairy industry, for dairy farmers, their
18 salaries go up and down every month, and it's tremendously
19 volatile, as you can see from that chart, which is why
20 dairy farmers need to implement and think about and be
21 consistent users of risk management strategies to better
22 protect their dairy farms.

23 In addition to the programs that we use to help
24 dairy farmers lock into a profit margin, we find
25 significant use of a program through the Federal Crop
26 Insurance Program called Dairy Revenue Protection
27 Insurance Program, which effectively puts a floor on milk
28 prices, and they get all the upside. Pretty good deal.



1 So a lot of times, if our farmer-owners aren't
2 using a forward contract to lock in their milk price, they
3 will use the Dairy Revenue Protection Program -- Insurance
4 Program, put a floor on their milk price, to prevent
5 further price erosion from happening. So there are a lot
6 of important tools that are available in the dairy
7 industry.

8 By the time this proceeding gets to a final
9 decision and is implemented, all of those transactions
10 will be settling against the announced class price, at
11 whatever the standard component test is at that time. And
12 so all of those transactions will be impacted by the
13 change in the component levels if we don't delay it.

14 Another area that I discuss as a challenge that
15 would be for the consumer side, the plant side, is the
16 impact on cross hedges, and that discussion in my
17 statement is on pages 16 through 19.

18 What a cross hedge is, is that you try to build
19 into a -- say, a Class IV price by using the components of
20 butter, or butterfat, and nonfat dry milk for nonfat
21 solids. And we use this quite a bit at DFA.

22 So for -- we have a target blend program that's
23 very popular with our farmer-owners to help them lock into
24 their milk price. Oftentimes, we will use the CME Group
25 futures products to hedge our risk, the risk that DFA
26 takes on to offer a fixed price to one of our
27 farmer-owners. We back everything so that we can be
28 assured if a dairy farmer wants a price, we cover it with



1 some sort of hedge transaction, so that we are assured and
2 they are assured that we can honor that price, and we're
3 protected. And the dairy farmers that -- of owners of
4 our -- of DFA that aren't using these risk management
5 programs don't take on any risk.

6 So oftentimes, what we will do is there will be --
7 we'll have some transactions on the plant side. For
8 instance, we're one of the largest ice cream manufacturers
9 in the United States, and so we'll lock into an ice cream
10 price for one of our customers. When we do that, we are
11 generally going long on a butter futures contract, because
12 the ice cream manu- -- the ice cream buyer doesn't want
13 something to happen later on that increases the price of
14 butterfat and will raise their ice cream price if they
15 just buy it as it comes. And so we have opportunities for
16 them to lock in their butterfat price, or lock in their
17 ice cream price.

18 We also export dairy products around the world.
19 And there's oftentimes that we have an export buyer from
20 another country buying our powder that wants a fixed
21 price, and so we will use financial derivatives to lock in
22 that price. Same situation, they don't -- they don't want
23 their price to go up. They are willing and accepting that
24 if prices go down, they will give up the lower price.
25 They don't want their price to go up.

26 And so we go long, and when you go long in the
27 futures market, if the price goes up, the futures contract
28 is profitable, which then creates revenue for DFA to cover



1 the higher input cost that maybe we're buying from our
2 farmers to make the product, and it allows us to give them
3 a fixed price.

4 Well, a lot of times we'll do those two
5 transactions in the futures market, but not always,
6 because with our blend price program, which is a short
7 position, so farmers don't want their milk price to go
8 down, so they sell in the futures market, and if the price
9 goes down, that financial transaction, that derivative is
10 profitable and covers that loss of income.

11 So we have got -- we have got a sell side with our
12 farmers and a buy side with a couple customers, and so
13 what we do is sometimes we match them up without going to
14 the futures market.

15 The challenge that we have right now is that
16 because we don't know what this change will be or when
17 it's going to be implemented, we aren't going to be
18 utilizing those internal transactions to make that hedge
19 because we won't be able to come equal on both sides, and
20 we'll have a loss in the middle. And that is explained
21 in -- on pages 16 and 19.

22 Ms. Krema testified from the CME on Monday and did
23 an extraordinary job providing insights into U.S. dairy
24 derivatives markets, and I think her testimony was very
25 credible.

26 And the top of page 5, I provide a chart very
27 similar to what Ms. Krema showed in her testimony. The
28 difference between my chart and her chart is that hers was



1 average daily open interest and mine is open interest on
2 the last trading day of each one of those years.

3 And I'd like to use this chart just to highlight
4 something a little bit more. The last time we were
5 together, or some of us were involved, in a national
6 hearing to consider class price formula changes, was back
7 in 2007, 2008. And when you look at this chart, you can
8 see the number of transactions on the CME Futures Dairy
9 Complex, which would be whatever their futures contracts
10 were at the time, had been growing, but is significantly
11 less than what it is now. In fact, now it's three to four
12 times the level.

13 So the last time we got together to discuss class
14 price issues at a national Federal Order hearing, the use
15 and -- and understanding of these derivative transactions
16 was not as significant nor was as significant of an issue
17 back at that time. Far different than it is now.

18 In fact, I recall in that time period, I was a
19 Dairylea employee, helping to work with the Dairy Farmers
20 of America risk management program. And I was asked to
21 join the DFA salespeople and other account managers when
22 they met with some of our customers, during 2008, 2009,
23 2010. And they would have a topic list of things that the
24 customer wanted to talk about, and frequently the number
25 one topic at those meetings was how they could use the DFA
26 risk management program, forward contracting programs, to
27 help their -- protect them against milk price volatility.

28 Now I don't go to those meetings so much, and the



1 difference is a lot of the buy side has invested in people
2 who are very sharp at using these derivative programs and
3 understood their use. And so that is part of the reason
4 why we have seen such a significant increase in the use of
5 these programs.

6 On the sell side, when I started at Dairy Farmers
7 of America in 2010, we had an astonishingly low volume of
8 milk covered under our forward contracting program. I
9 totally changed our approach on how we interact with a
10 farmer-owner. In fact, we were outsourcing it in some
11 cases. The education effort, we were outsourcing to
12 others. The silliest thing I had ever heard of.

13 I stopped that, day one stopped that, and I hired
14 people that could work with dairy farmers, explain risk
15 management to dairy farmers, and take what was happening
16 in the derivative market and relate it back to their milk
17 checks so they could understand it. And the use in our
18 forward contracting program skyrocketed, which is part of
19 the reason that you see the significant increase over
20 time.

21 Others -- others in the industry, that would be
22 brokers that worked extensively with dairy farmers, also
23 did a lot better job of explaining how to use these
24 programs to dairy farmers.

25 And so the use is significant and is of -- and is
26 now something that is so intertwined with the Federal
27 Order program because every one of these types of futures
28 contracts settle to an announced price by USDA that has



1 backstopped with an important price in the Federal Order
2 pricing system.

3 Ms. Krema did a better job than I did, as we go to
4 the top of page 6, in showing open interest information.
5 This is a snapshot of two particular days this year, the
6 open interest of futures and options on the CME Group
7 Dairy Complex. It is May 26th and August 8th.

8 And what I'd like to point out is just sort of the
9 role on how these futures contracts demand the amount of
10 open interest changes over time. So you can see that on
11 May 26th, we hadn't settled the May class -- the May
12 Federal Order prices yet, so those contracts were still
13 treading. They still had open interest.

14 You can see 12 months out, you get to May 2024,
15 and you can see fairly significant open interest through
16 May 2024, and then it falls off fairly considerably. In
17 fact, the second half of 2024 at that point had very
18 little open interest.

19 You move to August where both May and June prices
20 have been announced, and those futures derivatives on the
21 CME had rolled off the board and new ones have come on.
22 And you can see the significant change in open interest,
23 and you can see it extends out well beyond the 12 months.

24 And Ms. Krema's data that she showed in her
25 testimony, I think, was much better than this in showing
26 sort of the seasonality and the change.

27 I talked about the Federal Crop Insurance Program.
28 On page 7, middle of the page, is a chart. What that



1 chart is, that's data from the Risk Management Agency that
2 I have summarized, and it shows the coverage by crop year.
3 Now, a crop year runs from July 1st to June 30th, and a
4 crop year -- so we look at -- let's take 2022. The crop
5 year of 2022 doesn't mean all those transactions settled
6 out in that crop year. It's just the insurance policy was
7 taken out sometime between July 1 of 2021 and June 30th of
8 2022. That's the 2022 crop year.

9 It shows significant use. When you average those
10 numbers, because we don't know exactly what the coverage
11 would be for any one annual time period, any one January
12 through December, when you average those out, it's pretty
13 close to about 53 billion pounds of milk has been prior --
14 at least up until 2023 crop year. That's about 23% of the
15 U.S. dairy supply.

16 In the DFA risk management programs, the volume of
17 milk that's covered by our farmer-owners and forward
18 contracting is about the same as the volume of milk that's
19 covered under our Dairy Revenue Protection Insurance
20 Programs. They are both pretty significant. They have
21 both grown. In fact, in 2022, we had record volumes in
22 both programs.

23 And so sort of interpolating a little bit that
24 the -- relative to our use, and interpolating what I think
25 that means for producer coverage using the CME Group
26 futures derivatives for dairy farmers, that I think
27 somewhere between -- in 2022 -- somewhere between 35 and
28 45% of the U.S. milk supply was hedged by dairy farmers



1 across the United States. So it is pretty significant.
2 It's pretty significant.

3 I mentioned that we use risk management to support
4 exports. I'm going now to the middle of page 10. So we
5 are very fortunate in the United States to have such a
6 robust and well used dairy risk management program. The
7 CME Group futures market is by far and away the leading
8 dairy risk management futures market anywhere.

9 And it creates a significant strategic benefit to
10 the United States versus who we would say would be our
11 competitors in international marketplaces. In Europe,
12 there's a futures market, the EEX. And for New Zealand
13 they have a futures market that they can use for dairy; it
14 is the SGX. Neither of them have grown very much. They
15 are getting more and more use.

16 But if you look at this chart, the open interest
17 when you take their contracts, which are smaller sized
18 than the U.S. contracts, you convert them to their U.S.
19 equivalents, and you add up then their U.S. equivalent of
20 contracts that they would have, again, on the last day of
21 trading, for 2022, their open interest was about 20,000
22 contracts, which is about where the U.S. dairy industry
23 was in the early 2000s. So we have a significant
24 advantage over our European competitors when it comes to
25 the export markets to be able to strategically use these
26 programs to support the growth in U.S. dairy exports.

27 Okay. On page 11 is where I start my discussion
28 of the impact to dairy farmers and the need to delay



1 12 months. And so simply put, this chart goes through the
2 transaction and the determination of the Class III milk
3 price, using factors that I have -- use as an example.
4 And my example is that 2021 average component prices,
5 announced by USDA, the average cross amounts for 2021, the
6 annual average, the butterfat price, the protein price,
7 and the other solids.

8 And it goes through what the component factors are
9 to determine the Class III price: 3.5% butterfat, 3.1
10 other protein, and 5.9 other solids. It's the 3.1 and the
11 5.9 which we are seeking to modernize and update to meet
12 the average component test in producer supply.

13 As you go through that, and you come out with a
14 17.08 Class III price. I'm going to use that -- I use
15 that 17.08 Class III price in my example of what all this
16 means to dairy farmers.

17 Now, when I go through this example, I'm going
18 to -- I'm going to use an example where -- I'm going to
19 page 13, the middle of the page. I'm going to use an
20 example where I'm using different protein and other solids
21 component tests, and I'm not changing the butterfat price.
22 Right?

23 So in this example, on this dairy, that dairy
24 probably actually had a 4.0 butterfat test, but if I use
25 that 4.0 in what I'm trying to show to show you the impact
26 of what would happen when we change these factors, it will
27 cloud it by adding in butterfat component basis that we
28 aren't concerned about because we aren't changing the



1 butterfat standard. So I leave butterfat as 3.5 for
2 convenience to show the change.

3 And so this particular chart, though, looks to
4 be -- what's the full component test? So the change
5 hasn't occurred yet. This is an example of a dairy farm
6 who produces 3.5% butterfat, 3.27 protein, and 5.81 other
7 solids, and so their full component Class III price is
8 \$17.90.

9 The Class III price that they would hedge at would
10 be 17.08, which means they have a component basis of
11 \$0.82. It's that \$0.82 that ends up at risk of being
12 cannibalized as we raise the component factors in the skim
13 milk test. It is that \$0.82 I talk about as part of that
14 basis, that when we say dairy farmers lock in a 1 to \$2
15 profit, the \$0.82 is part of that. The rest of the 1 to
16 \$2 is on the butterfat side, but we aren't changing
17 anything in this proposal that's going to impact the
18 butterfat, so I'm leaving that out.

19 Going to the bottom of page 19, so this converts
20 to the butterfat, protein, and other solids factors -- or
21 excuse me, not the butterfat -- it converts the protein
22 and other solids factors to our proposal. And it goes
23 through and it recalculates what the announced Class III
24 price would be.

25 Now, I specifically -- going back to this chart --
26 I specifically chose these component tests when I
27 converted them to a skim milk value -- would be the same
28 as these -- to help show my point.



1 So now we go through, you realize the brilliant
2 testimony that the National Milk Producers Federation has
3 provided, and you choose to adopt our proposal. Thank
4 you. We appreciate that. But we're changing what the
5 announced Class III price would be. It's now going to be
6 17.90 instead of 17.08.

7 Going to page 15, middle of the page, this chart.
8 So here's sort of what the dairy farmer was thinking
9 about. All right. So the dairy farmer did this
10 transaction months before they knew what the change was
11 going to be or when it was going to be implemented, but as
12 it turns out, this -- this hedge they did settles after
13 the change happens.

14 So that dairy farmer had an expectation of locking
15 in a Class III price of 17.08, knowing that they then had
16 a component basis in addition to that of about \$0.82, they
17 said for \$17.90, I can make a profit on my dairy farm, and
18 so I'm going to lock it in.

19 Now we go to the change, after the fact, and the
20 announced Class III price is \$17.90. But there's no
21 additional component basis, it's been absorbed into the
22 Class III price.

23 So the dairy farmer then, the transaction is they
24 hedged at 17.08. They didn't want the price to go down.
25 Nothing else changed that -- the component prices were the
26 same when they hedged as when they settled the price. The
27 only thing that changed was the factor in the formula.

28 And so the formula then said the settlement price



1 that would be used by the CME and by our forward
2 contracting programs would be 17.90. So they hedged at
3 17.08 to protect themselves from the price going down, but
4 the price went up, so they had a loss on that hedge. They
5 had a loss of \$0.82 a hundredweight.

6 So they ended up at the price that they wanted in
7 the futures market that they saw, they are ending up at
8 17.08, but what's missing is they don't any longer have
9 that component basis because when they sold their milk to
10 whoever they were -- they were selling it to, they got
11 paid the 17.90. They got paid their full components.
12 They got the 17.90. But there was no additional value in
13 that basis than what they were -- as they were expecting
14 when they made the transaction.

15 And that's where the challenge, that's what the
16 problem is, why we are asking to delay this for 12 months.

17 I'll stop there, Nicole. The last part, pages 16
18 through 19, go through sort of the cross hedge
19 transaction, but I'll stop there and be happy to entertain
20 questions. Thank you.

21 Q. Thank you, Mr. Gallagher.

22 One question on the last part that you were just
23 mentioning on this delayed implementation. If we're at
24 this hearing today, and it's going to take us some time
25 before any kind of anticipated change that could happen
26 will actually be effective, I'm wondering if you could
27 talk about when that 12-month period or why that 12-month
28 commencement of the delayed implementation would occur at



1 the -- at the final order or the implementation of any
2 change as opposed to why people couldn't build that into
3 their risk management tools starting today so that we
4 could have the advantage of this kind of foreshadowing?

5 A. Correct. Thank you. That's an excellent
6 question.

7 So unfortunately, uncertainty is uncertainty, and
8 so not knowing when this is going to happen is then
9 becoming a guessing game. And what our risk management
10 programs are meant to do is to take uncertainty away and
11 make it more certain.

12 And so, you know, we have some view in our mind
13 when we think this final decision may be announced, and so
14 for transactions that would be occurring after that date,
15 we have quite a bit of uncertainty on how we use these
16 programs to support effective risk management for both our
17 dairy farmer-owners, our milk plants, and our customers.

18 Did I get to where you wanted to go?

19 Q. Yeah. I mean, I think is another part of this as
20 well, that they can't afford to not continue to engage in
21 their risk management tools because it's so integrated
22 into their current business practices?

23 A. Yes. So if I may sort of answer -- add to that
24 answer.

25 So, Mr. Nobis mentioned that he used risk
26 management sometimes. And so if Mr. Nobis was a DFA
27 farmer-owner, I would pull him aside after I'm done here
28 and explain to him the need to be consistently using the



1 programs because you never know.

2 We found, and unfortunately, a year -- so last
3 year, the end of 2022, there were some pretty decent
4 prices that dairy farmers could cover for the first half
5 of this year. But those prices that were offered didn't
6 offer a profit margin, so they didn't cover. We begged
7 them. Some covered, but not as many as usual. And
8 unexpectedly, prices fell off the charts, as we know. It
9 happened in the spring and into the summer.

10 What the challenge is, is that we probably will
11 see less risk management coverage because of the
12 uncertainty that we're going to be facing. And you never
13 know when prices are just going to fall off the shelf and
14 decline rapidly like they did last -- this -- this past
15 spring and into the summer. And so that is going to --
16 that uncertainty will bring a lot of challenges to
17 financial -- the financial operations of a lot of dairy
18 farmers.

19 Q. And then in Exhibit 110 that you have in front of
20 you, that's the Dairy Farmer of America brochure, if you
21 look at the second page there, can you talk about the map
22 that's reflected there?

23 A. Yes. So the dots represent one of our DFA
24 farmer-owner farms. So you can see where we're located.
25 We have seven operating councils. Each operating council,
26 you can see there sort of their geographic boundaries by
27 the light blue outline on the gray scale map. And our
28 operating councils -- or each operating council for that



1 region is responsible for marketing the milk of our
2 farmer-owners, getting paid, and determining pay prices,
3 and writing the milk checks for our farmer-owners in those
4 areas.

5 Q. Okay.

6 MS. HANCOCK: Thank you, Mr. Gallagher.

7 Your Honor, we would submit the witness for cross
8 now.

9 THE COURT: Questions for this witness, other than
10 AMS first?

11 CROSS-EXAMINATION

12 BY DR. CRYAN:

13 Q. I'm Roger Cryan with the American Farm Bureau
14 Federation.

15 A. Hello, Roger. How are you?

16 Q. Very well. How are you today?

17 A. I'm good. Thank you. You?

18 Q. I think I said so. I think I said I'm very well.
19 Thanks.

20 Okay. I'm -- I have been impressed with the way
21 you have grown DFA's market -- risk management programs
22 over the years. It really feels like it is part of DFA's
23 recommitment lately to serve the members in the industry
24 and the community, and I -- I -- I'm -- I thought this was
25 a good reflection of that.

26 A. Thank you.

27 Q. Now, you talked about 2020, and some of the
28 volatility, some of the crazy things that happened that



1 year. You've talked about prices dropping off the table.

2 And if I understand your programs correctly, and
3 you haven't -- I don't think you quite brought this up --
4 but when there was some real chaos in terms of basis risk
5 and with respect to uniform prices versus Class III and IV
6 prices, for example, in 2020, your -- a lot of your
7 programs covered -- covered producers, right? A lot of
8 your producers who were using your forward contracting
9 program as set forth saw a lot of that risk managed; is
10 that right?

11 A. That's correct. And we paid out between -- on our
12 forward contracting programs, we paid out tens of millions
13 of dollars to our farmer-owners during that period. And
14 those that would have had the Dairy Revenue Protection
15 Insurance Program, although we don't write those checks,
16 that comes from RFA --

17 Q. Sure.

18 A. -- they also got tens of millions of dollars. So
19 a very effective risk management implementation during
20 that time period --

21 Q. Yeah, you --

22 A. -- that was beneficial to our farmer-owners.

23 Q. Very good.

24 And you -- and your program, because you are
25 serving the farmers as producers, trying to help them
26 manage risk, and not just selling some product, you
27 dovetailed all the different options they have, like the
28 USDA programs, the various USDA programs and risk



1 management, and the crop insurance and dairy margin
2 coverage, and then you fill the gaps with --

3 A. Yeah.

4 Q. -- futures and options and so forth; is that
5 right?

6 (Court Reporter clarification.)

7 BY DR. CRYAN:

8 Q. And then you fill the gap with futures and options
9 and other forward contracting tools; is that right?

10 A. Yes, that's correct. So I didn't spend time
11 talking about the Dairy Margin Coverage Program. That's
12 widely known, I believe --

13 Q. Yes, it is.

14 A. -- and is by far and away the single best risk
15 management program in the dairy industry. And so when we
16 work with our farmer-owners, we start and look at how much
17 they have -- they can get covered under the Dairy Margin
18 Coverage Program, and so that's -- that's covered.

19 Q. Okay.

20 A. And then we work on whatever delta they have in
21 their milk production with our other programs.

22 Q. So putting those all together gets kind of
23 complicated. And in 2020, when -- when basis blew up and
24 there was massive amounts of depooling, a lot of the
25 programs, a lot of the proposals from National Milk are
26 aimed at -- including this one -- are at least in part
27 aimed at addressing class price misalignments and negative
28 PPDs and depooling, trying to -- trying to address that.



1 Could you talk about some of the impacts that
2 negative PPDs and depooling had on DFA as a -- as a -- as
3 a company, as a co-op that was taking on a lot of risk for
4 its members, and on the members themselves?

5 A. Yeah. So we're a little bit different than others
6 in the marketplace because we offer blend price-forward
7 contracts, and we offer producer price differential
8 forward contracts.

9 And so when those negative basis hit, dairy
10 farmers that had a blend price-forward contract were
11 protected, and those that -- so if you think a little bit
12 about, you know, you -- if you buy corn, right, you buy
13 corn, you can buy off the board, you can buy the basis, or
14 you can buy it delivered.

15 So think of our blend price-forward contract as
16 the delivered price. And then we have other dairy --
17 other farmer-owners that will say, I just want the board
18 price, which will be covering Class III. And then there
19 will be others saying, I just want the basis, which would
20 be the PPD. So we have -- we can cover all three of those
21 options for our farmer-owners. So a little bit different.

22 A lot of our transactions on risk management were
23 protected against that basis change, but not all of them.
24 And so because of some of the anomalies that happened in
25 dramatic differences between class prices that resulted
26 from various actions during COVID, the -- those
27 farmer-owners that didn't cover that PPD basis in one way
28 or another had very negative impacts on what they were



1 expecting for the outcome of their hedge.

2 Not because of component basis changes
3 necessarily, but because when they were making their
4 transaction, they weren't expecting to have a minus -- I'm
5 making this up a little bit, but it's in the ballpark -- a
6 minus \$8 PPD. They were either expecting a zero or maybe
7 slightly higher. And so when you lock in to a \$20 milk
8 price, and you think you're going to get a PPD of zero,
9 and that \$20 milk price is pretty good, then that's fine.
10 But when you lock into a \$20 milk price and you end up
11 with an unexpected minus \$8 PPD, you are really netting
12 \$12, and that is not a financially viable transaction,
13 unfortunately.

14 And so some of -- you know, the five proposals
15 that National Milk is offering up would support stronger
16 PPDs and would lead to more effective risk management
17 transactions by dairy farmers across the industry.

18 Q. Yeah. Larger and -- and more consistent, right?
19 Less variability in the PPD, that's -- those are kind of
20 two of the aims that will help support your -- your
21 support for producer risk management.

22 A. We would like stronger and more consistent PPDs.
23 I don't have analysis to know if our proposal is going to
24 do that or not --

25 Q. Okay. Very good.

26 A. -- consistently.

27 Q. Thank you, Ed. Thanks very much.

28 DR. CRYAN: That's all I have. Thank you.



1 THE COURT: Anyone else?

2 Mr. English.

3 MR. ENGLISH: Your Honor, I actually think this
4 would be a good time for a break.

5 THE COURT: The hearing reporter thinks so too. I
6 think so too.

7 And I'm beginning to wonder whether ten minutes is
8 enough. Enough? Okay.

9 The hearing reporter says it's enough. Let's come
10 back at 9:50.

11 (Whereupon, a break was taken.)

12 THE COURT: On the record.

13 Mr. English, your witness.

14 MR. ENGLISH: Thank you, your Honor.

15 CROSS-EXAMINATION

16 BY MR. ENGLISH:

17 Q. Good morning, Mr. Gallagher. My name is Chip
18 English. I think we have known each other since probably
19 1987 or something like that.

20 A. I think so, yeah. Good morning.

21 Q. And in this proceeding, I represent the Milk
22 Innovation Group.

23 A. Very good.

24 Q. So I -- I realize your testimony is about Issue 1,
25 but I think it is important to understand the philosophy
26 behind the testimony. So I want to ask sort of a holistic
27 question about the whole proceeding.

28 Is it your position that USDA should postpone



1 implementation of whatever changes it makes from this
2 proceeding all at one time?

3 A. Clarify that.

4 Q. Okay. So let's say, contrary to our position --
5 because we're not in favor of Issue 1 -- if the Secretary
6 were to adopt your Proposal 1, which you seek to have
7 12 months delay, should the Secretary similarly delay
8 implementation of any decisions on Issues 2, 3, 4, and 5?

9 A. The only implementation delay we are asking for is
10 for the implementation delay on the component changes to
11 the minimum class skim milk prices.

12 Q. So you are not going to appear later or someone on
13 National Milk's behalf is not going to appear later to
14 request that, say, for instance, Issue 2, survey changes,
15 would be implemented later?

16 A. What are Issue 2 --

17 Q. That's the survey. That's like removing barrels
18 from -- from the survey, adding 640-pound blocks, adding
19 mozzarella, things like that. I mean, I basically -- I
20 think -- I think if I'm correct, because this would be a
21 really short cross-examination -- if what you are saying
22 is that National Milk is only asking to delay
23 implementation of Issue 1 and not any of the other
24 proposals, is that what you are saying?

25 A. Yes.

26 Q. Well, then let me suggest, to the extent it is
27 helpful and the extent -- obviously USDA's not bound by
28 anything. But nonetheless, there is a concept called



1 negotiated rulemaking. Let me suggest to you since we
2 oppose Issue 1, your proposal, and you are in favor of
3 Issue 1 and seek that it be implemented 12-month delay, we
4 are entirely in agreement.

5 MR. ENGLISH: And I think my cross-examination is
6 over.

7 THE WITNESS: Thank you Mr. English.

8 CROSS-EXAMINATION

9 BY MR. MILTNER:

10 Q. Good morning, Mr. Gallagher.

11 A. Good morning. How are you?

12 Q. I'm well. Thank you. Ryan Miltner, and I'm
13 representing Select Milk Producers.

14 When you talk about DFA's risk management programs
15 available to its members, what does that all entail? What
16 are the different programs that you offer?

17 A. Quite extensive. So we -- we pride ourselves on
18 being able to create forward contracting programs to cover
19 price risk of any dairy product.

20 So, for instance, to get into the weeds a bit,
21 the -- if we have a farmer-owner who wants to solely cover
22 the Class III price risk in their blend price, but feels
23 that maybe the whey price is so low that it could only go
24 up, so they don't really want to lock the whey price in,
25 we have a method to help them just cover the protein price
26 and protect the protein price and let the whey price
27 change.

28 We also offer, through our forward contracting



1 programs, opportunities for our farmer-owners to hedge
2 feed price risk, and we build that into the milk price
3 that they would receive through a milk price-forward
4 contract.

5 So we have got -- on the producer side, on the
6 farmer-owner side, a significant number of options, and we
7 have ways that they can lock the price in. We have
8 opportunities for them to get a floor where they get all
9 the upside. We have transactions that we call min/max
10 forward contracts where they lock in the floor or they get
11 a floor price, but instead of getting all the upside, they
12 only get some of the upside, but in -- in -- in -- in
13 recognition of that, they get paid a certain value for
14 that transaction, or it reduces -- it reduces the cost of
15 the floor to limit the upside.

16 We have other programs where if they're locked in,
17 we have something that we have created that we call the
18 upside rider. So an upside rider, if you were locked in
19 at say a \$20 Class III price, and you were okay with --
20 with prices going higher, but if they really went higher,
21 if they went to \$28, you would really feel bad, you would
22 want to get some of that, the upside rider that allows us
23 to do a transaction with the forward contract and adjust
24 that price. So let's say for a particular fee, that when
25 the Class III price exceeded \$23, that they would get the
26 value above \$23, and they would only be locked in up to
27 that \$23.

28 So we have got quite a variety of programs. We



1 used to show it -- interestingly -- we -- when -- when we
2 sort of -- we are constantly learning how to do a better
3 job to talk to our farmer-owners and simplify our whole
4 process. One of the things we used to do, we were too
5 proud of ourselves, we used to show a chart, an extensive
6 chart, that had about 40 lines on it, that were most of
7 our risk management transactions. And we found that when
8 we showed that in our -- in our intro to risk management,
9 it was so overwhelming that it turned our farmer-owners
10 off. So we don't show that anymore, and we just sort
11 of -- but we have -- we have lots of options and lots of
12 variety. And we can extend all of that, also, over to our
13 own plants, and we can extend it to our customers,
14 depending on what their needs are.

15 Q. Are the underpinnings of all of those different
16 programs ultimately CME derivatives?

17 A. Absolutely. So I -- I did reference that we can
18 do internal transactions. I referenced that when I was
19 presenting my statement. But most of the hedges that we
20 do are transactions with a CME futures product.

21 Q. Tell me about the -- you mentioned an internal
22 hedge. What is that, and how does that work?

23 A. Sure. So a -- we would have a dairy farmer,
24 farmer-owner, that wants to cover the class -- as an
25 example -- Class IV price risk in their blend price. They
26 don't want the price to go down, so they are going to --
27 we're going to -- so we do a forward contract with them
28 for that Class IV piece. We go into the futures --



1 normally we would go into the futures market and we would
2 sell a Class IV futures.

3 Sometimes, instead of doing that, we are able to,
4 at the same time, know that we have a customer who we are
5 selling ice cream to who wants to lock in their ice cream
6 price, who then would have -- we would make a transaction,
7 normally in the futures market, to buy a butter futures.

8 And at the same time maybe we have an export
9 transaction for nonfat dry milk powder where we are
10 selling to our customer overseas at a fixed price, and
11 normally, what we would do to support that fixed price is
12 that we would buy a nonfat dry milk futures price.

13 Instead of going into the futures markets for
14 producer farmer-owner transaction and the two pieces of
15 the transactions with our customers, we just meet in the
16 middle and we do it internally without going to the
17 futures market.

18 That's what I -- that would be the internal
19 transaction. And in my testimony, I talk about the
20 middleman. DFA would be the middleman in that
21 transaction.

22 Does that make sense?

23 Q. It does, thank you.

24 On those types of internal transactions, what
25 exposure is there to the cooperative, and therefore its
26 owner members, if -- if a Proposal 1 is not delayed
27 12 months?

28 A. Yeah. We -- we -- as the middleman we won't get



1 back to -- so as it stands now, we can sort of perfectly
2 match up everything, so that as the middleman we don't
3 take on any risk of profit -- I mean, profit -- we don't
4 take on risk of loss. But as this occurs, we do. And we
5 will -- we will -- there will be an amount we -- we will
6 be uncertain whether we can get back, not knowing what the
7 change is, when it changes, the implementation date. So
8 that creates an exposure to us that we can't manage.

9 Q. And DFA, like all cooperatives, it's owned by its
10 farmer members, correct?

11 A. DFA is owned by I think it is 11,000 -- we have
12 11,000 farmer-owners, operating about 6,000 family farms.

13 Q. So would it be correct that in addition to the
14 impacts on your members with respect to the transactions
15 you describe in your testimony, exposure that DFA may have
16 through internal transactions, or otherwise, that's farmer
17 exposure too, isn't it?

18 A. Yes.

19 Q. Okay. Thank you.

20 MR. MILTNER: I don't have anything further, your
21 Honor.

22 THE COURT: Anyone else other than AMS?

23 CROSS-EXAMINATION

24 BY MR. COVINGTON:

25 Q. Calvin Covington, Southeast Milk, Incorporated,
26 I'm representing.

27 Good morning, Mr. Gallagher.

28 A. Good morning. How are you?



1 Q. Just fine. Thank you.

2 I want to ask a few questions and focus on the
3 earlier part of your testimony.

4 But first thing I want to ask you, though, is,
5 over the last couple of years, have you been a part of the
6 National Milk Producers Federation group of
7 representatives from the various dairy cooperatives to
8 develop this proposal, Proposal 1, that you are talking
9 about?

10 A. Yes.

11 Q. Okay. And what is the purpose of National Milk's
12 Proposal Number 1?

13 A. So -- so our purpose is to -- to re-establish the
14 accuracy of determining minimum skim milk prices across
15 all Federal Orders, for Classes I, II, III, and IV, by
16 returning to the policy initiative that they implemented
17 during Federal Order Reform, meaning that the skim factors
18 to determine minimum skim milk prices be based on the
19 average producer component tests across Federal Orders.

20 Q. All right. And why -- why is that update needed?

21 A. As we have -- as has been shown in testimony, I
22 think, by everybody that has presented evidence on
23 component tests, that these component tests have increased
24 substantially and that we no longer have the accurate
25 determination of those minimum skim milk prices across all
26 Federal Orders.

27 Q. Okay. Now, in your testimony, and the response
28 here, we keep using the term skim milk components, which



1 Proposal 1 is about.

2 What are the purpose of those skim milk component
3 factors?

4 A. Those skim milk component factors are used to take
5 the product derived protein, nonfat solids, other solids,
6 and convert them to skim milk prices.

7 Q. Okay. And why does the Federal Order system need
8 those skim milk prices, that conversion?

9 A. Skim milk prices are reflective of the -- it's
10 important that the skim milk prices are reflective of the
11 general component tests across the industry, and that when
12 establishing Class I prices, Class I price is the Class I
13 mover plus a differential at the minimum Class I price.

14 And in Federal Order Reform, the initiative, the
15 policy initiative, is that the Class I mover was meant to
16 reflect average manufacturing prices. And right now, it
17 doesn't, because in all of the component orders, the
18 average manufacturing prices, really what the components
19 are in the order, which are significantly higher than they
20 were in 2000, and so the skim values are out of date. And
21 we don't see the connection -- Mr. Nobis very ably
22 explained its impact on his dairy, that -- that we don't
23 see the connection with the Class I price, that minimum
24 Class I skim milk mover being priced off of manufacturing
25 price anymore.

26 Q. Okay. So the skim milk prices per hundredweight,
27 as you just responded there to the earlier question, that
28 are calculated from the component prices, they are needed



1 to help establish the Class I mover skim and also the
2 published Class II, III, and IV skim milk value prices?

3 A. Yes.

4 Q. Okay. All right. When the Federal Order Reform
5 was implemented back in 2000 that you referred to several
6 times, did those published Class III and Class IV skim
7 milk prices per hundredweight approximate the actual
8 Class III and IV skim milk prices at test at that time?

9 A. Yes.

10 Q. Okay. All right. And then, again, as you just
11 testified and also as you have responded, where component
12 prices have increased, do the current published Class II,
13 III, and IV skim milk values and also the Class I mover
14 skim milk value, do they approximate the current component
15 levels at the time?

16 A. Could I ask you to ask the question again?
17 Because I think you said component prices instead of
18 component tests.

19 Q. And I very, very well could have been, so I -- I
20 appreciate that.

21 Do the current -- does the current Class I mover
22 skim value per hundredweight, Class II, III, and IV skim
23 milk values per hundredweight, do they approximate --
24 published prices, do they approximate the actual prices at
25 test of the current II, III, and IV skim milk prices?

26 A. In the Federal Orders that have multiple component
27 pricing, Class II, III, and IV values approximate. The
28 Class I values do not. When you look at what the skim



1 milk -- minimum skim milk prices would be, they do not
2 approximate in any order what the actual producer tests
3 are right now.

4 Q. Thank you.

5 When the current skim milk components were
6 implemented back in 2000, as a part of Federal Order
7 Reform, were they ever intended to designate the minimum
8 skim milk component levels in Class I Federal Order skim
9 milk?

10 A. No, they were not.

11 Q. Okay. And if the National Milk Producer Proposal
12 Number 1 is implemented, does that mean that the Class I
13 skim milk must meet the proposed update -- updated skim
14 milk component levels?

15 A. No.

16 Q. Okay. And has been testified, the National Milk
17 Producer Proposal 1 would increase the Class I skim milk
18 price.

19 Does that increase give any kind of economic
20 advantage to one fluid handler over another in the Federal
21 Order system?

22 A. So the change would result in the average -- or
23 excuse me -- the Class I skim milk price mover being
24 higher, but being the same in every single Federal Order.
25 So there would be no competitive -- inter-competitive
26 advantage or disadvantage for any of the regulated
27 handlers.

28 Q. Okay. And currently under Federal Order



1 revisions, Class I handlers, to meet their obligation to
2 the Federal Order system when it comes to the skim milk,
3 they account for that skim milk on a per hundredweight
4 basis; is that correct?

5 A. Yes.

6 Q. Does National Milk Producers Federation
7 Proposal 1, does it change that?

8 A. No.

9 Q. Okay. Thank you, Mr. Gallagher.

10 MR. COVINGTON: Your Honor, that's all my
11 questions.

12 THE WITNESS: You're welcome.

13 THE COURT: Next, Mr. Rosenbaum.

14 CROSS-EXAMINATION

15 BY MR. ROSENBAUM:

16 Q. Steve Rosenbaum for the International Dairy Foods
17 Association.

18 You have provided your views as to the purpose of
19 various undertakings during Federal Order Reform in 2000.

20 Can you point to any specific statement in the
21 decision by USDA when they implemented those reforms as to
22 whether there would be a need for any future revision in
23 the skim milk composition assumptions, one way or the
24 other?

25 A. I don't have anything to point to from the record.

26 Q. Okay. And --

27 A. That I am aware of.

28 Q. And were you aware that at the time that Federal



1 Order Reform was instituted in 2000, USDA had issued
2 previously decisions where they made the explicit
3 statement that with respect to Class I, there was no value
4 in additional nonfat milk solid components?

5 A. I would answer your question first by directly
6 responding, I'm not aware of that.

7 But I would answer -- also follow up, in that the
8 same -- when they -- when they implemented the Federal
9 Order Reform decision, they struck it at the average
10 component test that existed at that time.

11 Q. Did they actually say that's what they were doing
12 in a decision, as opposed to simply trying to come up with
13 a formula that roughly approximated the current pricing
14 under the MW series?

15 A. I don't have specific information to add to that.

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

17 THE COURT: Anything further from anyone?

18 Yes.

19 CROSS-EXAMINATION

20 BY DR. VITALIANO:

21 Q. Peter Vitaliano, National Milk Producers
22 Federation.

23 Mr. Gallagher, I would like to just follow up on
24 the question from Mr. Rosenbaum just now with regard to
25 whether the Federal Order Reform decision contained
26 anything that anticipated further adjustments in the
27 future.

28 Is it your understanding that in terms



1 specifically of the component composition factors in the
2 Class III and Class IV formulas, the skim milk formulas,
3 that at that time of Federal Order Reform around 2000, the
4 average composition of producer milk was pretty stable and
5 not changing very much, and therefore would not
6 necessarily be something that they would comment on in the
7 Federal Order Reform decision?

8 A. Mr. Vitaliano, I would say that it was fairly
9 stable. I don't know -- I can't -- I can't get into the
10 mind of USDA at that time and the relative merits of
11 commenting or not commenting.

12 But I think if you -- if you look at the
13 testimony, the evidence that has been submitted at this
14 hearing, you will see a change in the component tests that
15 have been pretty significant, beginning around 2010, that
16 have increased substantially. And it is not -- as you had
17 mentioned in your question -- it is -- it is not sort of
18 just a little change or consistent component tests. They
19 are significant.

20 Certainly Mr. Nobis's testimony referenced why.
21 The testimony from Dr. Van Amburgh at Cornell University
22 testified why. And so there's just been significant
23 component production growth across the U.S. milk supply,
24 and it is my expectation and belief it is going to
25 continue.

26 Q. That is the very reason for Proposal 1. But my
27 question specifically was the situation around the time of
28 Federal Order Reform.



1 DR. VITALIANO: Thank you. No more questions.

2 THE COURT: Anyone else?

3 AMS, your witness.

4 CROSS-EXAMINATION

5 BY MS. TAYLOR:

6 Q. Good morning.

7 A. Good morning. How are you today?

8 Q. Well, Ed, I'll be honest, risk management is
9 something I have not had to learn for my entire career in
10 detail, so this is good way to start a Wednesday.

11 A. Well, hey, welcome to my world.

12 Q. So bear with me a little bit.

13 A. Yep. I understand completely.

14 Q. I do appreciate you coming here to testify today
15 on this subject. So thank you very much.

16 A. You're welcome.

17 Q. I think I heard from an answer you gave to someone
18 else's question that DFA has 11,000 farmer-owners and
19 6,000 dairy farms.

20 Did I hear that correctly?

21 A. Yes.

22 Q. Okay. And what percentage of those farms use risk
23 management tools?

24 A. So can we count Dairy Margin Coverage?

25 Q. Yeah, any risk management tool.

26 A. I would say close to 100%.

27 Q. And then since you're talking about the impacts to
28 the CME, and that doesn't necessarily deal with DMC, what



1 would you give an estimate on without DMC?

2 A. I -- I believe it's over 20% of our farmer-owner
3 farms.

4 Q. Okay. And do you know about how much production
5 then is covered?

6 A. I do, but I don't want to -- because of the
7 information I have put in this testimony, and some others,
8 our -- our -- others in the industry will be able to back
9 into some of the types of coverages that we sort of feel
10 is proprietary.

11 Q. I certainly can understand that. Thank you.

12 I don't know if you can speak to for DFA as a
13 whole -- and I have asked the same question of other
14 witnesses -- about their members meeting the small
15 business definition of \$3.75 million in gross revenue. Do
16 you know about how many of your farms or farmer-owners
17 meet that definition?

18 A. We recognized that you would ask that question.

19 We don't have the access to our farmer-owners
20 financials, so we -- we don't know for sure. But we've
21 done some estimations based on what we think based on each
22 farmer-owner's annual milk production, and backing into a
23 size -- an estimated size of farm, because we don't
24 necessarily know the number of milk cows that they have,
25 either. But recognizing that it is around a 700-cow
26 dairy, we think that about 80% of our farmer-owner farms
27 would meet the small business definition.

28 Q. Great. Thank you. I appreciate the



1 back-of-the-envelope calculations.

2 Another question. Have you seen in recent years,
3 especially as we went through COVID and getting out of
4 that, an increase in the use of risk management tools from
5 your members?

6 A. Yes, we have. So for calendar year 2020, we saw
7 record use of our program -- programs, and for calendar
8 2022, we saw record use of our programs. And I would say,
9 I believe I'm right, I don't have my statistics in front
10 of me, but in 2022 that record volume was almost double
11 the prior record volume. So significant uptick in risk
12 management.

13 And when you -- Ms. Taylor, when you think about
14 the growth that's going to occur in the U.S. milk supply,
15 there will be growth in all sizes of farms, but as the
16 math works, most of the growth is going to occur on
17 dairies in excess of 700 farms -- 700 cows, just that's
18 the math. Right?

19 And so as the growth occurs -- so -- so -- on
20 those dairies, if you are -- any -- any dairy, any size
21 dairy has debt. When you get to these larger farmer
22 operations, they have millions of dollars of debt and a
23 slim profit margin, and they will be -- I'll be talking
24 more about that when we get into the Class III and IV
25 issues -- well, what profit margins look like on dairy
26 farms.

27 And so it is a necessity for most of these
28 dairies, especially the larger dairies, to utilize risk



1 management transactions because they cannot afford a
2 long-term low price that is below their cost of
3 production, and there are many, many opportunities to use
4 these derivative markets to protect against that. And as
5 the dairy industry's milk production grows, there's going
6 to be a greater concentration of that growth on these
7 larger sized dairies taking on greater amounts of debt and
8 needing to use these programs even more, later than they
9 do now.

10 Q. So you expect that to accelerate?

11 A. Yes, I do.

12 Q. Okay. In your testimony, you refer to the term --
13 to "run-off." And I know -- I think that term was used
14 last week, and I'm pretty sure it's an industry term. So
15 if you would like to just explain for the record what that
16 means. I think I know what it means, but I'll let you
17 explain.

18 A. That's a technical economic term in risk
19 management. Run-off, it means that -- so as an example,
20 we typically have a farmer-owner that will forward
21 contract their milk today for the next 12 months. And so
22 when I refer to a run-off, that means when -- so they have
23 their forward contract for September 2023 through
24 August 2024. And so when I mean a run-off, is one month
25 settles out. So the September forward contract settles,
26 technically, in October. Then whatever result of that
27 forward contract occurs, gets into that farmer-owner's
28 October milk check, and so we had one month of run-off.



1 So that's what I meant by run-off.

2 Q. Thank you.

3 A. You're welcome.

4 Q. On page 7 of your testimony, towards the bottom,
5 this is under the Federal Crop Insurance for Milk section.

6 Oh, first on the chart, I wanted to make sure I
7 got this correct. For your crop years from July 1st to
8 June 30th, does that mean 2019, for example, is July 2018
9 to June 2019?

10 A. Yes. So we're currently in the 2024 crop year.
11 So the 2024 crop year started on July 1, 2023.

12 Q. Okay. Thank you.

13 And those numbers coverage, billion pounds of
14 milk, I think you said, this is when the coverage was
15 taken out, not when the contract ends.

16 Did I hear that correctly?

17 A. You did hear that correctly.

18 Q. Okay. And then in the text at the bottom, you try
19 to explain why the coverage -- the numbers show a decrease
20 in 2023, for two reasons. And the first one you state,
21 "First, Class III and IV price levels offered were
22 considered" -- "were down considerably, but production
23 costs were at or near record high levels making the hedge
24 less interesting."

25 Can you expand on what you mean there?

26 A. Sure. Our focus with our farmer-owners is to help
27 them manage to a profit margin. And so we we're not --
28 we're not milk brokers.



1 Q. You are not milk, I'm sorry, what?

2 A. We're -- we're not a -- we're not a brokerage
3 firm. We don't have -- a dairy farmer-owner doesn't have
4 an individualized account with us. We are doing -- we are
5 changing the price of the physical product. So -- and we
6 focus on profit margins and how we can help them bring --
7 we can bring value to them on their operation to try to
8 create a more consistent profit or protect against price
9 erosion.

10 So we aren't ever talking to them about which
11 direction we think the market is going and to try to get
12 them to make a bet on direction. And so when I say it's
13 less interesting, it means when we present them with a
14 perspective of what the futures market would show would be
15 the milk prices, and we have got a proprietary process of
16 taking whatever the futures market presents itself at any
17 one moment, and bringing that back in and presenting to
18 our farmer-owners what that would look like in their milk
19 check each month, going forward many months.

20 And so it was not interesting because when we --
21 we took that futures market information, put it into our
22 formula and showed them what the milk price -- milk check
23 milk price on their dairy would look like in the future,
24 they looked at it and they said, I can't lock in a profit.
25 And unfortunately, they also said, and because of that, we
26 think the price has to go up.

27 So the less interesting part was they couldn't
28 lock in a profit, and so they didn't do as many



1 transactions as we would have hoped they would have
2 normally done.

3 Q. And -- and is it fair to say they couldn't lock in
4 a profit because of the feed costs were -- let me see what
5 you used here -- production costs were near record high
6 levels?

7 A. That is very fair. And when I -- I will
8 eventually return, make a return appearance to talk about
9 topics with the Class III and IV proposals, I will be
10 presenting information on cost inflation on dairy farms
11 across the United States, that will show specifically what
12 that challenge would be.

13 Q. Okay. Bear with me. This was my late night
14 reading, so I have to remember what all my little notes
15 mean.

16 A. You stayed awake. I'm impressed.

17 Q. Okay. I'll get to that question later.

18 On page 9, at the top, you say, "I would estimate
19 the use of CME Group futures and options by dairy farmers
20 was equivalent to about 20 to 25 billion pounds."

21 That's not just DFA numbers, correct, that's just
22 industrywide?

23 A. That is my estimate of industrywide, correct.

24 Q. Okay. And so the use of CME plus the Revenue
25 Protection Insurance Program.

26 And are you talking DRP and LGM Dairy combined
27 into that number?

28 A. Sure.



1 Q. Yeah.

2 A. The LGM Dairy is so small, it's a rounding error.
3 But, yes.

4 Q. Okay. But not --

5 A. Even though it's a good program.

6 Q. I heard last week it's going to increase, so --

7 A. Yeah. I'm sure the guy that owns it has got to
8 promote it.

9 Q. On page 10, in this chart, it is the -- you have
10 stuff from -- I think that's New Zealand and the European
11 futures markets?

12 A. Correct.

13 Q. Okay. And you convert -- I just want to make sure
14 I'm clear. You took their contracts, numbers, and the
15 volumes, and you converted that over to show the CME
16 equivalent contracts.

17 And CME contract volumes are what again?

18 A. So for Class III and Class IV, that's
19 200,000 pounds of milk; for butter and cheese, is
20 20,000 pounds; for whey and nonfat dry milk powder, it's
21 44,000 pounds.

22 Q. What was that for whey?

23 A. 44,000.

24 And Ms. Krema is listening, and she will text me
25 pretty quick if I got any of that wrong.

26 Q. Well, good, because I'm going to quote her here
27 shortly for you. She can text me -- or I don't have her
28 number -- she can text you if I'm wrong.



1 Okay. I was curious. On page 12, you are talking
2 about DRP, and I recognize -- well, I know you all use
3 this program, so I -- I -- you talked a little bit about
4 changes that are in -- in -- being considered right now to
5 that program. And I think as I read it, the change would
6 be that DRP would settle against the formula -- the change
7 would be -- the DRP contract would settle against the
8 formula at the time of settlement, not at the time of
9 entering into the contract. That's the proposed change.

10 Do I understand that right?

11 A. That's correct. Did Dr. Bozic describe that when
12 he testified?

13 Q. I don't think in quite the detail, or maybe I just
14 didn't pick up on it at the time.

15 A. Okay.

16 Q. But you're up here, so I'm going to use this
17 opportunity to ask a few questions about it. He did say
18 there was a change that would be for the next year
19 upcoming.

20 A. Yes.

21 Q. But if I remember correctly what he said was, that
22 change would solve the upcoming year's issue, but it
23 wouldn't solve the year after that. It was like a
24 temporary fix. And -- and I might be getting that wrong.
25 I would have to go back and read the record.

26 But when I read what you wrote here, right, so
27 that's the change they're proposing, it struck me as then
28 why doesn't that change solve the DRP problem when it



1 comes to the implementation -- it might not solve your CME
2 issue, but why doesn't that solve the DRP issue?

3 A. The -- the -- what I'm expecting the change to be.

4 Q. Yeah. Uh-huh.

5 A. So presently, the Dairy Revenue Protection
6 insurance settlement price is based on whatever the
7 formula that existed in Federal Orders at the time you
8 took the transaction out. It -- it is my understanding
9 that I -- I -- is that sometime in the future, that it's
10 going to be changed to whatever the formula is at the time
11 of the settlement price, which puts it on the same footing
12 as how the CME transactions are settled. So it -- it
13 follows through -- the same issues exist that I described
14 for dairy farmers that would use those tools and the
15 consumption of the component basis would be the same for
16 the Dairy Revenue Protection Insurance transactions as
17 well after that change is made.

18 Q. Okay. On the bottom of 12, going onto 13, the
19 sentence reads: "Basis is the difference between the
20 price that is being hedged and the price, based on the
21 hedge, that the producer expects to receive. For dairy
22 producers, the producer price differential would be part
23 of their basis when hedging the Class III price."

24 I just wondered if you could explain that a little
25 bit more for me.

26 A. Sure. So if you think about Todd's statistical
27 price announcement when they announced the PPD, there is a
28 section where they show what the statistical uniform price



1 is, and that section is the Class III price at standard
2 test plus the PPD equals the statistical uniform price.
3 And so when we have a -- when we have farmer-owners trying
4 to hedge their milk check, milk price, which is more like
5 their blend price, and they may be using a Class III
6 hedge, then that basis would be the difference between
7 statistical uniform price and the Class III price, and
8 some of that basis then becomes the PPD.

9 Did that sort of resonate okay? Did that make
10 sense?

11 Q. Yeah. I'm just going back to look at your other
12 charts.

13 A. And so -- so just clarifying, when I went through
14 my example in my statement, I assumed there was no PPD.

15 Q. Okay. Thank you. That was the first time you
16 mentioned it, so that's why I was asking.

17 A. Yep.

18 Q. Okay. So the PPD would be in the -- so, for
19 example, on page 13, if we could go to that chart.

20 A. Yes.

21 Q. So they are locking in -- they are taking the
22 hedge out at 17.08; is that correct?

23 A. That is correct.

24 Q. But they expect to receive --

25 A. 17.90.

26 Q. -- 17.90?

27 A. Yes.

28 Q. But that doesn't include any of the PPD?



1 A. Correct. So --

2 Q. They would expect to receive in reality --

3 A. Maybe --

4 Q. -- 17.90 plus some PPD?

5 A. PPD plus the butterfat component.

6 Q. Right. Okay.

7 A. That's -- I didn't include as well.

8 Q. Okay. Okay. Thank you. That's helpful.

9 A. You're welcome.

10 Q. Let me move to my questions on my computer instead
11 of on my sticky notes.

12 I know you weren't here last week. Did you listen
13 to Ms. Krema's testimony?

14 A. I -- I listened to it driving to the airport.

15 Q. Okay.

16 A. I got some of it.

17 Q. I'm sure you can still answer these questions, but
18 I do want to just --

19 MS. TAYLOR: Your Honor, can I bring up Exhibit 78
20 to him? Because I do want to refer to a table in there.

21 THE COURT: Yes.

22 MS. TAYLOR: And this is the testimony that
23 Ms. Krema entered into the record last week.

24 THE WITNESS: Thank you.

25 BY MS. TAYLOR:

26 Q. First is just a general question. My second
27 question, we'll get into a piece of that.

28 So the CME witness who testified last week



1 mentioned the over-the-counter market, and I don't see
2 that mentioned at all in your testimony.

3 So I was just curious about DFA's use or your
4 members' use of the over-the-counter markets?

5 A. Yes. So I can't comment on our members' use of
6 the over-the-counter market. We -- we sometimes -- so
7 when we execute our hedges, our main coverage will be in
8 the CME futures, and then there's some other areas that we
9 can also cover. We may have a direct forward contract
10 with a customer. We may have some internal. Or we may
11 use the over-the-counter market.

12 I was trying to get some statistics on the
13 coverage, the use of the over-the-counter market, and I
14 didn't get what I needed in time, so I didn't include it.

15 I believe in Ms. Krema's testimony she indicated
16 that most -- so to give an example of an over-the-counter
17 hedge, so -- which is also known as a swap. So a bank may
18 be the intermediary on that swap. So I'll -- I'll use
19 energy. It is not part of milk, but it is no different.

20 We may hedge the natural gas input price at our
21 milk plants, and instead of going to a -- directly to a
22 futures market ourselves, we'll go to a swap partner.
23 That may be a bank. And I'm not sure what the bank does
24 to manage their risk, but they may likely go to the
25 futures market themselves, because they can bundle all
26 these other entities that are doing the same hedge and --
27 and get better coverage.

28 So that same type of transaction happens in the



1 dairy industry, and it could happen for Class III, cheese,
2 or nonfat dry milk, where somebody's going to an entity,
3 doing a swap, and that entity then is covering --
4 generally covering their risk, and a lot of times it goes
5 back to the CME.

6 So even though there are these OTC transactions, I
7 don't -- I don't have a way of knowing how that builds
8 beyond what I'm already suggesting is coverage that
9 would -- that would be coverage. Right? It just may be
10 another means of covering that transaction.

11 You did make a specific question. We have -- from
12 time to time, we will have a swap with a dairy farmer to
13 cover their feed. But we don't do a lot of swaps with our
14 farmer-owners. We handle most of everything through a
15 forward contract.

16 Q. Okay. So following up on that then. From what I
17 gather then, you don't see the OTC market kind of as a
18 useful transition tool during this implementation time
19 possibly?

20 A. It is a useful tool. They would suffer from the
21 same challenges as we would going to the futures market.

22 Q. Okay. I do want to refer in the Exhibit 78 we
23 handed you, to page 4, Figure 3, which is at the bottom.

24 So last week -- or this was Monday. Already seems
25 like last week. As Ms. Krema explained when she testified
26 on Monday, this chart shows the average open interest
27 distribution from 2018 to 2022. And so when I look at
28 this chart, and I'll read, say, the second line of data, I



1 read that as saying, on any given day, 75% of the open
2 interest contracts on the CME will close within six
3 months.

4 Would you say that's an accurate reading of that
5 line?

6 A. So I didn't produce the chart.

7 Q. Right.

8 A. It sounds accurate.

9 Q. Okay.

10 A. Okay.

11 Q. So if you just assume for --

12 A. Yes.

13 Q. -- this discussion it's accurate, I guess what our
14 question is, and I know Proposal 1 is asking for a
15 12-month implementation, but what would the impact be if
16 USDA, if we -- the Secretary decided to implement
17 Proposal 1, and chose a different implementation schedule
18 than NMPF has offered, given that this open interest shows
19 that, you know, a vast majority of contracts are only
20 about six months out on any given day?

21 A. Yeah. We -- we advocate for the 12-month delay,
22 and without -- and I don't think it's appropriate for me
23 to comment on something less than that, especially not
24 knowing what that something less would be and not knowing
25 what the amount of time would be from the date you
26 announce the final decision until the implementation of
27 everything else. Because I'm assuming that's not going to
28 be within 30 days, but maybe it would be. So there's



1 there's other variables I'd have to take into
2 consideration to be able to more appropriately reply to
3 that question.

4 Q. Okay. And along that line, when USDA issues a
5 final decision, at that point is when we go out for a
6 producer vote. And then assuming the vote is a yes vote,
7 we then issue a final rule, which gives the implementation
8 timeline.

9 You wouldn't consider the time period after the
10 final decision as proper notice to the industry of kind of
11 the changes USDA would be recommending as adopted?

12 A. We may. And I -- instead of -- we may. It's a
13 reasonable question. Again, I guess it would -- it
14 would -- would be important to know how many months that
15 would be. So I get what you are saying.

16 And as an example, so the record's more clear with
17 what I'm saying. So, for instance -- I'm making this
18 up -- that you said on -- make it easy for everybody --
19 that you said that the -- that the final decision came out
20 on January 1, and you were going to implement it on
21 June -- July 1, and the implementation of the component
22 factors was the following January 1. That's about
23 12 months. We -- well, that would support I think the
24 12-month delay.

25 Q. Okay.

26 A. And if not, somebody else from the team will be up
27 here and correct me later.

28 Q. If they don't ask you a question when I'm



1 finished.

2 A. But we support a 12-month delay in implementation.

3 Q. Okay. But the start of that 12 months could
4 possibly be the final decision point, not necessarily the
5 final rule point?

6 A. Yeah.

7 But on one other thing to consider, it has yet to
8 be determined the outcome of the Milk Innovation Group's
9 complaint and the National All-Jersey group complaint, and
10 there could be a delay in your implementation time because
11 of something. And it may not be that, it could be
12 something else.

13 Q. Uh-huh.

14 A. And so -- so that can really change that dynamic
15 of do we actually have that lead time and then shorter
16 implementation time after that. That's a hard thing to
17 know. Right?

18 Q. Yes. Okay. Thank you.

19 A. You're welcome.

20 Q. And in response from a question that Mr. English
21 asked you, you said that NMPF is only seeking an
22 implementation delay for Proposal 1.

23 Ad I'm curious why -- if you can explain why you
24 don't see any similar risk management issues if other
25 factors that are being considered in this proceeding are
26 also changed.

27 A. So I do. But when we weigh balance of everything,
28 for the other proposals, we weigh what the changes are,



1 the needs for the industry to change, make those changes,
2 and then the risk management impacts, as we weigh those
3 balances at the National Milk Producers Federation, we
4 come to the conclusion that for the other proposals, they
5 need to be implemented immediately, because of the impact
6 to the -- to the entire dairy industry, weighing
7 everything.

8 And we're sort of in a -- we're sort of --
9 National Milk Producers Federation is sort of in a unique
10 position when we look at what's best for the U.S. dairy
11 industry. Right?

12 The National Milk member cooperatives represent
13 about 75% of the milk produced in the United States. They
14 write milk checks to the farmer-owners of -- you know, the
15 National Milk Producers Federation member cooperatives
16 write the milk checks to their farmer-owners, and we have
17 got a governance structure. Every one of us, every
18 National Milk member cooperative has a governance
19 structure that allows for easy access and communication
20 from farmer-owners, up through the management, to the
21 boards of directors. It is an amazing, amazing process.

22 We also operate every kind of milk plant you can
23 think of. We are leaders in Class I processing. We're
24 leaders in Class II processing, III, and IV. And so we
25 are in this really unique position to be able to weigh all
26 these things together and how it impacts every aspect of
27 the dairy industry.

28 And when we do that, we come to the conclusion



1 that the need for some of these adjustments outweigh the
2 potential negative impacts on some of the risk management
3 transactions, and that's why we are not in support of a
4 delay for changes for National Milk's other four
5 proposals.

6 Q. And so in that case, if any of those proposals
7 were recommended by the Secretary and eventually
8 implemented, in those instances, producers would lose that
9 basis of those --

10 A. Well, now you ask. So from a dairy farmer
11 perspective, if they hedged in advance of the
12 Make Allowances increase which results in the class prices
13 going down, they have protected themselves against that
14 decline, and the impact on their component basis from
15 whatever that change would be is not very much. So if
16 they have actually hedged, they will -- they will get the
17 price they were expecting for the most part. And for a
18 lot of the other proposals that we have, ultimately
19 improves the PPD, so their basis improves.

20 Q. Okay. So it's the Proposal 1 scenario where their
21 basis would decline.

22 A. Correct.

23 Q. Okay. Thank you.

24 A. You're welcome.

25 Q. Let's see here. Proposal 1 seeks to have the
26 changes implemented in March. Curious if it makes any
27 difference, assuming -- let's just assume Proposal 1's
28 adopted, and under that assumption there's a 12-month



1 delay, but maybe it doesn't work out to be March.

2 Is there a different consequence if the changes
3 happen in the spring versus the fall, for example?

4 A. No. Not to my knowledge. If there is, we'll
5 brief or --

6 Q. You'll come correct it later.

7 A. Someone will correct me. We got lots of
8 opportunities to correct whatever I'm saying here.

9 Q. We will be here for a while.

10 So the time of year isn't -- doesn't necessarily
11 matter; it is just the 12-month piece that matters?

12 A. Yeah. So a little bit on how we -- how Peter
13 constructed that. He did a nice job. Mr. Vitaliano is
14 Peter. For the National Milk Producers Federation. We
15 knew that -- we think that by early March we would know
16 the component tests for the previous year, and so it -- we
17 didn't think it would take very long to make a computation
18 on what the averages were, and then we would want to
19 notice the industry as soon as we can. So that's how we
20 came up with that. But if there's a better construct for
21 you, we would be open to that.

22 Q. Okay. My apologies. I try to --

23 A. You're quite all right. Take your time.

24 Q. -- go in logical order, and I didn't -- I missed
25 one technical question. This should be my last question.

26 On page 16, and that's where you start to get into
27 your discussions of the cross hedging. But you did have a
28 statement in here that says, "We are concerned that some



1 of the liquidity providers will permanently exit the CME
2 Group futures and options market."

3 I'm wondering if you could just expand on that
4 statement, on that concern and its implications.

5 A. Yeah, I want to show -- I want to show a chart, so
6 bear with me.

7 Q. Uh-huh.

8 A. Okay. This is the chart I was looking for.

9 So in addition to the milk brokerage companies
10 that work directly with dairy farms -- this is on page 5
11 of my testimony, statement.

12 In addition to that -- and the efforts of DFA and
13 others to educate, one of the things that also has
14 occurred over time is the brokers have hired individuals
15 to trade in our futures markets to support more
16 transactions. And so, for instance, maybe we had a dairy
17 farmer that wanted to cover their milk 18 months out for
18 one month, but there was no buy side opportunity in the
19 general commercial business place.

20 So the brokers would hire people to potentially,
21 for that brokerage, take the other side of that position,
22 or maybe it would be what would be a full commission
23 merchant, which would be the entity that housed all the
24 trades for a group of brokers and worked directly with the
25 CME.

26 So they started investing more in those people
27 around the 2008, 2009, 2010, 2011, 2012. And so then --
28 so they would be considered liquidity providers because



1 they aren't necessarily hedging, they are supporting the
2 growth in transactions.

3 Also, what has happened is there is -- you would
4 potentially maybe have heard of hedge funds that transact
5 in corn markets or soybean markets. Well, there are
6 entities, I don't know who they are, entities that might
7 be like a hedge fund, that have decided to come in and do
8 transactions in some of our dairy markets, that also would
9 be considered -- they aren't necessarily hedging a
10 commercial transaction in the dairy industry. It may be
11 part of something that they are doing to protect the
12 business from inflation or whatever. And so they would be
13 considered liquidity providers.

14 Those individuals -- and I have -- those
15 individuals are -- are from time to time nervous because
16 there's participants like me who know more about what
17 might be happening in futures markets than maybe they do,
18 and that they then would be concerned that they may -- may
19 not -- they may not be in an equal footing in knowing what
20 may happen to markets, so they can be kind of skittish.

21 And so if all of a sudden there are these
22 significant changes to -- consistent changes, more
23 frequent changes, to the pricing formulas, they may find
24 that their knowledge of these is not strong enough to know
25 how to manage their transactions to protect themselves
26 from losing money, and they may take their investment
27 money out of the Dairy Complex and use it somewhere else
28 in another commodity or somewhere else instead of -- and



1 that's what Anne was referring to, is sort of those
2 individuals that are sort of making their own -- risking
3 their own capital and providing more transactions, that
4 liquidity, but they will leave the markets.

5 And if they do, or they reduce their activity,
6 that probably would result in -- I don't know if it will
7 result in reduced open interest or slower growth, but it
8 would have a negative impact.

9 Q. Okay. Thank you.

10 A. You're welcome.

11 MS. TAYLOR: I think that's it for AMS. Thank
12 you.

13 THE COURT: Anyone else have a claim of re-cross?
14 Seeing none, redirect.

15 MS. HANCOCK: Thank you, Mr. Gallagher, for your
16 time today.

17 Your Honor, we would move to admit Exhibits 109
18 and 110 into evidence.

19 THE COURT: Any objections?

20 Exhibits 109 and 110 are admitted into the record.
21 (Thereafter, Exhibit Numbers 109 and 110 were
22 received into evidence.)

23 MS. HANCOCK: Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: You are excused, Mr. Gallagher. Thank
26 you for being here.

27 Mr. English, you have arisen from your chair.

28 MR. ENGLISH: Chip English for the Milk Innovation



1 Group.

2 We have been doing a really good job off the
3 record discussing among counsel witnesses, and we wish to
4 put as the next witness for the Milk Innovation Group
5 Ms. Sally Keefe.

6 THE COURT: All right. Sounds good. Thank you
7 for those efforts behind the scenes. It makes a
8 difference in the procedures you alluded to. Helps us be
9 efficient.

10 MR. ENGLISH: Before we mark them, I'm going to
11 hand out what has been previously submitted as Exhibit
12 MIG-5 and Exhibit MIG-5A, and I have a comment on
13 Exhibit 5A. But if I may approach, your Honor, I want to
14 give you a copy first.

15 THE COURT: Yes, please.

16 MR. ENGLISH: And the court reporter a copy.

17 We have 15 single-sided copies unstapled, because
18 they were stapled last night, of 5 and 5A for USDA.

19 I have copies for the audience of both 5 and 5A.

20 THE COURT: Let's go off the record. Come back at
21 11:25 a.m.

22 (Whereupon, a break was taken.)

23 THE COURT: It is 11:25. Let's reconvene.

24 Technical issues resolved. Our witness is ready
25 to talk to us.

26 Mr. English.

27 MR. ENGLISH: Thank you, your Honor.

28 THE COURT: I didn't swear in the witness. I'm



1 sorry.

2 MR. ENGLISH: Oh, thank you.

3 THE COURT: Please raise your right hand.

4 SALLY KEEFE,

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

7 THE COURT: Your witness, Mr. English.

8 MR. ENGLISH: Thank you, your Honor.

9 So let me start by saying that before and during
10 the break we handed out what was submitted as Exhibit
11 MIG-5, and I'll comment on some modifications to what was
12 submitted this morning, Exhibit MIG-5A.

13 But if we first have them marked. I believe we
14 are now up to Exhibit 110. I would like Exhibit MIG-5,
15 which is Ms. Keefe's testimony, marked as Exhibit 110,
16 your Honor.

17 THE COURT: Actually I had -- I had Gallagher's
18 last exhibit as 110. So this should be 111, your Honor.

19 MR. ENGLISH: Thank you, your Honor.

20 THE COURT: So marked.

21 (Thereafter, Exhibit Number 111 was marked
22 for identification.)

23 MR. ENGLISH: And then Exhibit MIG-5A as
24 Exhibit 112, your Honor.

25 THE COURT: Yes. Exhibit 112 is marked for
26 identification. This was MIG-5A.

27 (Thereafter, Exhibit Number 112 was marked
28 for identification.)



1 MR. ENGLISH: And that is a 27-page -- 28-page
2 document.

3 (Court Reporter clarification.)

4 MR. ENGLISH: So I'm going to start by making --
5 just noting some corrections because we did upload, I
6 think, last night or early this morning, what is now
7 marked as Exhibit 112, also known as Exhibit MIG-5A, and I
8 wanted to note that there are three changes.

9 First, to some of the colors, to clarify the
10 colors on page 3. The colors just didn't come out the way
11 we intended, so we have what is now in front of everybody,
12 and also we have resubmitted to USDA, colors have been
13 changed.

14 On page 15, there was a legend issue. So page 15
15 now has the correct legend referencing Order 51.

16 And then page 22, there was a title modification.
17 For page 52 -- or page 22. Page 22.

18 So those are the three changes, and they are now
19 online. In case somebody had downloaded and printed out
20 from this morning, those are the differences. But they
21 are all in the corrected versions that have been provided
22 to your Honor, the court reporter, to USDA, and the
23 audience.

24 The next administrative matter, your Honor, is
25 that this witness, of all the witnesses we have had so
26 far, does not have a business address. And it is my
27 understanding from a prior hearing what she has done
28 instead is she has provided her address confidentially to



1 the court reporter.

2 THE COURT: Yes, exactly. Yes, again, the concern
3 is personal identifying information being released
4 unnecessarily to the public that would cause any harm.
5 So, yeah, I think that -- that was a suggestion, what I
6 suggested. Well done.

7 MR. ENGLISH: Thank you. All right. With that,
8 we will get started.

9 DIRECT EXAMINATION

10 BY MR. ENGLISH:

11 Q. Good morning, Ms. Keefe. Could you state your
12 full name and current professional work?

13 A. Good morning. My name is Sally Keefe, S-A-L-L-Y,
14 K-E-E-F-E. I'm the owner and principal of skFigures, a
15 company that provides consulting services to all verticals
16 of the dairy industry.

17 Q. On whose behalf are you appearing today?

18 A. I'm here today as a representative of the Milk
19 Innovation Group, MIG.

20 Q. What is your educational and professional
21 background?

22 A. I received my BA in economics from Middlebury
23 College and my MBA in finance and entrepreneurship from
24 the University of Colorado. Before entering the dairy
25 field, I worked as an environmental economics and policy
26 consultant.

27 Then in 1996, I joined Horizon Organic Dairy where
28 my work there focused on operations and milk procurement.



1 In 2003, I joined Aurora Organic Dairy as supply
2 chain director as a key member of the team that launched
3 that new, innovative organic dairy company. I served in
4 that and other roles in supply chain management before I
5 became the vice president of legal and government affairs
6 for Aurora Organic Dairy in 2007.

7 I served as Aurora's VP of legal and government
8 affairs until 2012. At that time -- and during that time,
9 I directed the company's legal, regulatory, and
10 legislative activities in both the dairy and organic
11 certification policy areas.

12 In 2012, I left Aurora Organic Dairy and founded
13 skFigures, my own firm. I provide management consulting
14 services, as well as technical and policy expertise to
15 agricultural and food businesses. I have a particular
16 expertise in Federal Milk Marketing Orders and have
17 testified in prior FMMO proceedings.

18 Today my clients include farmers, agricultural
19 cooperatives, dairy processors, corporations, trade
20 associations, as well as investors.

21 Q. And what kind of work do you do?

22 A. As part of my work as a consultant, I routinely
23 work with data from both processors and Federal Milk
24 Market Order MA, Market Administrator, reports. I'm very
25 familiar with the handler reporting of receipts and
26 utilization to the MA's, the monthly handler producer
27 settlement fund obligation statements, select the
28 computation of obligation, as well as, like, producer



1 payroll reporting, and the related FMMO reports and data.

2 As a routine part of all of this work for my
3 clients, and when I was an employee of handlers, I
4 regularly considered the components in milk, so both at
5 test and then also on a skim basis.

6 Q. Have you filed or assisted in filing of handler
7 Market Administrator reports?

8 A. Yes, I have been doing that sort of work since the
9 mid '90s at Horizon Organic Dairy. Horizon used
10 co-packers, and I was the person at Horizon that provided
11 the information to the co-packers where -- in order to do
12 the monthly MA reporting.

13 And then at Aurora Organic Dairy, I was the person
14 that did all of the MA reporting until I left the company.
15 And then since leaving Aurora, I have helped my clients
16 with their MA reporting.

17 Q. So you used a term that has not, I think, been
18 used so far in the record. And so for clarification, what
19 are co-packers?

20 A. Oh. Co-packers are when a dairy -- when a
21 business might outsource some of their manufacturing. So
22 other terms that you hear for this in business would be
23 like contract manufacturing, stuff like that.

24 So Horizon did not at that time, when I was an
25 employee at Horizon, didn't own any of its own
26 manufacturing facilities, and so all of its processing was
27 done in -- in plants that were owned by third parties.

28 Q. And for all those co-packers, you provided,



1 basically, the MA reporting data for Horizon to them so
2 they could use it in their handler reports, correct?

3 A. Yes, that's correct.

4 Q. When you say you regularly considered the
5 components of milk both at test and on a skim milk basis,
6 what do you mean?

7 A. Well, as we have all heard here in this proceeding
8 over the last week or so, the information that the MAs
9 collect as far as the milk, it really matters what's in
10 the milk. And so what we're talking about there are the
11 butterfat tests, the protein tests, the other solids
12 tests, solids nonfat test.

13 And so from both, you know, FMMO reporting and
14 compliance perspective, I consider that sort of
15 information. And then, quite frankly, that information is
16 also very important for the routine operation of all sorts
17 of dairy processing operations.

18 And so in my supply chain roles earlier in my
19 career, you know, that was the sort of information that I
20 routinely considered to figure out, you know, which milk
21 do I want to have at what plant on what day, you know,
22 what is going to be the best milk supply for a particular
23 processing activity, for a particular production run,
24 things like that.

25 MR. ENGLISH: Your Honor, at this time I move that
26 Ms. Keefe be recognized for this proceeding as an expert
27 in Federal Order compliance, especially the financial
28 impacts of regulations on milk producers and processors.



1 THE COURT: Any objections?

2 I so find.

3 BY MR. ENGLISH:

4 Q. Now, Ms. Keefe, later in your testimony, you are
5 going to discuss within what is Exhibit 112, a portion of
6 112, a survey that you conducted for this proceeding,
7 correct?

8 A. Yes.

9 Q. Have you conducted surveys like this one you'll
10 discuss later in the past?

11 A. Yes, I have, both for -- both for clients earlier
12 in my career when I was working for another consulting
13 firm, within my own business, and then also, you know, as
14 an employee, at both Horizon Organic Dairy and Aurora
15 Organic Dairy.

16 Q. When was the first study that you can recall?

17 A. So the first one that I recall is very early in my
18 career, so in the early '90s, a really fun study for the
19 American Water Works Association, where we were looking at
20 the feasibility of connecting small -- smaller water
21 treatment plants and whether that would provide more
22 efficiencies for their operations and assist with their
23 compliance with -- compliance and cost, really, for that
24 one.

25 Q. And before this proceeding, have you ever sort of
26 done a count of how many of these kinds of surveys you
27 have done?

28 A. No. I had never tried to count up anything like



1 that until you asked me that question.

2 Q. So with that -- okay. I'll ask you the question.
3 So how many do you think, approximately, you have done in
4 your time since the 1990s, if you can -- if you can have a
5 round number?

6 A. So I would say a round number would be somewhere
7 you know, as far as like something as broad as what we're
8 talking about here, we would probably be talking in the
9 neighborhood of, like, one a year or so. So, you know,
10 20-ish.

11 Q. Is it fair to say these kinds of surveys are
12 conducted in order to provide valuable business insights
13 to your employer or its clients or your clients?

14 A. Oh, absolutely. You know, to provide
15 benchmarking. To, you know, help find efficiencies, you
16 know, for -- you know, for an organization that is doing a
17 lot of contract manufacturing. To compare different
18 vendors, different suppliers, things like that. There's a
19 lot of reasons why people do this sort of -- these sorts
20 of comparisons.

21 Q. Is there anything unusual in this survey that you
22 conducted for your testimony?

23 A. Well, first, I have to say, the most unusual thing
24 about this particular project was the really short and
25 tight timeframe that we had to put this data -- put this
26 dataset together and analyze it and maintain the
27 confidentiality of the data while we were doing that. You
28 know, honestly, the short timeframe made participation a



1 challenge for some of the organizations. We started with
2 the members of the MIG group, then Albertsons, and Kroger
3 joined the work. And with the short timeframe that we're
4 all operating under here, you know, it was -- that was
5 definitely a heavy lift.

6 Q. Did you make any decisions to -- you know, of
7 which entities were selected as opposed to which data you
8 got for use in the survey?

9 A. What -- when you --

10 Q. Did you exclude any entity because the results
11 were inconvenient?

12 A. No. I didn't exclude any entities because the
13 results were inconvenient. There is one member of MIG
14 whose data is not included in the survey because the terms
15 under which they procure their milk are -- are very
16 different than the rest of the survey group.

17 Fairlife, which is a product that we have heard a
18 fair bit about over the last week now, is a high protein,
19 high solids product. It's -- and they -- the milk that
20 they bring in starts off at much higher component levels,
21 and they have very different procurement terms for their
22 producer milk receipts than the other plants in the group.

23 Q. Did you receive any data, for instance, that you
24 couldn't use because it didn't have -- you know, didn't
25 meet other requirements?

26 A. Oh, absolutely. There was -- we had all the usual
27 data problems. We had the incomplete data. We had the
28 data that doesn't necessarily make sense, so you need to



1 go to a secondary source, things like that.

2 And so for this data, the time period that we
3 looked at was January 2021 to December 2022. For most of
4 the plants in the survey group, that means that their MA
5 report data has gone through the Market Administrator
6 audit process, and so is frankly like very, very robust
7 and double-checked.

8 As you get later in the period, like in the back
9 half of 2022, those audits haven't been completed yet, and
10 so you will still find, like, a stray thing in there where
11 you will be like this -- this is out of line, this number
12 doesn't seem to be correct. And so then I would work with
13 the participant to look at a secondary data source, like
14 their internal receiving reports, things like that, so
15 that we made sure that we were using accurate information.

16 Q. So one other item that's unusual is primarily this
17 data is audited by the government, correct?

18 A. Yes.

19 Q. And did you use weighted average data?

20 A. Yes, I did.

21 Q. Did you use any estimated data?

22 A. I did not use any estimated data. And so if -- if
23 I wasn't able to get the full 24-month series for a plant,
24 then they were not included in the study.

25 Q. So what is MIG's position on Proposals 1 and 2?

26 A. So MIG is opposed to Proposals 1 and 2. My
27 testimony today is based on my analysis of both USDA's
28 data on the component tests and producer milk by order,



1 which I believe is Exhibit 17, and the data that I
2 collected from the fluid milk plant survey on their
3 producer milk receipts.

4 Q. What did you do first?

5 A. Well, first, I considered the current skim milk
6 formula factors, along with the fluid milk standards of
7 identity, and compared those to Proposal 1. And for
8 simplicity here with my testimony, I'm just going to refer
9 to Proposal 1, but what I have to say applies equally to
10 Proposal 2. Like there's not -- it's -- think plural
11 proposals.

12 Q. So for this first part of your exercise, what did
13 you find?

14 A. Well, looking at pages 3 and 4 of Exhibit 111, my
15 written testimony, you will find a table where I compare
16 the four relevant standards for the milk component
17 factors. The current skim formula component factors are
18 found at 7 CFR, Section 1000.50. Then I review the skim
19 factors from Proposal 1, and next the federal and
20 California composition standards for fluid milk. The
21 federal fluid milk standard of identity is found at
22 21 CFR, Section 131.110. In my written statement I
23 provide the citation to the California composition
24 standard.

25 Q. So let me interrupt for a moment, please.

26 Yesterday, in helpful questions from USDA that
27 were directed to the HP Hood and Shehadey witnesses, there
28 were questions asked about, you know, Y-axis labeling



1 issues, which I believe happened because you wanted the
2 document to be as large as possible, correct?

3 A. Yes.

4 Q. So why don't we see if we can address that issue
5 ahead of time.

6 So for pages 1 through 24, how would you know --
7 how would someone know what the Y-axis is?

8 A. So in Exhibit 112, for pages 1 through 24, the
9 Y-axis is going to be the first part of the title. So
10 like on page 1, it would be the Y-axis is referring to
11 protein as a percent of skim milk.

12 Q. And that would be true for whatever that first
13 part is through page 24, correct?

14 A. Yep. All the way through page 24.

15 Q. And how about pages 35 through 27, what are --
16 what is the Y-axis?

17 A. 25 through 27 is just a -- is a count. So it is
18 just the number of plants. And so the Y-axis there is
19 number of plants, and it runs from zero up to 32.

20 Q. So now let's continue to what you did first. You
21 were referring to the federal California fluid milk
22 composition standards?

23 A. Uh-huh. So -- so one thing to bear in mind is
24 that the federal and California fluid milk composition
25 standards are expressed for milk, not for skim in those
26 regulations.

27 And so for an apples-to-apples comparison with the
28 current and proposed FMMO skim milk price formula factors,



1 I converted the composition standards to a skim basis.
2 That's just an algebra conversion. It is nothing -- no
3 econometrics, nothing like that. It is just algebra. So
4 it is just removing the butterfats that we can talk about
5 the milk on only the skim, the skim basis.

6 Q. And you are not going to read those tables into
7 the record, correct?

8 A. No. Those tables are in my written statement, and
9 I don't see any -- we need to take the time to read the
10 table into the record.

11 Q. That's Exhibit 111.

12 What did you do next?

13 A. So next I looked at USDA's data in Exhibit 17,
14 which was formally known as USDA Data Request Table 2.
15 And that data and information provided by USDA shows --
16 shows the components by order, by month, from 2000 to the
17 present. I was most interested in the 24-month period of
18 January 2021 to December 2022 as that was also the study
19 period for the survey.

20 Q. So your results are found on charts -- on pages 1
21 through 4 of what is now Exhibit 112?

22 A. Uh-huh.

23 Q. "Yes"? Not uh-huh?

24 A. Yes.

25 Q. So if you would now turn on your screen, let's
26 start with the page 1.

27 A. Great.

28 So on -- so here, on page 1, we have the protein



1 percent of skim by FMMO for January 2021 to December 2022.
2 These are the seven multiple component FMMOs. So we have
3 the Northeast, the Upper Midwest, Central, the Mideast,
4 California, the Pacific Northwest, and the Southwest here.
5 And those are the colored curves.

6 And then the yellow line at the bottom is the
7 current skim milk formula factor for protein, and the
8 orange line in the middle is the proposal skim milk
9 formula factor for protein.

10 Q. So what does this data show for you?

11 A. So to me, what this data shows is that there is
12 both a very distinct, as you would expect, seasonal
13 pattern to the component level of protein in the Federal
14 Order producer milk receipts. Generally speaking, the
15 protein levels are highest in the winter months and lowest
16 in the summer months.

17 It also shows that there is a fair bit of regional
18 variation. We have got Order 1, the Northeast is the
19 black line that is found at the bottom of the group. And
20 then we have got Orders 124 and 126, so the Pacific
21 Northwest and the Southwest, the purple and blue lines,
22 near the top -- at the top.

23 Q. So let's move forward now to page 2 and move
24 forward quickly through other solids.

25 A. Okay. So for other solids, as has been discussed
26 previously in the hearing, it doesn't have the same -- it
27 doesn't have the same seasonal pattern as what you would
28 find with the protein or the nonfat solids information.



1 I do note that there are some differences between
2 the orders, but, you know, quite frankly, they are -- they
3 are grouped pretty close together, and it doesn't -- it
4 doesn't have a distinct seasonal pattern.

5 Q. And just for clarity, you used the same colors
6 throughout these. So in other words --

7 A. Yeah. So --

8 Q. -- the yellow line is the current standard, the
9 orange line is the proposal, and all the colors you
10 described previously are the same, you didn't change from
11 page to page?

12 A. Right. I didn't change from page to page. So,
13 like, the black is always the Northeast, and purple is
14 always the Pacific Northwest, and all the other colors
15 stay the same.

16 Q. So now let's turn to page 3, nonfat solids.

17 A. So, again, on the nonfat solids page, that is very
18 much following the same seasonal pattern as the protein,
19 with much higher levels in the winter months than the
20 summer months, and also showing some variation regionally
21 going from the Northeast, continuing across to the west,
22 getting out to the Pacific Northwest in purple.

23 Q. So go to page 4. What about butterfat?

24 A. So page 4 has the butterfat on it. And that is --
25 this chart is the only one where the colors are a little
26 bit different than the others because I have got the
27 butterfat here for all 11 of the Federal Orders. And so
28 we have got Florida is the yellow line down near the



1 bottom. And then we have also got orange, mustard, and
2 pink to bring in the Appalachian, the Southeast, and
3 Arizona.

4 And so much like the protein and the nonfat
5 solids, there is seasonal variation to the butterfat data.
6 And the main reason why the butterfat charts are included
7 here in the packet is, you know, a reminder and a
8 reference to be able to have a visualization of what's
9 going on between the milk when you are testing it and it's
10 milk, and then we have got the skim, and we're only
11 talking about part of the milk. And so the other part of
12 the milk is represented here by the butterfat.

13 Q. And there's no yellow straight line or orange
14 straight line for current or proposed because that's not
15 relevant here, correct? I mean, we have 3.5 is the -- is
16 what the standard is, but there's no -- there's no purpose
17 in the price that we're talking about for them, correct?

18 A. That's correct. So today, the formulas for the
19 reference prices are calculated at a 3.5% butterfat, but
20 the proposals don't seek to change that in any way. And
21 so this is -- you know, the butterfat tables in the packet
22 of charts is in- -- they are informational.

23 Q. Did you reach any conclusion about what the yellow
24 line for Order 6 tells you?

25 A. Well, for Order -- given the previous testimony
26 regarding the correlation between butterfat and solids
27 nonfat, and butterfat and protein, I would expect that the
28 levels of both protein and solids nonfat would be lower in



1 Florida than, say, the Pacific Northwest because the
2 butterfat in Florida is, you know, so much lower than what
3 is found in other parts of the country.

4 Q. So what did you do next?

5 A. So I wanted to examine the actual milk receipts
6 for fluid plants and compare that to this data in -- that
7 we have just looked at on pages 1 through 4. And so, you
8 know, before -- so early in the process, after the hearing
9 notice came out, on behalf of MIG, and under the direction
10 and control of Davis Wright Tremaine, MIG's lawyers, I
11 conducted a survey of fluid milk plant receipts. The
12 survey data is from the actual MA report receipts and
13 utilization submissions made by those plants and the
14 handler obligation statements received, so the report that
15 goes in and the statement that comes back.

16 And then I received under confidentiality terms
17 the same sort of Market Administrator report information
18 and handler obligation statement information from two
19 non-MIG members, Albertsons and Kroger. I carefully input
20 and double-checked the data from all of the participants.

21 Q. And in fact, I think you testified earlier, if
22 something didn't make sense, you went back and asked about
23 it?

24 A. Absolutely.

25 Q. So can you tell me a little bit more about your
26 dataset?

27 A. So the survey dataset includes 36 fluid plants
28 from across the country. Of the 36 plants, 32 had skim



1 component information available. The primary data source
2 was each plant's milk receipts, so their producer milk
3 receipts as reported to and audited by the Market
4 Administrator. As I mentioned earlier, a secondary data
5 source that I used in conjunction with the MA reports were
6 the plant's internal milk receiving component test
7 records. I analyzed the 24-month period of January 2021
8 to December 2022 and --

9 Q. Exhibit 112.

10 A. Exhibit 112, page 28, lists the participants, the
11 FMMO they're regulated under, and there's a little table
12 there that shows the count of participants by FMMO as
13 well.

14 Q. What are your survey results?

15 A. After analyzing the data, I developed charts
16 graphing the component levels for four of the orders and a
17 summary chart for all the survey plants in MCP orders.
18 Those charts are found in Exhibit 112 on pages 5 through
19 23.

20 I just want to note, there aren't individual
21 charts for Orders 33 and 126 as there were not enough
22 participants from those FMMOs to present that information
23 and maintain confidentiality. The -- the summary chart
24 for the MCP orders as a whole does include the data from
25 Orders 133 and 126.

26 Q. You mean 33, not 133? Correct?

27 A. Yes. I mean Order 33. We did not just get a
28 twelfth order.



1 Q. And just to be clear, when you dealt with
2 confidentiality, you -- you basically used the same rule
3 that USDA rule does, that there have to be three separate
4 owners, correct?

5 A. Yeah. We needed to have three separate owners
6 and, obviously, at least three plants. So there could be
7 a situation where there might be four plants in an order,
8 but if they only had two owners, then I wouldn't include
9 that information in a breakout.

10 You know, this dataset is unique in that it deals
11 with a group of competitors, and we need to be very
12 conscious of that information and those -- and those
13 relationships to maintain confidentiality of each
14 participant from one another.

15 Q. So what charts did you develop?

16 A. So I developed four charts each for Orders 1, 32,
17 51, 124, and the MCP orders as a group. Each order has a
18 chart that shows the surveyed plants' weighted average
19 protein, other solids, nonfat solids, and butterfat
20 component levels. These actual fluid plant producer milk
21 receipts are compared to that same data for the order as a
22 whole, and so that's the data from Exhibit 17, Data
23 Request Table 2, as well as the current skim formula
24 factor and the Proposal 1 skim milk formula factor.

25 In every chart I track the FMMO order-wide data,
26 so that would be the Exhibit 17 information in green and
27 the survey participants' data in blue. And then like the
28 first three charts on pages 1 through 3, the skim milk



1 formula factors, the current is in yellow, and the
2 Proposal 1 factors are in orange.

3 You know, my goals were to compare how the actual
4 fluid plant receipts stack up next to the order-wide data,
5 and then I wanted to compare the fluid plant receipts to
6 the current and proposed skim milk formula factors.

7 Q. And before we review those pages, what did you do
8 next?

9 A. So I also looked at on a plant-by-plant basis, for
10 the 32 plants that we have the skim component information
11 for, whether they were above or below the proposal levels,
12 by month, for the 24-month period. For this, I looked --
13 you know, like I said it is only the 32 plants that have
14 data available. I didn't do any sort of estimating for
15 the four plants that are in butterfat skim orders and
16 don't have and -- and simply didn't have comparable data
17 and information available.

18 Q. What conclusions did you reach?

19 A. Well, so my three key takeaways from the data were
20 that Class I plants routinely receive component levels
21 below the average level for the order, that Class I plants
22 routinely receive component levels below the Proposal 1
23 levels, and that there is remarkable seasonal and
24 geographic variation in the components as well.

25 Q. How does the data support your conclusions?

26 A. You know, the data to me, it affirms what, you
27 know, you would -- what you would infer, that the
28 incentives created by the current FMMO skim component



1 formula factors are that, you know, it makes sense to send
2 the higher component milk to where it can be best used,
3 and the higher component milk is best used in the
4 manufacturing classes. And so I wasn't super surprised to
5 see that -- you know, it's not all the time, but a fair
6 bit of the time that the fluid plants in this survey are
7 receiving -- their producer milk receipts are below that
8 of the order as a whole.

9 Q. That's not a criticism, is it? It is a logical,
10 reasonable business decision, correct?

11 A. Oh, absolutely. I mean, those are -- that's where
12 that milk has more value in those uses than it does in a
13 fluid use. Like, you're going to be able to produce more
14 cheese, you are going to be able to dry more powder.
15 Like, that's where it should go. That's -- that's what we
16 want to have happen.

17 Q. So what does the actual fluid milk receipts data
18 tell you about this Proposal 1?

19 A. So to me, the actual fluid milk plant receipts
20 data show that USDA really must deny Proposal 1. The
21 fluid milk plant survey data, like the FMMO data, does not
22 support a national standard set at the Proposal 1 levels.
23 Exhibit 112, pages 25 to 27, clearly show that much of the
24 time most of the fluid milk plants surveyed are below the
25 skim component factors in Proposal 1. The components
26 received by Class I plant are not consistent. They vary
27 from FMMO to FMMO. They vary seasonally. And -- but I do
28 know that even in the wintertime, there are survey plants



1 receiving milk with components below the proposals.

2 Q. When you say in the wintertime, because that's the
3 one time you would expect the components to come up?

4 A. Yeah.

5 Q. So let's go through some of the charts, not --
6 we'll go through some of them as samples and then not
7 cover every single one.

8 What does page 5 show?

9 A. So page 5 shows protein for the Northeast. And so
10 this is where we have got the survey group is in blue; the
11 FMMO is in green; the current formula factor is the yellow
12 line at the bottom; the proposal formula factor is the
13 orange line at the top.

14 And so what we're looking at here is, you know,
15 that most of the time the order as a whole for the
16 Northeast, as well as the survey plants, are running along
17 in between the current level and the proposed level, and
18 also, that the plants in the survey group for the
19 Northeast closely track the order as a whole on their milk
20 receipts.

21 Q. They track the order as a whole, but if we look
22 back at page 1, Order 1 was the lowest throughout the
23 whole country, correct?

24 A. Yes. Order 1 is the lowest for the MCP orders.
25 We don't know what that would look like for the butterfat
26 skim orders.

27 Q. So what about the -- what -- what does this tell
28 you about seasonality?



1 A. It tells me that the components are lower in the
2 summer than the winter and that, you know, going back to
3 high school math, you've got a nice cosign function there.

4 Q. So let's turn to page 6, and we'll talk about
5 other solids just once. So page 6 on other solids.

6 A. So here we have got the other solids in the
7 Northeast. This is pretty similar to what we were looking
8 at on page 2. You know, the survey, it -- there is not
9 the same seasonality with the other solids as we have got
10 going on with the protein, and the -- and it's very much
11 like above and below the proposal levels and -- but not on
12 a distinctive seasonal basis like the others.

13 Q. Let's turn to page 7.

14 A. So page 7 is nonfat solids for the Northeast.
15 Again, in the Northeast, the survey group plants are very
16 closely tracking the order as a whole, and I would note
17 that both are, for the most part, most of the time below
18 the level of the proposal.

19 Q. Let's turn to chart 8, which is butterfat, and
20 we're only going to talk about butterfat once.

21 A. Yeah. So, again, the butterfat pages, so here on
22 page 8, and then continuing on as the fourth one in each
23 group, the butterfat -- the butterfat charts are provided
24 for informational purposes. It shows -- butterfat shows
25 the same seasonality as protein and the nonfat solids, and
26 for the Northeast, the butterfat here is tracking really
27 close between the survey group and the order as a whole.
28 The survey group is maybe a little bit lower but not a



1 lot.

2 Q. So we're now going to turn to Federal Order 32,
3 the Central order, which is page 9. Could you tell us
4 what's shown on page 9?

5 A. So page 9 is showing the -- the protein for the
6 Central order. The survey group is blue; the Central
7 order as a whole is in green. And so what we see here is
8 that for the survey group plants, they are actually
9 receiving for the -- for the -- they are receiving milk
10 with lower protein levels than the order as a whole.

11 Q. Every single month?

12 A. Every single month for this order, and for
13 protein.

14 Q. And there's a couple months within this where the
15 protein for seasonality just barely breaks the current
16 level, correct?

17 A. Yes. For the fluid plants. Now, the order as a
18 whole is not as close to the -- to that current level, but
19 the fluid plants in the Central order are very close to
20 that current level that are in the factors today.

21 Q. Let's turn to page 11, which is nonfat solids for
22 the Federal Order 32, please. And tell us what that
23 shows.

24 A. So this is pretty similar to the story that we saw
25 for -- for protein. There are -- with respect to the
26 nonfat solids, there's a little bit more of the time when
27 the survey plants are exceeding the Proposal 1 level, but
28 most of the time they are not. And the survey group



1 plants are showing levels that are lower than that of the
2 order as a whole.

3 Q. So now we're going to turn to Federal Order 51,
4 which is chart 13.

5 A. So chart 13 is Order 51, so for California, sort
6 of the hybrid case here between the Northeast and the
7 Central order. So, you know, the beginning of the data is
8 a lot more like the Northeast where the survey group
9 plants are very, very close to the order as a whole, and
10 then in the later months, the protein levels for the
11 survey group plants are below that of the order. I also
12 note that in California the component levels, both for the
13 order as a whole and the survey group, are much higher
14 than they were in the Northeast.

15 Q. And that quite logically because -- partly because
16 of the composition standards in California --

17 A. Yeah --

18 Q. -- or you don't know?

19 A. To me -- to me, it's because California has been
20 using a component pricing system for a very long time, and
21 so, you know, producers in California have been focused on
22 components for a long time.

23 And then there's another big difference when you
24 are thinking about comparing between the orders. The
25 utilization of the milk in those orders is not the same.
26 And so, generally speaking, there are more manufacturing
27 uses for milk out in California than -- so more milk being
28 used in Classes III and IV, than what is going on out in



1 the Northeast, and so that would also create incentives to
2 have more high component milk in the pool because, you
3 know, those -- that higher component milk is, you know,
4 valuable and needed for the manufacturing classes.

5 Q. So now let's turn to page 15. And first I'm going
6 to ask you to talk about what it shows, and then I have
7 one further question.

8 So nonfat solids in FMMO 51, California, what does
9 this show?

10 A. So here we have got nonfat solids for FMMO 51.
11 And this is, you know, very similar to what was going on
12 on their protein chart, where at the beginning of the
13 study period, the -- at the beginning of the study period,
14 the survey group plants and the FMMO 51 data are very much
15 aligned. And then you see the -- you see the survey group
16 plants drop below Order 51 in the later months, like
17 towards the back in 2022.

18 Q. And before you actually testified, I corrected the
19 fact that on page 15 the legend had said 32 and was
20 resubmitted earlier this morning is now 51.

21 A. Uh-huh.

22 Q. Did you confirm that, nonetheless, this was
23 Order 51 data as opposed to 32?

24 A. Yes. The data here is for Order 51.

25 Q. So it was literally just a typo in the legend,
26 correct?

27 A. I believe -- I believe so.

28 Q. However it happened.



1 A. Yes.

2 Q. So if you turn to page 17, please.

3 A. So here on page 17 we have got the chart that
4 shows the protein for Order 124, the Pacific Northwest.
5 So it's got a similar pattern to California where the
6 survey group and Order 124 are close together at the
7 beginning of the study period and then the -- for the most
8 part, later in the time period, like most of 2022, aside
9 from that one strange month in the spring, we have got the
10 survey group plants dropping below the order as a whole.

11 Q. And so page 19, please.

12 A. So 19 are the solids nonfat for the Pacific
13 Northwest. Very similar in terms of the relationship
14 between the survey group and Order 124 over the course of
15 the study period. I would note that the overall level
16 here, so the nonfat solids for Order 124, is very much
17 higher than what we have -- than what we see in Order 1,
18 for example, so the first group of charts that we were
19 looking at.

20 Q. All right. So now let's turn to page 21, which I
21 believe -- why don't you tell me what that is.

22 A. Yeah. So page 21 shows the protein levels. This
23 is a weighted average across the participants. These are
24 for the plants that are regulated on Orders 1, 32, 33, 51,
25 124, and 126. So this includes all of the participants.
26 We did not have anybody in the survey that operates a
27 fluid plant in Order 30.

28 Q. So I note with this one, though, there is no green



1 line for the Federal Order.

2 A. Yeah, that's correct. Like, for me to be able to
3 add the Federal Order green line here, there would have
4 been a lot of estimating and a lot of math under the
5 covers, because the -- the amount of -- the distribution
6 of the plants across in the survey, and so the -- and the
7 distribution of the volume of their milk in the survey
8 doesn't match the distribution of milk in those six
9 orders. And so, like, doing the weighted average, it --
10 the amount of information that would be under the covers,
11 I did not think that would be a fair comparison.

12 Q. And moreover, involve estimation, and you did not
13 do any estimates?

14 A. I did not do any estimating.

15 Q. So turn to page 23, please. And please tell me
16 what that is.

17 A. And so this is the same chart as we were just
18 looking at on page 21, but this is for nonfat solids. So,
19 again, it is the plants on the six multiple component
20 orders. And what we see there is that for most of the
21 time the plants are below the Proposal 1 levels. They are
22 definitely receiving milk that's very much above the
23 current levels. But there's only, you know, a little bit
24 of time on the average, and so this is a weighted average
25 for all of them, only what we're seeing there is in the
26 winter months in 2021 and then again in the winter months
27 in 2022, that the plants are receiving nonfat solids above
28 the proposal level, but the rest of the year they are not.



1 Q. So in the spirit of time, we have already briefly
2 discussed tables 25 through 27. But could you still,
3 looking just at one of them, help out because there's
4 increments like there were yesterday, correct?

5 A. Yes. Happy to help. And now wishing the font was
6 larger on the Y-axis.

7 The -- so what we have got here is a count. This
8 is for the 32 plants that we have the component data for,
9 and it is showing whether or not the plant is above or
10 below the Proposal 1 skim formula factor on their actual
11 producer milk receipts. And so, for example, for
12 January 2021, what we're seeing here are 19 plants of the
13 32 below the proposal protein percent and then 13 plants
14 above.

15 Q. And that would be similar for the following two
16 pages --

17 A. Uh-huh.

18 Q. -- for other solids and nonfat solids, correct?

19 A. Yeah. And so, like, if you look at June of 2021,
20 June on the protein chart, that would be one plant up
21 there at the top where they are above the proposal level
22 for the skim.

23 Q. And in August of 2022, it was zero?

24 A. Yes. That's right.

25 Q. So how does your data connect up to the theories
26 underlying the Federal Milk Order system?

27 A. So the FMMO system is a minimum pricing system.
28 And I believe that the FMMO system needs to recognize that



1 Class I plants are not receiving the components found in
2 Proposal 1 on an average basis, and moreover, because of
3 seasonal variation, there are months when they are
4 receiving components closer to the current level. And --

5 Q. Go ahead.

6 A. And so I just want to emphasize again that our
7 system with the Federal Order system, it is a system of
8 regulated minimum prices.

9 Q. So how does this all impact Class I milk?

10 A. Well, so we have seen increases in components over
11 the last 20 years, and at the same time that that's been
12 happening, fluid milk is on a downward trajectory. It is
13 honestly, for someone like myself who has been focused on
14 the fluid side of our industry, it's a discouraging trend.
15 And it is -- it's a real problem for our industry, the
16 decline in Class I sales, on an absolute basis, on a per
17 capita basis.

18 And while we have seen the components going up
19 with -- we haven't really seen an increase in products
20 necessarily, you know, touting the components. And the
21 components that are out there that do make those claims,
22 so like a Fairlife or, you know, something that has some
23 added solids in it, those -- those processors undertake
24 significant investment in technologies like
25 ultra-filtration to concentrate the protein or they
26 undertake the expense of adding solids. And when you add
27 solids using NFDM or condensed skim, you are -- or if you
28 are using ultra-filtration processing technologies, you



1 are adding significant costs, you are adding large costs
2 beyond the milk itself.

3 And to me, I think that if more could be done to
4 get consumers to recognize the value of the components in
5 fluid milk, I think that processors would have pivoted in
6 that direction. They would be doing it because all --
7 fluid processors are trying so hard to increase sales.

8 So, you know, the component increases, you know,
9 claimed by NMPF and National All-Jersey, they don't change
10 the value proposition when it comes to fluid milk, and
11 raising Class I prices based on components would be
12 taking, you know, even more money from Class I, that it's
13 going to have a really hard time recovering in the
14 marketplace.

15 Q. Do you have a concluding comment?

16 A. Proposals 1 and 2 presume that the Class I fluid
17 market is similar to Classes III and IV when it comes to
18 component valuation, and this just isn't true. Yesterday,
19 we heard from Dr. Van Amburgh that the changing genetic --
20 was that yesterday or was it Monday; God, I think it was
21 Monday -- that changing genetics also increases the volume
22 of milk that the cows produce. And that's honestly where
23 the value is for Class I. It is in the volume; it is in
24 the butterfat. And when it comes to the volume, Class I
25 pays for those additional hundredweight. And Class I
26 plants don't derive value once you move beyond the
27 butterfat, and they also don't receive annually,
28 consistently, on a seasonal basis, they just don't receive



1 these components. And so Proposals 1 and 2 need to be
2 denied.

3 MR. ENGLISH: And with 24 seconds left in my one
4 hour, this concludes the direct testimony, and the witness
5 is available for cross- examination. And I note that it
6 is almost 12:30.

7 THE COURT: Yes. Unless someone has an objection,
8 I suggest we take lunch, come back at 1:30.

9 (Whereupon, a luncheon break was taken.)

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1 WEDNESDAY, AUGUST 30, 2023 - - AFTERNOON SESSION

2 THE COURT: Okay. On the record. We're back from
3 lunch with the cross-examination of Witness -- Cathy?

4 THE WITNESS: Sally.

5 THE COURT: -- Sally Keefe.

6 I forget who we had up about to commence cross.
7 Mr. Miltner, I think.

8 MR. MILTNER: Thank you, your Honor.

9 Before I get started, so I don't have to
10 interrupt, I'm going to grab some exhibits from USDA, if I
11 could.

12 THE COURT: Yes, sir.

13 MR. MILTNER: It is 15, 17, 33, and 52.

14 CROSS-EXAMINATION

15 BY MR. MILTNER:

16 Q. Okay. For the record, my name is Ryan Miltner. I
17 represent Select Milk Producers.

18 Hi, Sally.

19 A. Hi, Ryan.

20 Q. How are you?

21 A. Good, thanks. I feel like I'm louder.

22 Q. How was your lunch?

23 A. Lunch was great. Thank you.

24 Q. Excellent?

25 My first question is about the plants that you
26 included in -- in your data here. And so I'm looking at
27 the very last page of your 5A, which is Exhibit 112, and
28 if you want to grab I think it's Exhibit 33, let me know



1 when you have got papers situated.

2 A. Okay. I have got 33 here.

3 Got it.

4 Q. Okay. So looking at page 28 of your exhibit, you
5 have plants from Albertsons and from Kroger included
6 there, correct?

7 A. Yes.

8 Q. Okay. So I'm trying to match them up against
9 what's on Exhibit 33. I want to start with Albertsons.
10 So the one I'm looking at, there's one in Denver. That
11 one shows up on the list.

12 A. Uh-huh.

13 Q. There's one in Order 51, City of Commerce and San
14 Leandro. I see Safeway plants listed on Exhibit 33.

15 A. Which page of Exhibit 33, Ryan?

16 Q. I'm sorry. I'm looking at the very first page of
17 it.

18 A. Got you.

19 Q. And I don't see really any on here that are --
20 they are listed alphabetically on there, right, not by
21 order?

22 A. Yeah.

23 Q. Okay.

24 A. Yeah, they are not -- my list here is sorted by
25 order, and then it's alpha with the plant and the city
26 name. And Exhibit 33 is, as I understand it, the list
27 that USDA has on its website of regulated pool
28 distributing plants, and there's usually like two tabs in



1 the file. There's a pool distributing plant file --
2 there's a distributing plant tab and then there's a supply
3 plant tab. And so I believe that 33 are the distributing
4 plants.

5 Q. Okay. And I think it is because at least I'm
6 pulling that from the top that it is distributing plants.
7 I think 34 was the supply plants.

8 A. Okay.

9 Q. Maybe I can just shorten this question. If you
10 look at page 2 of that?

11 A. Of thirty --

12 Q. Of 33.

13 A. Yeah.

14 Q. Okay. About two-thirds of the way down there's a
15 bunch that are listed as Safeway stores?

16 A. Yep.

17 Q. Do you know if those are the Albertsons plants
18 that you reference?

19 A. Yeah. So on this page, page 2 of Exhibit 33, so
20 like where you see Safeway Belleview, Safeway City of
21 Commerce, Clackamas, Denver, San Leandro, and then Tempe,
22 those -- Safeway and Albertsons are one and the same now,
23 although the pool plant list doesn't necessarily -- hasn't
24 necessarily updated the names on here as ownership has
25 changed of the plants.

26 Q. Right.

27 A. And so like the very first plant on my list is
28 Albertsons in Hatfield, PA, and that's the same as the



1 third row down on page 2 of Exhibit 33, Lucerne Dairy in
2 Hatfield, PA.

3 Q. That was going to be my next question, if that was
4 the plant. Thank you.

5 I don't see the Safeway plant in Tempe listed in
6 your survey. Is that one of those that had perhaps data
7 issues?

8 A. Yes.

9 Q. Okay. Similarly, as I look at Exhibit 33 -- and
10 refer to it, if you'd like, but you may not need to.

11 A. Okay.

12 Q. Kroger plants in Indianapolis and Santa Ana,
13 California, data issues?

14 A. Likewise.

15 Q. Okay.

16 A. And as far as that goes, Albertsons and Kroger
17 joined the -- joined the study late. And so the ability
18 of those participants to be able to cure any data problems
19 was more limited just because of the tight timeline.

20 Q. I appreciate Mr. English's question that there was
21 no data excluded for convenience sake. Not that I would
22 have expected that, but appreciate that statement from
23 him.

24 I'd like to look at now your written statements,
25 which I think we marked as Exhibit 111. And I'm looking
26 at page 3 and your table there.

27 A. Yep.

28 Q. Okay. And you have four different let's call them



1 categories or different types of standards listed there,
2 correct?

3 A. Uh-huh.

4 Q. The one listed as current, that is the current --
5 current standards for the Class I base price, correct?

6 A. Yes. So those would be the current skim formula
7 standards that are used in just the skim portion of the
8 Class I.

9 Q. And then so the second is the same -- the same
10 information, but as it would be under Proposals 1 and 2,
11 correct?

12 A. Yes. If Proposals 1 and 2 were adopted, these are
13 the levels -- the factors that have been proposed for
14 those.

15 Q. So those two lines represent standards that are
16 applicable to the pricing formulas under the Federal
17 Order?

18 A. Yes. Those are pricing standards, absolutely.

19 Q. Okay. And the third line, that's a federal
20 standard -- you have it listed as a federal standard. As
21 I understand that, that is the -- that is the standard --
22 the standard of identity for milk under FDA regulations,
23 correct?

24 A. Yeah. So that's FDA's composition standard for
25 milk, not -- it's not a pricing standard.

26 Q. And the same -- the fourth is California's
27 composition standard for bottled milk, correct?

28 A. Right. And, again, that's a composition standard



1 for the milk, it's not a pricing -- it is not part of the
2 pricing formulas, those two.

3 Q. So since they are not part of the pricing
4 formulas, help me understand the importance of those two
5 lines to your opinions and your analysis.

6 A. So for me, those two lines -- so if you take those
7 and you keep going into the milk, if you take the federal
8 standard and you keep converting, you are going to be at
9 8 grams of protein per serving on a nutrition fact for
10 fluid milk, and that's what our -- that's what consumers
11 of our products see.

12 And then what the California standards -- I'm not
13 a -- I'm not a California girl. I'm not quite as good at
14 going all the way to the grams per serving for California,
15 but I believe that that one is higher. I think it is
16 10-ish. And so, again, like that's -- that's what
17 consumers see and expect.

18 Q. Okay. Okay. Can we turn to page 6 of your
19 statement, please?

20 A. Sure.

21 Q. The very first paragraph under section E, you
22 write, "The fluid milk plant survey data, like the FMMO
23 data, does not support a national standard set at the
24 Proposal 1 levels. Exhibit MIG-5A, pages 25 to 27,
25 clearly show that much of the time the fluid milk plants
26 surveyed are below the skim milk component factor levels
27 in Proposal 1."

28 And I'm drawing -- well, when I look at your



1 tables and your graphs --

2 A. Uh-huh.

3 Q. -- from which you draw those conclusions, are
4 these the same -- are those the same type of charts that
5 were presented yesterday by, I forget if it was both Hood
6 and Shehadey, but the same data -- or same information you
7 are trying to relate?

8 A. Yes. So that's the same type of information that
9 both Hood and Shehadey -- the Hood and Shehadey witnesses
10 yesterday were working with. But in the case of Hood and
11 Shehadey, they were each talking about their plants only.
12 They weren't talking about the group as a whole.

13 Q. Can you grab Exhibit 112, your graphs and tables?

14 A. Yep.

15 Q. And at the same time, if you would grab
16 Exhibit 17.

17 A. Yep.

18 Q. Okay. So we're going to -- I want to look at the
19 first page of Exhibit 17 and page 5 of Exhibit 112.

20 A. Yep.

21 Q. The blue line on page 5, that is your surveyed --
22 tell me if I have got this right -- your surveyed protein
23 among your group in Order 1 over that defined period.

24 A. Yes. And that would be protein as a percent of
25 skim.

26 Q. And there's a -- they overlap or they are very
27 close, but there's also a green line there. That's the
28 Federal Order data for protein and skim, correct?



1 A. Yep. And that Federal Order data is also as
2 protein as a percent of skim.

3 Q. Okay. The yellow line represents the presumption
4 of protein and skim under current standards, correct,
5 current pricing standards?

6 A. Yes, under the current pricing standards. It is
7 not the composition standards we were talking about
8 earlier.

9 Q. Great. So I want to look at -- and the chart,
10 your table, your chart, covers January '21 through
11 December 22nd -- or December of 2022?

12 A. Yes. It's a 24-month period. It starts in
13 January of 2021 and goes through December of 2022.

14 Q. If you look at Exhibit 17, on the first page --
15 and have you seen 17 before? You have looked at it,
16 right?

17 A. I have indeed seen Exhibit 17 before.

18 Q. I figured that was a safe assumption.

19 A. I don't actually think I have ever seen Exhibit 17
20 on paper before, to be fair.

21 Q. Now we have.

22 If I look at the protein test column, beginning
23 right at the top, that's Federal Order 1, beginning in
24 January of 2000.

25 A. Uh-huh.

26 Q. If I look at that column for protein test, and I
27 cover 24 months, ending halfway down the page of
28 December 2001. If you were to plot that protein test on



1 your page 5, that line would be entirely under that 3.1,
2 wouldn't it?

3 A. So before you would be able to plot the column for
4 the protein test here, because this is showing 3% or --
5 you know, January of 2000 is 2.99% in milk. And so just
6 like the formula factors, the charts are all as a percent
7 of skim, and so you would need to take the protein test
8 and put it in terms of skim.

9 Q. So it would be roughly 3% higher?

10 A. Roughly.

11 Q. And in which case it pretty well would still be
12 below that yellow line all across the board, right?

13 A. You are asking me to speculate. But, roughly,
14 yes.

15 Q. Yeah.

16 A. Yeah.

17 Q. And if you flip to page 9 of the MIG exhibit,
18 which is Exhibit 112, and page 26 of Exhibit 17.

19 A. Got you.

20 Q. Okay. So we're now looking at the Central order
21 on your graph, and we have turned to the Central order
22 information on Exhibit 17.

23 A. Uh-huh.

24 Q. For that same period, January 2000 through
25 December of 2001, those protein tests, somewhat higher
26 than Order 1 but still would fall in large part below
27 that -- that yellow line on your -- your graph, right?

28 A. Yeah. They would be closer, though, once you did



1 the -- once you converted them to a skim basis because,
2 like, January of 2000 for the Central order was 3.08% milk
3 for protein, and so once you did the bump to skim, you
4 would be -- I think that one would --

5 Q. Be really close, if not just over it?

6 A. I think it would come out just over it.

7 Q. Okay. But then July of 2000 where it is 2.93,
8 you'd probably land somewhere around 3.05, right?

9 A. -- 'ish, yes.

10 Q. Back in your written statement, the part we looked
11 at says -- where you say, "The fluid milk plant survey
12 data does not support a national standard set at
13 Proposal 1 levels."

14 Is that -- that's your expert opinion?

15 A. That's my opinion, yes, my -- and I believe Chip
16 qualified me as an expert, so I get to say that's my
17 expert opinion.

18 Q. He did, and I did not object to that.

19 Do you think the data in 2000 to 2001 would have
20 supported base prices at those levels given the protein
21 numbers we just looked at?

22 A. I think they would probably be pretty close. I
23 haven't gone back and looked at them all on a skim basis
24 for those. It is a -- but it seems like they would
25 definitely be closer than --

26 Q. All right. On the very last page of your written
27 statement, right before your conclusion, you write, "But
28 the component increases claimed by NMPF and NAJ don't



1 change the value of the fluid milk, and raising Class I
2 prices based on components would be taking more money from
3 Class I that it cannot recover in the market."

4 Is that your expert opinion?

5 A. That's my opinion, yes.

6 Q. Okay. On what do you base your opinion that the
7 Class I handlers cannot recover that increased price from
8 the market?

9 A. My opinion is based on -- similar to the testimony
10 that we heard from Jed Ellis with Shehadey yesterday about
11 what happens when you -- when as a fluid processor you
12 have got higher component milk that you have made for the
13 California market at, like -- and that meets the
14 California composition standard, and then you are trying
15 to market that to a non-California customer. The price
16 pushback that you get is significant and real. The
17 customers are -- within California, they recognize that
18 that is their composition standard and that they have to
19 pay for it.

20 When you go outside and you are -- when you are
21 moving outside of California and you are trying to sell
22 that same product -- like, it could be a situation where
23 you are like, look, like, I want to do all -- I want to do
24 all of my production on Tuesdays to California standard so
25 that I have efficient production, less shrink, you know,
26 stuff like that, in the plant.

27 And then you try to, like -- and then you're
28 sitting there, and you are trying to weigh it, you are,



1 like, okay, but if I do everything to California standard,
2 then I need to be able to sell everything I made that day.
3 Okay? And if I can't sell it all within the state of
4 California, where am I going to sell it? And then you
5 are, like, okay, well, let's get some sales out, let's try
6 and get more price.

7 And the pushback is real and phenomenal. It
8 doesn't happen. And you wind up eating those extra costs,
9 and you -- and you are -- you make it -- you have to --
10 you have to make a decision, and you have to say, okay,
11 that makes sense from -- perhaps from a plant efficiency
12 perspective or whatever to -- to do that that way.

13 Q. And that's a real situation. But as you describe
14 it, isn't that a function of California's standard and not
15 the Federal Orders standard?

16 A. Well, if Proposals 1 and 2 were in place, and the
17 Class I processors are paying more for the skim
18 components, you know, they -- I don't think it's fair to
19 expect someone to pay for something that they are not
20 actually getting and actually using and putting in the
21 milk.

22 And so, you know, what the formula factors imply,
23 the FMMO price formula factors imply, is that if
24 Proposal 1 is adopted, Class I as a group is going to need
25 to go out to its customers and is going to need to say,
26 there is more -- there's more here, and we need you to pay
27 for that. And -- and interestingly, like, because there
28 is today more there in California, as an industry, we have



1 an example for what happens when a fluid milk processor
2 tries to -- tries to do that with customers in the real
3 world today.

4 Q. Other than organic processors, when they buy raw
5 milk for Class I use, they buy it based off of the
6 announced Class I price, correct?

7 A. Typically, yes.

8 Q. And -- but the organic price is typically a fixed
9 price?

10 A. The organic prices are typically fixed,
11 non-classified and, frankly, much, much higher than the
12 prices that we have been talking about here.

13 Q. When a Class I processor sells its products, are
14 they pricing that off of some Class I underlying price?

15 A. They are using the Class I prices and then looking
16 at their processing, their manufacturing cost, their
17 packaging costs, like, they are putting it all together
18 and taking it out to the market.

19 Q. In the past we have had some discussions about
20 some of those costs, but things like resin caps, labels,
21 transportation, balancing, all of those things, correct?

22 A. Even glue.

23 Q. But the largest proportion of the cost from the
24 plant to its customer is the milk, correct?

25 A. Absolutely. The milk dwarfs all of it. I mean,
26 we can talk for a really long time about caps and resin
27 and the glue for a corrugated box and pallets and all the
28 rest of it. We can talk about dairy crates and cases. At



1 the end of the day, the most important thing is the milk
2 itself.

3 Q. And not in every case, but typically, that milk
4 price fluctuates month to month based on the announced
5 Class I price?

6 A. Typically, yes.

7 Q. Were you here for Peter Vitaliano's testimony back
8 on day one?

9 A. I believe I was, but it feels like it was more
10 than a week ago.

11 Q. Technically it was -- no, it's just a week, isn't
12 it?

13 I don't want to pull that out, but I think as I
14 looked at it he thought Proposal 1 would add \$0.80 to
15 Class III and \$0.41 to Class IV.

16 For our discussion will you accept that?

17 A. That -- it rings a bell, Ryan.

18 Q. Okay. So if we keep a Class I mover based on the
19 average of III and IV, can we suggest that Proposal 1
20 would add about \$0.60 to the Class I price?

21 A. Yes. Definitely.

22 Q. Can you grab -- go ahead.

23 A. Which am I supposed to grab?

24 Q. Well, I think you were going to say something and
25 I cut you off.

26 A. It's fine.

27 Q. 15. Is this one seared into your head like
28 Exhibit 17 is or --



1 A. Actually, it is not.

2 Q. Okay.

3 A. No.

4 Q. Would you turn to the last page of it, please?

5 And do you see that what's -- it is the third column where
6 it says base Class I price?

7 A. Yep.

8 Q. Okay. Do you need a second or two to look at that
9 before I ask you a couple of questions?

10 A. That would be nice. Thank you.

11 Q. Yep.

12 Okay. If you look at the year of 2021, if you
13 look at the base price in January and the base price in
14 December, there's a huge fluctuation there, correct?

15 A. Absolutely.

16 Q. About \$4, \$4.03, correct?

17 A. Uh-huh.

18 Q. So over the course of that calendar year, a
19 Class I handler selling to its customers, based on the
20 regulated price alone, is going to pass through \$4 of cost
21 changes over the course of the year, correct?

22 A. For most of the them, yes. I mean, as we have
23 heard from previous witnesses, there is different -- folks
24 have different time frames for those sorts of pricing
25 adjustments, and so not everyone is changing monthly. And
26 so -- but over the course of that year, if you're -- if
27 you are not figuring how to pass along that \$4 change, it
28 is going to be a problem for your business.



1 Q. And this type of fluctuation is just a function of
2 our Federal Order system, correct?

3 A. It is -- absolutely. It is a function of the way
4 that we price Class I off of III and IV.

5 Q. If you look at that same column, the change from
6 May to June, one month, is \$1.19, correct?

7 A. Yeah. So for May of --

8 Q. 2021?

9 A. Okay. Yeah, those two are \$1.19.

10 Q. So that fluctuation as a result of the order
11 system and our -- the way we select a mover and other
12 factors can cause the Class I price to increase by \$1.19
13 or more in one month?

14 A. Uh-huh.

15 Q. By the way, all of our -- are all of the handlers
16 in MIG federally regulated handlers or fully or partially
17 regulated Class I handlers?

18 A. Yes, they are all going to be either fully or
19 partially regulated. They may have -- there are some
20 members of the group that have plants in unregulated areas
21 completely, like --

22 Q. Like Hood?

23 A. All of Hood's plants are fully regulated.

24 Q. Oh, I'm sorry. But their main plant was in an
25 unregulated area.

26 A. Oh, yeah. It is located in Maine, but fully
27 regulated on Order 1. And that's a great example of I
28 think what you are trying to talk about, maybe.



1 Q. Maybe. That's good.

2 If these handlers can pass through in one month an
3 increase of \$1.19, why couldn't they pass through \$0.60 if
4 they are all subject to the same regulated minimum price?

5 A. They may be able to. It will increase the price,
6 and overall, when you increase the prices, that is going
7 to have an impact on consumers. While milk is relatively
8 inelastic, it is not perfectly inelastic, and so volume
9 decreases.

10 And I would also point out that this volatility of
11 the fluid milk prices that you were showing me on
12 Exhibit 15, that is something that is a real headwind for
13 Class I. Those prices changing all the time for the
14 consumers in the store is not a great thing. When you are
15 competing against other beverage products, other sort of
16 beverages, these -- that have a much more stable price,
17 and consumers know what to expect every single time, it is
18 in my opinion an easier proposition for the consumer to
19 understand what they are getting and why they are getting
20 it and the chart -- and the price they are being charged.

21 Milk is unfortunately -- fluid milk, our structure
22 that we have in the industry leads to some real
23 consumer -- confusion may be a bit too strong of a word,
24 but it is a headwind.

25 Q. Are you aware of USDA-collected data on the retail
26 prices of either conventional or organic milk?

27 A. I'm aware of that data, but I'm not super familiar
28 with it.



1 Q. You -- have you done any analysis to determine a
2 correlation between the regulated price and the retail
3 price of milk?

4 A. I haven't done any analyses on -- on those, no.

5 Q. Would you -- would you be surprised if, in fact,
6 the correlation between the regulated price and the shelf
7 price is not very strong?

8 A. It would not surprise me.

9 Q. Have you done any studies or have your members
10 shared any information about the frequency of price
11 changes of their products at the retail level?

12 A. So I have -- so, yes, our members have shared
13 information with me, as well as, you know, as recently as
14 yesterday in the hearing regarding the -- their price
15 change intervals. And it varies. Some are as much as
16 monthly; some are, you know, less than annually. And so
17 it's -- it runs the gamut.

18 Q. Is that a price change from your members to their
19 retailers?

20 A. That would typically be a price change from our
21 member to their retail customer. For the most part, the
22 member -- so I'm going to need to make a little bit of a
23 distinction here. So the survey included Albertsons and
24 Kroger who are clearly also retailers, okay? So the
25 comments that I'm about to make do not in any way refer to
26 Albertsons and Kroger. Albertsons and Kroger participated
27 in the survey. They are not members of the Milk
28 Innovation Group. The members of our group are



1 processors, and so they sell to a retailer. They do not
2 control the price at the shelf. That is controlled by the
3 retailer.

4 Q. Do your members keep track at all of what the
5 retailer markets their products for and the frequency of
6 the shelf price change?

7 A. Absolutely.

8 Q. Do you -- do you have that data for us?

9 A. I do not have that data for you. Those could be
10 some -- you -- I believe that members of our group will be
11 testifying over the course of the hearing. If that's
12 something of interest, I would suggest asking them.

13 Q. All right. I want to change gears a little bit
14 and talk about organic.

15 You stated that the raw milk price to an organic
16 handler is typically a fixed dollar price, correct?

17 A. Typically, yes.

18 Q. And in the rare instance, if it's ever occurred,
19 that the Class I price rises above that, there would be an
20 additional cost, correct?

21 A. In the rare instance when the Class I price is
22 above the organic, like, fixed contract price, the handler
23 would have to pay the regulated minimum price.

24 Q. And I'm trying to recall the transactions that I'm
25 aware of, and I can't think of that ever occurring.

26 With Horizon or Aurora, has that ever occurred?

27 A. It never occurred during my time at Aurora.

28 It did actually occur during my time at Horizon.



1 There were a few times when the Class I prices were high
2 enough, and the organic prices, candidly, were lower then,
3 and the Class I exceeded the -- the organic.

4 Q. And if the words weren't used by you, I'll use
5 them and see if you agree. An extraordinarily rare
6 occurrence for that to happen, right?

7 A. And that happened an extremely long time ago.
8 That would have been back in the '90s.

9 Q. So if Proposal 1 is adopted and the Class I prices
10 are increased, it really wouldn't affect the cost of milk
11 to an organic handler, would it?

12 A. It would not impact the cost of their milk itself.
13 It would impact the way that their obligation to the pool
14 is determined.

15 Q. How it's determined or the amount that's
16 calculated?

17 A. The amount that's calculated, when the formula
18 factors go through to determine the pool calculation.

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

21 THE WITNESS: You're welcome, Ryan.

22 Oh, wait, I have got lots of things that don't
23 belong to me.

24 MR. MILTNER: Do we want to leave them with the
25 witness in case anybody else wants to ask about them, or
26 would you like me to collect them now?

27 THE COURT: Let's leave them, but let's remember.

28 MR. MILTNER: Thank you.



1 THE COURT: Ms. Hancock.

2 MS. HANCOCK: Thank you, your Honor.

3 CROSS-EXAMINATION

4 BY MS. HANCOCK:

5 Q. Good afternoon, Ms. Keefe.

6 A. Good afternoon.

7 Q. So I want to start off on the data that you
8 collected. You said that you did this through a survey of
9 MIG members; is that right?

10 A. MIG members plus Albertsons and Kroger.

11 Q. Okay. Did you ask anyone else other than
12 Albertsons and Kroger beyond the MIG membership to
13 participate in the survey?

14 A. We also -- we asked Saputo to participate as well.
15 Unfortunately, with the tight timeline, they were unable
16 to participate.

17 Q. Okay. When did you do the survey?

18 A. Over the course of the last month.

19 Q. And how much time would you need to do a complete
20 comprehensive survey to make sure that you got a full
21 response?

22 A. Well, the survey is what it is. I mean, this
23 is -- this is the complete comprehensive response for
24 the -- for this hearing. I mean, it is what it is. Like,
25 it is complete.

26 Q. Okay. So you feel like the information that you
27 have is complete enough?

28 A. Like a lot of projects, if -- if there were more



1 time, like the plants that -- that Ryan was asking about,
2 like he mentioned like a couple of Kroger plants, he's
3 like, I don't -- you know, I see them here in the list of
4 pool plants, but they are not on your survey list. And,
5 you know, with more time, perhaps, more of the plants
6 could have had a complete 24 months, so that there
7 wouldn't be like -- like, the Kroger facility in
8 Indianapolis, for example, I didn't have a complete
9 24-month period, so they weren't included.

10 Q. Okay. Do you know how many Kroger plants there
11 are?

12 A. I don't know how many Kroger plants there are.

13 Q. In Mr. Brown's testimony I believe that he said
14 there were 14 Kroger plants.

15 Were you here for his testimony?

16 A. I wasn't here for his testimony. 14 sounds -- it
17 could be right, it could be wrong. I don't know, and I
18 don't want to speculate.

19 Q. Okay. And you know Mr. Brown worked for Kroger?

20 A. I do know that he worked for Kroger.

21 Q. Okay. No reason to disagree with him on that
22 point?

23 A. Well, I think that he may be including some of
24 their plants that aren't necessarily Class I plants. He
25 may be including some of their Class II facilities, some
26 of their other manufacturing facilities in that 14, and
27 that's why I'm a little reluctant to just go with 14.

28 Q. Okay. And if I'm doing the math on your



1 Exhibit 112, it looks like you have seven of Kroger's
2 plants listed there?

3 A. Is that page 28?

4 Q. The last page, 28 of 28 of Exhibit 112.

5 A. Uh-huh.

6 Q. Okay. So if it was 14, that would be about half
7 of the plants surveyed?

8 A. Yeah. One -- because we were interested
9 particularly in people's component data, Kroger
10 operates -- so, like, over the last month I have seen a
11 lot of this stuff, but one of the things I remember, for
12 example, with Kroger was that one of their plants in --
13 one of their plants in like the Southeastern order, for
14 example, we didn't have like the complete set, for
15 example. So stuff like that.

16 Q. Okay. So like Atlanta, you don't have the numbers
17 from Atlanta?

18 A. Yes. You have found. We have outed.

19 Q. What about -- and then -- I can't remember which
20 one Mr. Miltner asked you about, but Ohio and Virginia
21 Kroger plants, did you include that data?

22 A. Does Kroger have a plant in Virginia?

23 Q. Do you know if they do?

24 A. I don't know if Kroger has a plant in Virginia. I
25 do know that Kroger has a plant in Ohio and a plant in
26 Indiana, and they were not -- those two plants were not
27 able to comply -- provide complete data.

28 Q. Okay. What about for the other handlers with



1 MI- -- that are members of MIG, were you able to get the
2 data for all of their plants?

3 A. Yes, all of their plants. The MIG members,
4 because we -- the group has been working together for
5 quite a few months, they were a little bit more prepared
6 for my data request than Albertsons and Kroger were.

7 Q. Okay. So you believe you were able to get all of
8 data for all of the plants for all of the MIG members,
9 with the exception of Fairlife that you said you culled
10 out?

11 A. Yes.

12 And then there is one other MIG member plant.
13 Danone has a plant in Salt Lake City, Utah, and that plant
14 is located in an unregulated area, and then is partially
15 regulated, and then does all of its tracking on a
16 butterfat and skim basis. So they are not included.

17 Q. And that's just essentially because you didn't
18 believe that it would compare apples to apples?

19 A. Yeah.

20 Q. Okay.

21 A. They -- just not like the others.

22 Q. Okay. And I want to talk for a second about
23 Fairlife. You said that you culled out Fairlife because
24 they have a higher protein requirement for the -- their
25 milk; is that right?

26 A. Yes. The -- Fairlife's requirements for their
27 producer milk, the milk that they're -- the milk that they
28 are procuring from their suppliers is a very different



1 situation than this group of plants right here.

2 Q. Would you consider Fairlife to be something more
3 kind of innovative and a modern way to sell milk to
4 consumers?

5 A. Fairlife's products are definitely an innovative
6 product. It is --

7 Q. In fact, it is a patented product, isn't it?

8 A. Indeed it is.

9 Q. Okay. And you understand that with that comes the
10 opportunity for a higher premium price that can be charged
11 to consumers?

12 A. Indeed.

13 Q. And that's based on the higher protein values that
14 Fairlife requires in its raw milk that it takes in that it
15 ultimately is able to sell to customers?

16 A. My understanding of the process there would go far
17 beyond just the raw milk that they are receiving. A great
18 deal of the value add there would be related to their
19 proprietary ultra-filtration process that concentrates
20 those -- those nonfat solids.

21 Q. Did you attempt at all to run just Fairlife's
22 numbers, even separately, just to use as a comparison?

23 A. Fairlife's separate data is confidential and
24 proprietary, and I am not going to discuss Fairlife's
25 confidential information.

26 Q. Okay. Understood.

27 If you can take a look at Exhibit 112.

28 If we just look at the first page there,



1 Mr. Miltner had asked you -- I think he was using
2 Exhibit -- I think it was 17, where you said you were
3 familiar with the data, because you have been using -- is
4 that the source of the data that you used to do your
5 conversion to skim?

6 A. Yes. So I used -- yes. Charts 1 through 4 are --
7 1 through 3 are from Exhibit 17, but on a skim basis, and
8 then chart 4 would be the butterfat, just from Exhibit 17.

9 Q. Okay. And if we look at just the first three
10 charts, there's not any occurrence in which any of the --
11 any of the data points that you graphed between 2021 and
12 2022, that they even touch the current standard; is that
13 correct?

14 A. For -- yes. This data is for the orders as a
15 whole, and none of -- they are all above the current skim
16 formula factors.

17 Q. Okay. So for purposes of the graph, the current
18 standards are functionally irrelevant, aren't they?

19 A. When you are looking at it for the order as a
20 whole, I think it's important that -- the reason why I
21 included the current formula factors and the proposed
22 formula factors is so that we could understand how the
23 real producer milk receipts compares to the formula
24 factors. So, you know, I was trying to compare actual
25 producer milk receipts to the current and proposed formula
26 factors.

27 Q. Okay. And to the extent that that current
28 standard is even tracked on there, these -- this graphing



1 shows that it is irrelevant for purposes of measuring
2 where those components are today; is that right? It never
3 even dips below it.

4 A. So if -- if you look at the order by order
5 information, for the survey plants, you will see that it's
6 much closer. And so, for example, I think, if we look at
7 page 9, which is the protein for the Central order, you
8 see that the survey group is, you know, just above the
9 current level in the summer months.

10 Q. Okay. It gets -- it gets closer to it, but still
11 doesn't even cross over --

12 A. It doesn't dip below here for -- for the survey
13 group from Order 32 as a group.

14 Q. And if you look -- look at the overall blend, or
15 we can stay even on page 9, it looks like with time, and
16 what we were just looking at on Exhibit 17, with time,
17 even with these seasonal changes that occur that you
18 have -- that you have graphed on here, with time, we can
19 see that the overall trend is that those components are
20 continuing to move upward; is that right?

21 A. Yes, absolutely. Over the last 20 years the
22 components, both butterfat as well as the skim components,
23 have increased in the milk.

24 Q. And we know that, as you have noted here, that
25 there is a seasonal effect on this. But would you agree
26 that overall it's somewhat of a ratcheted system in that
27 with the improvement of genetics and the dietary or
28 nutritional feeding methods, that those components



1 continue to retain those trends of moving upward over
2 time?

3 A. Yes. The components are moving up.

4 Q. Okay. And they are keeping that trend line going
5 in that direction; is that right?

6 A. Yes. And I believe that Dr. Van Amburgh suggested
7 that we should expect that they are going to continue to
8 increase.

9 Q. And is that consistent with -- with the data that
10 you have been tracking and monitoring as well?

11 A. You know, the data that I have been tracking
12 and -- the data that I have looked most closely with is
13 just this 24-month period. And so, you know, the sort of
14 thing that you are -- that we're talking about right now
15 is over a much longer period of time, so --

16 Q. Well, but you would agree that even on the
17 24-month period that you are tracking, we can see that
18 that trend line continues to move up, even looking at that
19 two-year period?

20 A. I wouldn't agree that -- in the two-year period,
21 like what we can talk about is the seasonal change. But
22 the two years, like, I wouldn't want to, like, run a
23 regression through this and be, like, yeah, it tips up.
24 I -- that's -- that -- that feels like a short period of
25 time to me to be making a statement like that.

26 Q. Okay. But, for example, if we just looked at the
27 first page of Exhibit 112, it looks like this, at least
28 for the protein percentage by skim for the Federal Milk



1 Marketing Orders for this two-year period, you can see
2 that if you compare the two time periods to similar
3 months, from 2021 to 2022, that those move upward.

4 A. Indeed. Like, if you look at the Pacific
5 Northwest for January of '21 relative to January '22,
6 December '22, you are going to see them going up.

7 I would also say that, like, this is only 24
8 months. And the tail end there in November, December
9 2022, those are some pretty -- before I put a trend
10 through this, I would want to see what happens in the
11 first two quarters of 2023.

12 Q. And you can look back, at least with your
13 familiarity with Exhibit 17, you can look back all the way
14 to 2000 for that; is that right?

15 A. Yeah, I could. I have not done that work to date.
16 Like I said, my focus has just been on these comparisons
17 over this 24-month period.

18 Q. Okay.

19 MS. HANCOCK: Thank you for your time. Appreciate
20 it.

21 THE WITNESS: Yep.

22 CROSS-EXAMINATION

23 BY MR. COVINGTON:

24 Q. Calvin Covington representing Southeast Milk.

25 Good afternoon, Ms. Keefe.

26 A. Good afternoon, Mr. Covington.

27 Q. I want to -- just a couple questions here
28 regarding producer pricing.



1 And you are familiar with how minimum Federal
2 Order prices are established in orders that are required
3 to be paid producers?

4 A. Yes, I'm familiar with both classified -- the
5 class prices that the processors have to pay, as well as
6 the producer pricing, the uniform prices.

7 Q. Okay. Good. Thank you.

8 In Federal Milk Marketing Orders with multiple
9 component pricing, each month the Market Administrator is
10 going to announce a protein price per pound, a butterfat
11 price per pound, an other solids price per pound, and also
12 a producer price differential. And subject to location
13 adjustments, they would be the minimum prices that a
14 regulated handler would need to pay to producers.

15 Do you agree with that, if I'm summarizing that
16 correctly?

17 A. Yes. And I would add that the butterfat price,
18 the protein price, the other solids price, those prices
19 are going to be the same across the whole country. They
20 are not going to change.

21 Q. Right. Very -- yeah. Yes. The only thing that
22 would change would be the producer price differential
23 among the orders?

24 A. Among the orders, the PPD is going to change, and
25 then everyone is going to be changing based on location.

26 Q. Yes.

27 And let's take, for example, one step further how
28 it works. Assume I'm back being a dairy farmer, and I'm



1 producing milk of above average protein content. And --
2 and I'm located marketing my milk in a Federal Milk
3 Marketing Order with multiple component pricing. And
4 within the same location adjustment area, at about the
5 same distance from my farm, I could sell my milk to a
6 cheese plant that is regulated under a Federal Milk
7 Marketing Order, or I could sell my milk to a fluid milk
8 plant regulated under Federal Milk Marketing Order.

9 For one particular month, say, here the month of
10 August, would the minimum price that that cheese plant had
11 to pay me or that fluid milk plant had to pay me, would
12 they be different or would they be the same?

13 A. So you are talking about the price paid to the
14 producer irrespective of whether -- where the milk was
15 shipped?

16 Q. Yes. Yes.

17 A. Yeah. So the minimum price to a producer is the
18 same for -- irrespective of where the milk is shipped.

19 Q. Yeah. It is the same regardless where the milk is
20 shipped, as long as it is in the same location adjustment
21 and regardless of how the milk is used?

22 A. Uh-huh.

23 Q. Is that a basic premise of Federal Milk Marketing
24 Orders for uniform pricing?

25 A. Yeah.

26 Q. Okay. Then is there any economic incentive for
27 me, in that example that I used -- just used as a high
28 protein producer, is there any economic incentive for me



1 to go to one plant over another?

2 A. At the minimum, definitely not.

3 Q. Okay.

4 A. That said, you know, you were just asking me about
5 the regulated minimum price. You know, there -- that's
6 not the be all and the end all of -- that's the base.
7 That's like where we start with the prices. And so there
8 could be premiums, there could be reasons why you might
9 prefer one destination over another as a farmer.

10 Q. But either of those plants could pay me an
11 over-order premium?

12 A. They could pay you an over-order premium based on
13 your volume, but there could also be premiums based on
14 your components.

15 Q. But you would agree, though, that here at this
16 hearing, and Federal Order provisions, we're only involved
17 in establishing minimum prices?

18 A. We are definitely only talking about minimum
19 prices around here.

20 Q. So under Federal Order regulations, there's no
21 economic incentive for me to go to one plant over the
22 other, the Federal Order price is going to remain the
23 same?

24 A. As your producer price is going to be the same.

25 Q. Okay. Then go back to your written statement,
26 your written statement, Exhibit 111. And I'll wait until
27 you pull that up.

28 On page 6, your last sentence there before you get



1 to the bold E, where you state that "suppliers are
2 maximizing revenue by supplying higher component milk to
3 manufacturing classes."

4 Again, going back to my example, again, using
5 minimum Federal Order prices, can you explain to me then
6 how I would get an advantage of my high protein milk going
7 to a manufacturing plant when the Federal Order minimum
8 prices are the same?

9 A. So what I'm talking about there is not the uniform
10 prices, I'm talking about the class prices there, and
11 whether the milk -- say, like, when a cooperative is
12 marketing the milk, whether they would be better off
13 selling the load to a fluid plant or to a cheese plant.
14 And so I'm not talking about the producer prices there.

15 Q. Okay. Well, let's go back to my example. And I
16 said I was a dairy farmer. Let's say I'm a cooperative.
17 And as a cooperative, going to regulated plants, those
18 regulated plants have to pay me the minimum Federal Order
19 price.

20 So are you saying that if I'm a dairy farmer
21 versus being a cooperative, then the minimum price would
22 change?

23 A. The minimum producer price isn't going to change.
24 I was talking about the classified prices that handlers
25 pay in that paragraph. I was not talking about minimum
26 producer pricing there.

27 Q. Okay. So -- so, again, suppliers, you don't refer
28 then to a person that's supplying the milk. You consider



1 a person supplying the milk as being a supplier?

2 A. A supplier could be a cooperative. A supplier
3 could be a producer. It could be a direct ship like
4 Patrons. There's -- there's different ways that it
5 happens in the industry.

6 Q. Okay.

7 A. But I -- like I said, this paragraph is about the
8 classified prices paid by the processors as opposed to the
9 uniform price paid to the producer.

10 Q. The classified prices that -- that are paid by the
11 processors that were regulated under a Federal Milk
12 Marketing Order, those classified prices, are they used
13 for the particular regulated handler to make a settlement
14 with the Market Administrator?

15 A. Absolutely.

16 Q. Okay. So if those prices, classified prices you
17 referring to here, are used to settle with the Market
18 Administrator, so, again, if I'm a dairy farmer or a
19 cooperative, and I'm getting the minimum price that's paid
20 to me, how do I gain, if I'm a high protein producer,
21 going to a manufacturing class then under the order?

22 A. Can you repeat that question?

23 Q. Yes.

24 A. I'm a little lost.

25 Q. Be glad to.

26 We have already talked about that both a fluid
27 milk plant or a cheese plant that's regulated, okay? Are
28 going to pay producers or the cooperative -- consider



1 cooperative as a producer -- supplying milk to any of
2 those plants the minimum price. In component pricing
3 orders, there's going to be protein, other solids,
4 butterfat, and the producer price differential, minimum --
5 and we agree to that; is that correct? Both plants would
6 pay the same minimum producer price?

7 A. The minimum producer price is going to be the
8 same. The classified prices that are going to be used
9 for -- that are going to be put together and then used to
10 determine the PPD, those are going to be different between
11 the plants.

12 Q. So are you saying if I went to the manufacturing
13 plant, I would receive a different producer price
14 differential than going to the fluid milk plant?

15 A. No. I'm sorry, I think we're -- I feel like we're
16 talking past each other a little bit. And maybe I'm just
17 not following your -- the example that you are trying to
18 get me to follow.

19 The PPD is going to be the same for all the
20 producers in the order. Okay? So -- and then the uniform
21 price is going to be the same for all the producers in the
22 order. But if we have four plants in our order, and one
23 is a -- one does I, plant two does II, plant three does
24 III, and plant four is in Class IV, each of them is going
25 to have a different classified price for their milk.

26 And so the Class I plant is going to be buying
27 their milk on a butterfat skim basis. And then the
28 Class II plant is going to be buying their milk with



1 typically butterfat and nonfat solids. And then the
2 Class III plant is going to be buying their milk across
3 all the components. And then the Class IV plant is
4 going -- we're going to be back to like II with the
5 butterfat and the solids.

6 And so then over here, on the producer side, we're
7 going to have -- you're going to be paid out for your
8 components. You are going to be paid for your butterfat,
9 your protein, your other solids, then you are going to get
10 the PPD, and then there's going to be location
11 adjustments. And so -- and so my statement on page 6 of
12 my written statement, my -- the paragraph there just above
13 E, I was talking about classified pricing there. I was
14 not talking about producer pricing.

15 Q. Okay. So suppliers there does not refer to a
16 dairy farmer or a cooperative supplying any of those four
17 different plants there then?

18 A. Suppliers does refer to the -- the suppliers are
19 producers and cooperatives. The plants, the processors,
20 are required to pay the minimum classified price. They
21 have to pay those minimum class prices. And the pool
22 hangs out here, in the middle, so that -- to equalize
23 amongst these four different so that we get the one
24 uniform price over here for the producers. And so there
25 is no processor paying the uniform price. The processors
26 buy and sell at class. And then -- and then we have the
27 pool, and then the producers get the uniform.

28 Q. But as a supplier, can I get an economic advantage



1 at minimum prices paid under the order by going to one
2 plant over another?

3 A. I believe in multiple component order, as a
4 supplier, it is my view that you would be best off going
5 to -- if you have high component milk, you are going to be
6 best off going to, like, the cheese plant, where you are
7 going to get paid out for those components.

8 Q. Okay. So if I went -- my milk went to a fluid
9 plant that's regulated under multiple component pricing
10 order, are you saying I'm not paid for my components, that
11 the minimum order price is not components?

12 A. Who are we talking about right now? I'm sorry.
13 I'm lost again.

14 Q. Okay. I'm a dairy farmer, marketing my milk under
15 a Federal Milk Marketing Order.

16 A. Uh-huh.

17 Q. Okay. That uses multiple component pricing.

18 A. Okay.

19 Q. And I have an opportunity to sell my milk to two
20 different regulated plants, one bottling fluid milk, one
21 manufacturing cheese. Both of them are regulated.

22 Is my price as a producer any different regardless
23 of which plant I go to?

24 A. Your producer, the uniform price, is going to be
25 the same in both cases.

26 Q. So there's no economic advantage, me as a dairy
27 farm supplier, of going to a fluid milk plant over a
28 manufacturing plant at the minimum order prices?



1 A. The uniform price that the producer gets is the
2 same whether -- no matter where they are shipping the milk
3 to, assuming all their components and everything else are
4 equal.

5 Q. In my example, one is a fluid plant, one is a
6 cheese plant, I'm going to get the same minimum price?

7 A. The regulated minimum price is for the order. The
8 regulated minimum price does not depend on any one plant's
9 utilization.

10 Q. Okay. Again, no economic advantage going to one
11 plant over another?

12 A. The regulated minimum price is the same all the
13 time.

14 Q. Okay. If National Milk Producers Federation
15 Proposal 1 was adopted, and we all agree that it would
16 increase the Class I skim milk price, what -- what impact
17 would that have on producer prices in multiple component
18 pricing orders?

19 A. It would depend on the fluid milk, the Class I
20 utilization in each one of those orders. So like with
21 Mr. Miltner, he just reminded me of Peter Vitaliano's
22 testimony last week with the -- I think it was \$0.50 and
23 \$0.80, and we agreed that it was about \$0.60 for Class I.

24 And so in an order that has very high Class I
25 utilization, say, like, down in the Southeast, that's
26 going to increase the uniform price more down there
27 because the Class I utilization is higher. In an order
28 that has very low Class I utilization, like the Upper



1 Midwest, it would have a very small impact on the uniform
2 price.

3 Q. In multiple component pricing orders, if we
4 increase the revenue coming in from skim milk, any change
5 in revenue would show up in the producer price
6 differential; is that correct?

7 A. Yes, it would.

8 Q. Okay. Thank you.

9 MR. COVINGTON: That's all I have, your Honor.

10 MS. HANCOCK: Your Honor, I just --

11 THE COURT: Ms. Hancock, I can't tell if
12 someone -- it is not. Ms. Hancock.

13 MS. HANCOCK: I just have one brief question, if I
14 may.

15 THE COURT: Yes.

16 CROSS-EXAMINATION

17 BY MS. HANCOCK:

18 Q. Ms. Keefe, if National Milk's Proposal Number 1
19 were recommended by the USDA to be implemented with the
20 multiple components as proposed by National Milk, would
21 MIG support the delayed implementation?

22 A. Yes. If the Department were to adopt Proposal 1
23 or Proposal 2, we would want to see the 12-month delayed
24 implementation for risk management purposes.

25 MS. HANCOCK: Thank you.

26 CROSS-EXAMINATION

27 BY DR. CRYAN:

28 Q. Good afternoon. I'm Roger Cryan with the American



1 Farm Bureau Federation.

2 So I appreciated your analysis. I found a couple
3 of things striking. The most striking thing I found about
4 it was how well it demonstrates that these tests are all
5 above the current standard, pretty clearly across the
6 board.

7 MR. ENGLISH: Is that testimony or --

8 BY DR. CRYAN:

9 Q. Would you agree with that?

10 THE COURT: Yeah, I think it is testimony by
11 Mr. Cryan. But I think you better put a question mark in
12 there somewhere, Mr. Cryan.

13 BY DR. CRYAN:

14 Q. Would you agree with that Sally?

15 A. My analysis demonstrates that on the average, for
16 the orders as a whole and for the survey group, that
17 the -- that most -- that most of the tests are slightly
18 above or -- the current level, and then -- but they are
19 also mostly below the proposed level.

20 Q. Depending on which graph you are looking at,
21 because there's some of these where it seems like the
22 proposed level sort of cuts right through the middle of
23 the line, it seems to me.

24 Does that -- does it seem like that to you?

25 A. It doesn't seem like that to me, that the proposal
26 cuts right through the middle of it, no.

27 Q. So on Table -- on page 1, in Exhibit MIG-5A, it
28 did -- I mean, the proposal is to -- is based on averages,



1 previous averages. And it is -- and the -- an average
2 means that some will be below and some will be above.
3 The -- again, on page 1, does that not show a line more or
4 less going through the protein -- through the middle of
5 the protein tests on your -- on your graph?

6 A. So the proposals are definitely based on averages.
7 And I would point out, again, that we have a minimum
8 regulated price system and that it's very important to
9 consider the low points and the seasonal impact.

10 Q. Uh-huh.

11 A. And additionally, this -- the -- this information
12 on the first chart is only for the seven multiple
13 component orders for two years.

14 Q. Okay. Does it appear to you that there's an --
15 that your graphs generally show an upward trend from even
16 over just the course of two years, from beginning to end,
17 for these tests?

18 MR. ENGLISH: Asked and answered.

19 THE COURT: Yes, Mr. English?

20 MR. ENGLISH: That was a question asked by
21 Ms. Hancock and --

22 (Court Reporter clarification.)

23 MR. ENGLISH: And so it's asked and answered. I
24 mean, if we're going to keep asking the same questions,
25 we're going to never get done with this hearing.

26 THE COURT: Well, my memory is not perfect.
27 Unless Mr. Cryan admits that that's been asked and
28 answered --



1 DR. CRYAN: I --

2 THE COURT: -- I'm going to allow it this time.

3 DR. CRYAN: Okay.

4 BY DR. CRYAN:

5 Q. So a yes or no is fine.

6 A. So as I was discussing with Ms. Hancock, this
7 data, for example, on the first chart with the Pacific
8 Northwest, Ms. Hancock and I went through some of that,
9 and I noted that before I put a trend line through this
10 data, I would want to see what was happening before and
11 after. This is only a 24-month period.

12 Q. And it's a 24-month period that ends about nine
13 months ago.

14 Do you have any indication that there's been a --
15 well, you said that you don't acknowledge a trend. Okay.

16 DR. CRYAN: I'm -- I think -- that's -- I'm done.
17 Thank you very much. Thank you.

18 THE WITNESS: You're welcome.

19 THE COURT: Any further cross?

20 Seeing none, redirect?

21 MS. TAYLOR: AMS has some questions, your Honor.

22 THE COURT: I'm sorry. I'm going to do that the
23 rest of the hearing, I can tell.

24 MS. TAYLOR: We don't mind. I do think --

25 THE COURT: I mind.

26 MS. TAYLOR: -- Mr. Wilson's going to start.

27 THE COURT: Yes, Mr. Wilson, your witness.

28 MR. WILSON: Thank you, your Honor.



1 CROSS-EXAMINATION

2 BY MR. WILSON:

3 Q. Todd Wilson, Dairy Programs.

4 Hello, Ms. Keefe.

5 A. Hi, Mr. Wilson.

6 Q. So I've been accused of being in the weeds
7 sometimes, so I have got some questions relating to some
8 of the things that you had in your testimony, as well as
9 some of the information on the graphs.10 Page 4, you indicate that the survey that you
11 conducted was from the MA report receipts and utilization
12 submissions, and then in the next paragraph, you talked
13 about audited and reported. And then in the next sentence
14 you talked about secondary data sources.15 So could you go through maybe -- you know what
16 those terms mean, so I would like for you to kind of talk
17 to that.18 A. Sure. So every month a handler submits a report
19 of their receipts and their utilization, and that goes in
20 to the Market Administrator. And then about a week later,
21 or not even a week later, you turn it in on the 7th, and
22 then on about the 10th, so a few days later, you get back
23 your monthly statement of handler obligation.24 Typically, the receipts and utilization on -- that
25 you are reporting are going to match out to your statement
26 of handler obligation unless something's been found at
27 pool and that there's a -- you know, it could be that you
28 fat-fingered something or whatever, and so there's been a

1 correction there, a difference between what you submitted
2 and then what comes back. And then later in the process,
3 usually a few months later, then all of that will go
4 through audit, and there could be yet another correction
5 phase.

6 And then as far as the secondary data that I was
7 referring to, that would be like the plants, like,
8 receiving records on their component tests on their
9 producer milk at receiving. So this isn't like component
10 testing that the plants are doing to check their
11 composition standards for, you know, sale of finished
12 goods. This is on, you know, raw milk in the silos type
13 of stuff.

14 And there what I found in the data, particularly
15 in the later part of the period where we weren't -- where
16 we haven't necessarily -- that the plants haven't been
17 through their audit yet, that there would be some things
18 where it would be, like, there's a number here that
19 doesn't make sense, like, can we try to get this right so
20 that we don't have a total outlier and need to exclude the
21 plant.

22 Q. So is it safe to say that the secondary data
23 sources were used to validate information or could that
24 information actually be in the data?

25 A. That it was used to validate, and then in a
26 handful of instances, the secondary data source was used
27 as opposed to the primary data source when it was clear
28 that the primary data source had an error in it, that



1 based on my experience, a few of these plants in the
2 survey will probably have an audit adjustment coming in
3 their future.

4 Q. I would hope so.

5 The -- could you -- do you know approximately how
6 much data you might have that had been audited?

7 A. Most of the plants were I -- and I believe that
8 everybody was through the audit for the first six months
9 of 2021. About half of them, it was all of 2021; about
10 half of them, they weren't done with 2021 yet. And there
11 may have even been a few that were into 2022. But it
12 varied it -- it -- it varies. Like, it's not the same --
13 everybody's cycle isn't the same.

14 And, you know, typically, when the audits are
15 completed, like they're doing multi- -- the Market
16 Administrator offices are doing multi-month blocks at a
17 time, and so like you could have a plant in Order 32 that
18 has 12 months of audited data, but there might be another
19 one that has nine and one with 15. Like, that is the sort
20 of stuff that I was seeing.

21 Q. And so the submitted information, is it fair to
22 say that that was from the obligation report that comes
23 back from the Market Administrator?

24 A. Yes.

25 Q. Okay.

26 A. Yeah.

27 Q. Thank you.

28 Continuing on to -- so on pages toward the end of



1 your testimony, you went into the -- your charts, I
2 believe, that you have made. You have converted -- you
3 have converted the test of protein, other solids, and
4 solids nonfat back to a skim portion, skim milk.

5 Did you -- can you go through that calculation for
6 me?

7 A. Sure. So probably the easiest way to look at that
8 would be in my testimony. If we look at the table on
9 page 3, which is skim, versus the table on page 4, which
10 is milk. If you -- so -- so the current nonfat solids on
11 a milk basis is 8.69, when you still have 3.5% butterfat.
12 And then the page before on page 3, if you have got no
13 butterfat left -- and I would point out that this is
14 formula butterfat, I have not met a separator yet that
15 gets it down to zero -- that then we would be at 9% on a
16 skim basis. And so the amount in the milk there is the
17 same between the table on page 3 of my statement and the
18 table on page 4. It's like the sort of --

19 Q. So in your graphs you have -- you have -- instead
20 of taking 3.5% butterfat out of producer milk, you took
21 out the pounds of fat or the test of fat in producer milk
22 to get back to skim?

23 A. Can you repeat that, Todd --

24 Q. So --

25 A. -- Mr. Wilson?

26 Q. -- on page 1 of your 28-graph page of MIG-5A,
27 that's on a skim basis?

28 A. Uh-huh.



1 Q. So the protein there, you -- you have removed the
2 fat --

3 A. Yes.

4 Q. -- from the pounds to compute a protein percent?

5 A. Yes. On a skim basis.

6 Q. On a skim basis?

7 A. And I removed all of the fat. Like, formula --
8 formula skim, perfectly zero.

9 Q. And I'm not sure -- we were kind of looking at our
10 graphs that were submitted through USDA, and there seemed
11 to be one in the submission that somehow was missing a
12 line. It's on -- it's on the printed copy, but I --

13 A. Oh, really?

14 Q. -- just wanted to make a point of that, maybe to
15 clarify that. I think it was on page 17, if I remember
16 right. Yeah. So page 17, the 124 survey line did not
17 show up on the -- on the graph.

18 A. So the -- so you are saying that the -- on
19 page 17, the blue survey line isn't showing up in the PDF?

20 Q. Correct.

21 A. Okay.

22 Q. On the website.

23 A. That's weird.

24 MR. ENGLISH: Can I look?

25 Your Honor, obviously we submitted -- the papers
26 copy have it, correct?

27 MS. TAYLOR: Yes.

28 MR. WILSON: Yes, the paper copies --



1 MR. ENGLISH: So it's only the website?

2 MR. WILSON: Yes.

3 MR. ENGLISH: So we will obviously resubmit as
4 soon as we can figure out why it is that something loaded
5 that shouldn't have loaded.

6 THE COURT: Thank you.

7 THE WITNESS: That's strange.

8 MR. ENGLISH: Technology.

9 MR. WILSON: Usually it is because I have got a
10 different OS, but I don't think that's the case this time.

11 BY MR. WILSON:

12 Q. So on page 25 of those charts, you have got 32
13 plants in your survey. That equates out to 768 data
14 points.

15 In -- the prior witness from Shehadey testified to
16 the number of occurrences that was either above or below.

17 A. Yeah.

18 Q. Is there a way that you would be able to provide
19 us in these -- these stacked bar graphs, the number of
20 occurrences over the -- over the 24-month period that was
21 above and below?

22 A. Yes, I'd be happy to do that. So you are talking
23 about putting the data labels on the bars?

24 So like, for example, for, like, on page 25, like
25 showing -- if we look at June of 2021, we have got 31
26 below and one above. That sort of information?

27 Q. As just a combined number of -- out of the 768
28 occurrences.



1 A. Yeah. I'd be happy to do that.

2 Q. I have also been told that page 19 might need to
3 be looked at as well on the website submission.

4 A. Okay.

5 MR. WILSON: That's all I have, your Honor.

6 THE COURT: Ms. Taylor?

7 THE WITNESS: Ms. Taylor, can we wait for just one
8 moment while I write down the page 19?

9 MS. TAYLOR: Certainly. Of course.

10 THE WITNESS: Mr. Wilson or Ms. Taylor, do either
11 of you know which is the one that isn't coming through on
12 the PDF as opposed to the print?

13 MR. WILSON: It's the PR survey.

14 MS. TAYLOR: The PR survey.

15 MR. WILSON: It would be the blue.

16 MS. TAYLOR: The blue line.

17 THE WITNESS: Okay.

18 THE COURT: Should we go off the record and talk
19 about it?

20 MS. TAYLOR: We'll figure it out.

21 MR. ENGLISH: There's no way I will figure out how
22 that happened. Obviously, you know, all I can tell you is
23 we loaded the PDF, but we will -- we're here right now.
24 We can't load it again right this second. But we assure
25 you we will figure this out, although somebody else will
26 figure it out than me.

27 THE WITNESS: I'm going to be honest, somebody
28 else other than me maybe will figure this out, because I



1 sent the print job from the same PDF, and so why once it
2 goes through the website the line disappears, I'm really
3 perplexed.

4 MR. WILSON: I bet somebody's already figured it
5 out. It's only been three minutes ago.

6 I do have a couple more. I'm sorry, your Honor.

7 THE COURT: I'm not sorry. No reason for you to
8 be sorry.

9 MR. ENGLISH: All I can say is our person on the
10 ground says what we sent -- looking at what we sent to
11 USDA has the line. So somehow between getting it to you
12 and getting it posted, which -- that's a technology issue.

13 MS. TAYLOR: Yeah. That might be an accessibility
14 issue that happened, so let us check into that. We have
15 to convert them when we get them to be able to put them on
16 our website --

17 MR. ENGLISH: So it could be a conversion --

18 MS. TAYLOR: -- and it might have been a
19 conversion --

20 MR. ENGLISH: Before we resend, we'll work
21 together to fix this.

22 MS. TAYLOR: No problem.

23 THE COURT: Off the record a second.

24 (Off-the-record.)

25 THE COURT: Back on the record.

26 BY MR. WILSON:

27 Q. So page 28.

28 A. Okay.



1 Q. That's the last page listing of MIG IDFA fluid
2 plant -- fluid survey plants.

3 A. Uh-huh.

4 Q. The Federal Order column, is that an indication of
5 if it's regulated or not or --

6 A. It's -- it's generally which -- which Federal
7 Order the plant is reporting -- reporting to. There is
8 one plant that -- Danone's plant in Mount Crawford,
9 Virginia, typically reports to 5. They are a partially
10 regulated plant. Sometimes they are fully regulated, and
11 when they are fully regulated, they are typically fully
12 regulated on 1. And so I included them at -- on 1.

13 Q. Okay. So sometimes that plant might be fully
14 regulated on 1; some -- sometimes it might be a partially
15 regulated plant. So there is -- there are partially
16 regulated plants in this listing as well?

17 A. Yep. Yes, there are.

18 Q. Could I also point out, about a third of the way
19 down, Kroger, Winchester, Kentucky, Order 5. You have
20 that listed in the butterfat protein other solids column.

21 A. Yes. So Kroger at their Winchester, Kentucky,
22 plant, that -- so they get my data gold star award. So
23 lest anyone think from the earlier conversation that --
24 that the Kroger plants were not -- were having data
25 problems, like some of them were, some of them weren't.
26 But Winchester, Kentucky, is on Order 5, which is a
27 butterfat skim order. And they actually had records for
28 their butterfat protein and other solids, and they were



1 able to show me that the butterfat in these records was a
2 match for their -- the information that they were
3 reporting on their butterfat skim report for -- that they
4 report to Order 5.

5 Because you're quite right, the other Order 5
6 plants did not have that and then -- and that's not
7 uniform across Kroger, like you can see. Like, Kroger in
8 the Murfreesboro, Tennessee, that's a butterfat only
9 available, and so -- but that plant in Winchester,
10 Kentucky, had it available.

11 And, likewise, I would also point out that Mount
12 Crawford, Mount Crawford reports to Order 5, but then when
13 they are pooled, they are pooled on Order 1, and so they
14 have all the data all the time for the components.

15 Q. Okay. So to follow that line of thought through
16 the graphs. Is the data from Mount Crawford --

17 A. Uh-huh.

18 Q. -- is it listed in the Order 1 and subsequent data
19 points for components?

20 A. Yes. So like the Order 1 -- so Mount Crawford
21 would be part of the -- would be one of the data points in
22 the Order 1 graphs, and then -- and then Mount Crawford
23 would also be in the group of graphs that are the -- all
24 the MCP together. And then the bar charts at the end with
25 the above and the below.

26 Q. And for Kroger Winchester, for the stacked bar
27 that you just mentioned, are -- is Winchester going to
28 be --



1 A. Winchester will be one of the 32 plants in the --
2 in the stacked bar chart.

3 Q. And if I --

4 A. Sorry. And that's Kroger in Winchester, Kentucky.
5 There is another Winchester in here, so it can get
6 confusing quickly.

7 Q. Yes. And that one's actually Order 1?

8 A. Yes.

9 Q. Thank you for that clarification.

10 MR. WILSON: That's all I have, your Honor.

11 CROSS-EXAMINATION

12 BY MS. TAYLOR:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. I have a few non-weedy questions, as I like to
16 call them.

17 You spoke about the difficulty that MIG members
18 face when they need to attempt to pass along monthly
19 Federal Order cost variations to their customers.

20 Do you know if MIG members utilize any risk
21 management tools to help them hedge that risk?

22 A. Some do and some do not, so -- and I expect that
23 the members will be attending subsequent later in the
24 hearing and will be speaking to that directly.

25 Q. Okay. And then one of the sentences Mr. Miltner
26 asked you about was on the end of your statement, page 7,
27 about "raising Class I prices based on components would be
28 taking more money from Class I that it cannot recover in



1 the market."

2 And if I remember your answer correctly, it had --
3 that you specified your discussion about basically milk in
4 California has to meet those fortification standards, and
5 what I took from that is if a handler in California has
6 to -- has extra milk that they can't sell in the state,
7 and maybe they try to sell it elsewhere, they are unable
8 to recoup that additional fortification cost.

9 A. Generally, yes, that's -- yeah.

10 Q. Is that phenomenon seen anywhere else outside of
11 those California handlers?

12 A. With respect to this particular issue, I -- I
13 don't think so. I mean, it's very -- it is a very
14 California specific thing.

15 Q. Okay. Would you agree or disagree that one
16 objectives of the Federal Order system is to create
17 uniform raw milk costs between similarly situated
18 handlers?

19 A. Yes. It's my view that the -- that the system is
20 designed to create uniform regulated minimum, so, like,
21 the regulated minimum at the bottom, at the floor.

22 Q. And then that would allow the handlers to compete
23 on other competitive factors in the marketplace?

24 A. Yes. Other competitive factors in the marketplace
25 above the minimum.

26 Q. Correct. Okay.

27 And so in -- I'm going to ask a question I have
28 asked of other witnesses, a similar question. So if all



1 fluid milk processors face the same regulatory change on
2 their raw milk costs, how does this -- or does this change
3 the competitive relationship between those plants when it
4 comes to that -- those raw milk costs?

5 A. When it comes to those raw milk costs in the
6 regulated minimum price, they would be similarly situated.

7 I would point out that there is a wide variety of
8 different types of processors in our industry today, so
9 you have proprietary bottlers. You have the captive
10 bottlers that are owned by a retailer. You have the
11 cooperative bottlers. There's a -- there's a wide
12 variety. And so, you know, the way those competitive
13 relationships between the different types of bottlers out
14 there, I think that there is -- that there are nuances
15 there that are probably -- that need to be considered.

16 Q. Okay. And then if I could sum up what I have
17 heard over the past few days of MIG's primary objections
18 to adoption of Proposal 1 or 2, I think the first
19 objection as I have heard it is that higher component
20 levels -- I don't know the right word to use -- but really
21 aren't of importance to Class I handlers because they sell
22 on a volume basis, not on a component basis, so getting
23 additional components above a certain level of minimum
24 components is -- is -- it doesn't really matter to them.

25 Would that be correct as one objection to those
26 proposals?

27 A. Yes, that's correct.

28 Q. And then as I have heard it, the second objection



1 would be that the levels proposed in Proposals 1 and 2 far
2 exceed the actual component levels of milk received by
3 fluid plants owned by MIG members.

4 A. That's correct.

5 Q. Okay. So I know USDA put on data into the record
6 on Federal Order component averages for pooled milk.

7 So if we had the ability to look at audited
8 component data for milk delivered specifically to fluid
9 milk handlers, would using those component averages better
10 reflect what your plants actually received rather than
11 Federal Order pooled milk averages?

12 A. That sort of an average would definitely better
13 reflect it. I also think that we should be thinking hard
14 and looking at whether it should be an average or the
15 minimum.

16 Q. Can you just expand on that a little more for the
17 record?

18 A. Sure. What I mean by that is that we have a
19 minimum regulated price system, and so rather than setting
20 those component factors at the -- at the average, and so
21 if we were doing that at the average, like, maybe we
22 should be talking about raising the 3.5 and the reference
23 price to a higher number, and because butterfat also no
24 longer averages 3.5.

25 And so, to me, it would make a lot of sense to
26 think about the minimum levels that are out there being
27 received by fluid plants.

28 And certainly one very real problem with the



1 average is the seasonal nature of all of this, and that
2 you have got this high in the winter, low in the summer
3 thing going on that is another real kind of picky issue to
4 try to, like, wrap your head around that math and those
5 pricing implications as well.

6 Q. Okay. And so taking the discussion of averages
7 one step further in your -- MIG's concern about using
8 averages. I mean, would that extend to other factors we
9 may be considering later in the hearing on pricing
10 formulas that might look at an average of some data series
11 that's put on instead of a min or a max number?

12 A. So I'm -- I think that -- I think that it's a
13 little bit different here on the -- not all the stuff
14 that's being considered here in the hearing is exactly the
15 same as the -- when it goes through the formulas. And,
16 you know, it's, frankly, much like the question that
17 Ms. Hancock asked me, and Mr. English asked Mr. Gallagher,
18 about the skim formula factors and the impact on risk
19 management with the 12-month -- with needing to have a lag
20 for risk management.

21 This part of the formula is what you're actually
22 buying. It's like the real -- it's -- it's the quantity
23 part of what's going on. Whereas other parts of the
24 formula, say, like, a manufacturing cost survey or
25 something like that, to me at least, that's a little bit
26 different. Like, that is -- that is talking -- that's --
27 that algebra that we need to go through in our end product
28 price formula system to go from the commodity price to get



1 to the milk price. And so I don't think that this whole
2 thing of minimums versus averages is a one-size-fits-all
3 sort of situation. But to be fair, there are other places
4 where I think that the minimum is more appropriate than
5 the average.

6 Q. Make me beg the question, an example of one?

7 A. So coming up in later issues, I am confident that
8 you will hear from me on my views about minimums and
9 averages. So -- we can save that for another afternoon.

10 Q. I'll save that for further conversation.

11 MS. TAYLOR: I think that's it. Thank you so
12 much.

13 THE WITNESS: You're welcome.

14 THE COURT: It's 3:22. Do we have redirect?

15 MR. ENGLISH: I do but --

16 THE COURT: How long, Mr. English, do you think?

17 MR. ENGLISH: I don't know how long, but I -- I
18 need a break.

19 THE COURT: I'm sorry, you need a break? I need a
20 break.

21 Let's come back -- let's come back at 25 of.

22 Let's come back at 3:35.

23 (Whereupon, a break was taken.)

24 THE COURT: Back on the record.

25 Mr. English, you have redirect.

26 MR. ENGLISH: It will be very short, I hope, your
27 Honor.

28 ///



1 REDIRECT EXAMINATION

2 BY MR. ENGLISH:

3 Q. So, Ms. Keefe, Mr. Miltner asked you a couple
4 questions about organic milk.

5 A. Yes.

6 Q. And I just wanted to clarify for the record
7 because I got a little confused about what was asked and
8 what was answered.9 So organic milk, by and large, is priced on
10 long-term fixed price contracts, prices significantly
11 higher than the Federal Orders, correct?12 A. Yes. Typically organic milk is bought and sold
13 at -- on a long-term fixed price contract, at prices that
14 are substantially above the Federal Order class prices,
15 and those prices are generally not tied in any way to the
16 class prices.17 Q. So if Proposal 1 -- or for that matter, any other
18 proposal in this hearing later, is considered and adopted
19 which raises the Class I price, what is the practical
20 impact for an organic handler?21 A. The practical impact for an organic handler would
22 be a change in -- for the proposals that you just asked
23 about, an increase in their pool obligation, so it changes
24 their fully landed cost of milk. So it's -- you know, the
25 cost of getting the milk off the farm, to the plant, the
26 cost of the milk itself, the regulatory costs, in this
27 case the pool obligation on the milk. It wouldn't change
28 the actual price paid for the milk itself under the fixed

1 price long-term contract.

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

3 THE COURT: Any further questions?

4 Yeah, let's go ahead and put these --

5 MR. ENGLISH: I move admission of Exhibits 111 and
6 112, your Honor.

7 THE COURT: Objections?

8 Exhibits 111 and 112 are made a part of this
9 hearing record.

10 (Thereafter, Exhibit Numbers 111 and 112 were
11 received into evidence.)

12 MR. ENGLISH: Ms. Keefe ended up with a number of
13 documents that were provided to her that I believe belong
14 to USDA, and we obviously want to make sure they get back
15 to USDA.

16 MS. TAYLOR: Yes.

17 MR. ROSENBAUM: Your Honor, Steve Rosenbaum for
18 the International Dairy Foods Association. We would like
19 to call as our next witness, Mr. Steve Galbraith.

20 THE COURT: Yes. Raise your right hand.

21 STEVE GALBRAITH,

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

24 THE COURT: Your witness, Mr. Rosenbaum.

25 MR. ROSENBAUM: Your Honor, we have distributed an
26 exhibit which is Mr. Galbraith's written testimony as IDFA
27 Exhibit 24. We would ask that it be marked as Hearing
28 Exhibit 113.



1 THE COURT: So marked for identification.

2 (Thereafter, Exhibit Number 113 was marked
3 for identification.)

4 DIRECT EXAMINATION

5 BY MR. ROSENBAUM:

6 Q. Mr. Galbraith, could you start by telling us what
7 your job title is?

8 A. I am currently vice president of procurement and
9 commodity risk management for Saputo USA. I work out of
10 the Dallas office at 2711 North Haskell.

11 Q. Okay. Before we get into your reading your
12 testimony, which has been distributed in hard copy and was
13 posted to the website as well, I understand that you have
14 a small correction to make to the table that appears
15 attached to your testimony. So why don't we go ahead and
16 do that before we have you start your testimony.

17 A. So on the Excel spreadsheet, pardon my fat
18 fingers, the boxes at the bottom should read, the averages
19 for 2022, the bottom should be 9.1391, and the one below
20 that for the total of the 19 months should be 9.1327.

21 Q. All right. So just to be clear, there's a number
22 that right now is 9.1070, and that should be changed to
23 1-point -- excuse me -- should be changed to 9.1391; is
24 that correct?

25 A. Correct.

26 Q. And then there's another figure that's 9.1212, and
27 that should be 9.1327?

28 A. Correct.



1 Q. Okay. All right. Could you please read your
2 testimony?

3 A. Sorry. My background?

4 Q. Yes, please.

5 A. Well, I'm Steve Galbraith, as I mentioned, vice
6 president of procurement and commodity risk management at
7 Saputo Cheese. I have held this position since April of
8 2013. I'm located at the Dallas office on North Haskell.

9 Saputo operates 29 plants in 13 states across the
10 United States, manufacturing and packaging a variety of
11 cheese, cultured dairy products, whey ingredients,
12 extended shelf life, and aseptic dairy products.

13 Saputo is among the top three cheese manufacturers
14 and one of the largest producers of extended shelf life
15 fluid products.

16 22 of the 29 plants in the United States process
17 milk and receive milk pooled in seven different Federal
18 Marketing Orders. Most of the milk we buy is regulated by
19 Federal Order system and extends, at least to some degree,
20 of all classes of milk.

21 We frequently source milk, cream, and condensed
22 dairy products from ten of the 11 Federal Marketing Orders
23 as well as unregulated regions of the Western United
24 States. Consequently, Saputo does have a strong interest
25 in the decision resulting from this hearing.

26 A little bit about my background. As vice
27 president of procurement and commodity risk management at
28 Saputo, my primary responsibilities involve negotiating



1 contracts for the purchase and delivery of dairy
2 commodities for the Class II manufacturing facilities --
3 (Court Reporter clarification.)

4 THE WITNESS: So my primary responsibility is in
5 negotiation of contracts and purchase and delivery of
6 dairy commodities for the Class II manufacturing
7 facilities, as well as administration of commodity risk
8 management programs for all of Saputo USA.

9 Prior to my experience at Saputo, I spent nine
10 years as VP of procurement in the White Wave, Morningstar,
11 and Corporate Divisions of Dean Foods, and I started my
12 procurement career at Nestle USA where I spent my entire
13 15-year tenure in the procurement group, working most of
14 the time on the commodity procurement and risk management
15 teams. In the last five years at Nestle I held the
16 position of VP of commodity procurement and risk
17 management for dairy, fats, and oils, and sweeteners, at
18 Nestle.

19 I also serve as president of the California
20 Creamery Operators Association.

21 I grew up in Eastern Kansas on a farm, although
22 not a dairy farm, and I graduated from Kansas State
23 University, with undergraduate degrees in animal science
24 and business.

25 So I have spent most of the last 55 years of my
26 life working in agriculture for some -- at some extent,
27 and the last 25 years heavily focused in the dairy sector.
28 That's the background.



1 So I think the position that we would have
2 regarding -- we have reviewed and support the testimony of
3 Mr. Mike Brown representing the International Dairy Foods
4 Association. And I want to -- specifically want to
5 testify on Proposals 1 and Proposals 2.

6 BY MR. ROSENBAUM:

7 Q. All right. And just so we have it on the record,
8 is it your understanding that Proposals 1 and 2 would
9 raise the current protein assumption in the milk
10 composition formula from 3.1% to 3.39%?

11 A. That is correct.

12 Q. And the other solids would be raised from 5.90% to
13 6.02%?

14 A. Correct.

15 Q. And the nonfat solids, total nonfat solids, would
16 be increased from 9% to 9.41%; is that correct?

17 A. That is correct. That is my understanding.

18 Q. With that orientation, could you please continue
19 with your testimony?

20 A. So that proposal, which would update the milk
21 component factors in the skim milk, should be rejected and
22 is opposed by Saputo for the following reasons.

23 The raw milk components delivered to the Saputo
24 plants in Federal Marketing Orders Number 6 and Number 7
25 do not support the component values submitted by the USDA
26 as part of these hearings.

27 Q. So let me just interrupt you right there, because
28 I want to get into that data.



1 Are -- are Orders 6 and 7 so-called fat/skim
2 orders?

3 A. Yes, they are.

4 Q. Okay. If we can turn then to the table that's
5 attached to your testimony, the one that you made the
6 small correction on a little bit ago, tell us -- tell us
7 what information -- it spreads on pages 4 and 5 --

8 A. Right.

9 Q. -- of this document. So tell us what it is your
10 you're reporting here.

11 A. So what I'm reporting is the tests for skim solids
12 and butterfat for -- in three of our plants, in Decatur,
13 Alabama, Murray, Kentucky, and Plant City, Florida. And I
14 went back and asked the QA managers at each plant to pull
15 the records on the loads of milk that came in from January
16 of 2022 through July of '23, and summarized the solids
17 nonfat component as well as the butterfat component,
18 summarized that on this sheet, and came up with averages
19 across Florida, Alabama, and Kentucky.

20 Q. Okay. So these are -- the data here runs, I
21 believe, in all -- in all cases, from January through
22 December of 2022, and then also from January through July
23 of 2023; is that correct?

24 A. That is correct.

25 Q. So this is basically the most recent 18 months of
26 data that's available?

27 A. Correct. 19 months, correct.

28 Q. 19 months. I stand corrected. Thank you.



1 And if we look in the two boxes at the bottom of
2 page 4, is the top box the data for calendar year 2022?

3 A. Correct.

4 Q. And is the bottom box the data for the first seven
5 months of 2023?

6 A. No, it is an average of the entire 19 months.

7 Q. I stand corrected. Thank you.

8 And so what was the total of skim solids in 2022?

9 A. The average skim solids as a percent of raw milk
10 was 8.78%, and as a percent of skim milk was 9.1391.

11 Q. All right. And just to lay this, if you will,
12 upside, the Proposal 1 for these three plants combined for
13 2022, the average total skim solids was 9.1391%, correct?

14 A. As a percent of skim, correct.

15 Q. And if Proposal 1 were to be adopted, am I correct
16 in understanding that Saputo would be required to pay for
17 that milk as if it had total skim solids of 9.4%?

18 A. Correct. In those three plants.

19 Q. Okay. And then if we look at the bottom box,
20 which as you have explained reflects averages for the
21 entire 19 months covered by your tables --

22 A. Right.

23 Q. -- for those three plants, your total skim solids
24 on a skim milk basis is 9.1327%, correct?

25 A. Correct.

26 Q. And, once again, if Proposal 1 were to be adopted,
27 Saputo would be required to pay for that milk as if it
28 contained 9.4% nonfat solids; is that correct?



1 A. Correct. That's my understanding.

2 Q. And is that something you think is appropriate?

3 A. No. And the reason it is not appropriate is --
4 and the reason we measure these solids is because we
5 formulate certain levels of solids nonfat in our finished
6 product. So what we have to do then is bring the fluid
7 milk in, we know what the solids are, and then we fortify
8 it with either condensed, skim, or with powder. So we
9 would in essence have to pay for the solids twice.

10 Q. And you would pay for the solids once because you
11 would be required to account to the pool as if the milk
12 had 9.4% nonfat solids, correct?

13 A. Correct.

14 Q. And then you would actually have to go out to the
15 marketplace and buy solids to make that up?

16 A. Correct.

17 Q. And that's what you mean by paying for it twice?

18 A. We would have to pay the delta between the 9.1 and
19 the 9.4. That gap, we would have to backfill and pay for
20 it again.

21 Q. Okay. Could you turn to page 2 -- I know I
22 interrupted you when you were reading, but I thought it
23 was important to -- to go ahead and look at the attachment
24 the first time you referred to it. I think it was the --
25 I think we've sort of gotten through the first bullet
26 point under number one. So if you could continue on,
27 please.

28 A. So on many of the products that are classified as



1 Class II necessitate minimum levels of nonfat solids to
2 meet the standard of identity. An example of that would
3 be ice cream mix. And to meet these standards of
4 identity, as I mentioned, we would have to go out and
5 purchase either condensed skim or we'd use powdered milk
6 to make up for that difference in the formulas to meet
7 those minimum standard requirements.

8 And so in order -- and basically receive raw milk
9 that has the pricing formula built in, which is -- does
10 not adequately reflect the component values. It's simply
11 paying for milk solids that do not exist. I call those
12 ghost solids. That's my term. It's an unofficial term
13 within the industry.

14 And the subsequent purchase of condensed skim to
15 meet product requirements that are replacing those ghost
16 solids is simply paying for the skim solids twice. And
17 what that does is, it means that those plants in -- in
18 Kentucky and Alabama and Florida now have a competitive
19 disadvantage because they are paying for the solids twice
20 as opposed to solids that are in the component priced
21 orders.

22 Q. Because of the component price order, you actually
23 only pay for how much solids are really there?

24 A. That is correct.

25 Q. Okay. If you could continue, please.

26 A. So the products that we fortify in our plants are
27 ice cream mix, frappe mix, aerosol whipped topping, and we
28 do do some specialty milks for California in our Murray,



1 Kentucky, facility that we have to standardize to
2 California standards, and so we end up having to pay for
3 that twice as well.

4 So those are the four big categories that we --
5 that we formulate skim solids for and put extra solids in,
6 and the delta between the 9.1 and the 9.4 was just that
7 gap I'm talking about that we would have to double pay
8 for.

9 So we would not support Proposal 1, and for the
10 same reasons, we would not support Proposal 2.

11 Q. And I think on the very last page you indicate you
12 would support these becoming multiple component prices?

13 A. Yes. Absolutely.

14 Q. So meaning you are happy to pay for whatever
15 solids are actually there, you just don't want to pay for
16 what's not there?

17 A. Right. And paying for the solids that are there
18 drives productivity and efficiency, and it promotes the
19 farm and the plant operations. So I would definitely
20 support the component pricing.

21 MR. ROSENBAUM: Your Honor, the witness is
22 available for cross-examination.

23 THE COURT: Okay.

24 Who has cross?

25 CROSS-EXAMINATION

26 BY MR. MILTNER:

27 Q. Good afternoon, Mr. Galbraith.

28 A. Good afternoon.



1 Q. My name is Ryan Miltner. I represent Select Milk
2 Producers.

3 I don't have very many questions, but I do have
4 one. In your role as the vice president of procurement,
5 you say that your responsibilities involve negotiating
6 contracts for the purchase and delivery of dairy
7 commodities.

8 Does that include raw milk contracts to supply
9 your plants?

10 A. No. The raw milk contracts are purchased in
11 another group that buys cheese, so that would be a
12 different group. It would be the cream, condensed,
13 condensed whey, condensed buttermilk, and commodity risk
14 management.

15 Q. Are you familiar with the raw milk supply
16 agreements for Saputo?

17 A. Somewhat, yes.

18 Q. Do you know if those contracts include
19 specifications for a minimum level of butterfat in the
20 milk that's delivered?

21 A. No, I -- I do not believe that -- I don't believe
22 they do.

23 Q. Do you -- do you know if they have terms that
24 include a minimum level of protein or other milk solids?

25 A. No. They do not. I do not believe they do.

26 Q. Okay. Do you -- do you know why they do not
27 include those terms?

28 A. We don't pay for -- we don't need the protein in



1 the formulation. We -- in a Class II product, the protein
2 is not something that we add the value to the customer
3 within a Class II product, so we don't pay additional
4 premiums for the protein. We do in the cheese but not in
5 the Class II.

6 Q. Explain, if you could -- I'm looking at page 2 of
7 your statement, where you list several products fortified
8 or standardized with solids nonfat.

9 A. Yes.

10 Q. Could you explain the relevance of that to the
11 issue with Proposal 1 and 2 if you could?

12 A. So when we bring -- when milk comes into our
13 facility and we pay the Class -- the proposed Class II
14 9.41, and we are receiving less than that, then we have --
15 and we have to fortify on top of that, then what happens
16 is we end up double paying for that. We have to add skim
17 solids back to those products to meet standard of
18 identities and/or performance issues that we have within
19 those products, and in order to do that, we have -- we do
20 buy other solids and fortify that.

21 Q. And are you suggesting that Proposal 1 will cause
22 that to occur more often or increase the cost to Saputo,
23 either one of those?

24 A. It will increase the cost.

25 Q. Would that cost be mitigated if you required your
26 raw milk to have a certain level of other solids in it?

27 A. Yes, it would be.

28 Q. But Saputo you say does not do that today?



1 A. Not today.

2 Q. There's nothing that prevents them from doing
3 that, though, is there?

4 A. No.

5 MR. MILTNER: Thank you.

6 THE COURT: Other than AMS, does anyone else have
7 cross?

8 Seeing none, AMS, do you have cross for this
9 witness?

10 MR. WILSON: Yes, your Honor.

11 CROSS-EXAMINATION

12 BY MR. WILSON:

13 Q. Todd Wilson, Dairy Programs.

14 Good morning -- or good afternoon --

15 A. It's good evening.

16 Q. -- Mr. Galbraith. It seems like I want to be back
17 in the morning, maybe. I don't know why. Maybe tomorrow
18 morning.

19 So as you are aware -- maybe, maybe not -- USDA
20 identifies -- or Small Business Administration identifies
21 companies for determination of small business, that is --
22 how many employees does Saputo have, estimated?

23 A. Twenty- -- worldwide?

24 Q. Yes.

25 A. 20,000.

26 Q. Thank you.

27 The information you have provided indicates that
28 your -- on page 2, there's a couple of terms, and I just



1 want to better understand the testimony. There's a group
2 of bullet points under products fortified/standardized
3 with solids nonfat.

4 A. Yes.

5 Q. What does LFM indicate?

6 A. Lactose-free milk.

7 Q. Thank you.

8 Under number two right below that you indicate
9 NMPF Proposal 2. Are you referring to NMPF Proposal 1 or
10 NAJ Proposal 2 or possibly something different?

11 A. I'm referring to Proposal 2, which is the annual
12 milk component factors update annually.

13 Q. Okay. Thank you.

14 A. That's what I'm referring to.

15 Q. On a previous witness we heard from, indicated
16 plants in a USDA exhibit -- I don't remember what number
17 it is, but it's a long list of plant names, and whether or
18 not they are regulated and non-regulated plants.

19 You have identified two plants that you have and
20 given information on, Decatur, Alabama, and Murray,
21 Kentucky, and Plant City, Florida.

22 A. Yes.

23 Q. Can you identify if -- if any of those are fully
24 regulated plants or not?

25 A. They are partially-regulated plants.

26 Q. Partially-regulated plants. Okay.

27 Is the Sulphur Springs plant partially regulated?

28 A. It is fully regulated.



1 Q. It's fully regulated. It wasn't highlighted in a
2 different color, and I missed that.

3 A. I just use that as a reference point since it sits
4 in East Texas close to Louisiana. It's still in
5 Order 126.

6 Q. Yes. Thank you.

7 We've heard from a few different witnesses about
8 risk management. I noticed in your background information
9 that was one of the -- one of the things that is listed as
10 your experience with.

11 Can you tell us if Saputo utilizes risk management
12 tools in their -- in their risk assessment?

13 A. Yes, we do.

14 Q. Thank you.

15 Can you -- when you say "yes," can you expand a
16 little bit on what type of products you might use? We
17 have had several testimonies -- witnesses' testimony on
18 CME or LGM Dairy.

19 A. We use both OTC, over-the-counter instruments, as
20 well as exchange traded financial instruments on the CME,
21 depending on what commodity and what product and what
22 we're doing.

23 Q. Very good. Thank you very much.

24 MR. WILSON: That's all, your Honor.

25 THE COURT: Ms. Taylor, do you something?

26 MS. TAYLOR: No, that's it. Thank you.

27 THE COURT: Okay. Is that it for -- no one opened
28 the door, I don't think?



1 Mr. Rosenbaum.

2 MR. ROSENBAUM: I just have a follow-up question
3 or two regarding the questions you got from Mr. Miltner.

4 REDIRECT EXAMINATION

5 BY MR. ROSENBAUM:

6 Q. You were asked whether you could contractually
7 demand that your dairy farmers provide higher nonfat
8 solids milk, correct?

9 A. We can, yes.

10 Q. He asked that --

11 A. He asked that question, yes.

12 Q. And based upon who is supplying you with milk now,
13 are they capable of doing that at this point in time?

14 A. We would have to have a conversation with them and
15 see if they are. We haven't had that conversation, but we
16 could have that.

17 Q. But based upon what they are supplying you so far,
18 they're a considerable distance below 9.4%; is that right?

19 A. The evidence would indicate that they are not able
20 to ship that.

21 MR. ROSENBAUM: Thank you very much.

22 THE COURT: Well, let's offer Exhibit 113 for
23 identification into evidence, if that's fine with you,
24 Mr. Rosenbaum.

25 MR. ROSENBAUM: So moved.

26 THE COURT: Seeing no objection, it is in the
27 record. Thank you.

28 (Thereafter, Exhibit Number 113 was received



1 into evidence.)

2 THE COURT: You may step down.

3 THE WITNESS: Thank you.

4 THE COURT: Mr. Galbraith, thank you for coming.

5 MR. ENGLISH: I believe that we are sort of moving
6 on to Issue 2. I just want to say that -- I know this --
7 I think this has been discussed before, but I want to make
8 sure the record is clear. There will be -- unlike
9 yesterday's witnesses, who hopefully will have follow-up
10 from HP Hood and Shehadey -- there will be other MIG
11 members who will testify later in the hearing, and their
12 testimony will touch on Issue 1. So I just want to make
13 sure -- you know, we're moving on to Issue 2, but I think
14 we have talked all along about the fact that somebody may
15 end up talking about an issue at another time. So I just
16 want to make sure that's clear for the record.

17 THE COURT: Anyone else have anything they want to
18 say about that?

19 I guess they'll object if they have a problem
20 then, but it sounds like general agreement within the room
21 since no one -- no one objected.

22 Okay. Are we -- are we going to keep going today
23 or -- I thought so.

24 Ms. Hancock.

25 THE COURT: Raise your right hand.

26 PETER VITALIANO,

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



1 THE COURT: Welcome back.

2 THE WITNESS: Thank you, your Honor.

3 MS. HANCOCK: I don't know if this is the first
4 time we're putting on a witness previously -- or that had
5 previously testified. Do you want us to do the same,
6 address, and name for the record?

7 THE COURT: Anyone see a need for that? I don't.
8 It's all in the record.

9 MS. HANCOCK: Okay.

10 THE COURT: If you wanted to remind us -- I know
11 we like to say things out loud rather than just do it on
12 the paper. But I'm not going to interrupt you if you
13 wanted to remind us of why this witness is qualified to
14 testify. But I'm sure you asked before whether he was
15 qualified to come, you can do that. But when you asked if
16 he was qualified to testify as an expert, did you cover
17 all the topics do you think?

18 MS. HANCOCK: Okay. Thank you.

19 THE COURT: Did you? I mean I may have already
20 found that, so --

21 MS. HANCOCK: Yeah.

22 DIRECT EXAMINATION

23 BY MS. HANCOCK:

24 Q. Okay. Good afternoon, Dr. Vitaliano. This is
25 your second round at testifying at this hearing; is that
26 right?

27 A. That is correct.

28 Q. And this testimony that you are offering today,



1 what is the topic on which you will be talking?

2 A. My testimony today is in support of Proposal 3,
3 one of five proposals submitted by the National Milk
4 Producers Federation, hereafter known as NMPF.

5 Q. Okay. And just so our record is clear, you
6 previously in this hearing have been qualified as an
7 expert. I'll just note that here for this portion of the
8 transcript. So if there's any question, it at least
9 creates an anchor point to refer back to day one of
10 testimony.

11 A. Very good.

12 Q. And did you prepare a statement on behalf of your
13 testimony in support of barrel elimination?

14 A. I have.

15 Q. And is that what's been identified as Exhibit
16 National -- or excuse me -- Exhibit NMPF-6?

17 A. It has.

18 MS. HANCOCK: Your Honor, I'd ask that this be
19 marked as the next exhibit for identification purposes.

20 THE COURT: So marked.

21 MS. HANCOCK: I don't recall what the number is.

22 THE COURT: I'm sorry, 114.

23 (Thereafter, Exhibit Number 114 was marked
24 for identification.)

25 MS. HANCOCK: 114. Thank you.

26 BY MS. HANCOCK:

27 Q. Dr. Vitaliano, would you mind presenting your
28 testimony as outlined in Exhibit 114?



1 A. Yes. I am Peter Vitaliano, vice president of
2 economic policy and market research at National Milk
3 Producers Federation. This testimony is presented in
4 support of Proposal 3, one of five proposals submitted by
5 National Milk Producers Federation.

6 I am going to summarize parts of my testimony.
7 Those are the parts that are identical to the -- my
8 testimony a week ago, and it was just one week ago,
9 although it may seem longer to some of us.

10 The parts that I want to summarize concern
11 description of the National Milk Producers Federation; a
12 background of Federal Order Reform emphasizing the very
13 important transition in Federal Order Reform from the
14 direct survey of milk prices to the indirect price
15 discovery of milk prices through the end product price
16 markets, through a combination of formulas that translate
17 those product prices into a raw milk price; the importance
18 of those formulas to mirror closely the structure of the
19 U.S. dairy industry that guides that transformation; the
20 fact that the product price formulas adopted in Federal
21 Order Reform contain mostly fixed factors that have
22 largely not changed since the time of Federal Order
23 Reform, contrasted to the relatively rapid structural
24 evolution of the U.S. dairy industry that affects those
25 factors; and the corresponding need to update those
26 factors in a systematic fashion; describe the intensive
27 and lengthy process that the National Milk Producers
28 Federation has undertaken for the purpose of that



1 modernization; and ending in the five proposals that we
2 have brought to this hearing, as well as two other
3 proposals, two other recommendations whose -- we are
4 seeking to achieve through other forums.

5 Also, included was a brief description of the
6 economic and market impacts of our package of proposals,
7 impacts on producers, processors, consumers, and small
8 businesses. I will not repeat those -- those sections.
9 They are identical in my statement Exhibit NMPF-6 as read
10 into the record a week ago and as contained in Exhibit
11 NMPF-6, which is available on the website.

12 This testimony -- this portion of my testimony is
13 in support of Proposal 3 concerning surveyed commodity
14 products. Proposal 3 can be described as remove the U.S.
15 average survey price for 500-pound barrel cheddar cheese
16 from the computation of the protein component price.

17 NMPF requests the Secretary to amend
18 7 CFR 1000.50(n) applicable to all Federal Milk Marketing
19 Orders as specified at the conclusion of this testimony,
20 which would remove barrel cheddar cheese -- or cheddar
21 cheese packaged in 500-pound barrels from the cheese
22 reference prices specified in the Federal Order protein
23 component price formula.

24 Disorder caused by the inclusion of 500-pound
25 barrel cheddar cheese prices in the current computation of
26 the protein price:

27 The Class III milk price in Federal Orders is
28 derived from calculations of component prices for protein,



1 butterfat, and other solids. The protein component price
2 formula references two survey price series for cheddar
3 cheese submitted by manufacturers through the Dairy
4 Product Mandatory Reporting Program and reported in the
5 weekly National Dairy Product Sales Report, or NDPSR.
6 These are the 40-pound block yellow cheddar cheese price
7 and the 500-pound barrel cheddar cheese price.

8 The total cheese price used in the protein price
9 calculation is the weighted average of the block and the
10 moisture-adjusted barrel price plus \$0.03 per pound
11 weighted by sales volumes reported in the survey. The
12 respective reported sales volumes of block and barrel
13 cheese are roughly equal on average but with blocks
14 ranging from 37% to 60% of total reported weekly volumes
15 from 2017 through this past July.

16 The Federal Order Reform final decision explained
17 the current cheese price computation as follows, and I'm
18 quoting, with a few explanatory words added in parenthesis
19 in the written statement.

20 "The NASS cheese survey price" -- at that time it
21 was NASS that was surveying the prices -- "will be
22 determined by adding \$0.03 to the moisture-adjusted barrel
23 price and then computing a weighted average price" --
24 volume weighted average price -- "using the block cheese
25 price and the adjusted barrel price... Including both
26 block and barrel cheese in the price computation increases
27 the sample size by about 150%, giving a better
28 representation of the cheese market.



1 "Since the Make Allowance in the protein component
2 price formula is for block cheese, the barrel price" --
3 "the barrel cheese price must be adjusted to account for
4 the difference in cost for making block versus barrel
5 cheese. The \$0.03 that is added to the barrel cheese
6 price is" -- emphasis here -- "generally considered to be
7 the industry cost" -- "standard cost difference between
8 processing barrel cheese and processing block cheese," end
9 of quote.

10 This method of computing the cheese price for the
11 protein component formula worked reasonably well as long
12 as the difference in the respective market prices of
13 blocks and the moisture-adjusted barrel price remained
14 close to these assumed \$0.03 per pound processing cost
15 difference.

16 From 2000 to 2016, the spread between the NDPSR
17 block and barrel cheese prices annually remained within a
18 tight range of a few cents per pound. Subsequently,
19 however, the correlation between the block and barrel
20 prices deteriorated significantly starting around 2017.

21 The weighted average spread of block over barrel
22 prices in the weekly NDPSR during January 2017 through
23 July 2023 was \$0.12 per pound, with a much wider and more
24 volatile range of between minus 30 and a half cents per
25 pound to 72.7 cents per pound. The highest monthly block
26 barrel spread during that period, monthly spread, was
27 \$0.69 per pound and the lowest was minus \$0.29 per pound,
28 slightly -- slightly tighter range on the monthly basis



1 compared to the weekly basis. This change in the weekly
2 price relationship is shown clearly in Figure 1.

3 And I apologize that my computer is set up to do
4 two monitors, and so I can't -- I can't do the display
5 setting on PowerPoint because it's on the other monitor
6 that here is a phantom monitor.

7 But you will see the pattern. Again, this goes
8 from the beginning of 2017 through this past July, with
9 the weekly NDPSR reported price difference between, again,
10 block prices and the moisture-adjusted barrel cheese price
11 without the \$0.03 in it.

12 The dotted line represents the \$0.03 standard.
13 The solid blue line represents the \$0.12 average during
14 that period, four times the current regulatory \$0.03
15 standard, with a considerable wide variation, which, by
16 any measure, an economist would describe as volatility in
17 that barrel block spread.

18 The CME block cheddar cheese price is used as a
19 pricing index for most cheese produced in the United
20 States, cheddar 40-pound blocks, 640-pound blocks,
21 mozzarella, other American type cheese, and other types of
22 cheese, including cream cheese and Hispanic cheeses,
23 typically use the 40-pound block price as an index for
24 pricing purposes.

25 Approximately 90% of natural cheese produced in
26 the United States is sold using the CME 40-pound block
27 cheese price as an index. The CME barrel cheese price is
28 used as an index to price barrel cheese and processed



1 cheese products, but it's not often used to price other
2 natural cheeses.

3 Working with its cheese-producing member
4 cooperatives and their expertise, NMPF estimates that the
5 CME barrel cheese price is used to price only about 9% of
6 total domestically-produced natural cheeses during
7 calendar year 2022, including barrels themselves.

8 The volatile block barrel spread over the past
9 five years has negatively impacted both dairy producers
10 and processors. Historically, using both block and barrel
11 cheese prices in the Class III pricing formula effectively
12 increased the volume of cheddar cheese reported in the
13 NDPSR. As long as the block barrel spread was relatively
14 stable and consistent at around \$0.03 per pound, including
15 both block and parallel prices, did not result in
16 unpredictable and disruptive fluctuations in the Class III
17 price.

18 Since 2017, however, the significantly wider and
19 increasingly volatile block barrel spread has caused
20 instability in the cheese market. It has reduced dairy --
21 revenue for dairy producers because barrels, at
22 approximately half of the price survey volume, and an
23 average price roughly four times lower than current
24 regulatory standard \$0.03 per pound, overrepresented the
25 roughly 10% of total U.S. cheese production that relies on
26 the CME barrel market as a price index, which accordingly
27 results in a Class III price that undervalues milk to
28 produce cheese. It undervalues that milk to all producers



1 paid under Federal Milk Marketing Orders.

2 The proposed solution in Proposal 3 is to remove
3 the survey price for 500-pound barrel cheese from the
4 computation of the protein price. From the Federal Order
5 Reform final decision quoted above it is clear that the
6 intent of using barrel cheese prices to determine -- to
7 partially determine the protein price was to bolster the
8 volume of surveyed 40-pound block cheddar cheese. The
9 purpose of determining the requisite price used -- cheese
10 price used in the protein component formula. It did so by
11 adjusting the barrel cheese price to resemble a block
12 cheese price.

13 But what worked reasonably well for a decade and a
14 half or so subsequently became a disorderly marketing
15 condition when the market dynamics for barrel cheese
16 deviated significantly from those for blocks. And the
17 spread between the block and barrel prices widened and
18 became unstable. Block and barrel cheddar cheese are no
19 longer essentially the same product, simply in different
20 packaging, as the current regulations effectively assume.

21 This widening and increasing volatility of the two
22 prices no longer results in barrel cheese prices
23 resembling block prices. The increase in the spread has
24 lowered Class III prices, lowered producer prices, and
25 created disorderly marketing conditions.

26 Eliminating the barrel cheese -- cheddar cheese
27 barrel price series from the Class III price calculation
28 will result in Federal Order pool values that more



1 accurately reflect the value of milk used to produce
2 cheese. It will reduce financial uncertainty for
3 procedures and processors by ensuring that the cheese
4 price in the protein component formula represents the
5 single basic commodity cheddar cheese product that prices
6 almost all other cheese rather than what have effectively
7 become two different products.

8 Price risk management opportunities for processors
9 will be enhanced because there are risk management tools
10 built around block cheese that do not exist for barrels.
11 Existing risk management tools, including the Class III
12 price and the cheese futures and options, will become more
13 effective means to price cheese for consumers and to
14 manage input price risk.

15 Eliminating the cheddar cheese barrel price series
16 from the Class III price calculation will create more
17 orderly marketing in Federal Orders for all of these
18 reasons.

19 Calculated, again, just arithmetically, not an
20 economic analysis, but simply an arithmetic calculation,
21 eliminating the cheddar cheese barrel price series from
22 the Class III price calculation would have increased the
23 cheddar cheese price used in the Federal Order protein
24 component calculation by 4.31 cents per pound, which would
25 have increased the Class III price by \$0.41 per
26 hundredweight using average product prices for 2017
27 through 2022.

28 During 2019 through July 2023, the NDPSR weekly



1 survey volumes represented 33% of the total U.S. natural
2 cheese production, 30% of U.S. dry whey production, and 9%
3 of U.S. butter production. It is estimated that reported
4 volumes of 40-pound block cheese represents about 16% of
5 total U.S. natural cheese production.

6 Limiting barrel cheese from the protein component
7 price formula would still provide adequate value of
8 cheddar cheese for price discovery purposes in determining
9 a component price for protein in the context of the
10 corresponding percentages for butter and dry whey. Doing
11 so would also bring the survey cheese price into
12 conformity for those for butter, nonfat dry milk, and dry
13 whey, in their respective Federal Order component price
14 formulas, namely in their use in a truly single commodity
15 product, with a single price, determined by a single spot
16 market.

17 That consistently effective process -- practice
18 for the other three products in their respective component
19 price formulas, together with the unfortunate experience
20 of deviating from that practice for cheese, lends powerful
21 support for the adoption of Proposal 3.

22 This testimony provides an overview of our
23 justification for adoption of Proposal 3. More detailed
24 testimony will follow that supports all or key portions of
25 Proposal 3, including testimony provided by Darin Hanson,
26 representing NMPF member cooperative Foremost Farms USA,
27 other members of the NMPF task force that developed our
28 Federal Order modernization proposals, and producers who



1 are members of NMPF member dairy cooperatives.

2 Finally, the regulatory language we propose -- and
3 I have written our regulatory language to reflect the
4 total package of five NMPF proposals.

5 So our proposal for modification pursuant to
6 Proposal 3 of Federal Order regulation CFR -- 7 CFR
7 1000.50 (n), protein price, the protein price per pound
8 rounded to the nearest one-hundredth cent shall be
9 computed as follows: Strike all subsequent parts of this
10 paragraph and insert in lieu thereof:

11 (1): Subtract the cheese Make Allowance from the
12 U.S. average AMS survey price for 40-pound block cheese
13 reported by the Department for the month, and multiply the
14 result by 1.383;

15 (2): Add the amount computed pursuant to
16 paragraph (n)(1) of this section an amount computed as
17 follows:

18 (i): Subtract the cheese Make Allowance from the
19 U.S. average AMS survey price for 40-pound block cheese
20 reported by the Department for the month, and multiply the
21 result by 1.572; and

22 (ii): Subtract 0.9 times the butterfat price
23 computed pursuant to paragraph one of this section from
24 the amount computed pursuant to paragraph (n)(2)(i) of
25 this section; and

26 (iii): Multiply the amount computed pursuant to
27 paragraph (n)(2)(ii) of this section by 1.17.

28 This concludes my testimony.



1 Q. Thank you, Dr. Vitaliano.

2 MS. HANCOCK: Your Honor, we would submit him for
3 cross-examination.

4 THE COURT: Yes.

5 Who has cross for this witness aside from AMS?

6 Mr. Rosenbaum.

7 CROSS-EXAMINATION

8 BY MR. ROSENBAUM:

9 Q. Good afternoon, Dr. Vitaliano. Steve Rosenbaum
10 again for the International --

11 A. Good afternoon, Mr. Rosenbaum.

12 Q. -- International Dairy Foods Association.

13 So you are aware that the question whether or not
14 the barrels should be included in the cheese price survey
15 was a question that was addressed during the 2000 order
16 reform?

17 A. Yes, it was -- I quoted the Department's
18 conclusion, explanation, and justification for making the
19 current decision, yes.

20 Q. And are you -- you are aware that at that time,
21 your organization, National Milk Producers Federation,
22 opposed the inclusion of barrels, but the USDA concluded
23 otherwise?

24 A. Yes. My organization did oppose the inclusion of
25 barrels as we are doing now, and we -- that was -- the
26 Department did not agree with it.

27 Q. And are you -- you recall, of course, then there
28 were subsequent hearings in 2006, I think 2007 as well,



1 resulting in a decision in 2008 that made a variety of
2 changes to the Federal Order system, correct?

3 A. Yes. But I'm mostly familiar with the changes
4 affecting the Make Allowances in those proceedings.

5 Q. Are you -- are you -- are you aware that at that
6 time, once again, there was a proposal by not National
7 Milk but co-op organizations to remove the barrel cheese
8 from the survey?

9 A. I have heard that. I have not read that
10 particular decision.

11 Q. I think National Milk sat out those hearings. Am
12 I right about that?

13 A. I think so, because I do not recall that we
14 participated in those hearings. And -- and I don't recall
15 that we took a position on Make Allowances at that time.
16 That was -- my impression is that that was the dominant
17 topic of those hearings.

18 Q. Okay. Do you recall that USDA, once again,
19 addressed the issue whether or not blocks should be
20 included in the survey?

21 A. They must have because blocks are still included
22 in the survey.

23 Q. Well, that they -- but it's not just that it is a
24 carryover, they explicitly reexamined the question and
25 determined that the decision they had made in 2000 was
26 still correct?

27 A. Yes. But that -- given that -- that does not
28 prevent us from recommending that and bringing Proposal 3



1 to this proceeding.

2 Q. And --

3 A. And I will point out to you that the Federal Order
4 Reform discussions were held prior to 2000. The more
5 recent proceeding that you reference was I think concluded
6 in 2008. And you will hear me -- you will recall that I
7 said many times in my written statement that -- that I
8 just testified to, that the problems with including barrel
9 cheese, even though National Milk recommended not
10 including it way back in Federal Order Reform, the problem
11 did not become acute and represent disorderly marketing
12 until 2017.

13 So I would propose that my testimony primarily
14 talks about the current dairy market, particularly the
15 current barrel and cheese and block cheese market. Going
16 back, again, to our overarching statement of purpose for
17 what we're -- you know, our entire package of Federal
18 Order modernization proposals was to recognize the changes
19 that have occurred in the dynamic dairy market, in this
20 case changes which take have taken place only since 2017,
21 as being particularly pertinent to what we're testifying
22 to at this hearing, and not necessarily to basically going
23 back over the past, other than to create -- basically
24 recreate the conditions that led to the decisions in the
25 past that we still have today.

26 Q. Well, let's talk about some of the similarities or
27 differences.

28 What -- what percentage of surveyed cheese today



1 is -- is block versus barrel?

2 A. In the survey?

3 Q. Yes.

4 A. It's a little -- it's a little more than 50%. I
5 think it is getting up to about 54% of the reported
6 volumes are barrels, and a little -- and the one -- you
7 know, 100% minus that 54, 55. So I track those prices
8 weekly, but I don't -- I don't memorize the numbers. But
9 it's around 54, 55, 45.

10 Q. Okay. So if we look at the 2008 decision where
11 USDA said, quote, "Record evidence reveals that barrel
12 production in the NASS survey is often in excess of 50% of
13 the total cheese volume surveyed," end quote, that remains
14 true today, correct?

15 A. That remains true today, yes. Slightly more than
16 the 50%.

17 Q. Okay. And --

18 A. And that -- and that is exactly part of the reason
19 for our proposal, that that 54, 55% is vastly
20 overweighted -- vastly overweights the importance of
21 barrel cheese in the NDPSR weekly cheese price
22 calculation, and therefore the monthly price calculation,
23 compared to the volume of cheese that is actually priced
24 with reference to the block cheese price versus the barrel
25 cheese price.

26 So, yes, indeed, I fully agree with you, that that
27 50-some percent barrel cheese in the -- in the survey is
28 very pertinent to Proposal 3 and our support therefor.



1 Q. Now, you say -- you make reference on page 4 of
2 your testimony to -- to this \$0.03 difference, correct?

3 A. That's correct.

4 Q. But correct me if I'm wrong, but I read that
5 language -- this is on page 4 of your testimony -- to be
6 entirely addressing the understanding of USDA as to the
7 difference in the cost of making the products, not
8 difference in the price at which the products are sold. I
9 mean, just look at language you quote.

10 Is that a fair characterization?

11 A. No, I don't believe it is. Because even though
12 they use that language, cost difference, and adjusting the
13 Make Allowance, the entire context of that quote from the
14 Federal Order -- from the Federal Order Reform decision
15 implicitly assumes that barrel cheese is the same product
16 as block cheese, only in a slightly different package,
17 just like say the butter specification in the survey
18 specifies metric and English units of package labeling.

19 The point I'm making is that the assumption for
20 the Federal Order Reform decision to include barrels
21 implies -- basically is found -- is built upon the
22 assumption it's the same product in a different package;
23 therefore, the only standardization necessary to bring
24 barrel prices into a reasonable mimicking of block prices
25 is the processing costs.

26 Q. Well --

27 A. That assumption no longer applies. These are two
28 different products that behave in two different ways. So



1 in a sense, the standard for judging the appropriateness
2 of including barrel cheese as a adjunct to -- as a
3 different type of block cheese -- which is also very
4 apparent in the language that you have just quoted, that
5 paragraph -- that no longer applies. So it is perfectly
6 pertinent to -- to do the analysis of the different
7 marketing prices, as I have laid out in my testimony.

8 Q. All right. So let me read you the words, and you
9 tell me where they are talking about price as opposed to
10 cost.

11 Quote: "The barrel cheese price must be adjusted
12 to account for the difference in cost of making block
13 versus barrel cheese. The \$0.03 that is added to the
14 barrel cheese price is generally considered to be the
15 industry standard cost difference between processing
16 barrel cheese and processing block cheese."

17 It is all cost --

18 A. I interpret the use of the word "cost" in that
19 paragraph to be totally in the context of the assumption
20 in that paragraph that barrel cheese is block cheese in a
21 different container. And the only -- the only thing that
22 needs to be adjusted for the barrel cheese to compare it
23 and treat it like block cheese is to adjust the moisture
24 and adjust the cost, which is my understanding was
25 basically just the -- the packaging cost.

26 And I am testifying to the extent that that
27 assumption that barrel cheese is block cheese in a
28 different package no longer applies. So the -- going back



1 to the 2000 -- 1999 language that uses the word "cost"
2 is -- may have been appropriate at that time. It is no
3 longer appropriate. And that is part of our position on
4 Proposal 3.

5 Q. Well, if the two products had been absolutely
6 identical, wouldn't -- what would be the point of even
7 having included barrels --

8 A. To increase -- I'll read that. It's right in that
9 paragraph, sir.

10 Q. All right.

11 A. "Including both block and barrel cheese in the
12 price computation includes" -- "increases the sample size
13 by about 150%."

14 You would always want to include -- increase the
15 sample size if you indeed had consistent products.

16 Q. Aren't they --

17 A. It would make it -- it would make sense to do that
18 if barrel cheese was effectively block cheese in a
19 different package. But that's no longer the case.

20 Q. Haven't they always had different uses?

21 A. They always have.

22 Q. Okay. I mean, let me read you what CME --

23 A. But --

24 Q. Let me just finish.

25 Let me read you what the CME block cheese futures
26 says, quote, "Although" -- and I'm going to ask you if you
27 agree -- "Although blocks and barrels are both cheddar
28 cheese products, their end uses are diverse. Typically,



1 manufacturers use block cheddar cheese for chunks, loaves,
2 shreds, and snack-sized natural cheese, while barrels are
3 often consumed in the processed cheese category."

4 Is that accurate?

5 A. Well, yes. What you just read makes -- further
6 supports the point that we are making in supporting
7 Proposal 3. The block and barrel cheese are different
8 products, different end uses, and now increasingly very
9 different market dynamics.

10 Q. Well, they -- they both represent market dynamics
11 in the cheese market, correct?

12 A. They represent different market dynamics in the
13 broader cheese market. We are talking -- in terms of
14 Proposal 3, we are focusing on the dynamics of the block
15 cheese market. And the Federal Order Reform decision
16 effectively affirms that, that we're basically looking at
17 considering barrels -- that decision considered barrel
18 cheese to be a different kind of block cheese. They
19 talked about using the Make Allowance for block cheese,
20 and the only thing that needed to be adjusted was the
21 difference.

22 Q. Well, they talked about the cost of making it --
23 they talked about -- strike that.

24 They talked about if you wanted to adjust the cost
25 of making it --

26 A. Right.

27 Q. -- \$0.03 would capture that?

28 A. In the overarching assumption that block barrel



1 was block cheese in a different kind of package. And
2 implicitly, if at the time of Federal Order Reform we saw
3 the kind of instability between block and barrel cheese
4 prices, I would seriously doubt -- I cannot speak for the
5 Department -- but I would seriously doubt that the
6 Department would have made that decision.

7 MR. ROSENBAUM: That's all I have at this time.
8 Thank you.

9 THE COURT: Mr. English.

10 CROSS-EXAMINATION

11 BY MR. ENGLISH:

12 Q. Good late afternoon, Doctor.

13 A. Good late afternoon, Mr. English.

14 Q. So let me start on page 5. And you say that
15 National Milk estimates that the CME barrel cheese price
16 is used to price only about 9% of total
17 domestically-produced natural cheeses.

18 A. Yes.

19 Q. Now, that -- that -- that is different from the
20 concept of the survey where more than 50% of the survey is
21 barrel, correct?

22 A. Yes. And, in fact, my testimony specifically
23 draws attention to the disparity between the 50%-plus
24 weighting of barrels in the survey, and the only 9% in
25 terms of its role -- barrel's role in pricing all natural
26 cheese.

27 Q. So, now, when you talk about all natural cheese,
28 though, that then is much larger than blocks, correct?



1 A. Much larger, yes.

2 Q. So now we're comparing -- you have got blocks,
3 which you are okay with keeping in, but you want to
4 exclude barrels because you are comparing barrels to all
5 natural cheese. Isn't that an inept comparison?
6 Shouldn't you be comparing blocks to barrels?

7 A. Can you repeat that question? I'm not sure
8 exactly I fully understand it.

9 Q. Well, I'm the one who doesn't understand what is
10 the relevance given the fact that -- well, let me
11 backtrack.

12 When you use the phrase natural cheeses, what's
13 include in natural cheeses?

14 A. Basically all cheeses except processed cheese,
15 cottage cheese, the sort -- as I kind of loosely laid out,
16 40-pound blocks, 640-pound blocks, mozzarella, other
17 natural cheese. In the practical sense, I would -- I
18 would consider all natural cheese to be what is reported
19 by USDA's National Agriculture Statistic Service, or NASS,
20 under the categories of American cheese, including cheddar
21 and other types, Italian cheese, including mozzarella and
22 other types, and Hispanic cheeses, cream and Neufchatel
23 cheese, Swiss cheese, those -- those things. Basically,
24 the -- you know, NASS gives you the most disaggregated
25 statistics on the production of various varieties of
26 cheese.

27 Q. But aren't a lot of those -- and let's go back to
28 mozzarella. We heard about mozzarella earlier this week.



1 Aren't a lot of those products a value-added
2 products?

3 A. But they are cheese products. When you make
4 mozzarella cheese, the Class III price is the appropriate
5 price -- price that cheese manufacturers pay into the
6 pool. I'm talking about whatever cheese prices, natural
7 cheese prices, are produced for which the processors pay
8 the Class III price into the pool. So the Class III price
9 is a -- is a broad -- I'm looking at the universe of
10 natural cheese as all cheese that is basically -- whose
11 production pays into Federal Order pools at the Class III
12 price.

13 Q. But isn't the whole point of using the blocks and
14 the barrels because those are deemed to be the products
15 that are commodity products, and Class III and Class IV
16 are designed to be market-clearing prices?

17 A. The purpose of the products that are to be
18 included in the product price formulas, and the NMPF
19 modern -- Federal Order modernization process spent a lot
20 of time on this, including examining things like unsalted
21 butter, including mozzarella, 640-pound blocks, is to
22 select the commodity product, the product that you make
23 when you have milk that you have no other use for, but
24 need to process it into a product, cheese, butter, nonfat
25 dry milk, dry whey. That's the product -- that's the
26 product that you want to have in your -- in your component
27 price formulas.

28 In the case of butterfat formula, the case of the



1 nonfat solids formula, and the case of the other solids
2 formula, you have a single product that is truly the
3 commodity product that is in those formulas. For historic
4 reasons, mainly to extend the volume reported, as going
5 back to the quote on Federal Order Reform, the purpose of
6 including blocks and barrels was the feeling at that time
7 that just like butter, for example, is packaged in, you
8 know, different kinds of package, labeled metric and
9 otherwise, that blocks and barrels were the same product,
10 and you simply had to adjust the moisture and put that
11 \$0.03 difference to basically a larger sample of the same
12 product.

13 We are claiming in -- basically, in accordance
14 with our overall procedure in approaching our
15 recommendations for Federal Order Reform, look at how the
16 industry has changed and how that affects the
17 appropriateness of the formulas that were adopted, often
18 without subsequent change, for instituting end product
19 pricing. What may have made sense on barrels and blocks
20 in 2020 and up through 2016, we claim no longer makes
21 sense when you look at the fundamental purpose of the
22 cheese protein price formula.

23 Q. I understand you say this -- but, now, isn't
24 barrel cheese effectively exactly what you are saying, a
25 product where you put milk as a matter of last resort?

26 A. In some cases. But the change -- the cheese
27 industry is a very large industry in this country, and it
28 may have two -- it clearly has two commodity -- or basic



1 commodity products. And the point we're making is that
2 the commodity product, if you want to call it such, that
3 is barrel cheese, is seriously overweighted in the
4 reported volumes that set the Class III price compared
5 to -- set the Class III price for determining the value of
6 milk that dairy farmers produce that is used to make
7 natural cheese seri- -- the inclusion of barrel cheese in
8 the formula seriously overweights the importance of
9 that -- of barrel cheese relative to the volume that it
10 represents in terms of actually pricing natural cheese.

11 And that that imbalance, which does not affect the
12 use of butter, nonfat dry milk, and dry whey, the single
13 product in the other three component formulas, that
14 product -- that problem does not exist. It exists in
15 cheese because the Department chose for the purpose of
16 enlarging the reported volumes on the assumption that we
17 had the same product in different packaging types,
18 basically has ended up causing problems.

19 And, therefore, we're effectively advocating for
20 an approach to using a product -- a single -- truly single
21 product, with a single price, and a single spot market, in
22 all four formulas. We are advocating to bring the cheese
23 price used in the protein component formula into
24 conformity with the other three component price formulas.

25 Q. So -- but is there another product in butter that
26 has ever been viewed to be a place where you put the
27 excess butter when you have no other use for the milk?

28 A. In this country I -- my understanding is that --



1 is that 80% salted butter, according to the legislatively
2 mandated standard, is where you put -- where you put
3 your -- your excess cream if it could go nowhere else. We
4 looked extensively, with some support in some of our
5 members, at including unsalted butter as a way to increase
6 the volume of butter, which is reported in the survey,
7 which is about 9%. It is the lowest one.

8 And we had a vigorous discussion on that, and
9 those of our task force who were involved in the butter
10 business says, unsalted butter is not the commodity
11 product, it is a specialty product, it doesn't necessarily
12 have a standard. We will get to that at another --
13 another testimony.

14 Q. But the difference is milk used to make barrel
15 cheese is the milk of last resort source, correct? That's
16 where it ends --

17 A. In some -- in some areas of the country but --

18 Q. Well, are those people supposed to just be
19 completely abandoned?

20 MS. HANCOCK: Your Honor, can he finish his
21 answer, please.

22 THE COURT: Yes.

23 Mr. English isn't asking for an instruction here,
24 but I do feel like there's starting to be disconnect
25 between the question asked and the answers given.
26 Mr. English asked whether there was another commodity
27 used, and I don't -- I'm not even sure that ever got
28 answered, but a lot else did.



1 So for the purposes of the record, I think I would
2 ask the witness to answer the question asked a bit more
3 directly and stop there unless further elaboration is
4 required on that answer.

5 Is that okay with you, Mr. English?

6 MR. ENGLISH: It is. I also won't step on the
7 answer. But I also do think that -- that I've had
8 circular answers and sort of the same answer over and over
9 again.

10 BY MR. ENGLISH:

11 Q. So I'm trying to understand, is milk used to make
12 barrel cheese, at least in some parts of the country, the
13 place of last resort for milk?

14 A. I don't have a detailed knowledge of the cheese
15 industry to that extent, but that -- I would not disagree
16 with your statement.

17 Q. And if those that price on blocks had a problem
18 with the volatility in the block/barrel relationship, why
19 would they continue pricing on blocks?

20 A. Could you repeat that question?

21 Q. If those that price their products, that you claim
22 in this list on page 5, price on blocks, have a problem
23 with the volatility in the block/barrel relationship, why
24 would they price on blocks?

25 A. They price on blocks because that is the industry
26 standard, and those who price on blocks, I'm not sure that
27 volatility -- I mean, the dairy industry is full of
28 volatility. What would be their alternative? They can't



1 stop the volatility by going to some other product.

2 Q. So the --

3 A. The --

4 Q. -- what are the barrel -- producers of barrels
5 supposed to do if you eliminate barrels from the survey?

6 A. The barrel cheese, there is a spot market for
7 barrel cheese that will, I assume, continue to function
8 and -- and basically be a price discovery mechanism for
9 the price of barrel cheese.

10 Q. But it won't be included in USDA's survey, which
11 actually then results in the price of milk that they use
12 to be changed, correct?

13 A. Yes.

14 Q. Will that not cause disorderly marketing when the
15 entities that are trying to produce barrels have a
16 disconnect with their price, that their price is no longer
17 used for price discovery for USDA price-setting purposes
18 but is used for price discovery purposes elsewhere?

19 A. Didn't you ask that that -- if that was
20 reasonable?

21 Q. No, I asked if that's going to be disorderly
22 marketing for them. What about those entities and the
23 dairy farmers who ship to those plants?

24 THE COURT: Do you understand the question?

25 THE WITNESS: I understand the question, but my
26 answer is, is it reasonable to expect dairy farmers
27 through the Federal Order program to subsidize the
28 production of barrel cheese at their expense of being



1 underpaid for the true value of the milk they produce that
2 is used to produce cheese in the United States, under --
3 at least under the Federal Orders.

4 BY MR. ENGLISH:

5 Q. And yet you are going to exclude the value of the
6 milk used to produce barrels?

7 A. We looked at the option of continuing to include
8 barrel cheese in the formula, but to weight it more
9 appropriately compared to its value in -- or to its -- to
10 the proportion of barrels that -- that actually -- of
11 cheese that is actually priced by barrels, which would
12 have been a -- a weighting of the survey prices of around
13 90% blocks and 10% barrels.

14 That would have been unprecedented to, basically,
15 enforce a weighting procedure, and the feeling was that
16 would be disruptive in itself, in its -- by itself. It
17 would require USDA to annually or periodically survey
18 volumes. And decided that the 10% contribution from --
19 for barrel cheese would be not worth that extra effort, so
20 we went, you know, the next step and said, let's just take
21 barrel cheese out of the formula and return the cheese
22 price to a single product, like the other three component
23 formulas.

24 Q. So what's the point of having a survey if you are
25 just going to say, we don't think this product is valuing
26 milk correctly, and therefore we're just going to exclude
27 it?

28 A. Well, under the current regulations, if barrel



1 cheese were excluded, USDA would no longer have the
2 authority to require -- require its price to be processed
3 to report -- be reported to the NDPSR.

4 Q. Precisely. And so as a result, the processors who
5 make barrel cheese, products of milk of last resort, and
6 the dairy farmers who ship to them, will be basically
7 told, never mind, we don't want your product because we're
8 not going to continue you in the survey.

9 A. I don't agree that excluding it -- that -- that
10 having it excluded from the survey would amount to a -- to
11 a determination or a declaration that we don't want your
12 product anymore. Processed cheese is going to continue to
13 be -- to be produced. Barrel cheese will continue to be
14 produced, will continue to be priced. And -- and so I'm
15 not sure I agree with the presumption behind your
16 question.

17 Q. Why shouldn't industry practice, that is to say
18 the fact that barrel cheese is being produced, conform to
19 industry regulation, rather than the other way around?

20 A. If the regulation is causing disorderly marketing
21 conditions, then the regulation should be changed. That's
22 why we're here.

23 Q. And the disorderly marketing is that somehow as a
24 result of including milk for last resort going into
25 barrels, is somehow undervaluing milk for dairy farmers,
26 correct?

27 A. It is, yes.

28 MR. ENGLISH: I have no further questions.



1 THE COURT: Any further cross aside from AMS?

2 Yes, Mr. Miltner -- so it is 5:02. I would ask --
3 that's our -- we're after our normal cutoff. I don't know
4 how much cross you have, Mr. Miltner. I don't know how
5 much cross AMS has. I think we could -- or how much
6 redirect there would be. I'm suggesting we come back
7 tomorrow with this witness.

8 MS. TAYLOR: I think that's a good idea.

9 THE COURT: Okay. With that, we'll return
10 tomorrow morning at 8:00 a.m. to resume the examination of
11 this witness.

12 (Whereupon, the proceedings were concluded.)

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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 14, 2023
FRESNO, CALIFORNIA



MYRA A. PISH, RPR CSR
Certificate No. 11613



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