

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 31, 2023

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Reported by:

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Ryan Miltner

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1 THURSDAY, AUGUST 31, 2023 - - MORNING SESSION

2 THE COURT: Let's get started. On the record, Mr.
3 Rosenbaum.

4 MR. ROSENBAUM: Your Honor, I have a preliminary
5 matter to raise.

6 THE COURT: Yes, counsel?

7 MR. ROSENBAUM: Steve Rosenbaum for the
8 International Dairy Foods Association.

9 It has been our practice that at the end of a
10 session, for the counsel to confer, sometimes with USDA
11 participating, as to who the witnesses are for the
12 following day. And we had this exchange yesterday. I was
13 specifically asked, for example, who I would be calling.
14 I said I would need to check, but I would let them know,
15 which I did yesterday evening.

16 This morning, we received a list from National
17 Milk as to who they are going to call today. Obviously,
18 we prepare for whoever is going to be coming the next day,
19 and even if a witness may have had his testimony posted
20 some time ago, you prepare for whoever you are told is
21 going to be the next day. There are so many people who
22 are being called as witnesses.

23 I was told this morning that National Milk
24 Producers Federation intend to call Dr. Kaiser as a
25 witness today. He was not on the list of individuals who
26 were provided to me yesterday. I was provided several
27 other names, and that's what I spent my entire evening
28 preparing for. And I believe it's unfair.



1 Now, it's true Dr. Kaiser's testimony has been
2 posted for some time, but that he is one of, I don't know,
3 a dozen or more testimonies that have been posted by
4 National Milk. And obviously, I have not prepared in
5 advance for every single one of them. I think it is
6 unfair for Dr. Kaiser to be permitted to testify today,
7 and I object to his testifying today.

8 THE COURT: How would you feel, Mr. -- we got
9 other people, we'll hear from them. I do appreciate your
10 helping everybody to sort out the procedure. I know these
11 are long hearing days, and as much as we can do off the
12 record to streamline things and give people fair warning,
13 I think it is a great use of time.

14 MR. ROSENBAUM: This -- I mean, that practice of
15 letting the opposing counsel know is sort of -- it's a
16 part of the courtesy, but frankly, it has become simply
17 practice in every litigation in which I'm involved, not
18 just USDA proceedings. It is just the way the world
19 works. It's obviously reciprocity. You do it from both
20 sides because both sides need to have that advance notice.

21 National Milk has offered to have Dr. Kaiser this
22 afternoon. That's not sufficient. I am spending this
23 morning here in the hearing, and I'm prepared to
24 cross-examine the other witnesses, who I prepared for last
25 night.

26 THE COURT: Yes, Mr. English.

27 MR. ENGLISH: If I may go before National Milk, so
28 they can respond once rather than twice.



1 So, yes, it is been posted. I will note that I
2 did read it enough and -- to look at it. And it's about
3 Class I elasticity. We have heard a little bit about
4 that. But when you read it, it talks about increasing the
5 Class I price differential. And so I inferred that it was
6 going to come up during the Class I price differential.
7 And I understand posting, you know -- but we really did
8 not prepare for it last night. It is extraordinarily
9 difficult and dense testimony. I can assure you that if
10 it goes today, we're going to come to a grinding halt
11 because it is really hard stuff, and having not prepared
12 means that it's going to take a whole lot longer to go
13 through.

14 So as a matter of hearing efficiency -- now, I
15 understand from National Milk, this is the one day he can
16 testify. Well, again, I agree it is not a requirement,
17 but we heard last night -- I would have spent my entire
18 night differently had I known that he was testifying
19 today.

20 And -- and so as a matter of hearing efficiency,
21 even if he went tomorrow, it is going to be a whole lot
22 more efficient. And I just worry that we're going to
23 grind the hearing to a halt today.

24 THE COURT: Before I hear from National Milk, does
25 AMS have anything to say about this? You'd prefer
26 National Milk to talk?

27 MR. HILL: Yeah.

28 THE COURT: Very good.



1 Ms. Hancock.

2 MS. HANCOCK: Thank you, your Honor.

3 Your Honor, we did tell them that Harry Kaiser was
4 going to testify a few days ago. I didn't have my
5 computer open last night. In fact, I leaned over
6 Ms. Taylor's list and said, "Who do you have for us down
7 tomorrow?" And I went off of her list, and I didn't have
8 it by memory that Mr. Kaiser was coming in today.

9 But it is true that I didn't tell them last night,
10 but I had told them previously that he was coming in this
11 week. And, in fact, your Honor, we have bent over
12 backwards to give them our entire chronology of lists for
13 the entire week to let them know who we have coming in.
14 And we're not required to tell them.

15 We have been -- we have been 100% cooperative with
16 them when they have had their witnesses that they need to
17 get in and on the stand and off the stand, even though it
18 interrupts our presentation of evidence. We let their
19 rebuttal witnesses go in the middle of our testimony. And
20 you'll remember that we did Mike Brown, and we did two of
21 their producers. We stopped our progression of witnesses
22 so that we could accommodate their schedules, and we made
23 sure that -- that we did that. We have offered every day
24 to cooperate with them.

25 If this is any kind of formal or binding situation
26 where we're not being flexible, then I would be much more
27 formal about sitting down with them with my computer and
28 my entire list. This is something where we just stand in



1 the back of the room and talk about where we're -- where
2 we're going.

3 Mr. Kaiser's testimony -- or Dr. Kaiser's
4 testimony has been on the website for a week, more than a
5 week now. It was one of the first testimonies that we
6 even submitted in this hearing. It's not new information.
7 There was not the plethora of testimonies that we see on
8 the website today when his testimony was posted, because
9 his was one of the first ones that were posted.

10 I offered as a gesture of kindness and to
11 cooperate with them that we would post it after -- or that
12 we would put him on after lunch instead of after
13 Dr. Vitaliano this morning, so that they could have that
14 time to prepare for this.

15 But the reality is, every time we put on a
16 witness, we're preparing somewhat on the fly. Right? We
17 don't have any advanced testimony for anything other than
18 the proponents of proposals.

19 This is the one day that Dr. Kaiser can testify.
20 He flew in last night, he flies out at 4 o'clock in the
21 morning, and so this is the day that he has available.

22 And, your Honor, we're not required to provide it
23 to them. We have done it.

24 But, frankly, Mr. Rosenbaum has accused me of
25 really awful things and that I'm trying to hide or conceal
26 this witness, which I think is entirely inappropriate and
27 inconsistent with what we have done in this hearing. This
28 has not been adversarial at all, and, you know, that I



1 didn't remember last night to say his name again, it was
2 my omission, but it's certainly not to the level that they
3 are representing to this -- to your Honor.

4 THE COURT: Yes, Mr. English.

5 MR. ENGLISH: Very quick. I acknowledge the
6 cooperation. I think we have all been trying to
7 cooperate. That's just a little bit why we were caught by
8 surprise. And I certainly did not intimate, and certainly
9 on the record I did not hear Mr. Rosenbaum intimate, that
10 it was done to mislead or to hide, that it is just a
11 reality that -- you know, whether it's posted or not.

12 I guarantee you, none of us have had any downtime.
13 I can't -- I can't expect National Milk has had any
14 downtime. None of us has had downtime. We're working
15 feverishly, you know, night and day, weekends, to get
16 prepared. And literally, you look at the schedule, and
17 you say, what can I prepare for tonight? And I can tell
18 you, there's e-mails going back and forth at 2:00 a.m., at
19 5:00 a.m., and at 6:00 a.m.

20 And so, again, look, we appreciate the gesture of
21 putting on after lunch. I think that's still not exactly
22 what we need. I don't know if he can come at another
23 time. The reality is that this is going to be really --
24 this is really hard, really difficult stuff. I do not
25 have my economist with me today to help me. And so it is
26 going to be a little wandering in the wilderness.

27 THE COURT: What's AMS have to say about this?
28 You guys all ready to go?



1 MR. HILL: Yes. While we do understand that
2 people need time to prepare, we also do understand that
3 there is no requirement for National Milk to provide
4 anything extra here.

5 We do -- from AMS's point of view, we want to hear
6 as much testimony as we can. We understand that the
7 witness is only here today. So we understand that
8 everyone has a very difficult job here. But we really
9 take no position other than to hopefully get all that we
10 need on the record, and whatever that requires, we are in
11 favor of. But we take no position between the two sides
12 here, obviously.

13 THE COURT: But AMS feels like it's prepared for
14 this witness?

15 MR. HILL: Yes, we are prepared to move forward.
16 Yes.

17 THE COURT: Okay.

18 Yes, sir.

19 DR. CRYAN: Good morning.

20 THE COURT: Good morning.

21 DR. CRYAN: I'm Roger Cryan. I don't know if I
22 have to say that right now.

23 So we had a conversation yesterday at the end of
24 the -- among Ms. Hancock, Mr. English, and Mr. Rosenbaum,
25 and I. We exchanged cards to -- to share information
26 about witnesses. I heard nothing from Mr. Rosenbaum, so
27 what's good for the goose is good for the gander. Thank
28 you.



1 THE COURT: I'm sorry, what was the last part?

2 DR. CRYAN: What's good for the goose is good for
3 the gander.

4 THE COURT: And by that you mean -- I understand
5 the meaning of that --

6 DR. CRYAN: I think it was a courtesy and -- and
7 it didn't happen. You know, we -- we don't have to be
8 attorneys to represent our folks at this -- at these
9 proceedings. But I'm -- I'm just pointing out that if it
10 is practiced, then it is not being consistently followed,
11 so I don't see any reason not to let National Milk put its
12 witnesses on.

13 THE COURT: Yeah, I'm not sure I follow. You are
14 saying it hasn't become an established -- well, I mean, I
15 have not gotten involved with establishing, you know,
16 notice of witnesses and such. I don't know if anyone is
17 asking me to do that. I would prefer not to do that. I
18 appreciate the cooperation among the witnesses.

19 I have not heard why Dr. Kaiser is only available
20 this one day.

21 Ms. Hancock, can you address that?

22 MS. HANCOCK: Your Honor, he flew in last night
23 to -- specifically to testify for today, and he has a
24 flight out tomorrow. He doesn't live here. And this is
25 something that he's doing as an -- as an expert witness.
26 This isn't -- you know, he's not in the dairy industry
27 where this is something that he can be present here.

28 THE COURT: I'm not sure it's easier on a dairy



1 farmer person involved in the dairy industry to be here
2 than an expert witness, frankly.

3 Well, I mean, we have Friday set aside for dairy
4 farmers, and I guess it would be possible to pick up part
5 of that day with a different witness?

6 I mean, I, frankly, have not known how we have
7 done the witness scheduling. And I am concerned about
8 what Mr. Rosenbaum and Mr. English are saying about not
9 being prepared for this witness. And if -- well, I mean,
10 it occurs to me, if we have to take this witness over
11 because they can't complete their examination because they
12 haven't had a chance to prepare thoroughly, it is an
13 inefficient use of our time here.

14 And I don't think -- well, if that happens, we
15 decide what to do then, in bringing back the witness or
16 carrying, you know, in -- into the evening would be a
17 possibility.

18 I'm not sure what to do here. I have not been
19 involved in the scheduling of witnesses. I had not heard
20 the conversations. It's a little hard for me to say --
21 and I don't think that our goal here is to establish
22 blame. It's -- I mean, these are long hearing days.
23 We're all working very hard. I appreciate all that work.
24 I appreciate people meeting after hours. And it's tough.
25 And the goal is to get the -- get the hearing done, but
26 I'm hearing that that is interfering to some extent with
27 the ability to get it done because people have trouble
28 preparing. I mean, I have been there in private practice,



1 and I know we're under tight deadlines.

2 How about tomorrow?

3 MS. HANCOCK: Your Honor, he has a flight out. He
4 has to leave at 4 o'clock in the morning. He is a
5 professor, and he teaches classes.

6 I will note, your Honor, that National Milk
7 complied with all of the requirements. We have turned and
8 submitted in all of our testimonies early. We haven't
9 submitted them late. We have -- they have been posted
10 online. This is not new information. Everything that
11 we're required to do, we have done. We provided -- this
12 testimony has been available for more than a week. We
13 have done everything that we're required to do. We were
14 going above and beyond in trying to cooperate with them.

15 But it wasn't anything that was required, and it
16 wasn't anything that was even formal. It was something
17 that -- that we were doing and -- and that we didn't say
18 his name last night, but had said it earlier in the week.
19 I mean, there's no reason why they couldn't have prepared
20 for this. They are not -- they are not prejudiced in any
21 way that they didn't prepare last night for it, I
22 understand. But that's why we have said that we'll put
23 him on after lunch. I mean, if we want to take a
24 90-minute lunch instead of a one-hour lunch, maybe that
25 makes sense.

26 But we have done everything that we're required to
27 do under all of the regulations. In fact, we have gone
28 above and beyond. And now that it didn't work out the way



1 that -- that we all -- that I would have liked to have it
2 work out, it is not a basis for either delaying or
3 excluding this witness or somehow penalizing National Milk
4 because we have done everything that we're required to do.

5 THE COURT: Well, I don't see it as penalizing
6 National Milk, frankly. I mean, you are not -- the only
7 penalty would be if you get to foreclose your opponents
8 from having the time they assert that they need to
9 prepare. I mean, there's going to be slippage in whatever
10 procedures that we have here.

11 Mr. English, you mentioned not having your
12 economist to help you prepare. Is he available over lunch
13 and we can take a longer lunch?

14 I mean, we've got seven weeks of hearing here. I
15 have some difficulty with the concept that this witness
16 has got to come up tomorrow because he's here. I realize
17 it is an expense to National Milk, expert witness, I'm
18 sure. But, you know, all of our time is -- is -- Mr.
19 English's time is expensive I'm sure, Mr. Rosenbaum. My
20 time is not.

21 MR. ENGLISH: Your Honor, I'm not -- okay. It's a
22 whole lot better to have him here. I can certainly try to
23 consult, you know, remotely and do the best I can.

24 I -- I just assure you that when you start talking
25 about estimated price elasticities using something in the
26 neighborhood of 25 or 30 studies and analyzing, for
27 instance, you know, averages, medians, standard
28 deviations, concepts of what this data means, and how it



1 is applied, it is probably the most dense material we are
2 going to discuss at this hearing. And there's going to be
3 other witnesses to talk about it, and we certainly will
4 let National Milk know when those witnesses, you know, are
5 going to appear.

6 THE COURT: Well, I think everyone's going to --

7 MR. ENGLISH: And I want to emphasize, yes, I -- I
8 agree. And, listen, I am very grateful for everything
9 National Milk has done to prepare. It's just a reality
10 that -- as opposed to last night, Mr. Rosenbaum and I both
11 preparing for witnesses on Issue 2 having to do with the
12 price surveys, and at a minimum one of us would have gone
13 off entirely into this area. And I did not do that at
14 all.

15 So if we end up -- and, again, I appreciate
16 National Milk as a gesture of good faith saying, put him
17 after lunch. I'm just saying that I am at a disadvantage.
18 And, yes, it's a disadvantage based upon the nature of how
19 all this works, but it is the reality of what we did last
20 night.

21 And, again, it is not intended in any way,
22 Ms. Hancock, to reflect -- you know, we're moving as fast
23 as we can.

24 But the idea that sometime in the last ten days,
25 when I have worked every single hour I can, I mean, I --
26 and I'm not unique. I'm not claiming I'm unique. I'm
27 getting at best three or four hours sleep. And there is
28 not another moment in the day to have said, okay, I'm



1 going to look at this testimony when I don't think it's
2 going on, is the problem.

3 You know, I -- I do think, you know, the question
4 is, can he come another time? I realize he flew down.
5 That's -- you know, I get it. Maybe there's something we
6 can do about that. But, I mean, the reality is this
7 hearing isn't going to be over until the end of September,
8 and there may be another day. And I -- I can absolutely
9 guarantee that if he's on another day, the examination by
10 me will be at least half as long, if not -- you know, it's
11 just a reality.

12 And not only that, but focused, the record, trying
13 to understand all of this stuff. I -- I'd just try to,
14 you know, consider. And I don't know whether we can go
15 off the record and National Milk can consult with
16 Mr. Kaiser, and we can talk about the expense of his
17 flight or something like that. I don't have authority to
18 offer that, but, I mean, I'm trying to think of something
19 that's a compromise that works for everybody.

20 MR. HILL: Your Honor?

21 THE COURT: Yes, Mr. Rosenbaum.

22 MR. HILL: To the extent that --

23 THE COURT: I'm sorry, Mr. Hill. Let's not have
24 the record reflect the wrong speaker. That would be
25 Mr. Hill speaking right now.

26 MR. HILL: Yes. To the extent that the witness
27 will be heard today --

28 THE COURT: Yes.



1 MR. HILL: -- I'm not sure of the efficacy of
2 waiting until after lunch because it seems to me at that
3 point we're just eliminating part of the time that he
4 would be able to be cross-examined. So if the witness
5 were to be heard this morning, and then maybe again,
6 there's a break at lunchtime at which people can gather
7 their thoughts and recall the witness after some period of
8 time, it seems to me that that would be a better solution
9 than just waiting until the afternoon and eliminating two
10 or three hours that a person -- that he could be crossed,
11 so --

12 THE COURT: Well, I mean -- I mean, we're -- I
13 take AMS's thoughts into account here. We're really doing
14 this to inform the decisionmaker at USDA, which I guess
15 you represent. And I do think that it seems to me
16 everyone has been operating in good faith and doing their
17 best under trying -- trying circumstances.

18 What would it take to bring Dr. Kaiser back,
19 Ms. Hancock?

20 MS. HANCOCK: Your Honor, I don't know. This
21 is -- what I have been told is that this is the day that
22 he has to testify.

23 I will note two things. One, the substantive
24 testimony that he has is four pages long. Four pages.
25 Yesterday, MIG's economist testified as to price
26 inelasticity. If I just use Dr. Kaiser as a rebuttal
27 witness or a surrebuttal witness to MIG's economist that
28 testified yesterday, which, frankly, is going -- she said



1 the exact same thing that Dr. Kaiser is going to say, in
2 that fluid milk is inelastic -- or the price of fluid milk
3 is inelastic. But if I'm using him to address what she
4 said yesterday, I didn't have to even tell them last
5 night, exactly what they have done to me every morning
6 where I get a testimony in the morning, and they use it as
7 a rebuttal testimony.

8 They have blown this up to be something far beyond
9 what it is. This is a professor who is going to testify
10 on price inelasticity. Their own economist testified
11 about that yesterday. Mr. English just told you that he
12 has other witnesses that are going to testify about this.
13 This is not a new issue for them. This isn't a big
14 surprise issue that they haven't had time to talk about
15 with their economist or other witnesses. They have
16 already talked about it because she testified about it
17 yesterday, and they have other witnesses coming.

18 I do think that Mr. Hill's suggestion about
19 putting his direct testimony on before lunch and giving
20 them the lunch hour to prepare for a cross-examination,
21 that's more time than I've had to prepare for their
22 cross-examination of their rebuttal witnesses. We're
23 going to continue to face this throughout the hearing.
24 And I just think that this has been used as somewhat of a
25 red herring for an issue that doesn't exist.

26 THE COURT: Okay.

27 Mr. English, rebuttal witness.

28 MR. ENGLISH: Not exactly, your Honor, because he



1 was presented as being a substantive witness, as I
2 mentioned. It appeared to be the Class I issue, which is
3 Issue 5.

4 I do note that, you know, it may be that the
5 statement in principle is four pages, but there's an
6 appendix that is page 9 that is Econometric Output for
7 Farm to Retail Price Transmissions. That page by itself,
8 you know, variable coefficient, standard error,
9 t-statistic, probability, C, LOG(T), I mean, R-squared,
10 you know, that page is what's really going to be an issue
11 here, so saying it's just a mere four pages.

12 I do not think it is the same thing as a rebuttal
13 witness because it is their case in chief for Issue 5, and
14 Issue 5 is the Class I differentials. If it had said
15 components in it somewhere, I would have read it
16 differently. Again, everybody -- I -- I don't want to --
17 you know, to undercut -- because I certainly don't want to
18 change these off-the-record conversations about who is
19 coming. I just think that this is a different scale, a
20 different scope.

21 And, you know, again, sure, you could put him on
22 before lunch and then he might get done today, but it is
23 still not going to be the kind of clear record I think we
24 really need. And I still think we have been, you know,
25 put under an unfortunate -- and if unintended -- difficult
26 situation that is just really hard for us -- it is just
27 really big testimony on issues.

28 And as I say, you read it, it says -- critical



1 sentence on page 3: "How would increasing the Class I
2 price differential impact retail fluid milk demand?" I
3 read that sentence. I said to myself, aha, they posted it
4 early, but it is for Issue 5. I did not expect it to come
5 up now.

6 THE COURT: Yes, Ms. Hancock.

7 MS. HANCOCK: And, your Honor, that's ridiculous.
8 We have been talking this last week and a half, or however
9 long it's been, everything that we have heard from
10 Mr. Rosenbaum and Mr. English when they put their
11 witnesses on, is how the components are increasing Class I
12 prices. That's exactly what we're talking about in the
13 component issue. Almost every one of the proposals
14 that -- that National Milk is putting forth is going to
15 increase Class I prices. We do want our expert witness to
16 go on in front of all of that. That's what we're entitled
17 to have.

18 There -- if -- if inelasticity of Class I prices
19 didn't matter for components, then why did MIG's economist
20 testify yesterday that it was inelastic? That he read one
21 sentence in a -- in a -- in the expert's report and he
22 thought it was going to go on later, we posted it the
23 first week. It was one of the first testimonies that we
24 put into the record.

25 THE COURT: I do think the topic of price
26 elasticity has come up. The whole idea about what happens
27 if you raise the allowance, what people can absorb, things
28 like that. I don't know what's in this testimony exactly.



1 It has come up in this first section of the thing.

2 I would ask you -- well, would -- AMS says it's
3 ready to go. We could have AMS go before you all, if that
4 helps. Does it help to have the witness testify in the
5 morning so you could hear what he says and have -- and I'm
6 willing to take two hours for lunch to give you a little
7 more time.

8 Does -- what's better for you, Mr. English, and,
9 you, Mr. Rosenbaum?

10 To have this witness come on in the morning?
11 Apparently he can't come on tomorrow.

12 I am struggling with the idea this witness can
13 only -- there's only one day of seven weeks that this
14 witness can testify for.

15 MR. ROSENBAUM: Your Honor, I -- I try to be
16 reasonable and compromise when I can. I'm not going to
17 compromise on this one because the only compromise that
18 makes sense is that he comes back another day.

19 I mean, Mr. English points out this witness is
20 presenting a very complicated analysis, elasticity. It
21 has, as Mr. English pointed out, tremendously complex
22 computations, which are not the sort of thing that I have
23 an independent background to be able, over lunch, to
24 prepare to examine someone on.

25 I'm -- and I'm not suggesting that this was
26 intentional on the part of National Milk --

27 THE COURT: I understand.

28 MR. ROSENBAUM: -- but I am suggesting that we had



1 a specific exchange of information, and I didn't prepare.
2 And I don't -- I don't have with me the people I need to
3 prepare.

4 THE COURT: So I have got to make some kind of
5 decision here. Would you prefer this -- if we go ahead
6 with this witness before lunch or after lunch, better for
7 you, Mr. English and Mr. Rosenbaum?

8 And I think from now on, if people can remind me,
9 at the end of the day we'll talk about which witnesses are
10 coming up when. I -- I would prefer not to -- it's great
11 that you all -- when you all can work out things amongst
12 yourselves. It is hard for me to come in after the fact.

13 MR. ENGLISH: Well, your Honor, I'm going to --
14 I'm going to answer your question two ways.

15 First, I'm going to agree with Mr. Rosenbaum that
16 I don't think I can compromise and that I think that we
17 are really prejudiced -- and, again, not intentionally --
18 but we are prejudiced in a permanent way for being able to
19 prepare properly. The idea that we can do so over lunch
20 means we can prepare a little bit, but we can't prepare
21 completely.

22 My second answer to the question is, you know,
23 obviously if the idea is that we need to get him on and
24 off the stand today because he's only here today -- and we
25 have yet to hear, it seems to me, on the record or off the
26 record, why he can't be here sometime in September, which
27 I think is a critical question that has not been
28 addressed.



1 I will say that if we're going to do it, sure, and
2 it started in the morning, give us more time at lunch.
3 But I will not waive what I view to be an objection --
4 that is our objection of permanent prejudice, because we
5 just don't have the resources, having prepared the way we
6 have, to cross-examine this witness properly at this time.

7 Again, it is absolutely not a claim in any way,
8 shape, or form that National Milk or its counsel have done
9 anything but operate in good faith. I accept absolutely
10 the -- just the -- that's fine.

11 THE COURT: Well, it is not like you asked them,
12 you know, when is Dr. Kaiser coming on, either, right?

13 MR. ENGLISH: No, because I made -- and I made an
14 assumption. Is the assumption on me? That's -- yeah,
15 that's my fault. But I think it was a reasonable
16 assumption and --

17 THE COURT: Tell me again why that was a
18 reasonable assumption. I just -- I mean, I just have not
19 been involved --

20 MR. ENGLISH: We're going to be talking about
21 elasticity a lot during this hearing, but in terms of
22 actual experts who would know about it, to the extent that
23 there is testimony coming about those, the most reasonable
24 time for them to come, as is stated on page 3 of his
25 testimony, is about the Class I differential, because
26 that's the biggest increase, and that's what he said in
27 his statement.

28 THE COURT: And you are saying that that's really



1 a part of a later proposal?

2 MR. ENGLISH: It is really part of Issue 5. And,
3 yes, Issue 1 is about increasing. Issue 4 is about
4 increasing. But Issue 5 is where the biggest price
5 increase is. And it's where he said you can -- you know,
6 increasing Class I differentials. He didn't say
7 increasing Class I prices; he said increasing Class I
8 differentials. So my reasonable inference as a lawyer who
9 has been doing this for 38 years was that that's going to
10 come up in Issue 5.

11 And so I do think the one thing that is missing in
12 this record today is an explanation of why he can't come
13 in September. Which, okay, not Friday the 1st, but the
14 5th, the 6th, the 7th, the 11th, the 12th, the 13th, the
15 14th, etcetera. And that's missing in this record.

16 THE COURT: Mr. Miltner.

17 MR. MILTNER: Your Honor, I realize that my
18 clients are not primary proponents in this proceeding, but
19 we do have three. And although I have had conversations
20 with counsel for most of the participants in this room,
21 and it's been cordial and collegial, I have overheard
22 conversations about which witnesses are coming on each
23 day. I have not been part of those as a regular basis,
24 and perhaps going forward I should be.

25 My economist has not been able to be here the
26 first two weeks of the hearing due to an issue -- an
27 unexpected issue that's arisen. And so as Ms. Hancock
28 noted, when -- especially when you have rebuttal



1 witnesses, that testimony comes out, and we deal with it
2 that morning. And we deal with it as we are able to with
3 the personnel that we have.

4 Both Mr. Rosenbaum and Mr. English do have
5 economists, either on staff or associated with them, who
6 can work with these statements as they are filed, and I
7 understand that they are not here and available today.

8 I think the issue as to whether Dr. Kaiser is able
9 to come in September is one that we should answer.
10 However, if today is the only day on which he can be
11 available, we have all been in this position before where
12 we have to do examination or cross-examination under less
13 than ideal circumstances.

14 And given that both IDFA and MIG have economists
15 of their own, if they feel that there is a hole that they
16 haven't been able to address on cross-examination, they
17 certainly have the ability to put those expert economists
18 on, who are very capable individuals, to point out the
19 issues that they might not have been able to tease out on
20 cross-examination. And I don't want that point to be left
21 off the record. Thank you.

22 THE COURT: Okay. Ms. Hancock, Dr. Kaiser can
23 leave his teaching post and come back here at a later
24 time. I realize that's an expense and an imposition on
25 you all.

26 I'm trying to develop -- and I'm trying to develop
27 the best record we can for the Department of Agriculture,
28 or AMS, and I just want it to be as thorough and as well



1 done as possible. Although I'm influenced by AMS not
2 wanting to take a position here. I come back to them.

3 But go ahead, Ms. Hancock.

4 MS. HANCOCK: Your Honor, I appreciate that. It
5 has been repeatedly communicated to me and confirmed that
6 he is not available to come back. So today is his day
7 that he can testify, and if he can't testify today, then
8 we're not able to bring him back here to testify. He is a
9 professor, and he has classes. This is the start of the
10 school year. And that's -- that's the information that we
11 have been given.

12 Your Honor, I think it's important to note that
13 Mr. Miltner's right, the conversations have only occurred
14 between Mr. Rosenbaum and Mr. English and me, and to the
15 extent that AMS is involved, them as well, where we have
16 tried to do this. It's only been a courtesy that we
17 have -- that we have offered. And we have really tried to
18 be as professional and courteous as we can.

19 What we have not heard them address is the fact
20 that a couple of days ago I told them that he was going on
21 this week. It was only last night that I didn't reconfirm
22 it. But I had already told them that he was going on this
23 week.

24 This is not new information. This is information
25 that they have had. When I had my computer earlier, I
26 have a list right on my computer of the order of witnesses
27 that we're going in. We have taken their witnesses, MIG's
28 and IDFA's witnesses, out of order because they have said



1 that those are the only days they could go on. The two
2 producers, one from Hood and one from Shehadey, we put
3 both of them on on Tuesday because that was the day that
4 they had to go on and go off.

5 We put Mr. Brown on before them because they
6 wanted to make sure that Mr. Brown testified before their
7 two producers. So we paused the presentation of our case
8 and our proposal, and we allowed them to do that, because
9 that accommodated their schedule. I did not grill them on
10 whether their witnesses could come at another time or ask
11 them about what their personal schedules were, why they
12 couldn't come back at another time.

13 We have been more than accommodating to their
14 witnesses and their schedules. In fact, your Honor, we
15 have now burned 45 minutes of this time they could have
16 been getting ready. I mean, this is time that they could
17 have been getting ready instead of going back and forth.
18 We get zero time to prepare. There is not even as many
19 hours left in the evening as what we're offering to give
20 them. This 45 minutes that we have already burned, you
21 have offered them two hours at lunch, and they are saying,
22 I'm not willing to compromise.

23 Frankly, your Honor, it is not their decision to
24 compromise or not. We didn't have to give them notice.
25 We did it as a courtesy. I will continue to extend them
26 the professional courtesy because that's the way that I
27 practice law, and I think that that's the way it should be
28 practiced. But they are literally biting the hand that



1 just fed them that courtesy because I didn't have to
2 extend it to them. But the one time that I misstepped, in
3 one fraction of a moment, now they are just coming at me
4 and -- and they have --

5 THE COURT: Well, Ms. Hancock, in fairness to you,
6 they could have asked you, too, like, who is up next,
7 right? I take it you are not saying they asked you, and
8 you didn't tell them.

9 MS. HANCOCK: And I told them when we -- they
10 already started the conversation yesterday when I talked.
11 I wasn't even in the conversation initially. And then I
12 joined in late, and I asked -- I didn't have my computer
13 with me, which is where I keep my list. And I didn't have
14 the list memorized. I leaned over Ms. Taylor's shoulder
15 and said, who did you have us down for tomorrow? And it
16 was all of our barrel witnesses, and I said, oh, yeah,
17 that's right. And then I said, well, then we're going to
18 need more witnesses. I didn't have my computer in front
19 of me. I mean --

20 THE COURT: Okay.

21 MS. HANCOCK: -- I'm just not infallible. Your
22 Honor --

23 THE COURT: No. If this system counts on any of
24 us, including your Honor here, being infallible, we are in
25 deep, deep trouble, so --

26 MS. HANCOCK: I do agree that maybe perhaps at the
27 end of each evening we could put on the witnesses that
28 we're going to call officially --



1 THE COURT: Well, I think we're going to have to
2 do that, yeah.

3 MS. HANCOCK: And I --

4 THE COURT: I'm sorry. Let me talk, just so we
5 don't have two people at -- you don't have to sit down.
6 You can -- you can continue to talk to me. I don't -- I'm
7 not telling you you have to stop.

8 But, I mean, the last thing I want to do is
9 discourage cordial relations, you know -- cordial is not
10 even the right word -- professional, cooperative
11 interactions between counsel. I think we're really
12 counting on that to get through this hearing. I don't --
13 definitely do not want to discourage that. And I don't
14 want to have to be a part of every conversation among
15 counsel as to witness scheduling, either. And there are
16 going to be glitches here.

17 And I think -- I still don't understand why a --
18 seven weeks of witness testimony, he can't come back for
19 one day?

20 MS. HANCOCK: Well, your Honor, he's not in the
21 dairy industry -- this is not --

22 THE COURT: I understand.

23 MS. HANCOCK: He doesn't have a stake in this.
24 And so he's a professor. He has a full-time job. And so
25 we have coordinated for him to be here today. I did
26 notify the other parties of that earlier in the week. And
27 it was only yesterday that I didn't reiterate it for them.

28 THE COURT: Yeah. But, I mean, I take it you are



1 paying him. He's an expert witness. He took on a --

2 MS. HANCOCK: Your Honor, I didn't ask any of the
3 other parties why Hood or Shehadey, who actually has a
4 vested interest in the outcome of this hearing and are
5 participating as actual participants in this hearing, why
6 they couldn't come at another time.

7 THE COURT: Yeah. But I take it you didn't feel
8 severely disadvantaged by putting those witnesses up at
9 that time either, whereas I'm hearing from Mr. English and
10 Mr. Rosenbaum that they are disadvantaged.

11 MS. HANCOCK: Your Honor -- oh, okay. Well, he
12 just wanted me to make clear he's not being paid for this,
13 so --

14 DR. KAISER: I'm not being paid to testify.

15 THE COURT: You are not being paid, Dr. Kaiser.

16 DR. KAISER: I am not. I'm doing it pro bono. My
17 expenses are covered. That's it.

18 THE COURT: Well, I'm not sure that -- I'm not
19 sure what to make of that.

20 MS. HANCOCK: Your Honor, we --

21 THE COURT: I guess I -- it's very admirable of
22 you, Dr. Kaiser, to be willing to do this for free, I
23 think, and help inform the record. I sure think it's
24 appropriate that we get your views on the record.

25 All right. Tell you what -- AMS, do you have
26 anything -- really, this is for -- again, we're trying to
27 develop a record for USDA here. And I know people think
28 I've got more decisional ability perhaps than I have and



1 all that. I'm just sort of calling balls and strikes to
2 try to develop a record on which someone else can make a
3 decision here. So I'll take any suggestions you have --
4 or I mean, I will hear any suggestions you have.

5 MR. HILL: Right. From our perspective we want as
6 much information on the record as we can get. And if he's
7 only available today, we need to have him on today to hear
8 what he has to say.

9 And I -- we will point out that the rules that we
10 have for testimony have changed a little bit for this
11 hearing in terms of how quickly people get the information
12 that's on the website and so forth. And in years past,
13 and in hearings past, that wasn't even available. People
14 came up with their testimony on the day of, and you had to
15 do it -- whatever you had to do to tease out of that
16 witness what you could at the time.

17 So from our perspective we need to get this
18 witness on as soon as possible so that we can get the best
19 record that we can possibly attain.

20 THE COURT: Okay. Thank you.

21 Okay. I mean, this is difficult. I think,
22 again -- is it better -- if I'm going to say that this
23 witness should appear today, which I am, is it better that
24 we take this morning or put him on this afternoon,
25 Mr. English and Mr. Rosenbaum? I realize you are under
26 difficult circumstances, but would you rather have him in
27 the morning and -- would AMS be willing to go first?

28 MR. HILL: As I said before, your Honor, we would



1 like to take him early and then have cross this afternoon.
2 I mean, you know, we can take a long lunch for that, but
3 it doesn't seem efficacious to us to have him wait until
4 the afternoon because that just -- it -- it actually cuts
5 off an opportunity for cross-examination. So if we could
6 have a little bit of extra time maybe, as your Honor has
7 stated before, that would be perfectly fine with us. And
8 if we -- if you want us to go first, I suppose that USDA
9 would do that as well.

10 THE COURT: Okay. Mr. English, Mr. Rosenbaum,
11 what do you think? I mean, we could take an hour off this
12 morning too. I mean, I hate to do that.

13 MR. ENGLISH: Your Honor, without waiving our
14 objection, and understanding what you are saying, and
15 appreciating that Dr. Kaiser has come on his own,
16 effectively -- you know, we're not trying to inconvenience
17 him. I want to be very clear about that but --

18 THE COURT: That is sort of a telling point, isn't
19 it?

20 MR. ENGLISH: Well, I mean, a little -- it is. On
21 the other hand --

22 THE COURT: I mean --

23 MR. ENGLISH: On the other hand, it doesn't change
24 the prejudice to us.

25 THE COURT: No. I understand.

26 MR. ENGLISH: So, you know, having said that and
27 without waiving our objection, you know, obviously -- you
28 know, I can't say that if he's going to be an all-day



1 anyway because I think at some point there's only so much
2 I can do without the lack of preparation. But, you know,
3 clearly, putting him on sooner, you know, and then giving
4 us whatever opportunity we have at lunch -- and I'm not
5 going to say that an hour and a half is actually going to
6 make a difference and all of that. But, you know,
7 obviously putting him on sooner is more likely to get him
8 finished, because I think the one risk is if you put him
9 after lunch, he doesn't get finished, and then we have the
10 same problem we have anyway.

11 And I'm -- you know, I'm not going to say I know
12 how long the cross-exam is going to go because I haven't
13 had a chance to prepare. I have been pretty good at
14 trying to prepare for cross-examination, and as a result,
15 making it pretty efficient.

16 THE COURT: You have argued that the more time you
17 had to prepare, the shorter the cross would be. I
18 understand that, too.

19 MR. ENGLISH: Yeah, and that is not going to
20 happen today, so I just cannot predict.

21 So, by definition, again, without waiving our
22 objection about prejudice -- and I understand AMS's
23 position about information in the record. I think there
24 is a caveat to that. Information in the record that is
25 efficiently presented and understood is better than just
26 information in the record without that parenthetical
27 attached to it.

28 I'm going to stop, you know, arguing about all of



1 this is. I think you -- I do want to point out that
2 whatever we've done with the 45 minutes, the point is that
3 when we're in the hearing room, we're paying attention,
4 very close attention to the witness, and preparing
5 cross-examination for that witness. So when other
6 witnesses are on the stand, we don't have an opportunity
7 to prepare. So that does go to the point of probably
8 putting him on sooner.

9 THE COURT: Should we postpone -- I forget where
10 we are on this witness. Where are we on this witness?

11 MS. TAYLOR: Cross.

12 THE COURT: Cross. Do we want to interrupt this
13 witness and put Dr. Kaiser on?

14 MS. TAYLOR: That's fine.

15 MS. HANCOCK: That's fine, your Honor. We're fine
16 with that.

17 THE COURT: What do people think? All right.
18 That gives us some more time.

19 Mr. Rosenbaum.

20 MR. ROSENBAUM: Your Honor, I, in candor, don't
21 think this choice is meaningful.

22 THE COURT: Uh-huh.

23 MR. ROSENBAUM: And to the concerns that I -- you
24 know, that I identified. And I'm not relying upon -- when
25 I predicted Dr. Kaiser was going to testify, based upon
26 what issue he was covering, and although I agree with
27 Mr. English, I would have predicted he would come on
28 Class I -- and we have a section that's devoted to Class I



1 differentials. His testimony explicitly is addressing
2 raising Class I differentials. So my expectation was
3 certainly the same as Mr. English's. But what I was
4 relying upon was a specific discussion yesterday as to who
5 was going to be called.

6 And AMS is right, that they have established
7 certain additional procedures here. But I have been doing
8 this a long time, and it has been the practice of
9 revealing who your witnesses are going to be for the next
10 day. That goes back well before the procedures that AMS
11 published here.

12 And I just -- you know, I continue to be of the
13 view that we're prejudiced --

14 THE COURT: No, your objection is preserved, and I
15 understand.

16 I think we have to do the best we can here, and
17 we'll be more careful -- all of us will be more careful
18 going forward so everyone knows better what witnesses are
19 coming up. But I think we got the witness here. We
20 better use it -- use the time we have, do the best we can
21 with it. So that's where we are.

22 So I think we will -- I hate to interrupt this
23 witness --

24 DR. VITALIANO: Not a problem, your Honor.

25 THE COURT: Thank you.

26 So, Dr. Kaiser, ready to go then?

27 Do I have his testimony? Let's go quickly as we
28 can to get as much in as possible.



1 Thank you for being here, Dr. Kaiser.

2 Raise your right hand.

3 HARRY KAISER,

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

6 THE COURT: Your witness, Ms. Hancock.

7 DIRECT EXAMINATION

8 BY MS. HANCOCK:

9 Q. Good morning, Dr. Kaiser. Can you please state
10 and spell your name for the record?

11 A. Good morning. My name is Harry Kaiser, H-A-R-R-Y,
12 K-A-I-S-E-R. And did you want my title, was that --

13 Q. Sure.

14 A. I am a professor in the Charles H. Dyson School of
15 Applied Economics and Management at Cornell University.

16 Q. Thank you, Dr. Kaiser.

17 Could you provide for the record your business
18 mailing address?

19 A. Yes. It is 201H Warren -- that's W-A-R-R-E-N --
20 Warren Hall, Cornell University, Ithaca, New York. 14853
21 is the zip code.

22 Q. Thank you.

23 And I think we said this off the record, but you
24 understand that you're here as an expert witness to
25 testify on behalf of National Milk's proposals in this
26 matter?

27 A. Yes.

28 Q. And are you being paid for your testimony here?



1 A. No, I'm not. My expenses, just my business --
2 travel expenses.

3 Q. Okay. Could you provide for us some of your
4 professional background, starting with your education
5 after high school?

6 A. Yes. I went to the University of Wisconsin at Eau
7 Claire as an undergraduate from 1975 to 1979, where I
8 majored in economics and history. And then I did my
9 Master's and my Ph.D. at the University of Minnesota Twin
10 Cities from 1979 to 1985.

11 Q. What was your specialty?

12 A. Agricultural and applied economics.

13 Q. And can you talk about your professional career
14 after you graduated with your Ph.D.?

15 A. Yes. My entire professional career spans
16 38 years, I started in 1985, all at Cornell University. I
17 took a sabbatical leave from Cornell in 1994, '95, where I
18 was at the University of Minnesota for a year and half
19 time at Land O'Lakes Dairy Cooperative.

20 Q. And what was your role in the private sector?

21 A. My role was, basically, to act as kind of a -- one
22 of their applied researchers, and I was given a couple of
23 different projects to research, including the futures
24 market which was brand new to dairy at the time, and how
25 we -- and how Land O'Lakes could go about hedging using
26 the futures markets.

27 Q. And have you published any articles or been
28 involved in any other programs related to the dairy



1 industry?

2 A. Can you -- related to the dairy industry, did you
3 say, or not related?

4 Q. Related to the dairy industry.

5 A. Yes. I have published -- I have published 150
6 journal articles that -- those are peer reviewed, since
7 1985, and I would guesstimate that about a third of those,
8 maybe -- yeah, a third of those are all related to the
9 dairy industry, specifically dairy policy and dairy
10 marketing issues.

11 Q. Okay. And did you participate in the dairy
12 promotion program?

13 A. Yes, I did. From -- for -- for a period of 11 or
14 12 years, I performed the independent economic evaluation
15 for the Dairy and the Fluid Milk Acts, which is the dairy
16 farmer and the fluid milk processor checkoff programs.
17 That is -- that analysis is required every year under --
18 under the Farm Bill. And I -- and I did that for, I think
19 it was like 12 years.

20 Prior to that, by the way, I worked with officials
21 from AMS as well as ERS USDA on developing a model that
22 they adopted, and then they finally just said, why don't
23 you -- why don't you do it for us, and they hired me to do
24 that.

25 Q. And what was --

26 A. And that -- oh, go ahead.

27 Q. No, go ahead and finish.

28 A. And I think it was a -- relatively speaking, it



1 was probably like 12 years that I did that.

2 Q. Okay. What was the timeframe for that?

3 A. I think I stopped doing it about ten years ago.

4 So I -- the 12 years prior to whatever -- 2013, 2014.

5 Q. What type of modeling was it?

6 A. It was an econometric model and the -- basically
7 the -- the bottom line, the key thing that they wanted was
8 a return on investment for both dairy farmers and fluid
9 milk processors.

10 Q. Okay. Specific to the dairy industry?

11 A. Specific to the dairy industry. More specific to
12 the -- to their promotion effort and -- and the way they
13 are spending their money.

14 Q. And I think you said it was for both the dairy
15 farmers and for the processors?

16 A. Yes, that is correct. Originally it was just for
17 the dairy farmers, and then the last five years, they
18 added my evaluation to include the Fluid Act, which I
19 think is the name of the fluid processor program.

20 Q. Okay?

21 MS. HANCOCK: Your Honor, I would offer Dr. Kaiser
22 as an expert in agricultural economics and consumer demand
23 analysis.

24 THE COURT: Yes, I find that he's qualified to
25 testify as an expert on those matters.

26 MS. HANCOCK: Thank you, your Honor.

27 BY MS. HANCOCK:

28 Q. Dr. Kaiser, did you prepare testimony in support



1 of National Milk's five proposals?

2 A. Yes, I did.

3 Q. And has that been identified as Exhibit NMPF-48?

4 A. Yes, it is.

5 MS. HANCOCK: Your Honor, for identification
6 purposes, can we mark this as Exhibit 115, please?

7 THE COURT: So marked.

8 (Thereafter, Exhibit Number 115 was marked
9 for identification.)

10 MS. HANCOCK: Thank you.

11 BY MS. HANCOCK:

12 Q. Dr. Kaiser, would you mind providing us with your
13 testimony?

14 A. Sure.

15 Q. Thank you.

16 A. I think I'll skip the first paragraph since I
17 think we just talked about my credentials.

18 So the focus of my testimony is on the expected
19 impacts of milk product demand accompanying regulated
20 price changes. The price elasticity of demand for milk is
21 inelastic, which means that consumers are not very
22 sensitive to adjusting their purchases in response to
23 price changes.

24 A price elasticity basically measures the
25 percentage change in demand given a 1% change in price.
26 Technically, any elasticity that is lower in absolute
27 value than 1.0 indicates that the demand is relatively
28 price inelastic since changing the price by 1% is less



1 than -- will result in less than a 1% change in quantity
2 demanded. When firms have control over price setting,
3 they will strive to raise the price when the current price
4 is in the inelastic range of a demand since doing so will
5 result in a higher percentage increase in the price than
6 the corresponding percentage decrease in quantity and,
7 therefore, revenue will increase.

8 The overwhelming majority of empirical studies
9 that have measured the price elasticity of demand for milk
10 have found it to be inelastic. For instance, I
11 constructed a table based on 38-peer-reviewed studies that
12 have measured the price elasticity of demand for milk at
13 the retail level, and the average estimated elasticity
14 indicates that a 1% increase in the retail price of milk
15 would cause, on average, a 0.35% decrease in per capita
16 quantity demanded, when you hold all other demand drivers
17 constant.

18 More on that later because what I'm going to argue
19 in my testimony is that these other demand drivers are
20 much more important than the retail price.

21 The median elasticity from these 38 studies is
22 even smaller than that. Specifically a 1% increase in
23 price reduces per capita quantity demanded by 0.2%. In
24 other words, half of the 38 studies finds that the price
25 elasticity is less than 0.2, and the other half of them
26 find that the elasticity is bigger higher than 0.2 in
27 absolute value.

28 It's also important to note that these studies



1 span 60 years and have consistently shown the same result,
2 the price inelastic nature of milk.

3 In my Table 1 in my testimony, this does not list
4 all researched studies of milk demand price elasticity,
5 but they do represent the overwhelming bulk of published
6 peer-reviewed studies. The finding that milk demand is
7 inelastic is consistent with the use of classified pricing
8 that charges the highest regulated price for milk utilized
9 in Class I products while charging lower prices for milk
10 used for more price elastic manufactured dairy products.

11 Of the 38 studies cited in my testimony, only one
12 study, the study by Davis, et al., in 2012, estimated milk
13 to be price elastic. The researchers reported in that
14 study a 1% increase in the retail price would cause milk
15 quantity demanded to decrease by 1.66 -- 1.63%, in other
16 words, that's -- that's a finding of an inelastic price
17 elasticity.

18 However, the 37 remaining studies all found milk
19 to have a price inelastic demand ranging as low as
20 practically zero, minus .003 by a study that my research
21 associate and I did in 2008, to a high of minus .873, a
22 study by Aviola and Capps in 2010.

23 I think a natural question is, why is demand for
24 milk inelastic? Milk is considered a staple good in that
25 milk -- milk buyers regularly consume it, usually in the
26 same amount regardless of the price level. For regular
27 milk consumers, milk is considered more of a necessity
28 than a luxury, which explains why consumers are not very



1 sensitive to price changes. They regularly buy milk and
2 do not significantly alter their purchases when the price
3 changes.

4 For non-milk consumers, which are also part of the
5 market, such as vegans, people who are lactose-intolerant,
6 or people who simply do not drink milk, the price of milk
7 has no impact on their decisions on whether or not to
8 consume it. For example, for people who practice a vegan
9 diet, the price of milk could be zero and they still would
10 not consume it.

11 The net result is that for people ranging from
12 those who consume a lot of milk to those consuming little
13 or no milk, price is not much of a deciding factor in
14 their purchase decision.

15 In addition, other economic demand drivers, such
16 as the price of substitutes and the price of complementary
17 products to milk have been found to not have a large
18 impact on milk demand. You may have heard of this as the
19 cross-price elasticity of demand. That's what economists
20 technically refer that to.

21 And as an example, that same study that my
22 research associate and I did in 2008, we estimated that
23 the most important substitute product for milk at that
24 time is bottled -- was bottled water and that a 1%
25 increase in the price of bottled water would cause a .32%
26 increase in the demand for milk, holding other demand
27 drivers constant. In other words, bottled water was the
28 most important substitute at that time for fluid milk.



1 Most empirical studies on milk demand have also
2 shown that the own and the cross-price elasticities of
3 milk demand are inelastic. In other words, changing the
4 price of beverage options up or down does not
5 proportionately impact milk consumption up or down.

6 Another way to demonstrate how unimportant price
7 changes are in terms of driving milk demand, consider the
8 fact that the real price of milk relative to all goods and
9 services in the United States economy has fallen by 7%
10 since 2013. So the price of milk -- the real price of
11 milk relative to the -- to all goods and services in the
12 economy has fallen since -- by 7% since 2013.

13 That means that milk has become less expensive to
14 purchase relative to other goods and services in the
15 economy since 2013. Yet during that same time period, per
16 capita milk consumption actually decreased by 18.3%. That
17 is even though the price of milk has decreased relative to
18 other products, per capita demand has decreased since
19 2013.

20 Of course, there are other demand drivers that
21 help explain this decline, but if the price of milk was
22 actually elastic, one would expect the 7% decrease in the
23 real milk price to have resulted in an increase in milk
24 demand over that time period, not an 18.3% decrease. This
25 is just illustrative of the unimportance of the retail
26 price when it comes to driving demand for milk.

27 Well, what -- a natural question then is, what has
28 caused the steady decline in per capita milk demand over



1 time? There are at least three reasons that I can think
2 of for this, and they do not include the retail price of
3 milk.

4 First, the beverage market has become increasingly
5 competitive with many new products introduced over time.
6 In the distant past -- in fact, I remember when I started
7 at Cornell in 1985, milk lost significant market share to
8 soda. More recently, bottled water, sports drinks, and,
9 of course, more recently, plant-based milk products have
10 taken tremendous market share away from milk. The steady
11 downward trend in per capita milk sales, in large part,
12 has been due to milk drinkers switching to these
13 alternative beverages.

14 Second, another cause of declining per capita milk
15 consumption has been the increasing trend in food consumed
16 away from home. Food consumed away from home would
17 include restaurants, convenience stores, buying beverages
18 anywhere outside the home. As people consume more food
19 away from home, fluid milk consumption may be diminished
20 by the lack of availability of many varieties of fluid
21 milk products at restaurants as well as other
22 establishments, as well as the expanding availability of
23 other products that compete with milk.

24 Many eating establishments carry only one type, if
25 any, of fluid milk, which causes some people who would
26 normally drink fluid milk to consume a different beverage
27 if the preferred fluid milk product is not available away
28 from home.



1 Between 2013 -- between 2013 and 2019, prior to
2 COVID, the trend in food consumed away from home as
3 measured in food expenditures away from home increased by
4 34%. These expenditures decreased significantly during
5 COVID, but were still 15.4% higher in 2021 -- the most
6 recent year of data that I found -- than in 2013. So
7 clearly, consumers are spending more and more money over
8 time on food and beverages that are consumed away from
9 home. Thus, the increase in food consumed away from home
10 appears to be responsible for some of this decrease in
11 fluid milk consumption -- in per capita fluid milk
12 consumption.

13 Finally, an important demographic change causing a
14 decrease in milk demand is the proportion of young
15 children in the population, which is lower than it was in
16 2013. Since young children are one of the largest fluid
17 milk-consuming cohorts, any decline in that cohort
18 negatively impacts average per capita fluid milk
19 consumption for the United States.

20 Between 2010 and 2021, the proportion of the
21 population under 19 years of age in the U.S. fell from
22 26.9% to 24.8%, which represents almost an 8% decline in
23 the youngest cohort of our population. Therefore, there
24 is a positive relationship between per capita fluid milk
25 consumption and the age cohort; both have declined.

26 How would increasing the Class I price
27 differential or the Class I price impact the retail fluid
28 milk demand? National Milk Producers Federation's



1 proposal recommends a nationwide increase in the Class I
2 price differential by an average of almost \$1.50 per
3 hundredweight. At current Class I prices -- and
4 current -- I mean, when I was writing this testimony a
5 month ago -- this represented approximately an 8.6%
6 increase in the Class I price.

7 To translate the Class I price increase to the
8 retail level, we need an estimate of a price transmission
9 from the farm price to the retail price. So if you
10 increase the farm price, what does that do to the retail
11 price?

12 Based on monthly Class I and retail price data,
13 from 2013 through May of 2023, I estimated -- and that's
14 the last page that was referred to in my testimony -- that
15 a 1% change in the Class I price would cause a .55% change
16 in the same direction in the retail price for milk
17 products.

18 By the way, this has -- this has been found by
19 other people that, roughly, the farm value of the -- of
20 the -- of milk -- the milk price is roughly around 50%.
21 So this is -- this is much in line with what -- what the
22 empirical evidence shows.

23 Based on this estimate, an 8.6% increase in the
24 Class I price, then, would result in a 4.7% increase in
25 the retail price for milk products. Okay? So if -- if
26 the Class I price is increased by 8.7%, the retail price
27 would -- would increase over time by about 4.7%.

28 Based on the average retail price elasticity of



1 the 38 studies that I computed, that is .35, a 4.7%
2 increase in the retail price would cause per capita fluid
3 milk demand to decrease by 1.6%.

4 Alternatively, using the smaller median retail
5 price elasticity of demand, which is .2 -- not .37, but
6 .2 -- a 4.7% increase in the retail milk price would cause
7 per capita fluid milk demand to decrease by just under 1%,
8 .9%. Using either estimate, the decrease in demand would
9 be substantially lower than the percentage increase in the
10 Class I price and, therefore, would increase gross
11 revenues to dairy farmers.

12 In summary, practically all studies that have
13 measured the price elasticity of demand for milk has found
14 it to be inelastic. Likewise, many of these studies have
15 found the cross-price elasticities of demand for milk
16 substitutes to be inelastic.

17 These results -- these results suggest that
18 increasing the Class I price by increasing Class I
19 differentials will increase gross revenues to dairy
20 farmers while not having a significantly negative impact
21 on milk sales volume.

22 These insights are essential to validating the
23 ongoing justification or rationale for establishing higher
24 minimum Class -- minimum prices for Class I milk. The
25 underlying economic rationale hinges on two factors: One
26 is the higher cost of serving Class I processors; the
27 second relates to the economic argument that setting a
28 higher price for the most inelastic use of milk will



1 result in higher gross revenue to dairy farmers, even if
2 there is consequent lower prices for other uses of milk as
3 markets find new supply and demand equilibria.

4 It is important to understand clearly that the
5 facts that the consumer -- the fact that the consumer
6 demand for Class I products is price inelastic in no way
7 conflicts with the obvious fact that per capita and total
8 sales of these products have been trending downward over a
9 decade, over the last 20 years, over the last 50 years.

10 What the research indicates is that those sales
11 trends are one cause by other factors than the price of
12 milk, and two, would exist -- would exist even if minimum
13 Class I prices were lowered. This is not to say that
14 changes in minimum Class I prices would have no impact on
15 sales, but rather that those impacts would be minor in
16 comparison to the other demand drivers for milk.

17 That concludes my written testimony.

18 Q. Thank you, Dr. Kaiser.

19 I just have a couple follow up questions. I think
20 it was yesterday -- what is today, Thursday -- Tuesday we
21 heard testimony from a producer who processes milk or
22 sells milk -- or processes milk in California, and they
23 have a higher protein requirement for their Class I milk
24 in California.

25 Are you familiar with that requirement?

26 A. Yes. And -- and the average retail prices are --
27 are higher in California because of that.

28 Q. Okay. And he gave an example that if for some --



1 if they were to encounter a situation where they had
2 produced more milk than the California markets would bear,
3 that when they take that milk outside of California where
4 they don't have that same high protein requirement, they
5 are not able to sell that at that higher premium price.

6 A. Well, that -- that makes obvious sense because
7 there's lower price milk in that market. So if the
8 availability of -- of a big supply of that milk is lower
9 priced, it doesn't -- you know, price arbitrage would mean
10 that they would have to lower their price.

11 That doesn't mean, though, that the price of --
12 that the demand for milk is inelastic. It just says if
13 you somehow shock that market with higher priced milk,
14 that -- that they are going to have to price the milk like
15 the rest of the market.

16 Q. Okay. So would then it make sense if -- if all of
17 the producers had the same requirement for pricing, that
18 that would neutralize that effect?

19 A. Exactly. So if you are talking about a national
20 market, for example, that -- that would totally neutralize
21 that.

22 Q. Okay. Thank you.

23 And you gave three reasons why -- I guess three
24 reasons why you believe Class I milk consumption has
25 declined over the years.

26 I want to just ask about the third one. You talk
27 about the age demographics of 19 or under. Is that
28 also -- is there any correlation to the consumption of



1 cereal?

2 A. That's a good question. I do not know for a fact
3 that that is true, but I would -- I think that that's a
4 pretty good thing to speculate. I mean, there's --
5 there's -- there's certainly more of a correlation with
6 young people and milk consumption, drinking milk. But I
7 would also guess that children probably consume -- are
8 bigger consumers of cereal. But I -- I -- I -- that's a
9 little bit of a speculation on my part. But it is
10 certainly true with milk. Certainly true with milk.

11 And, in fact, if I could just elaborate on that.
12 What I have found over time, over 38 years studying milk
13 demand, is that it used to be 19 years of age, where it
14 was kind of the -- where people really stopped or really
15 significantly reduced their milk consumption. That
16 threshold has come down, and now what we're seeing is the
17 younger cohort being -- stopping, you know, at ten years
18 of age and switching to plant-based milk or -- or
19 substitutes.

20 So I have -- when I estimate a milk demand
21 function, which I have done a lot over my career, that is
22 always the biggest -- that is the largest demand driver
23 that I have found for milk, and it is the only elastic.

24 So, for example, we -- we typically see that a 1%
25 increase in the young cohort, be it under 19 or be it
26 under nine years of age, results in an increase in -- in
27 milk demand, per capita milk demand, by over 1%. It is
28 like 1.4% or something like that.



1 And if you read, for example, the reports to
2 Congress on the dairy evaluation, they estimate fluid milk
3 demand in that study, they include that as a variable -- I
4 started to do that, and my predecessors that took over
5 doing that, from Texas A&M, continue to put that, as well
6 as the trend in away from home, because those are the two
7 most important factors affecting demand over time, and
8 it's basically empirically shown in those studies.

9 Q. Thank you.

10 On page 3 of your testimony, in the third full
11 paragraph, the last sentence, you state, "Using either
12 estimate, the decrease in demand would be substantially
13 lower than the increase in the Class I price and would,
14 therefore, increase gross revenues to dairy farmers."

15 I'm wondering if you can elaborate on that a
16 little bit. As I understand that statement, are you
17 saying that, you know, because if demand decreases at or
18 the same amount or -- it would take away the benefit of
19 the corresponding price increase to dairy farmers because
20 they would not have as much volume to sell?

21 A. Right. So it -- it's -- it's always -- economics
22 is always a little bit abstract, but it is actually a
23 pretty easy thing to describe. When you have an
24 inelastic -- in this case, a highly inelastic price
25 elasticity, what that literally means is if you increase
26 the price by, say, 10%, you are going to get a much, much
27 smaller percentage decrease in quantity demanded. And
28 since revenues, gross revenues, are price times quantity,



1 revenues will go up.

2 And so -- in fact, I just taught this yesterday to
3 my price analysis class. We like to say, if a firm can
4 set price, and they are -- and they know they are
5 operating at a price that is on -- that's on the inelastic
6 portion of their demand curve, it is optimal for them to
7 raise the price because the revenues will go up by doing
8 so. And so it's as simple as that.

9 Q. Okay. Thank you.

10 MS. HANCOCK: I think that's all I have for now.
11 Your Honor, I don't know if there's anybody that has
12 cross-examination questions, but we would submit him for
13 that if anybody wants to examine now, or as we talked
14 about previously, we're happy to bring him back after
15 lunch so that people have an opportunity to spend some
16 time preparing.

17 THE COURT: I think AMS said they were ready to
18 go.

19 MR. HILL: Your Honor, I know this is highly
20 irregular, but we have a farmer here who can only be here
21 apparently for the morning. It should be quick, we
22 believe. And so we will do our cross a little bit later.
23 I think -- I think we want to do it after lunch, but we
24 will go first at that point. But we do have a farmer here
25 we would like to get on.

26 THE COURT: Any objections other than the
27 objections already lodged and preserved?

28 MR. ENGLISH: We're perfectly clear, dairy farmers



1 go first. So, no, absolutely no objection.

2 MR. ROSENBAUM: This is Steve Rosenbaum for the
3 International Dairy Foods Association. We have a very
4 longstanding practice that dairy farmers can come as they
5 are available, and I have never heard an objection to a
6 dairy farmer testifying when they are available. I don't
7 view the current witness as falling within that category.
8 That is as to the person that just got through testifying.
9 But the long and short of it is we certainly have no
10 objection to the dairy farmer testifying at this time.

11 THE COURT: So ruled. Dairy farmers come first.
12 We all think that's important.

13 MS. HANCOCK: Perhaps we could just clarify --
14 perhaps if we could just clarify. Are we bringing him
15 back after the dairy farmer, or are we going to bring him
16 back after lunch?

17 MR. HILL: I think after lunch would be our
18 preference.

19 MS. HANCOCK: Okay. Sounds fair.

20 THE COURT: Then we're going to put another
21 witness on after the dairy farmer. This is an irregular
22 morning.

23 MS. HANCOCK: Finish Dr. Vitaliano's cross? Okay.

24 THE COURT: We're going to work -- thank you,
25 Doctor. Thank you, Professor.

26 Mr. Miltner.

27 MR. MILTNER: I have one quick ask, and that is
28 that after we complete the dairy farmer, I will have



1 cross-examination for Dr. Kaiser. There's one or two
2 questions that might take 15 minutes for Dr. Kaiser to go
3 through. And I think if we can have him do that, I hope
4 those questions would help everybody prepare the rest of
5 their cross for this afternoon. So if that -- if we could
6 do that, I really think it would be helpful.

7 If we can do it now before we put on the farmer, I
8 have no problem doing that.

9 THE COURT: Well, what do we want to do? I kind
10 of like the idea of something that would -- and you are
11 representing that it would -- that it would clarify cross,
12 I guess no one will know unless they hear it. And it
13 doesn't -- and one or two questions sounds good. I'm
14 inclined to let you do that. I mean, you are representing
15 in good faith that --

16 What do you think Ms. Hancock? It is your
17 witness.

18 MS. HANCOCK: If Mr. Miltner is ready to ask these
19 questions, we might as well knock them out now, and we'll
20 still have time for the dairy farmer before lunch.

21 THE COURT: Does that work for you, AMS?

22 MR. HILL: As long as the dairy farmer can get on
23 before lunch.

24 THE COURT: Absolutely.

25 MR. HILL: He has to leave before lunch.

26 THE COURT: Dr. Kaiser has resumed the stand.

27 Mr. Miltner has a couple of questions in service
28 of the record.



1 MR. MILTNER: Thank you.

2 CROSS-EXAMINATION

3 BY MR. MILTNER:

4 Q. For the transcript, my name is Ryan Miltner. I
5 represent Select Milk Producers.

6 Dr. Kaiser, my questions are not about the text of
7 your statement but about the references that appear on
8 page 5.

9 A. Okay.

10 Q. All of the articles and research you cite there, I
11 have not gone through and matched them up against Table 1,
12 but do those just correspond with the studies that are
13 listed in Table 1?

14 A. That's correct.

15 Q. Is there anything in the references that's -- that
16 is not part of what's referenced in Table 1?

17 A. No, there is not.

18 Q. On page 9, and this is where we might take a
19 little bit of time but -- your appendix, for those of us
20 that are not statisticians, can you walk us through what
21 this shows.

22 A. Sure. Sure.

23 So this represents what is technically called a
24 price transmission. And what a price transmission
25 measures is how do prices at the farm level get
26 transmitted to the wholesale, to the retail level. And
27 this is a farm-to-retail price transmission.

28 And so it's just a statistical model that tries to



1 explain the retail price per fluid milk per gallon times
2 8.6, which is roughly a hundredweight, a hundred pound, as
3 a function of the farm Class I price.

4 And because this is monthly, a change in the
5 Class I price in one month will have a -- probably have an
6 impact on the retail price, but it takes time. So if you
7 change -- if you increase the Class I price today by say
8 10%, it might increase the current retail price, but it
9 would take time.

10 And so I basically looked at this -- and the
11 bottom part of that graph is four months of lags. And so
12 the sum of the lags where it says .54929, that basically
13 means that over a four-month period, a 1% increase in the
14 Class I price would result in a little over a half a
15 percent increase in the retail price. That's the price
16 transmission.

17 Alternatively, one could just look at and -- look
18 at the average Class I price and the average retail price
19 adjusted on a quantity basis, and you roughly will get
20 something that's in this neighborhood of half a percent.

21 Q. All of your -- I'm looking at the middle of this
22 appendix here where you have R-squared, adjusted
23 R-squared.

24 Is that standard error of regression?

25 A. Yes. Yes. These are all statistical diagnostic
26 measures. The R-squared, quite simply, is 7 -- .74, for
27 example, that means that 74% of the variation in the
28 Class I price and its four lags explains 74% of the



1 changes in the retail price for milk. That's what -- it
2 is sometimes referred to as a goodness-of-fit measure.
3 And that's a very reasonable R-squared.

4 Q. And the rest of the measures in there are similar
5 measures of fit?

6 A. Yes. They -- they are measures of statistical --
7 they are statistical diagnostic measures, basically.

8 But, quite frankly, the reason I did this -- I
9 didn't do this in the first draft. I just took a number
10 like 50 -- and knowing that, for example, in New York
11 State, the retail price for milk cannot be 50% more than
12 the Class I price. I originally just used the number .5
13 because I needed to translate the proposed Class I price
14 increase into a retail price increase, and that's why I
15 did that. And then later on I found this data, so I just
16 simply ran this regression. So this is really just a way
17 to translate the price -- the -- the \$1.50 increase in the
18 Class I differential to what that would mean in terms of a
19 percentage increase in the retail price.

20 Q. Would it be correct then that the information in
21 the appendix, because it relates to the effects on the
22 retail price from a wholesale price increase, it's not --
23 the data in this appendix does not relate to the
24 elasticity of demand for milk, correct?

25 A. Correct.

26 Q. Okay.

27 MR. MILTNER: Thank you. That's all I had.

28 THE COURT: So we're going to let Dr. Kaiser step



1 down from the stand, and we're going to bring up dairy
2 farmer Kevin Krentz.

3 I'll swear you in. Welcome, Mr. Krentz. Thanks
4 for coming in. Please raise your right hand.

5 KEVIN KRENTZ,

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

8 THE COURT: Do we have someone filling the role of
9 direct examiner?

10 DR. CRYAN: No. Well, not really. I'm just
11 here -- I have -- President Krentz -- Kevin Krentz is the
12 president of the Wisconsin Farm Bureau and a dairy farmer.
13 He's here as a farmer and as the president of the
14 Wisconsin Farm Bureau. I'm here to facilitate however I
15 can on behalf of one of our member states. But I -- I'm
16 only here to help.

17 So I think at this point I'll just say, go ahead,
18 President --

19 THE COURT: Well, let's mark his --

20 DR. CRYAN: Oh, yes.

21 THE COURT: Go ahead, sir. Let's mark it as an
22 exhibit for identification.

23 DR. CRYAN: President Krentz has written
24 testimony, and we would ask that it be marked for -- as an
25 exhibit. I don't know what the next number is.

26 MR. HILL: 116.

27 THE COURT: So marked, Exhibit 116.

28 (Thereafter, Exhibit Number 116 was marked



1 for identification.)

2 DR. CRYAN: Thank you very much.

3 THE COURT: Okay. Mr. Krentz, you may give your
4 statement.

5 Am I pronouncing your name correctly?

6 THE WITNESS: Correct. Yes. You are.

7 THE COURT: Proceed.

8 THE WITNESS: Again, my name is Kevin Krentz. I
9 am the president of Wisconsin Farm Bureau, and along with
10 my wife Holly, we milk 600 cows and run 1400 acres in
11 Berlin, Wisconsin. I purchased my father's cows, 60 cows,
12 in 1994 and have been dairy farming since.

13 First, I want to thank USDA for agreeing to
14 hearing these proposals on Federal Milk Marketing Order
15 reform. These changes are long overdue. Midwest farmers
16 are in need of urgent reform, and the proposals supported
17 by the American Farm Bureau will go a long way to
18 restoring balance to a system that has moved away from
19 sustainably supporting producers.

20 Wisconsin is America's dairyland and, as such,
21 have seen some of the greatest market fluctuations in the
22 country. While we can talk about Wisconsin's agriculture
23 diversity, the economy in Wisconsin, the agriculture
24 economy, is driven by the dairy sector.

25 Let's look at the dairy industry in Wisconsin. In
26 2018 the last time the Farm Bill was being debated and the
27 average-of was adopted, Wisconsin had roughly 8800 dairy
28 farms. At the beginning of 2023, there was about 6,000



1 left. That's a loss of about 30%.

2 Milk margins have the lowest level since 2019, and
3 the catastrophic \$4 level on dairy margin cover was also
4 breached for the first time. Changes as a result of the
5 2018 Farm Bill have cost farmers nationally almost
6 \$1 billion since May of 2020, not to mention inputs remain
7 high and feed costs continue to be increased.

8 But let's bring that to a community level. A
9 number of years ago, I did analysis on my expenses on my
10 farm, and I found that 62% of my expenses on my farm are
11 spent within a 15-mile radius of my farm. Multiply that
12 by the 6,000 dairy farms in Wisconsin, and that's heavily
13 affected small communities across the state where those
14 dollars are spent over and over.

15 While the news of farmers dumping milk during the
16 pandemic, and most recently earlier this summer in Western
17 and Southeast Wisconsin, is disheartening, Wisconsin Farm
18 Bureau and American Farm Bureau are supporting several
19 changes that could positively impact dairy farmers.

20 Wisconsin Farm Bureau is proud to support the
21 following provisions for reform for Federal Order:

22 Number one, the reform for the dairy pricing
23 formula moving back to the higher of as opposed to the
24 average of Class I mover. This change was made in the
25 2018 Farm Bill at the request of the stakeholders. The
26 Class I mover was -- on the average of Class III or
27 Class IV has been a terrible impact for dairy farmers and
28 dairy markets. Changes in the market could lead to



1 similar price misalignments between the Class III and
2 Class IV in the near future, as cheese -- cheese-making
3 capacity grows. This -- these changes are also supported
4 by the American Farm Bureau.

5 Number two, reducing economic incentives for
6 depooling. Depooling has several negative impacts for
7 farmers. In some cases the manufacturers don't pay into
8 the pool, taking money out of the pockets of dairy
9 farmers. Even when manufacturers do pay the full class
10 price value to their depooled farmers, that creates
11 winners and losers. Some farmers get more, some farmers
12 get less for the same product, which defeats the purpose
13 of Federal Milk Marketing Orders to assure farmers in the
14 market get roughly the same price regardless of what the
15 use is. And this ultimately pits farmer against farmer.
16 It pits neighbor against neighbor.

17 There's a higher chance of negative PPD producer
18 price differentials. Negative PPDs and depooling create
19 huge risk for farmers who try to hedge on farmer
20 contracts; that is, the relationship between future
21 settlement prices and actual market blend prices is so
22 volatile that it can increase in farmer's risk rather than
23 manage it. This is penalizing farmers for trying to do
24 the right thing to manage their risk.

25 Many farmers across the state use Dairy Revenue
26 Protection. And even if they -- even if the Dairy Revenue
27 Protection product is at class price during that month, a
28 large negative PPD will drastically throw that -- throw



1 that income off for that producer. And I have heard
2 negative PPDs in Wisconsin of negative 7 to \$9 across the
3 state, moving through 2020.

4 The 2018 Farm Bill switched from the higher-of to
5 the average-of plus \$0.74, further exasperating the
6 disruption and made milk checks more confusing. Leading
7 to another discussion that we need to have is milk check
8 standardization or transparency.

9 In 2020 alone, over 700 million was lost in the
10 revenue pool, partly due to the formula switch decreasing
11 the payments many farmers are receiving as well as
12 manufacturers' depooling behavior. At first this
13 imbalance was linked to COVID forces; however, the losses
14 in pool value have continued into 2023 as Class IV prices
15 have become a significant driver in the dairy market.

16 Cumulative pool losses have reached nearly
17 920 million since the formula went into effect in May of
18 '19.

19 The third, eliminating advanced prices of Class I
20 milk and Class II skim milk. Under the current Class I
21 and Class II pricing formulas, weighted averages dairy
22 product prices from the first two weeks of one month are
23 calculated -- advanced prices used to price Class I and
24 Class II products for the following month. This
25 arrangement creates a long lag between when the advanced
26 prices and the current prices are announced for the same
27 month and means that advanced prices can be based on
28 weekly data that is 25 to 40 days older, on average, than



1 the basis of the current prices.

2 This means when the market prices rally, current
3 prices can be much higher than advanced prices, leading to
4 low and negative PPDs. This creates the opportunity to
5 depool milk from the order to benefit from a non-pooled
6 volume of the recent elevated prices without sharing the
7 value with the pool and further depress the PPD.

8 By removing advanced pricing, all commodity prices
9 would be announced during the same month using the same
10 data, removing any lag time within the pricing system.
11 Combining this adjustment with the switch back to the
12 higher-of Class I mover would further reduce price spreads
13 that contribute to higher probability of handlers
14 depooling from the marketplace.

15 Elimination of advanced pricing would not be
16 expected to have a substantial impact on average Class I
17 or overall producer prices, but it would increase average
18 uniform prices in the Federal Milk Marketing Orders
19 because periodic high manufacturing milk values would not
20 be removed through pooling.

21 During 2020, avoiding depooling would have
22 retained billions of dollars in the Federal Milk Marketing
23 Order pool, helping better maintain uniform price amongst
24 producers rather than large differences between pooled and
25 depooled milk values. And with my farm alone, it was
26 roughly \$200,000 from negative PPDs affecting my farm.

27 I believe in fairness in pricing and transparency
28 in dairy pricing. Processors and producers both must



1 have -- both must be profitable. But we have to ask
2 ourselves, how many new farms have been created the last
3 couple of years? How many new dairy farms the last couple
4 of decades? We need a pricing system that works for dairy
5 farmers and pays them for the commodity they produce.
6 Without these reforms, we'll continue to see small farms
7 leave and greater consolidation in the industry. These
8 priorities are not only in keeping with America's -- or
9 Wisconsin's dairyland heritage, but will benefit farms
10 across the order.

11 In conclusion, these changes won't stop dairy
12 farms from going out of business, but in combination with
13 the proposals along with the possible Farm Bill changes,
14 give dairy farmers the best opportunity to minimize their
15 risk. Wisconsin dairy farmers aren't looking to put
16 processors out of business. In fact, we need -- we need
17 producers and processors. These changes make it at least
18 possible where we could find some symmetry between the two
19 moving forward.

20 And I also look forward to working with USDA on
21 milk check transparency down the road and building
22 standardization in that as well, as we build trust within
23 the system between processors and producers moving
24 forward.

25 Thank you.

26 CROSS-EXAMINATION

27 BY DR. CRYAN:

28 Q. I'm Roger Cryan with the American Farm Bureau



1 Federation. Thank you, President Krentz, for your
2 testimony.

3 Do you support all of AFBF's proposals and our
4 positions in support of other proposals, including four of
5 the five National Milk positions?

6 A. We do, and I do. We have a robust grassroots
7 policy process within the Farm Bureau, and many of our
8 dairy farmers within Wisconsin have been part of that
9 process over the last number of years, building a robust
10 policy that we can support everything that we have
11 proposed from AFBF.

12 Q. And dairy farmers like you are very active in the
13 membership and leadership of Wisconsin Farm Bureau; is
14 that right?

15 A. Absolutely.

16 Q. You attended the -- our forum, the Farm Bureau
17 Federal Milk Marketing Order forum last fall, and spoke,
18 in fact.

19 A. In Kansas City, yes.

20 Q. And was it your understanding there was a pretty
21 high consensus among farmers in support of a number of
22 things, including the higher-of Class I formula and
23 addressing negative PPDs?

24 A. Yes. Yeah. That forum helped build consensus
25 amongst processors and producers.

26 Q. You talked in your testimony about the variation
27 in prices among producers within -- within our -- even
28 within the neighborhood. You even said it pitted neighbor



1 versus neighbor in terms of price variation.

2 Could you talk about that a little bit, from your
3 experience?

4 A. Absolutely. When we have producers within the
5 same town, within the -- within the same neighborhood,
6 that are potentially selling to two different plants, and
7 they are -- they're producing the exact same commodity,
8 but yet their prices could be vastly different because one
9 plant decided to depool and move out of the market and one
10 plant stayed as a pooled product, so --

11 Q. And that also -- as you also talked about, impacts
12 that has on risk management?

13 A. Absolutely. That -- that is -- we have built a
14 system that dairy farmers can protect themselves with the
15 Dairy Revenue Protection, and it has become a significant
16 tool. But it takes fluctuations in the market to create
17 opportunity with that product. But the negative PPDs
18 drastically drop that at the final price for the milk
19 check, for the -- for the profitability of that farm.

20 Q. Well, are there any other impacts of depooling and
21 negative PPDs you want to share with us?

22 A. Well, again, I shared almost 200,000 from my farm
23 alone, and it -- it is not only farms across Wisconsin,
24 across the orders, it is communities that this drastically
25 affects, because those dollars are -- are spent over and
26 over within those communities.

27 Q. Of course.

28 Is there anything else you would like to say?



1 A. I don't believe so.

2 Q. Okay. Well, thank you very much, sir.

3 DR. CRYAN: I'm done. Thank you.

4 THE COURT: Do we have questions for this witness?

5 Mr. Rosenbaum.

6 CROSS-EXAMINATION

7 BY MR. ROSENBAUM:

8 Q. Good morning, Mr. Krentz. My name is Steve
9 Rosenbaum. I represent the International Dairy Foods
10 Association. Thank you for coming today to testify.

11 You in your testimony referenced the 2018 Farm
12 Bill that changed the -- what a lot of people call the
13 Class I mover. You know what I mean when I refer to that?

14 A. Yep.

15 Q. And changed it from the higher-of Class III or
16 Class IV to instead the average-of Class III and IV plus
17 \$0.74, correct?

18 A. Correct.

19 Q. Is it your understanding that that change was
20 jointly proposed by both the dairy farmer side and the
21 dairy processor side to Congress?

22 A. As far from a dairy producer, I don't -- I don't
23 remember having any say in that. As for -- from a
24 Wisconsin Farm Bureau standpoint, I do not recall having
25 participate in that discussion.

26 Q. Okay. Do you know whether other dairy farmer
27 associations, for example, some of the other organizations
28 here today, whether they were actively supporting that,



1 along with the processor side?

2 A. I want to be careful on speaking on behalf of
3 someone else.

4 Q. Okay. You are just not sure one way or another;
5 is that fair?

6 A. Correct.

7 Q. Okay. And are you familiar with the proposal that
8 my client, the International Dairy Foods Association, has
9 submitted for this hearing to change the Class I mover?

10 A. Not in -- not in depth, but some of it, yes.

11 Q. Okay. Do you -- do you know whether that -- let
12 me strike that.

13 Your -- your concern is that there was a period in
14 2020 when had the Class I mover been the old formula, it
15 would have returned a higher price than the formula that,
16 in fact, came into effect in 2019, correct?

17 A. 2020 showed the significant portion of that, but
18 those negative PPDs continue even into 2023.

19 Q. Are you aware that International Dairy Foods
20 Association proposal is designed to ensure that dairy
21 farmers will never be paid less than they would have been
22 paid had the higher-of been in place?

23 A. I guess I -- I'm not following your exact
24 question.

25 Q. You wanted -- you want to be -- you feel like you
26 were underpaid because the formula was no longer the
27 higher-of, correct?

28 A. Correct.



1 Q. And I take it you haven't examined whether the
2 IDFA proposal would itself achieve the result of paying
3 dairy farmers as much as they would get under the
4 higher-of?

5 A. I -- no. Not fully. I have not dove into that.

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

7 THE COURT: Further questions?

8 CROSS-EXAMINATION

9 BY MR. MILTNER:

10 Q. Good morning, Mr. Krentz.

11 A. Good morning.

12 Q. Ryan Miltner for Select Milk Producers.

13 I think during the conference in Kansas City we
14 spent some time talking, if I recall.

15 A. Okay.

16 Q. I want to ask about that -- that meeting that you
17 referenced.

18 I believe it was over three days that producers
19 met from around the country to talk about these issues,
20 correct?

21 A. Correct.

22 Q. I wonder if you could share for USDA, if you can,
23 the consensus that was built around returning to the
24 higher-of?

25 A. Specifically with that, there was a -- the
26 majority of the room moved in that direction. That was
27 one of the major items that we came to consensus pretty
28 quickly.



1 Q. And of all the issues talked about, would you say
2 that that was one of the most important, if not the most
3 important, discussion that was had?

4 A. That is one of the major items that have
5 essentially left dollars outside the farm gate, if you
6 will. And, again, that's a major concern of dairy farmers
7 across the nation. And -- and, like you said, that was
8 one of the major items that we came to consensus in that
9 forum in Kansas City.

10 Q. By the end of that meeting, do you recall if there
11 was any real opposition in the room to returning to the
12 higher-of?

13 A. Again, I can't speak for -- for any opposition.
14 But, again, the goal of that was to come to a consensus.
15 Now, that's not necessarily unanimous, right.

16 Q. Sure. Yeah. Consensus is not unanimous.

17 A. Uh-huh.

18 Q. Thank you.

19 Have you had a chance to review or are you
20 familiar with the three proposals in this hearing from
21 Select Milk Producers?

22 A. I have not dug deep into that.

23 (Court Reporter clarification.)

24 BY MR. MILTNER:

25 Q. When the change was made to move away from using
26 the-higher of to the average-of III and IV plus \$0.74, I
27 understand you were -- as you had said to Mr. Rosenbaum,
28 you weren't involved in those discussions.



1 Do you recall, though, when that change was made
2 that the expectation among the dairy producer community
3 was that there would be no material economic change to
4 your check from that?

5 A. I -- I guess in 2018 I don't recall hearing that
6 specific discussion at that point, so --

7 Q. Okay. Whether through your role as Farm Bureau
8 president or just as a dairy farmer, do you pretty
9 carefully track the class -- the individual class prices
10 month to month?

11 A. I do. And I generally, especially with products
12 like Dairy Revenue Protection or buying -- using puts and
13 calls on the CME, I am generally looking forward nine to
14 12 months, trying to protect myself, trying to protect my
15 business, and locking -- trying to lock in a margin along
16 the way. Again, if -- if those -- if I'm locking in a
17 margin and -- and doing what I can to protect myself and
18 my business and something happens, like negative PPDs,
19 large negative PPDs, it drastically changes that measure
20 in a short amount of time when that milk production month
21 comes along.

22 Q. You also spoke about how during 2020 the change to
23 the new Class I mover had serious financial consequences
24 to farmers, correct?

25 A. Correct.

26 Q. Have you -- have you looked at what that
27 relationship between Class III and Class IV is in the last
28 few months?



1 A. PPDs, I -- are positive, at least at my farm.
2 They have been slightly positive, 30 -- I believe last
3 month was \$0.36.

4 Q. Have you looked to see whether the Class I mover
5 would have been higher or lower than it is now for the
6 first day of August?

7 A. I have not. I'm going to let the economist do
8 that.

9 Q. Very good. Thanks for answering my questions.

10 A. Thank you.

11 THE COURT: Any further questions, other than AMS?
12 Seeing none, Ms. Taylor.

13 CROSS-EXAMINATION

14 BY MS. TAYLOR:

15 Q. Good morning.

16 A. Good morning.

17 Q. Thank you for coming today to testify.

18 A. Thanks.

19 Q. The Small Business Administration defines for a
20 dairy farm a small business as one that receives
21 7-point -- excuse me -- \$3.75 million or less in gross
22 revenue a year, and that's on a whole farm basis.

23 Would your farm meet that definition?

24 A. Yes.

25 Q. Okay. And you answered some questions to
26 Mr. Miltner about your risk management use.

27 Did I catch it correctly that you -- when you are
28 looking to lock in a margin, you go out about nine to 12



1 months when you are doing that?

2 A. I try to stay out that far, looking to protect
3 myself. Now, margin fluctuations, price of that product,
4 may dictate when -- when I pull the trigger if you will
5 on -- on buying that product.

6 Q. Okay. And I don't think you mentioned this. Are
7 you a cooperative member or are you an independent
8 shipper?

9 A. I used to be a cooperative, but that was purchased
10 by a private.

11 Q. Okay. I think you answered some of my questions
12 already in other people's questions.

13 On the second page of your statement when you are
14 talking about the impact of negative PPDs, number four
15 says, "At first, this imbalance was linked to COVID-19
16 forces, however the losses in pool value have contributed
17 (sic) through 2023 as Class IV prices have become the
18 driver of the dairy market."

19 I was wondering if you could expand what you mean
20 by that statement.

21 A. Again, in Wisconsin, we -- we produce -- 90% of
22 our milk in -- 90-plus percent of our milk in Wisconsin
23 goes into the cheese market, so we're heavily reliant on
24 Class III and Class IV. And moving from the higher-of to
25 the average-of has -- has drastically changed those
26 calculations or that -- that -- that price coming to the
27 farm. And as the Class IV is a higher driver in that is
28 the -- has been more of a differential in that.



1 Q. Okay. And then towards the bottom of the page
2 when you are discussing eliminating advanced pricing, you
3 say, "It would not be expected to have a substantial
4 impact on average Class I or overall producer prices, but
5 it would increase the average uniform prices because
6 periodic high manufacturing milk values would not be
7 removed through pooling."

8 I just would like you to, for the record -- I
9 think I know what you mean there but, for the record, kind
10 of explain what that statement means.

11 A. Again, keeping -- keeping the product in the pool,
12 so there's a -- a fair price across the board. And,
13 again, I'm speaking from the producer standpoint and the
14 dollars that essentially come to the farm gate. And
15 that's where I believe that the -- keeping the pool,
16 keeping the standardization, disincentivizing depooling,
17 if you will, is extremely important.

18 Not all areas of the country, not all orders can
19 support a very stringent process of depooling, basically,
20 lengthening out the days required when you are going
21 through the depooling process. And so the --
22 disincentivizing the depooling process is extremely
23 important, so that way we can incentivize producers to
24 stay within the pool, bringing a standardization of
25 dollars to that farm gate.

26 Q. Okay. And so expanding on that a little bit,
27 would it be fair to say that if you eliminate advanced
28 pricing and Class I was announced at the end of the month,



1 just like manufacturing classes, then you would lessen the
2 chance of price inversions?

3 A. That's what I believe, yes.

4 Q. Yeah.

5 You mentioned that your farm has lost \$200,000
6 from negative PPDs.

7 Do you know what time period that was from?

8 A. The majority of that is in 2020.

9 Q. Okay.

10 MS. TAYLOR: I think that's it for AMS. Thank you
11 so much.

12 THE COURT: Redirect? No?

13 Let's offer the statement into evidence. Any
14 objection to the admission of Exhibit 116 into the record?

15 Seeing none, the exhibit is admitted.

16 (Thereafter, Exhibit Number 116
17 was received into evidence.)

18 THE COURT: With that, thank you for coming.

19 THE WITNESS: Thank you, your Honor.

20 THE COURT: You are excused.

21 It is 10:00 a.m. We have been going for two
22 hours. I'm sure everyone's ready for a break. Do we need
23 more than ten minutes? The reporter requests 15. Let's
24 return at 10:15.

25 (Whereupon, a break was taken.)

26 THE COURT: Okay. Back on the record.

27 Witness Vitaliano has resumed the stand.

28 Mind you, you are still under oath.



1 THE WITNESS: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. MILTNER:

4 Q. Good morning, Dr. Vitaliano.

5 A. Good morning, Mr. Miltner.

6 Q. We're starting a couple hours later than planned,
7 but we are starting, right?

8 A. We are starting.

9 Q. All right. I'm looking at your written statement,
10 Exhibit 114, if I wrote that down correctly, and I'm
11 looking at page 5.

12 Do you have it in front of you?

13 A. Yes, I do.

14 Q. With the fourth line down after your graph, you
15 write, "Approximately 90% of natural cheese produced in
16 the U.S. is sold using the CME 40-pound block price as a
17 pricing index."

18 Can you expand on the record for that and how the
19 block price is used as an index to price cheese?

20 A. Yes. As you know, the block and barrel cheese
21 forms, cheddar -- the only -- the only types of cheese
22 that have spot markets, and typically in the industry --
23 and we have other witnesses that are very actively
24 involved in those markets, can explain further -- usually
25 dairy products are often priced with reference to an
26 actual spot market for a similar product and trade at a
27 premium or a discount to the market price that's
28 established in the spot market.



1 So since -- again, since the only spot markets for
2 cheese are barrels and blocks, generally all cheese -- all
3 natural cheese that's produced are -- are priced, again,
4 with reference to one or -- one of those or the other with
5 a standard sort of premium markup.

6 Q. If you were a manufacturer of, say, mozzarella
7 cheese, am I correct that the way you would index your
8 mozzarella price off of cheddar would be to say, I'm going
9 to sell you my mozzarella cheese, and the price will be
10 the 40-pound block price plus or minus some -- some
11 factor?

12 A. That's my understanding. But I would recommend
13 that you also direct that question to the next witness,
14 Mr. Darin Hanson. He represents a company that's one of
15 the largest manufacturers of mozzarella cheese and can
16 give you a very definitive answer to that.

17 Q. Thank you.

18 Do you know, or will one of National Milk's
19 witnesses know, to the extent which product cheese or
20 cheese products are priced off of barrels?

21 A. Yes, I believe.

22 Q. Is that something I should ask you about or one of
23 the other witnesses?

24 A. Well, you can, but I asked them the same question
25 and went through basically the varieties of cheese, you
26 know, which one -- you know, which of the two prices --
27 mozzarella, which price is Swiss, things of that sort. So
28 I'd say probably you will get a more definitive answer by



1 either directing it to Mr. Hanson or Mr. Bower.

2 Q. Thank you.

3 At the bottom of page 5, you discuss the
4 volatility of the block and barrel price spread. And I
5 believe it was yesterday, Sally Keefe testified about
6 volatility of Class I costs and how it impacted fluid
7 processors.

8 Do you recall her testimony on that?

9 A. Somewhat, yes.

10 Q. Do you believe that the adoption of Proposal -- is
11 this Proposal 3, yes -- the adoption of Proposal 3 would
12 reduce the volatility in Class I prices as well?

13 A. It could. But don't forget, both -- both block
14 and barrel prices are volatile. And so if Proposal 3 was
15 adopted, that would not necessarily -- I could not say
16 a priori that it would reduce the volatility of that price
17 series.

18 The point I was making in the volatility between
19 barrels and blocks is because they are both treated as --
20 as if it was a single product, that -- that -- you know,
21 whose prices were closely aligned, that this volatility,
22 you know, creates difficulties in establishing the
23 Class III price. That does not mean that the Class III
24 price itself would become less volatile but that it would
25 become less volatile with respect to the correlation
26 between the value of cheese and the value of the Class III
27 price to producers.

28 Q. Were you here at the hearing when Lynne McBride



1 testified about Proposal 6? About mozzarella, adding
2 mozzarella to the survey?

3 A. I have been here for this hearing, but I don't
4 recall her particular testimony on that.

5 Q. Have you heard from any National Milk members or
6 anyone else any concerns about thinness of the market for
7 40-pound blocks and whether that price alone is sufficient
8 to price Class III?

9 A. We looked -- we had a discussion, for example,
10 about the -- if you want to call it thinness of the
11 market, for the price of butter, which basically the
12 reported volumes of butter compared to the total
13 manufactured butter is about 10%. We looked at ways,
14 including a proposal here, to add unsalted butter to that.

15 Our conclusion as a task force was that the
16 importance of securing greater volumes is not
17 insignificant, but adding -- adding an inappropriate
18 product, a product that is not truly the -- you know, the
19 residual commodity product, to the formulas for the pure
20 sake of increasing the volume is not necessarily a good
21 trade-off.

22 And so we are proposing that while, yes, indeed,
23 eliminating barrel cheese would eliminate some volume, it
24 would not create a thin market situation when you look
25 particularly compared to butter, when including barrels,
26 as we -- as I testified yesterday, would clearly overstate
27 the importance of barrel cheese in establishing the
28 proper -- the proper value of Class III products -- of



1 Class III milk.

2 Q. Are any of National Milk's witnesses particularly
3 well suited to discuss that issue about whether the
4 40-pound block CME market is sufficient?

5 A. I think all of our witnesses on Proposal 3 are
6 prepared to discuss that in their testimony, yes.

7 Q. Are you familiar with the types of whey that come
8 from the manufacturing of 40-pound blocks and 500-pound
9 barrels?

10 A. In a general sense. I'm not a -- an expert in
11 dairy processing.

12 Q. Are you aware that the whey stream or the whey
13 that comes off of those products is different in a
14 material respect?

15 A. Yes. I'm aware that the whey stream coming from
16 barrel cheese production is uncolored, if you call it by
17 virgin whey I think is the term, and that I have heard
18 that that has a premium value in the growing market for
19 nutritional products, particularly for protein, enhanced
20 whey, whey protein concentrate and the like.

21 But those are marketed to audiences that do not
22 like to see something on the label called, say,
23 unbleached -- or bleached whey, which is my -- my
24 understanding is the use of whey from block cheese
25 production, particularly in, you know, maybe the Upper
26 Midwest where there's coloring in the whey, to make it
27 suitable for use in some of those products that color has
28 to be taken out. But -- but I can't -- I can't give you



1 very much quantitative information on that, though.

2 Q. Have you -- do you know if any of the National
3 Milk task force or any of its members have -- have
4 discussed whether that white whey or virgin whey is
5 actually a target product for a manufacturer and that the
6 500-pound barrel is a byproduct of producing white whey?

7 A. I have heard that, and I have heard that with the
8 growing importance of whey, which used to be a byproduct,
9 there are some cheese operations where the whey product is
10 considered the chief value added product, including -- I
11 have heard that for barrels, and the cheese becomes the
12 commodity -- I wouldn't call it co-product, I would call
13 it -- but I -- I do not have information on the actual,
14 you know, price premium that that uncolored whey could
15 deliver for barrel manufacturers, for example.

16 Q. As an economist, would you agree that if a
17 byproduct were produced in sufficient -- in a quantity
18 greater than the market demands, and then placed for sale,
19 it would depress the value of the sales price of that
20 commodity as received on the market?

21 A. In general, when there's an oversupply of any
22 product, compared to the demand for that, the market will
23 adjust for the lower price until the market clears.

24 Q. And if 500-pound barrels were, in fact, in
25 oversupply, and the market for 40-pound cheddar and
26 500-pound cheddar were not substitutes, would that help to
27 explain the growing divergence between those two prices on
28 the market?



1 A. It could. If they were not perfect substitutes
2 for each other, the supply and demand situation in those
3 two different markets and the resultant prices would
4 not -- the technical term is arbitrage where one product
5 could move into the other market as a substitute.

6 I would -- I would look at the growing volatility
7 of the spread between block and barrel price and say there
8 must be some of that in there, as well as perhaps the
9 difference in virgin -- in the whey -- quality of the whey
10 streams, the value of the whey streams, which has resulted
11 in a recent average of \$0.12 per pound difference in the
12 moisture-adjusted prices of barrels and blocks compared to
13 the \$0.03 historical one.

14 Q. Thank you. I have one more question, or maybe a
15 couple of questions on the same topic.

16 Have you looked at or do you track the volume of
17 processed cheese sales in the U.S.?

18 A. No, I have not -- I have not -- I have tracked
19 that in the past, particularly at a time when I think USDA
20 used to report more data on that. But my understanding is
21 that processed cheese sales are not increasing as much as
22 natural cheese sales.

23 Q. And is it -- and I forget if it is in your
24 testimony, and I don't want to waste our time looking for
25 it. But are 500-pound barrels the primary source of the
26 cheese used to manufacture processed cheese?

27 A. I believe so. But, again, we have other witnesses
28 to follow who would very definitively be able to answer



1 that question.

2 Q. I'll save the rest of my questions for those
3 witnesses then.

4 MR. MILTNER: Thank you.

5 THE COURT: Further questions? Other than AMS?
6 Mr. Rosenbaum.

7 CROSS-EXAMINATION

8 BY MR. ROSENBAUM:

9 Q. Dr. Vitaliano, I want to follow up on some
10 questions asked about your statement on page 5 of your
11 testimony here in Exhibit 114 that approximately 90% of
12 natural cheese product produced in the United States is
13 sold use the CME 40-block price as a pricing index. Okay?

14 A. Uh-huh.

15 Q. So I take it what you are describing here are the
16 private contracts between the cheddar cheese manufacturer
17 and its customer; is that correct?

18 A. Presumably it would be private contracts, but it
19 could be open spot transactions as well.

20 Q. Do you actually have access to the terms of those
21 private contracts?

22 A. No, I do not.

23 Q. And are all cheddar cheese manufacturers members
24 of co-ops that are part of National Milk Producers
25 Federation?

26 A. We have -- National Milk Producers Federation
27 membership I believe processes -- produces a significant
28 proportion of the cheddar cheese, but I'm sure they -- you



1 know, there are private cheddar cheese manufacturers that
2 are not cooperatives and, therefore, not even eligible for
3 membership in the federation.

4 Q. I take it this 90% number is an estimate, not
5 actually based upon --

6 A. Oh, yes.

7 Q. Let me finish -- let me start the question again
8 just so the reporter can get it down.

9 The 90% is an estimate, not something that's
10 calculated based upon actual underlying data?

11 A. It is an estimate based upon USDA National
12 Agriculture Statistic Service data on the production of
13 cheese in the United States by -- natural cheese by
14 variety.

15 Q. But in terms of what -- I'm focusing simply on the
16 question as to whether the CME 40-block price is used as
17 the pricing index for the sale of that. You don't have
18 any access to any underlying data that would result in
19 that 90% --

20 A. I did not do a survey of actual contracts.

21 Q. Okay. I take it you have read the testimony of
22 Mr. Hanson?

23 A. Yes.

24 MR. ROSENBAUM: If I could approach the witness,
25 your Honor.

26 THE COURT: Yes.

27 BY MR. ROSENBAUM:

28 Q. This is National Milk Producer Federation



1 Exhibit 7. Of course, Mr. Hanson himself will be a
2 witness, but I just wanted to ask you about something that
3 appears on page 8 of his testimony. And so this is
4 National Milk Producer Federation Exhibit 7, which will
5 doubtlessly be given a Hearing Exhibit number later.

6 And if you look at page 8, he says, "In my ex-" --
7 well, "In my experience at Foremost and other companies,
8 at least 75% of natural commodity cheese sold in the U.S.
9 uses the CME 40-pound block cheddar cheese price as a
10 pricing index."

11 Do you see that?

12 A. Yes.

13 Q. Now, I read that sentence to be describing the
14 exact same thing you are describing in your testimony on
15 page 5, except that his number is 75% -- or I should be
16 clear -- at least 75%, and your number is 90%.

17 Am I right that you are both describing the same
18 thing?

19 A. Roughly, yes.

20 Q. Okay.

21 A. His characterization is at least 75%; mine is
22 approximately 90%.

23 Q. And of the two of you, which of you is more
24 involved in the actual market?

25 A. Mr. Hanson is. You will need to question him on
26 his estimate.

27 Q. Okay.

28 MR. ROSENBAUM: That's all I have, your Honor.



1 THE COURT: I don't see any need to mark that
2 exhibit just used with that witness for identification
3 now. I think the designation of the exhibit as NMPF-7 at
4 the top right-hand corner is good enough for now.

5 Thank you, Mr. Rosenbaum.

6 MR. ROSENBAUM: Thank you, your Honor.

7 THE COURT: Any further examination of this
8 witness other than AMS?

9 CROSS-EXAMINATION

10 BY DR. CRYAN:

11 Q. Roger Cryan for American Farm Bureau Federation.
12 Hello, Peter.

13 A. Good morning, Roger.

14 Q. It's great to see you, as always.

15 A. Likewise.

16 Q. So you -- you emphasize that 500-pound barrels
17 are -- are not a substitute for 40-pound blocks.

18 A. Increasingly, yes. That's --

19 Q. Are 640-pound blocks economic substitutes, or use
20 substitutes, for 40-pound blocks?

21 A. I'm not that familiar with 640-pound blocks. I
22 would recommend that you direct that question to our --

23 Q. Okay.

24 A. -- following witnesses that are actively involved
25 in the cheese business.

26 Q. Okay. I will.

27 DR. CRYAN: Thank you.

28 THE COURT: Anyone else other than AMS?



1 Your witness, Ms. Taylor.

2 CROSS-EXAMINATION

3 BY MS. TAYLOR:

4 Q. Good morning.

5 A. Good morning.

6 Q. I wanted to start just going through a couple of
7 the statements that you made in your testimony. I'm going
8 to start on page 5 towards the bottom.

9 In the middle of that paragraph you have a
10 sentence that reads, "Since 2017, however, the
11 significantly wider and increasingly volatile block-barrel
12 price spread has caused instability in the cheese market."

13 I wonder if you could elaborate on what you mean
14 there.

15 A. I was primarily referring to it created volatility
16 in the transmission of basically information from the
17 cheese market translated through the Federal Order product
18 price formulas, to an appropriate value for the Class III
19 price. That's -- that was my primarily reference.

20 Q. Okay. My other -- I'll get into some other
21 questions, but I just wanted to go through just some
22 statements in your testimony.

23 On the next page, towards the bottom, you talk
24 about how eliminating barrels would still provide an
25 adequate volume for price discovery purposes for cheese.

26 I was wondering if you could expand on that and
27 define, you know, what is -- what would you consider
28 adequate.



1 A. Well, I -- to a great extent, I use the benchmark
2 of the butter price, which we discussed extensively, and
3 we had advocates on our task force for seeking ways to
4 expand the volume of butter in the survey, particularly
5 looking at adding unsalted butter.

6 And those of us -- those of our task force who
7 were very involved in butter production and marketing
8 indicated that that was not appropriate, we will testify
9 later to that extent. And they did not express as active
10 users of, you know, butter markets, spot markets futures,
11 and active followers of the NDPSR, and its role in
12 establishing the butterfat price, they basically concluded
13 that even, you know, the 9% was not a -- an issue in terms
14 of its -- the appropriateness of that volume of butter to
15 establish the important value of butterfat in the Federal
16 Order pricing formulas.

17 So to that extent we looked at -- effectively
18 considered, you know, 10% or so adequate volume as long as
19 it was properly constructed. And the numbers we looked at
20 indicated that block cheese by itself would represent
21 about 16% of the natural cheddar cheese production, and
22 therefore, we could -- that there would still be adequate
23 volume with blocks only in the formula.

24 Yes, we would lose some volume. We do -- National
25 Milk does not dispute that more volume is better than less
26 volume in the survey. But -- but there is a trade-off.
27 If you by -- if you seek to achieve more volume in the
28 survey by including inappropriate products, that trade-off



1 is a negative one.

2 The point we're making in that connection is that
3 at the time of Federal Order Reform, the behavior of
4 barrels and block prices made it appropriate to include
5 both in the weighted average form as in the formula.

6 But going back to our overarching premise for
7 everything we -- behind our proposals of this hearing, the
8 structure of the dairy industry has changed. What may
9 have been very appropriate at the time of Federal Order
10 Reform, and for years after that, in many cases has become
11 inappropriate because the industry has changed and the
12 formulas have not. And the inclusion of barrel cheese,
13 which we would concede would have been appropriate,
14 because it was not disruptive up until through 2016, is
15 now inappropriate because the industry has changed and
16 barrels and blocks have become two different markets.

17 Q. Okay. And that kind of leads me to my next
18 question then. You talk about how including barrels
19 currently has led to disorderly marketing conditions.

20 And other than the price volatility that you have
21 discussed, you know, what are the other disorderly market
22 conditions that you are speaking of?

23 A. Primarily the volatility, but that on average, not
24 only -- if you go back to Figure 1, not only have block
25 and barrel prices become very volatile in terms of the
26 spread between the two of them, but the -- the
27 establishment of an average \$0.12 difference in recent
28 years compared to the assumed \$0.03 difference has created



1 disorderly marketing in that it has resulted in dairy
2 farmers being underpaid for the value of their milk that
3 is used to produce cheese compared to the assumptions that
4 underlie the inclusion of barrel cheese in the formula in
5 the first place.

6 Q. Okay. So I think you touched on this yesterday,
7 but I don't quite remember the whole answer then.

8 On that line of how the survey doesn't properly
9 represent how their milk is used in cheese, and you
10 estimate that 90% is used in blocks or priced off blocks,
11 and 10% then would be barrels; is that correct?

12 A. Yes.

13 Q. So how come we wouldn't just look to weight
14 differently with the prices in the survey rather than just
15 eliminate a product to begin with?

16 A. The task force, the National Milk task force
17 considered that as an option but chose to -- if the number
18 was 10% or something -- you know, something -- you know, a
19 significant majority, given the importance, if you looked
20 at the other formulas of having a single product, why not
21 just eliminate the barrels altogether. That was the
22 choice.

23 Q. Okay. So you did discuss about how during reform
24 USDA made the assumption that blocks and barrels were
25 similar; hence, they both were included with the \$0.03 on
26 barrels, and they are different now.

27 And so what makes them different?

28 A. I would defer that -- I would reserve that



1 question for our upcoming experts who are actively
2 involved in the cheese business.

3 Q. Okay. And then -- and maybe these questions will
4 be better served for another witness, but I'll just ask
5 you and you can let me know.

6 So, you know, the purpose of our end product
7 pricing program now, and as stated in our reform decision,
8 that the products we survey are the bulk commodity
9 wholesale products.

10 How would you define a bulk commodity wholesale
11 product?

12 A. A bulk commodity wholesale product -- and this is
13 not a professional definition -- would be -- a commodity
14 product would be sort of the product of last -- what
15 product would you produce, say -- it's a little simpler
16 with butter. What type of -- what product would you
17 produce if you had extra cream that really couldn't go
18 anywhere else? What would be the last market short of
19 dumping where you could put excess cream when nobody else
20 would -- what's the last one that would take your product?
21 It would be producing standard 80% salted butter because
22 there's adequate -- always adequate capacity for that.

23 Similar, with cheese, where would you send your
24 cheese milk, what would you produce, if you had extra
25 cheese milk and you couldn't find a home for it anywhere
26 else? It would be an undifferentiated non-value-added
27 product, which are usually produced by contractual
28 agreements. It would be sort of the undifferentiated, the



1 most basic product that, again, would be -- I would use
2 the term residual product, where -- where would you --
3 where is the last resort where you could put your extra
4 milk or dairy component?

5 And bulk would mean it's not specially packaged.
6 It would be in the standard packaging, which in the case
7 of cheese is 40-pound blocks or -- yeah, basically -- you
8 know, 40-pound blocks is kind of -- would be the basic
9 commodity product in cheese.

10 Q. So then it's National Milk's position that barrel
11 cheese doesn't represent a bulk commodity wholesale
12 product anymore, it is not a place of last resort?

13 A. I would defer that question to our witnesses that
14 are more -- very far more experienced in the cheese
15 markets than I am.

16 Q. Okay. I think I have more questions for your
17 further witnesses, but I will ask one.

18 The last question is, I know we're getting into
19 makes and yields eventually. But if National -- if USDA
20 does decide to adopt your proposal and eliminate barrels,
21 then would the follow-on to that be making sure that the
22 makes and yields in the formulas also only reflect blocks
23 and not barrels production?

24 A. Yes, that would be appropriate.

25 Q. I think that's it.

26 MS. TAYLOR: Thank you.

27 THE COURT: Redirect?

28 Or do we have re-cross? Re-cross.



1 DR. CRYAN: Yes. This is in response to
2 Ms. Taylor's questions.

3 THE COURT: Okay.

4 RECROSS-EXAMINATION

5 BY DR. CRYAN:

6 Q. Ms. Taylor asked you about why the markets are
7 separate, and at one time they weren't. And let me offer
8 you a hypothetical and let me -- and tell me if you think
9 that makes economic sense.

10 It's -- if in 2000 there was substantial slack
11 capacity to produce both blocks and barrels, then there --
12 and there was an opportunity to move milk from one
13 production line to another to meet demands, would that
14 tend to allow the prices to -- to be closer together and
15 make the markets look similar?

16 A. This is just an economic answer.

17 Q. Yes.

18 A. If there's adequate arbitrage capacity or
19 capabilities, then you would expect there would be some
20 price equivalent -- equilibrating, that they would be
21 closer together.

22 Q. And if -- and if you had a situation, say, again,
23 hypothetically, 20 years later where block and barrel
24 plants were running at full capacity without slack to move
25 milk from one to the other, would that tend to lead to
26 separate market prices?

27 A. If they were -- if they were different capacity
28 situations in different markets, yes, that could explain



1 price differences.

2 Q. Very good. Thank you.

3 DR. CRYAN: Thank you very much.

4 THE COURT: Redirect?

5 MS. HANCOCK: Thank you, your Honor. We have no
6 further questions. We'd move to admit Exhibit 114.

7 THE COURT: Seeing no objections, Exhibit 114's
8 admitted into the record.

9 (Thereafter, Exhibit Number 114 was received
10 into evidence.)

11 THE COURT: Thank you.

12 MS. HANCOCK: Your Honor, our next witness is
13 Darin Hanson. It is almost 11:00. I'm not sure what you
14 were thinking for the -- if we're still going to do an
15 extended lunch hour, when you would like to start it, but
16 we and probably get the direct in.

17 THE COURT: Okay. But -- I'm sorry, Ms. Taylor?

18 MS. TAYLOR: Whatever you all decide.

19 THE COURT: Yeah. Okay. I did -- I forget what I
20 ruled before. What did we decide? We're going to go with
21 this witness and bring up Dr. Kaiser after lunch; is
22 that -- okay. I don't trust my own memory here.

23 All right. Yes. Let's -- and as far as an
24 extended lunch, does that help you all, Mr. English,
25 Mr. Rosenbaum? Your previous objections are noted and --

26 MR. ENGLISH: Without waiving the previous
27 objection, I thought the conversation -- and having
28 consulted with our team -- a two-hour lunch really is



1 important. But I do think we can get this direct done. I
2 don't think we need lunch now. And, in fact, I don't
3 think I'm ready to do that. So I think -- I think it
4 makes sense to do the direct.

5 THE COURT: Mr. Hill, did you want to say
6 something?

7 MR. HILL: Yeah. If it's fine with Mr. English
8 and Mr. Rosenbaum, we're fine with it too.

9 THE COURT: If it's fine with you all, then it's
10 fine with me. Yes, by consensus, with the previous
11 objections noted and continuing forth in the future, we'll
12 take this witness, whose name I have already forgotten.
13 I'm sorry.

14 Please raise your right hand.

15 DARIN HANSON,

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

18 THE COURT: Ms. Hancock, it's your witness.

19 DIRECT EXAMINATION

20 BY MS. HANCOCK:

21 Q. Good morning, Mr. Hanson. Can you state and spell
22 your name for the record, please?

23 A. Darin Hanson, D-A-R-I-N, H-A-N-S-O-N.

24 Q. Thank you.

25 Would you provide your mailing address, please?

26 A. Yes. 8401 Greenway Boulevard, Suite 600,
27 Middleton, Wisconsin, 53562.

28 Q. Thank you.



1 And where were you employed?

2 A. At Foremost Farms USA.

3 Q. What's your role there?

4 A. I am senior vice president of supply chain and
5 risk management.

6 Q. What falls within the scope of your
7 responsibilities at Foremost?

8 A. Everything related to procurement and logistics
9 and warehousing of all direct materials, including all
10 milk materials, balancing milk, all the risk management,
11 and working with our commercial team on risk management
12 and pricing programs.

13 Q. How long have you been at -- in this position at
14 Foremost?

15 A. This position has grown over the past five years
16 since I have been at Foremost and -- but I have always
17 been in that risk management and milk procurement member
18 relations role.

19 Q. How long have you worked in the industry?

20 A. 20 years.

21 Q. And what are the various roles that you have held
22 in the industry?

23 A. I started at Pillsbury as a commodity analyst
24 where we looked at risk management strategies, procurement
25 strategies. And then at General Mills, I was procurement
26 manager for dairy products, including cheese and powders.
27 Then at Land O'Lakes, I was a procurement manager, and
28 then director for dairy products, including cheese and



1 powders, and working very closely with the business teams
2 on risk management and pricing programs. And then moved
3 to Foremost Farms in similar types of roles as we
4 discussed.

5 Q. And what about your educational background?

6 A. I have a Bachelor's degree from Drake University
7 in economics, a Master's degree from the University of
8 Minnesota, and an applied economics and an MBA from the
9 University of Chicago.

10 Q. Your first Master's degree, what was that in?

11 A. Applied economics.

12 Q. Okay. Applied economics. Thank you.

13 MS. HANCOCK: Your Honor, I would offer Mr. Hanson
14 as an expert in procurement, risk management, and
15 agricultural economics.

16 THE COURT: I so find.

17 MS. HANCOCK: Thank you.

18 BY MS. HANCOCK:

19 Q. Mr. Hanson, did you prepare testimony on behalf
20 the National Milk's barrel elimination proposal?

21 A. Yes.

22 Q. And is that what we have identified as Exhibit
23 NMPF-7?

24 A. Yes.

25 MS. HANCOCK: Okay. Your Honor, I believe we're
26 on Exhibit 117. Is it okay if we mark NMPF-7 for
27 identification purposes as Exhibit 117?

28 THE COURT: So marked.



1 (Thereafter, Exhibit Number 117 was marked
2 for identification.)

3 MS. HANCOCK: Thank you.

4 BY MS. HANCOCK:

5 Q. Mr. Hanson, would you go ahead and offer your
6 testimony?

7 A. Yes, thank you. And thank you for the opportunity
8 to testify today. I will skip through my bio and go right
9 down to the Foremost profile since we have gone through my
10 bio.

11 Q. And I just --

12 A. Uh-huh.

13 Q. -- maybe, proactively, I'd ask you to read slowly
14 as well.

15 A. Sure.

16 Foremost is a large dairy cooperative
17 headquartered in Middleton, Wisconsin. Our 850 members
18 produce 6.2 billion pounds of milk annually and are
19 located in Wisconsin, Michigan, Iowa, Minnesota, Indiana,
20 Ohio, and Illinois.

21 The cooperative has all sizes of dairy farming
22 operations, ranging from less than 50 cows to more than
23 10,000. Foremost is a large manufacturer of cheese,
24 producing 500 million pounds annually. Of that volume,
25 350 million pounds is soft Italian style cheeses, making
26 Foremost one of the top manufacturers of Italian cheeses
27 in the US.

28 Foremost has eight plants in its dairy



1 manufacturing network. These include three Italian cheese
2 manufacturing plants, two cheddar type manufacturing
3 plants, and one butter manufacturing plant, all located in
4 Wisconsin. In addition, there are two milk separation
5 facilities in Michigan and Wisconsin.

6 Foremost processes two-thirds of its member milk
7 into its own products and markets one-third of the
8 remaining milk. Foremost sells cheese in various sizes to
9 converters, foodservice, and retail customers who
10 incorporate our cheese into their finished products.

11 In all cases, Foremost's cheese is priced using a
12 cheese market price index, which transfers market price
13 risk from Foremost to its customers. Some customers have
14 chosen to engage in risk management activities, such as
15 cheese and milk hedge pricing to help offset their price
16 risk.

17 In recent years, dairy producers in the Federal
18 Milk Marketing Orders have been adversely impacted by
19 fundamental pricing changes in the cheddar cheese market.
20 Commodity cheese prices in the US are primarily indexed on
21 two prices series, the 40-pound block cheddar price and
22 the 500-pound barrel cheddar price.

23 Prior to 2017, these markets were highly
24 correlated with an annual average spread of about a penny
25 per pound. This is NDPSR block higher than NDPSR barrel.
26 As a result of this strong correlation, both price series
27 were incorporated into the protein price formula used in
28 the Class III milk price calculation through weekly



1 surveys of both sellers and buyers.

2 Federal Order pricing is designed to provide dairy
3 producers with a fair price for their milk based on the
4 value of dairy products manufactured by processors.

5 However, since 2017, the spread between the NDPSR 40-pound
6 block price and the NDPSR 500-pound barrel price has
7 expanded significantly with the block price exceeding the
8 barrel price by as much as \$0.27 per pound on an annual
9 basis.

10 As a result, the Class III milk price has been
11 undervalued because the proportion of barrel cheese used
12 in the protein calculation is significantly overstated
13 relative to the total volume of commodity cheese priced
14 using the barrel cheese market as an index.

15 Most commodity cheese in the US, whether that be
16 Italian or cheddar, is priced using the block market as an
17 index. The CME 40-pound block cheddar cheese price is the
18 driver of the NDPSR block cheddar cheese price. Barrel
19 cheese has been selling at a significant discount as
20 compared to block cheese over the past five years, and the
21 resulting impact on the Class III price calculation has
22 cost dairy producers around \$2 billion since 2017.

23 Table 1 shows the spread impact to dairy producer
24 revenue on reported Class III and Class I volume. This
25 actually understates the revenue impact to dairy producers
26 because a significant amount of depooling of Class III
27 volume occurred in 2020 and 2021 which is not included in
28 the impact calculation. If this volume was included, the



1 impact would be significantly higher.

2 Federal Order pricing has historically also
3 ensured consistent and predictable earnings for processors
4 of dairy products, which includes dairy cooperatives.
5 Ideally, the cost of milk incurred by a processor is based
6 on the revenue generated from the sale of milk products
7 minus the cost to manufacture the products. The cost
8 credited back to processors is referred to as the
9 Make Allowance.

10 When a single price series is used to calculate a
11 component price, the cost of milk will be highly
12 correlated with the prices of the finished product.
13 However, because the Class III protein price is based on
14 reported prices received from the sale of both block and
15 barrel prices, processor profitability will fluctuate if
16 the spread between block and barrel prices is highly
17 variable.

18 Since 2017, the price spread between blocks and
19 barrels has been extremely variable, resulting in earnings
20 volatility for processors. Barrel cheese manufacturers
21 have been paying high milk costs relative to the prices
22 received for barrel cheese. Block cheese manufacturers
23 have faced financial uncertainty when the price spread
24 shifts dramatically over time.

25 The Class III milk price in the Federal Orders is
26 derived from calculations of protein, butterfat, and other
27 solid component prices. The protein component price uses
28 two cheddar cheese survey price series submitted by



1 manufacturers through the Dairy Product Mandatory
2 Reporting System and reported in the weekly National Dairy
3 Products Sales Report.

4 The price series used are the 40-pound number 2
5 yellow cheddar block price and the 500-pound barrel
6 cheddar cheese price. The total cheese price used in the
7 protein calculation is the volume-weighted average of the
8 NDPSR block and barrel prices, adding \$0.03 per pound to
9 the moisture-adjusted barrel price.

10 Survey reported volume of cheddar prices was 34%
11 of total cheddar cheese produced in the U.S. in 2022.
12 Block prices represented 16% of total cheddar production
13 and barrels represented 18%. Removing the barrel price
14 series from the Class III calculation would result in
15 40-pound block representing all U.S. cheddar cheese
16 production at that 16% level. While seemingly a small
17 percentage, it would still be higher than the butter
18 counterpart. The NDPSR butter represents just 9% of total
19 U.S. butter production.

20 During Federal Order Reform, USDA proposed and
21 later adopted the inclusion of the 500-pound barrel
22 cheddar cheese price in the Class III protein price
23 formula because block cheddar cheese prices and barrel
24 cheddar cheese prices were highly correlated. Including
25 barrel cheese also boosted overall cheddar cheese volume
26 in the survey for pricing calculation purposes. This
27 increased the sample size by 150%, according to the
28 original 1999 USDA justification for Federal Order Reform.



1 The barrel cheddar cheese prices were then adjusted by
2 \$0.03 per pound and adjusted for moisture to arrive at a
3 synthetic 40-pound block-equivalent price.

4 With the price spread between blocks and barrels
5 becoming less predictable with a larger difference in
6 swing, barrel cheese can no longer be used to represent a
7 synthetic 40-pound block equivalent price. Its inclusion
8 in the Class III protein price calculation is not
9 appropriate. The benefit of having a larger sample size
10 is outweighed by the distortion caused by a volatile
11 block-barrel price spread.

12 Block and cheddar prices reported -- reported
13 volumes captured in the NDPSR have remained fairly
14 consistent over the past ten years with barrel volumes
15 being slightly higher than blocks over the past three
16 years.

17 If you look at Table 3, in 2022 blocks represented
18 48% of reported prices -- reported volume, and barrels
19 represented 52%.

20 From 2000 to 2016, the price spread between NDPSR
21 40-pound block cheddar cheese and 500-pound barrel cheddar
22 cheese annually averaged a plus \$0.01 per pound with a
23 range of minus \$0.01 per pound to a positive \$0.03 per
24 pound. The high correlation and tight spread between
25 block and barrel cheese prices diminished significantly
26 from 2017 through 2022. The annual average price spread
27 of NDPSR block cheese prices over NDPSR barrel cheese
28 prices during the five period (sic) was plus \$0.11 per



1 pound, with an annual average range of plus \$0.01 per
2 pound to a high of \$0.27 per pound. The highest monthly
3 spread during this period was plus \$0.61 per pound, but
4 the lowest was minus \$0.20 per pound.

5 Total U.S. cheese production in 2021 was
6 13.8 billion pounds, with cheddar cheese representing
7 3.9 billion pounds, or 29% of total cheese production.
8 Total barrel cheese production capacity in the U.S. is
9 estimated to be 1.2 billion pounds annually, which is only
10 9% of total commodity cheese production. Breaking out
11 barrel production capacity from all cheddar cheese
12 production leaves 2.7 billion pounds of block cheddar in
13 the form of 40-pound block and 640-pound blocks.

14 The CME 40-pound cheddar block price is used as a
15 pricing index for most of the cheese sold in the U.S.,
16 whether it's selling 40-pound block cheddar, 640-pound
17 block cheddar, mozzarella, other American cheese, such as
18 Colby and Jack, or other styles such as parmesan and
19 Hispanic cheeses. The 40-pound block cheddar market is
20 typically used as an index for the cheese selling price.

21 In my experience at Foremost and other companies,
22 at least 75% of natural cheese sold in the U.S. uses the
23 CME 40-pound block cheddar cheese price as its pricing
24 index.

25 From Table 5, barrel cheddar prices only
26 represents -- barrel cheddar cheese represents only 9% of
27 natural cheese manufactured in the U.S. The CME 500-pound
28 barrel cheese price is used as an index to price most



1 barrel cheese, and processed cheese products, but is not
2 often used to price other forms of natural cheese. In my
3 experience, the CME barrel cheese price is used to price
4 only around 9% of total U.S. natural cheese and the other
5 cheese categories use the block market as a pricing index.

6 In conclusion, the increasingly volatile
7 relationship between the 40-pound block cheddar cheese
8 price and the 500-pound barrel cheese price over the past
9 five years has negatively impact both dairy producers and
10 cheese processors.

11 Historically, using both block cheese and barrel
12 cheese prices in the Class III pricing formula was
13 feasible and widely accepted because the relationship was
14 consistent over time and barrel prices did not have an
15 adverse and disproportionate effect on the Class III milk
16 price calculation.

17 However, since 2017, the price spread has widened
18 and become less predictable, more volatile, and more
19 disparate from month to month. The two forms of cheddar
20 cheese are not interchangeable products and have developed
21 into different and distinct markets.

22 Including barrel cheese prices in the Class III
23 formula reduces revenue for dairy producers because
24 barrels overrepresent the volume of total U.S. cheese
25 production that uses the barrel price series as a price
26 index.

27 Eliminating the barrel price series from the
28 Class III price calculation will reduce financial



1 uncertainty for processors, including cooperatives, where
2 cheese prices are not reflective of actual market
3 conditions and could result in shifts to where both blocks
4 and barrel processors use a block market as a pricing
5 index.

6 Price risk management opportunities for processors
7 will be enhanced because there are no barrel market
8 futures or options available today, and existing risk
9 management tools, such as Class III, cheese block and
10 barrel futures, will be more efficient to price customers
11 and manage input cost risk.

12 National Milk strongly recommends eliminating the
13 barrel cheddar cheese price from the Class III price
14 calculation.

15 Foremost thanks the USDA for the opportunity to
16 testify on this critical Federal Order Reform topic.

17 Q. Thank you, Mr. Hanson. I just have a few
18 questions I just want to expand on in your testimony.

19 In your testimony, on page 2, you talk about how
20 the market has -- for barrels has changed, or at least the
21 price spread for barrels, and the 40-pound block of
22 cheddar has changed since 2017. And we have heard some
23 questions yesterday where barrel elimination had been
24 talked about in order reform in 2000 -- or in the late
25 1990s, and then again in 2008 there was another
26 opportunity for talking about removing barrels from the
27 pricing.

28 I'm wondering if you could expand a little bit



1 more on what actually changed in 2017 and how that
2 differed from the historical time frames in 2008 and 2000.

3 A. I think during that time you saw a lot of -- you
4 saw an increase in barrel production capacity around that
5 2017 time period, and so I think there was some
6 overcapacity in the industry at that time that started
7 causing barrel prices to drop versus block. But then
8 you've seen some contraction in barrel capacity, and then
9 you've seen barrel prices jump up versus block. But
10 overall, you just -- you saw an imbalance between block
11 capacity and barrel capacity that was driving a lot of
12 that volatility.

13 Q. And I think we heard a little bit when we were
14 talking with Dr. Vitaliano about the market-clearing
15 nature of the barrel -- of barrels.

16 Can you talk about that?

17 A. Yeah. I think every -- every manufacturer has its
18 own plant network where they have to balance and have
19 balancing levers to make sure that they are making product
20 out of milk. I mean, for Foremost, for example, we make
21 40-pound blocks, we make 640-pound blocks, and we make
22 mozzarella.

23 If we have too much milk because milk production
24 is up, or if we have lower demand, we may have to balance
25 40-pound blocks in the spot market. Or if we have --
26 don't have orders for 640s, we may have to balance
27 640-pound blocks. Or we -- it might be the same with
28 mozzarella too where we have to make mozzarella cheese and



1 put that on the spot market.

2 So it's not just like barrels are the balancing
3 lever in the industry and -- and the place of last resort.
4 I think, every -- every manufacturing company has to
5 balance within their own network.

6 Q. So would you consider barrels today to be a market
7 demand product than a residual or market-clearing product?

8 A. I'd consider them a demand product. I mean,
9 there's a demand for barrel cheese going into processed
10 cheese.

11 Q. And then I think you might have said this, but
12 just to make sure that the record is clear on this. Is it
13 a product of last resort?

14 A. I mean, it's -- it's going to really depend on
15 where the market prices are and where those specific
16 manufacturers have open capacity. I mean, for us it's --
17 for Foremost Farms, it is not a market of last resort. We
18 don't make barrels. If companies are making both blocks
19 and barrels, it may be their product of last resort. But
20 if barrel prices are higher than blocks, then they are
21 going to make -- they are going to make barrels versus --
22 versus blocks.

23 Q. Just to respond to the natural demand of the
24 marketplace?

25 A. Right.

26 Q. Okay. Can you -- can you help us understand what
27 the difference is between the cheddar market and the
28 barrels?



1 A. The markets and, like, where the products get
2 used?

3 Q. How the products get used, what the differences
4 are between the two, cheddar block and barrels, yeah.

5 A. Yeah. The block products, you get a lot of use in
6 cut-and-wrap type applications. They put it in shred-type
7 products. They can be cubed. So they get put into a lot
8 of retail foodservice types of products that use natural
9 cheese. Either barrel prices -- or barrel products --
10 barrel -- barrels go into processed cheese products, where
11 they get combined with other types of ingredients to give
12 the processed cheese sort of functionality. And that can
13 be used for a quite a few different products, from sauces
14 to, you know, cheese slices and things like that.

15 Q. And would you consider them to be interchangeable
16 products?

17 A. They can be on the fringe, but if prices get
18 really, really wide, let's say barrels are much lower than
19 blocks, you are going to see blocks go into processed
20 cheese applications, just because there is an economic
21 incentive to do so. But then you get into labor
22 challenges and things like that.

23 Q. Can you tell me about what those -- what you mean
24 by labor challenges?

25 A. Well, I mean a lot of cut-and-wrap and
26 processed -- block processors are very automated, and, you
27 know, if -- if you are using blocks in a processing cheese
28 application, you are going to have to physically pick up



1 those blocks and take them out of the boxes and put them
2 on the production lines, versus with barrels, they have
3 more of an automated process.

4 Q. Can you take a look at page 7 of your testimony?
5 I want to look at Table 4.

6 And you put this table together?

7 A. Correct.

8 Q. And it looks like you -- so at the bottom there,
9 you have an average of the NDPSR block minus barrel spread
10 for -- you averaged it for 2000 to 2016.

11 And -- and that was 0.01; is that right?

12 A. Yes.

13 Q. And then you took the average where you said that
14 the market started changing at 2017, and took it for all
15 the -- up to date, for at least the reported data and --
16 and reached an average of 0.11?

17 A. Correct.

18 Q. And we can see that in 2022, it looks like it was
19 back to -- just for that one year, it was back to 0.01.

20 Do you know why it dipped back down then? What
21 was happening in the market at that point in time?

22 A. Yes. Starting in May of 2022, you -- the spread
23 inverted between block and barrel, so you had barrel
24 prices higher than block for about a six-month period up
25 until November of that year. Just -- again, it's just
26 supply and demand conditions. At that point in time, the
27 demand for barrels was higher than what the demand was for
28 block.



1 Q. And what's happened since November of 2022?

2 A. Yeah, it -- it came back. It -- blocks were
3 higher than barrel, so a positive spread from about
4 December until April. And then it inverted again where
5 barrels were above block from May until July. In late
6 July, blocks are above barrel, and so for the past six
7 weeks we have had a positive block-barrel spread. A
8 lot -- a lot of volatility.

9 Q. That was going to be my next question. More
10 indicative of the volatility that you have been talking
11 about, you have seen continue even after 2022?

12 A. Right.

13 Q. And then if we look at page 8 of your testimony,
14 Mr. Rosenbaum foreshadowed where he'll be going with you
15 in comparison to Dr. Vitaliano's estimates.

16 When you say, "In my experience at Foremost and
17 other companies, at least 75% of natural commodity cheese
18 sold in the U.S. uses the CME 40-pound block cheddar
19 cheese price as a pricing index."

20 And he had that compared to Dr. Vitaliano's
21 testimony in which Dr. Vitaliano said approximately 90%.

22 A. Right.

23 Q. Would you help provide some clarity as to -- are
24 you guys saying different numbers or explain what you --
25 what you understand to be that difference?

26 A. Well, I think it is just -- it's my risk manager
27 nature. Right? So I'm being more conservative with some
28 of the numbers I put out there. I do agree that the



1 number is probably higher than 75%, but just based on my
2 experience, that's the number I'm comfortable saying.
3 That's why I say it is at least 75% because, you know, a
4 lot of colleagues in my network are -- definitely would
5 agree that the vast majority of commodity cheese is priced
6 off the 40-pound block market.

7 Q. Okay. So would you agree that at least 75% is
8 the -- consistent with somebody saying approximately 90%?

9 A. Yes.

10 Q. And are there significant types of natural cheese
11 besides barrel cheddar that are priced off barrels?

12 A. As far as I'm aware, only -- from a natural cheese
13 perspective, only barrels are going to be priced off the
14 barrel price index. Again, processed cheese, a lot of
15 processed cheese is priced off the barrel market, but
16 that's not part of the natural cheese category.

17 Q. Okay. Thank you, Mr. Hanson.

18 MS. HANCOCK: Your Honor, we would submit him for
19 cross-examination at this time.

20 THE COURT: Mr. Rosenbaum.

21 CROSS-EXAMINATION

22 BY MR. ROSENBAUM:

23 Q. Steve Rosenbaum for the International Dairy Foods
24 Association.

25 I mean, is it fair to say from your testimony that
26 both barrels and blocks can be product of last resort
27 based upon particular circumstances at a point in time?

28 A. Yes.



1 Q. Okay. Now, Foremost, I take it, does not make
2 barrels; is that correct?

3 A. That's correct.

4 Q. Is it correct to say that most companies that make
5 barrels do also make blocks?

6 A. Some do, some don't, yes.

7 Q. I'm just -- specifically on the companies that
8 make -- I'm not asking whether companies that make blocks
9 also make barrels. I'm asking the opposite, just so we're
10 clear on my question. Do companies that do make barrels
11 typically also make blocks?

12 A. Again, there's some barrel companies that only
13 make barrels; there's some that make barrels and blocks.

14 Q. Okay. And according to -- as I read your
15 testimony, in 2022, roughly, 1.2 billion pounds of barrel
16 cheese was sold in 2022?

17 A. Produced, yes.

18 Q. Okay. And roughly half of the cheese that is
19 surveyed for purposes of setting minimum class prices is
20 block cheese, correct?

21 A. Yes.

22 Q. And the other half, 40-pound -- 40-pound -- sorry,
23 it's roughly half 40-pound -- start the question again.

24 The survey is roughly 40% 500-pound barrels and
25 half 40-pound blocks, correct?

26 A. Well, the survey volumes, it would be 52% barrel
27 and 48% block.

28 Q. Okay. And the total survey is 34% of cheddar



1 cheese, correct?

2 A. Yes.

3 Q. That's a very robust survey, you would agree, for
4 setting minimum milk prices?

5 A. Yes.

6 Q. And eliminating 500-pound blocks would basically
7 cut in half the market price information utilized,
8 correct?

9 A. Yes.

10 Q. So -- okay. I'm correct that both 40-pound blocks
11 and 500-pound barrels are traded on the Chicago Mercantile
12 Exchange, correct?

13 A. Correct.

14 Q. And does that tend to indicate that both of them
15 are commodity products?

16 A. Yes.

17 Q. And we are going to be having discussions about
18 which products should be used to price Class III or
19 Class IV milk. I just want to counter distinguish, if you
20 will, those proposals.

21 There's one proposal to include 640-pound blocks
22 in the survey. That is not a CME traded commodity,
23 correct?

24 A. Correct.

25 Q. And similarly, there's a proposal to include
26 unsalted butter in the butter survey for purposes of
27 setting minimum milk prices. That is not a CME traded
28 product, correct?



1 A. Correct.

2 Q. And then, finally, there is a proposal to add
3 mozzarella to the cheese survey. And that is not a CME
4 traded product, correct?

5 A. Correct.

6 Q. So let's talk a little bit, if we could, about the
7 requirements established for inclusion in the survey.

8 MR. ROSENBAUM: And I would like to have this
9 document marked as the next exhibit number, your Honor,
10 whatever it is --

11 THE COURT: Yes. Exhibit 118.

12 MR. ROSENBAUM: -- if I could.

13 THE COURT: It's so marked for identification.

14 (Thereafter, Exhibit Number 118 was marked
15 for identification.)

16 BY MR. ROSENBAUM:

17 Q. So showing you Exhibit 118. Are you familiar with
18 the fact that there is a regulation establishing the
19 specifications that cheddar cheese has to satisfy to be
20 included in the survey?

21 A. Yes.

22 Q. And it's set forth in 7 CFR, Section 170.8; is
23 that correct?

24 A. Sure.

25 Q. And -- and do you see here where the -- these are
26 the specifications, correct?

27 A. Yes.

28 Q. And so just to look at, if you will, the



1 similarities between the products, or dissimilarities,
2 obviously, you can either be a 40-pound block or a
3 500-pound barrel, correct?

4 A. Correct.

5 Q. And in terms of moisture content, for 400-pound
6 blocks moisture content is not reported, and it -- one
7 would exclude cheese that will be aged, correct?

8 A. Correct.

9 Q. And then for 500-pound blocks you do report the
10 weighted average moisture content but adjust it to a
11 standard of -- a particular standard, correct?

12 A. Correct.

13 Q. And the cheese moisture can't exceed a specified
14 level, correct?

15 A. Correct.

16 Q. And then when it comes to age, the -- correct me
17 if I'm wrong, but the age requirements are the same,
18 namely, that in both cases the cheese cannot be less than
19 four days, no more than 30 days old on date of sale,
20 correct?

21 A. Correct.

22 Q. And that applies to both the blocks and the
23 barrels, right?

24 A. Uh-huh.

25 Q. And for grade, the 40-pound blocks have to meet
26 the Wisconsin State brand or be USDA Grade A or better,
27 correct?

28 A. I assume that's correct.



1 Q. Okay. And 500 pounds can also meet the Wisconsin
2 State brand or USDA extra grade or better standards.

3 Do you see that?

4 A. Yes.

5 Q. The color requirements are slightly different,
6 correct?

7 A. Correct.

8 Q. And then, of course, in terms of packaging,
9 there's a requirement for the cheese being -- if it's a
10 40-pound block, the cheese being wrapped in an airtight
11 package, in corrugated or solid fiberboard, and any other
12 packaging costs are excluded, correct?

13 A. Yeah. If that's what it says, yeah.

14 Q. And the 500-pound barrels, you exclude the
15 packaging cost, correct?

16 A. If that's what it says, yes.

17 Q. And then there's a series of things excluded
18 thereafter in number eight. I will not go through them
19 one by one except to indicate, if you will agree with me,
20 that these are exclusions that apply equally to the blocks
21 and to the barrels; is that correct?

22 A. If that's what it says, then, yes.

23 Q. Okay. And in terms of any -- strike that.

24 I assume it's cheaper to package some -- one
25 500-pound something than it is to package separately a
26 bunch of 40-pound somethings, correct?

27 A. Right. On a per-pound basis, I would agree with
28 that, yes.



1 Q. Sorry, I couldn't quite --

2 A. On a per-pound basis, I agree with that.

3 Q. I appreciate that correction.

4 And you are aware that the federal formula,
5 pricing formula, provides a \$0.03 adjustment to reflect
6 that difference in packaging cost, correct?

7 A. Yes.

8 Q. Okay. So, I mean, the -- the uses of these
9 products are both reflective of substantial demands for
10 cheddar cheese in this country, correct?

11 A. Correct.

12 Q. So that I'll just read what the CME says:
13 "Although blocks and barrels are both cheddar cheese
14 products, their end uses are diverse. Typically
15 manufacturers use block cheddar cheese for chunks, loaves,
16 shreds, and snack-sized natural cheese, while barrels are
17 often consumed in the processed cheese category," end
18 quote.

19 Is that -- that's con- -- is that your view as
20 well?

21 A. Yes.

22 Q. And so I take it that if you are going to be
23 looking to produce chunks, loaves, shreds, or snack-sized
24 natural cheeses, you are going to be, as a buyer, buying
25 40-pound blocks, maybe a larger block too, but in any
26 event a block, correct?

27 A. Yes.

28 Q. And if you are buying -- strike that.



1 If you are making processed cheese, you are going
2 to typically be buying a barrel; is that right?

3 A. Correct.

4 Q. Okay. So, I mean, you have to include both of
5 them, don't you, really, to reflect the actual supply and
6 demand for cheddar cheese in this country?

7 A. Well, National Milk -- we're taking the stance
8 that you need to have one price series to represent the
9 key dairy commodities used in pricing. So one series for
10 cheese, one series for butter, one for whey, and one for
11 nonfat, to make sure that you don't have price distortion
12 from milk going to the finished product.

13 Q. But you are -- you -- I mean, cheddar cheese is
14 the commodity that we use to set minimum prices in this
15 country for all -- for all cheese, correct?

16 A. And it worked well prior to 2016 because there was
17 a high correlation. So to create the synthetic block from
18 barrel by adding the \$0.03 adjusting moisture worked
19 because there was a very tight price correlation. So
20 since 2017, the wide block-barrel spread has been very
21 disruptive, both to processors, and it has really
22 shortchanged dairy producers on the value they get on the
23 Class III price.

24 Q. Well, but I take it that the -- at some points in
25 time, the inclusion of the barrel has lowered the minimum
26 regulated price; is that right?

27 A. Yes.

28 Q. Okay. And -- and that reflects that at that point



1 in time -- at those points in time, the demand for barrel
2 cheese was such that it simply didn't support as high a
3 price; is that correct?

4 A. I agree with that.

5 Q. That's reflective of the supply and demand for
6 milk going to cheddar cheese, right?

7 A. Right. But I think an order of magnitude it
8 impacted dairy producers. I mean, because barrel cheese
9 is only 9% of total commodity cheese, but it represents
10 52% of the price calculation of Class III milk. So that's
11 a 5X of magnitude that dairy producers are getting
12 impacted by the block-barrel spread.

13 Q. But you have admitted -- you admitted, I think to
14 my first question, that from time to time it's barrels
15 that are the product of last resort, and sometimes it's
16 blocks, right? Goes from --

17 A. Uh-huh.

18 Q. -- one to the other, correct?

19 A. Correct.

20 Q. And so, I mean, if to the extent that USDA
21 believes that it's important that minimum milk prices are
22 reflective of the value of milk going to the product of
23 last resort, sometimes that's barrels.

24 A. For the past five years, it's been barrels most of
25 the time. And that's been really disruptive to the pay
26 price to dairy producers --

27 Q. Well --

28 A. -- because it's overrepresented in the overall --



1 where --

2 Q. Well --

3 A. -- wherever Class III milk goes, barrels are
4 overrepresenting that larger pool of commodity cheese
5 production.

6 Q. At those points in time the product -- the
7 market -- strike that.

8 At the times when the barrel is lower, that's
9 going to be the product of last resort, correct?

10 A. Yes. When it's lower.

11 Q. Okay. And are you familiar with the term
12 market-clearing price?

13 A. Yes.

14 Q. Okay. I mean, and at those times it's barrels
15 that are providing the market-clearing price, correct?

16 A. Yeah, you can argue that's the market-clearing
17 price as -- out that's the market-clearing price for 9% of
18 the commodity cheese that Class III milk goes into, not
19 52%. But the impact on the Class III price is over 50%.
20 It should only be closer to 9%. So taking barrels out
21 really removes that disruption and gives dairy producers
22 more value.

23 Q. Well, you would end up with a price that's above
24 the market-clearing price for barrels, surely. That's --
25 that's what you would be achieving?

26 A. Yeah. But you would be -- it would better
27 represent reality than what we're seeing today.

28 Q. Well, my question was a little different. In the



1 circumstances you are describing, you are setting a
2 minimum milk price that is in excess of the
3 market-clearing price for barrels, correct?

4 A. I disagree that it's -- it -- you -- you're --
5 you're -- you would be making it closer to reality because
6 barrels are overrepresenting the market-clearing impact in
7 the marketplace today.

8 Q. Let just -- but for those 1.2 billion pounds of
9 barrel cheese --

10 A. Uh-huh.

11 Q. -- you are going to be setting a price that's in
12 excess of the market-clearing price?

13 A. Just for that 9% of commodity product.

14 Q. Okay.

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

16 THE COURT: Mr. English, your witness.

17 MR. ENGLISH: I can go, but I am conscious -- you
18 know, I -- of Dr. Kaiser's schedule and the fact that we
19 really shouldn't go too late because we all have other
20 things for tomorrow. And so I'm wondering whether now
21 would be a good time to take a two-hour break -- I mean, I
22 could go now, but I'm just worried that we push it at the
23 end -- and I hope Dr. Kaiser knows, pointblank, none of
24 what happened this morning was about him personally, it
25 was about the timing of the hearing. So now having your
26 making the decision you have made, I want to help work
27 with his schedule, and I'm going to be clear about that.

28 THE COURT: I'm here to serve the parties.



1 MR. ENGLISH: I think it makes most sense -- and I
2 would also do a procedural thing -- I think it makes most
3 sense if we take our two-hour lunch break now. And I
4 appreciate the offer from USDA, but I think given that we
5 would normally do it, I actually prefer regular order,
6 which is to say that we come back, Mr. Rosenbaum and I do
7 the examination, because I don't think it's going to
8 change our preparation ability. So unless USDA objects, I
9 think we would come back with Dr. Kaiser, obviously maybe
10 other cross-exam other than Mr. Rosenbaum and I, but I
11 think that I worry a little bit that we don't get him done
12 otherwise.

13 THE COURT: I'm worried, yeah.

14 MR. HILL: I was going to suggest the same thing,
15 your Honor, that we take the break now before further
16 cross-examination.

17 I do have one question or one note on what was
18 marked as Exhibit 118. At the top it does say 170.8, and
19 just for the record, I want it to be known that this is
20 7 CFR 1170.8, and only the A portion. I think there's a
21 B, C, and a D that are not included on the document. So I
22 just wanted to make that clear.

23 MR. ROSENBAUM: I must say, as I was reading it
24 out, I was thinking that number doesn't sound right to me.
25 But that's what it said on the piece of paper, so I read
26 it. I appreciate the correction.

27 THE COURT: I had the same thought. Thank you,
28 Mr. Hill.



1 Okay. So we're going to take a two-hour lunch.
2 Again, I'm making the ruling here, but I'm trying to do
3 this by consensus. And nothing personal to anybody here,
4 much less Dr. Kaiser, for sure.

5 So let's -- let's suspend the cross-examination of
6 this witness, take a two-hour lunch, and come back with
7 Dr. Kaiser back on the stand. Thank you, everybody.
8 Let's come back at 1:36 p.m.

9 (Whereupon, a luncheon break was taken.)

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1 THURSDAY, AUGUST 31, 2023 - - AFTERNOON SESSION

2 THE COURT: On the record. Dr. Kaiser has resumed
3 the stand.

4 I remind you, you are still under oath.

5 Do we have further direct? Is that where we are?

6 MS. HANCOCK: No, your Honor. He's available for
7 cross.

8 THE COURT: Okay.

9 And we wanted -- as I understand it, we were going
10 to do the usual order.

11 Mr. Rosenbaum bravely steps forward first into the
12 breach.

13 CROSS-EXAMINATION

14 BY MR. ROSENBAUM:

15 Q. Dr. Kaiser, Steve Rosenbaum for the International
16 Dairy Foods Association. If you could turn to Exhibit --
17 Hearing Exhibit 115, which is your testimony, your written
18 testimony.

19 A. Okay.

20 Q. On page 4, going onto page 5, you have a series of
21 estimates of price elasticity demand for fluid milk.

22 Do you see that?

23 A. Yes.

24 Q. Now, not having had the opportunity to actually
25 read any of them, I will nonetheless ask some questions.

26 It looks to me like the most recent estimate --
27 strike that. Let me start that again.

28 It looks to me like the most recent study in which



1 you were personally involved was in 2012, the
2 Dong/Schmit/Kaiser study, the fourth one listed.

3 A. That is, I believe, correct.

4 Q. Okay. So that is the last time you published?

5 A. It is the last time I had a refereed publication
6 on milk elasticity, yes.

7 Q. Okay. And is it the protocol that when the
8 authors of a refereed work are listed, you list the
9 authors in order of relative contribution?

10 A. That's -- that is correct.

11 Q. So in that particular one, there were two
12 individuals who had a greater contribution to the article
13 than yourself, correct?

14 A. Yes.

15 Q. Okay. And --

16 A. But could I just add something there?

17 So most of these articles are with research
18 associates that I hired, and I always put their names
19 before mine. So I wouldn't say that it's an extreme lack
20 of my involvement as an author in these articles. I'm
21 just trying to help out people that are younger in their
22 career than I am.

23 Q. But it's been 11 years since you participated in a
24 study to which --

25 A. In a refereed --

26 Q. In a referred --

27 A. -- study.

28 Q. -- study?



1 A. I have -- I have estimated milk for the report to
2 Congress more recently than that.

3 Q. Okay. The most recent refereed work in which you
4 are listed as the first author was in 1998, the Kaiser and
5 Liu study?

6 A. That is correct. Wait, no. I'm sorry. Yes.
7 Yes. I'm sorry, yes, the Kaiser and Liu study, correct.

8 Q. And I thought your last report to Congress was in
9 2011. Is that not correct?

10 A. I would have to look. If you have something in
11 writing, I would believe it. I don't have a great recall
12 on when I stopped doing that. But I thought it was a
13 little bit more recent than that.

14 Q. And this was a report to Congress on the efficacy
15 of, what, one of the fluid milk promotion programs?

16 A. On the dairy and fluid milk promotion programs,
17 checkoff programs, yeah.

18 Q. So that would have been roughly 11 years ago as
19 well, correct?

20 A. Yes.

21 Q. And I do note that the two studies that you --
22 that -- that I believe are the two most recent studies on
23 your list that have your name associated with them are the
24 fourth one, which I referred to before, the
25 Dong/Schmit/Kaiser 2012 study, correct?

26 A. Correct.

27 Q. And then the Dong and Kaiser study in 2008,
28 correct?



1 A. I will take it as -- I would have to look to
2 verify that, but I believe it's probably true.

3 Q. Okay. And those studies came up with a price
4 elasticity of negative 0.710 and negative 0.735, correct?

5 A. Correct.

6 Q. And the bigger the negative number, the more
7 elastic --

8 A. Correct.

9 Q. -- the response to a price increase, correct?

10 A. Correct.

11 Q. Okay. Meaning that the more your sales decline
12 based upon a given price increase, correct?

13 A. Correct.

14 Q. If one were to focus on your own personal work in
15 those two studies, you would have an elasticity response
16 more than double the 4.7% -- I'm sorry -- more than double
17 the 0.35 --

18 A. Correct.

19 Q. -- elasticity that you included?

20 A. Correct.

21 Q. Okay. So have you -- I mean, the -- the
22 calculation that you actually put forth in your paper
23 suggested that an increase of the magnitude being
24 contemplated here would result in a 1.6% decline in fluid
25 milk sales in the United States?

26 A. Correct.

27 Q. And --

28 A. Based on the average elasticity from the 38



1 studies, based on the median elasticity, it was .9%.

2 Q. But if we were to focus on your own personal work,
3 that would double to 3.2%, roughly? And these are rough
4 numbers but --

5 A. For these -- just these -- I don't know how many
6 publications I have on this, but you are just using two of
7 them.

8 Q. Well, I'm using two of the recent -- I mean, I
9 think they're the two most recent.

10 A. Yeah.

11 Q. Yeah.

12 A. Okay.

13 Q. And by the way, just since we're talking about
14 these results and what they mean, I mean, have you
15 calculated what a -- what a 1.6% decline in milk
16 consumption would mean in terms of loss of dollar sales?

17 A. No, I haven't. But it would result in an increase
18 in dollar -- in total value to dairy farmers because the
19 price --

20 Q. No, I'm worried about the processors in this
21 question.

22 MS. HANCOCK: Your Honor, if we could let the
23 witness finish --

24 MR. ROSENBAUM: Okay. All right.

25 MS. HANCOCK: -- his answers before we cut him
26 off.

27 THE WITNESS: It would also likely result in an
28 increase in revenue to processors because the price



1 increase would be more than the percentage decrease in
2 quantity demanded. Because the retail demand --

3 BY MR. ROSENBAUM:

4 Q. But you are assuming -- but you are assuming they
5 are just passing through their additional costs, right?

6 A. No, I'm not assuming anything. I'm -- I'm
7 basically saying that's the definition of an inelastic
8 elasticity. If it's below one in absolute value, the
9 increase in the price will outweigh the decrease in the
10 quantity demanded, and revenue will increase as a result.

11 Q. Well, but your chart on page -- in the appendix,
12 page 9, that's based upon -- that's your effort to
13 determine what -- what would happen to the price -- price
14 of milk based upon -- at the -- at the retail level?

15 A. What the appendix on page 9 shows is if the
16 Class I price basically increases by 10% --

17 Q. Right.

18 A. -- that would translate to a 5 -- roughly a 5%
19 increase in the retail price. That has nothing to do with
20 the revenue. The revenue is that when you have a demand
21 elasticity that's inelastic, the processor revenue would
22 go up if -- if you raise the price.

23 Q. Well, yes. But based upon a cost -- based upon
24 their bearing an extra cost, right? Isn't that --

25 A. What would the extra cost be?

26 Q. The higher price we have to pay our farmers for
27 the milk.

28 A. That would be passed along to the consumer.



1 That's what I'm saying. If you are a retailer --

2 Q. You -- go ahead.

3 A. If you are a retailer and you are selling in an
4 inelastic market, if you raise the price, you are going to
5 get a demand effect, a negative demand effect, but that
6 will be less in percentage terms than the increase in the
7 price. Revenue is equal to price times quantity, so
8 revenue will go up for the processors as well.

9 Q. But that -- you are reflecting in that
10 calculation -- correct me if I'm wrong -- but you are
11 reflecting, for example, that there are additional costs
12 along the way. So it's just milk, isn't it, when it comes
13 to the retail price of milk?

14 A. Well, yes. I'm talking about revenue. I'm not
15 talking about net revenue. Yes. No. Now I know what you
16 are saying. Yeah, their costs would go up as well, but
17 it's an empirical issue whether they're -- I'm -- I'm
18 basically saying gross revenue for -- for processors and
19 gross revenue for farmers will go up by raising the --
20 raising the Class I price.

21 Q. And costs as well for the processors?

22 A. Correct. Yes, that is true.

23 Q. Now, also on -- going back to page 5 of 9, you
24 calculate an average elasticity of -- of -- of negative
25 3-point -- of negative 0.354, correct?

26 A. Correct.

27 Q. And that's the number you used in the calculation
28 that we have been discussing so far, correct?



1 A. Correct.

2 Q. I notice that you also have a standard deviation
3 shown.

4 A. Uh-huh.

5 Q. You need to say yes or no, just for the reporter.

6 A. Oh, I'm sorry. Yes.

7 Q. And -- which is the same number as the average?

8 A. Yes.

9 Q. And is that just a coincidence?

10 A. It is just a coincidence.

11 Q. All right. And -- okay. My understanding of
12 standard deviations, correct me if I'm wrong, is that
13 to -- generally to be at a 95% confidence level that you
14 are right, you would apply two standard deviations to
15 whatever number you are assessing? Is that just standard
16 statistics?

17 A. I don't really know the answer to that. It's been
18 a while since I have taken probability.

19 Q. Okay. You don't know whether two standard
20 deviations in a normal bell curve represents a 95% --

21 A. Oh, I'm sorry. That sounds about right. There
22 are -- there are other ways to go about doing that than
23 talking about standard deviations. You and talk about
24 standard normal, for example, and --

25 Q. I mean, I'm trying to use the phrase you used,
26 standard deviation.

27 A. Okay.

28 Q. That's the way -- I'm using it in the way you used



1 it in your paper.

2 A. This is -- this is the way -- can I answer -- the
3 way I would interpret the standard deviation here is that,
4 basically, a one standard deviation movement would be plus
5 or minus. You would add that number to the mean to get --
6 to get -- I don't know if it's two. I'm not sure if it is
7 two. But I think we're talking about a little bit
8 different --

9 Q. Well --

10 A. -- thing. I mean, if you are talking about
11 confidence interval, I think -- it wouldn't apply the way
12 I calculated the standard deviation.

13 Q. Okay. So this isn't a question of determining the
14 likelihood that your number is correct?

15 A. No.

16 Q. Oh.

17 THE COURT: I'm sorry, Mr. Rosenbaum, I am just
18 too tempted. Is it stepping on your cross if I ask why he
19 includes a standard deviation number if it is not intended
20 to be a test of the confidence level? If you don't want
21 to ask that question, I will let -- again, I don't want to
22 interrupt your cross, but I'm just too curious.

23 MR. ROSENBAUM: Sure.

24 BY MR. ROSENBAUM:

25 Q. Why -- what were you calculating the number for if
26 not to determine the likelihood that your number is
27 accurate?

28 A. I will answer that as the following: Each one of



1 these estimates, elasticity estimates, are statistically
2 diff- -- significantly different than zero. The standard
3 deviation, you can't just add these numbers up and say
4 that this is going to be a measure of -- I mean, you can,
5 but -- but the individual observations that went -- went
6 about in each one of these estimates was statistically
7 significant. So I'm not sure what you are trying to point
8 out by the standard deviation.

9 Q. Well, my understanding of statistics is exactly as
10 follows, that when you have a series of disparate results,
11 you can calculate a standard deviation that tells -- that
12 you can then apply to determine the likelihood that your
13 conclusion, in this case your conclusion average of 0.354,
14 is correct and that that standard deviation will grow as
15 there's no disparity in the numbers --

16 A. It certainly is correct. It's a simple average
17 that I took. So what do you mean by it not being correct?

18 Q. I mean, well -- well, but that's what statistics
19 is all about. I mean, it is a question of when you have a
20 series of disparate numbers that are, in this case,
21 purportedly measuring the same thing and they are
22 disparate numbers, then you can apply statistical
23 probability that will let you know what's your confidence
24 level that your average is right.

25 A. Isn't.

26 Q. Isn't that how you use it?

27 A. No.

28 Q. No?



1 A. I don't agree with your interpretation of
2 statistics in that regard.

3 Q. You are not -- you are not familiar with the
4 notion that when -- you know what a bell curve is? Let me
5 start with that. Do you know what a bell curve is?

6 A. Yes.

7 Q. And a bell -- isn't a -- and when you have a bell
8 curve, you have a certain distribution of -- distribution
9 of results?

10 A. Yep.

11 Q. Correct?

12 A. Yep.

13 Q. And --

14 A. On a random variable.

15 Q. Right. And when they form a bell curve, isn't it
16 correct that you can calculate standard deviation and --
17 let me finish -- and then you would -- and then if it's a
18 normally distributed bell curve, then whatever is within
19 two standard deviations, that's when you have a
20 95% confidence your number is right. That's not your
21 understanding?

22 A. No. What you can do when you have a bell curve is
23 you can take the area underneath it and calculate the
24 probability that the random variable falls within that --
25 that area under the -- under the bell curve of 99%, 95,
26 90% confidence level.

27 Q. Okay.

28 A. I'm not familiar with two standard deviations,



1 what you are talking about there. That's foreign to me.

2 Q. Are you -- and you are not confident with the
3 notion that standard deviations will -- will provide you a
4 confidence band?

5 A. It will -- it will factor in -- a standard
6 deviation will factor into a confidence band, but it's not
7 the only thing that determines it. You need to multiply
8 it by something. I -- I would have to go back to my
9 elementary statistics books to talk about a confidence
10 interval.

11 Q. Okay. So since we're talking about how price
12 would affect demand, I take it that the emergence of
13 plant-based, what they at least would call milk
14 products -- although we wouldn't consider them milk -- is
15 a relatively recent phenomenon, correct?

16 A. That's correct.

17 Q. And a new competitive front for the dairy
18 industry; is that fair to say?

19 A. Yes.

20 Q. And is -- is that -- I mean, is that something
21 that has occurred more recent than any of the studies that
22 you personally participated in that are shown on this?

23 A. Yes.

24 Q. Okay. And do you -- what's the most popular
25 plant-based milk product in the United States today, do
26 you know?

27 A. I don't know. I would assume soy milk, but I
28 don't know.



1 Q. Would it surprise you to know that that's wrong,
2 soy milk is number three?

3 A. Nope. I said I don't know. I'm just guessing on
4 that.

5 Q. Since I told you soy milk is number three, can you
6 make another guess what's number one?

7 A. I don't see the point of guessing.

8 Q. Well, I'm trying to see whether your analysis
9 actually reflects the current realities that face my
10 client in the marketplace. I --

11 A. I submitted that it wasn't in my study. Oh, wait,
12 soy milk -- actually soy milk was in the USDA study, but
13 that's not on this list.

14 Q. Okay. Anyway, my question was whether you --
15 since soy is not it, do you have any idea what number one
16 is?

17 A. No.

18 Q. Okay. You are presupposing that the increase in
19 minimum Class I prices would result in a decline in the
20 sale of fluid milk in the United States?

21 A. I wouldn't use the term presupposing.

22 Q. That was a loose word for me. You have
23 calculated that --

24 A. Yes, I have calculated.

25 Q. -- that -- let me just finish -- you have
26 calculated that an increase in the minimum price for
27 Class I milk would result in a decline in fluid milk
28 consumption in the United States, correct?



1 A. That's correct.

2 Q. Have you made any effort to address that social
3 cost?

4 A. No, I have not.

5 Q. I mean, if -- if you -- if one thinks that the
6 Federal Order system was in some respects designed to make
7 sure -- to encourage the availability and consumption of
8 fluid milk because it's a healthy product, you have not
9 assessed what -- what negative price, if any, we ought to
10 assess -- to allocate to that decline?

11 A. No.

12 MR. ROSENBAUM: That's all I have at this time,
13 your Honor.

14 THE COURT: Mr. English.

15 CROSS-EXAMINATION

16 BY MR. ENGLISH:

17 Q. Good afternoon, Doctor. My name is Chip English.

18 A. Good afternoon.

19 Q. I represent the Milk Innovation Group, a group of
20 ten entities operating a number of fluid milk plants
21 across the United States.

22 And I don't want to repeat what Mr. Rosenbaum did,
23 but I do want to set the stage, so I want to confirm in my
24 first question what you were just discussing with him,
25 which is that even though in your opinion milk prices are
26 inelastic, an increase in the cost of fluid milk products
27 at retail will still result in a decrease in purchases,
28 correct?



1 A. Correct.

2 Q. And on page 3, you say that NMPF's proposals would
3 increase the Class I price by an average of \$1.49 per
4 hundredweight, correct?

5 A. Correct.

6 Q. And using your first assumption, at the current
7 Class I prices that would result in an 8.6% increase in
8 Class I prices to my clients, correct?

9 A. Correct.

10 Q. And that in turn results in a 4.7% increase in
11 retail price, correct?

12 A. Yes. Correct, based on my estimated price
13 transmission.

14 Q. And that estimated price transmission was 0.55%,
15 correct?

16 A. Correct.

17 Q. And that will result in a decrease in consumption
18 by 1.6%, correct?

19 A. Based on the average elasticity, yes.

20 Q. Okay. Did you do any analysis of what that 1.6%
21 milk demand drop means by pounds?

22 A. No, I did not. I would -- that would be easy to
23 do. I just have to -- my numbers are based on basically
24 all milk sales, so whatever the estimate would be.

25 Q. So assume with me for a moment that for annual
26 2022 that would be 54.6 million pounds. Okay. Just
27 assume for a moment.

28 A. Uh-huh.



1 Q. "Yes"? Please. You agree you will do that?

2 A. Sure.

3 Q. I just -- uh-huh doesn't help the court reporter,
4 nor does my going fast.

5 A. Sorry about that. Yes.

6 Q. So if there is decreased milk consumption in fluid
7 milk at 54.6 million pounds, where does that milk go on
8 the farm?

9 A. Where does that milk go? There's a good question.
10 I don't -- I don't know that I have the expertise but --
11 to answer that. But what I would guess is it would go
12 probably to the export market.

13 Q. Which is Class IV, correct?

14 A. Which is Class IV, right.

15 Q. Which is the lowest class price, correct?

16 A. That's correct.

17 Q. So when you did your analysis of the benefit to
18 dairy farmers in your document here, did you consider the
19 impact on dairy farmers of 54.6 million pounds less in
20 Class I that would be in Class IV?

21 A. No, I did not.

22 Q. And Class IV is below Class I, right?

23 A. Correct.

24 Q. Okay.

25 THE COURT: You say "below." You mean price?

26 BY MR. ENGLISH:

27 Q. Sorry, the price. The price -- the classified
28 price is lower, correct?



1 A. Correct.

2 Q. So you, in fact, don't know whether there will be
3 a positive price impact for producers, do you?

4 A. I guess -- I guess it would depend upon what the
5 price difference would be. I simply have not made that
6 calculation. So I -- I feel like I can't answer that,
7 definitively.

8 Q. So you don't know, for instance, what would that
9 do to the Federal Order uniform prices, correct?

10 A. Correct.

11 Q. And you don't know what that would do to dairy
12 farmer mailbox prices, correct?

13 A. Correct.

14 Q. But we do know that consumer prices would go up,
15 correct?

16 A. Correct.

17 Q. So in your analysis, you agree that purchases of
18 milk these days are not just grocery stores but, for
19 instance, restaurants, correct?

20 A. Correct.

21 Q. Did you include restaurants in your studies?

22 A. Some of them I did; others I did not. It depends
23 upon the study. I would have to go through each of the
24 studies. So some of them I used all milk sales. Some of
25 them I used A.C. Nielsen data, which would just be store
26 sales of milk. Would not include at home --
27 away-from-home, for example, milk. And that's true with
28 all these studies -- all 38 studies. Some of them use



1 A.C. Nielsen or IRI grocery store types of data; others
2 use commercial disappearance of all milk.

3 Q. But I think you stated that consumption has been
4 shifting to restaurants over grocery stores?

5 A. It has.

6 Q. And you agree that restaurants are price
7 sensitive?

8 A. Oh, wait. I'm sorry, can you -- can you say the
9 first thing over again? That I what.

10 Q. I thought you said at one point in your testimony
11 that consumption has been shifting towards restaurants in
12 terms of the percentage of the market versus grocery
13 stores.

14 A. What I said was away-from-home food and beverage
15 consumption as an -- as an aggregate -- expenditures has
16 been growing over time.

17 Q. So if there's a shift --

18 A. I didn't say that milk was being -- more milk was
19 being consumed away from home. I said the amount of money
20 that people spend over time on away-from-home versus
21 at-home food and beverages has been growing over time.
22 That's what I said.

23 Q. Okay. And milk is a food or beverage that they
24 would consume away from home, correct?

25 A. Yes. But I'm not saying that -- that people's
26 expenditures on milk away from home are growing. I have
27 no idea about that.

28 Q. Would you agree that -- that restaurants are very



1 price sensitive?

2 A. Price sensitive to what?

3 Q. To the cost. If they have a cost increase,
4 they're price sensitive as a result, because restaurants
5 have low profit margins?

6 A. Oh. Cost sensitive to food ingredient costs --

7 Q. Yes.

8 A. -- and things like that you mean?

9 I assume so. I'm not an expert on restaurants.

10 Q. Let's think about coffee shops for a moment. As
11 the price of fluid milk goes up, do you agree that demand
12 for fluid milk at coffee shops will go down?

13 A. Yes.

14 Q. Mr. Rosenbaum asked you a question. I'm going to
15 ask a slightly different question. Do you happen to know
16 when Starbucks rolled out oat milk as a product, as an
17 alternative to our fluid milk that I drink?

18 A. I have no idea. I don't -- I don't shop at
19 Starbucks.

20 Q. If it were March 2021, would that affect some of
21 the studies that were conducted prior to March 2021?

22 A. Not sure. I'm not sure.

23 Q. You testified that milk consumption among youth,
24 or young people, have fallen.

25 Do you know that that milk consumption has fallen
26 by 50% per capita in teens?

27 A. Can I argue with what the -- I didn't say that.
28 What -- what -- the first part of what you said is not



1 what I said.

2 Q. All right. Well, then, please, you -- you can
3 correct me.

4 A. Okay. What did you say again.

5 Q. What is your testimony with respect to the milk
6 consumption among young people?

7 A. What I said is the age -- that age cohort has been
8 declining over time. It's lower -- it's lower -- fairly
9 significantly lower than it was in 2013. And that is the
10 largest milk-consuming cohort, and -- and that is
11 explaining part of the reason why milk -- average milk
12 consumption per capita for the whole population has
13 declined.

14 Q. But -- but per capita, if there's fewer youth,
15 that wouldn't explain -- isn't it also the case that the
16 actual consumption by that reduced cohort is less than it
17 used to be?

18 A. I think that's correct. Yes.

19 Q. Okay. I don't know about you, but I grew up
20 drinking milk every day, both for breakfast and for
21 dinner. But that's not true anymore, is it?

22 A. That's correct.

23 Q. And it is increasingly true, correct?

24 A. Correct.

25 Q. And -- and with that changing population, that
26 means there's a change in preference that we have to
27 confront as a dairy industry, correct?

28 A. That is correct.



1 Q. So why are young people, leaving aside that there
2 are fewer of them, drinking less milk as opposed to
3 products that may use the name milk but aren't milk?

4 A. That is a very good question, and I don't know if
5 I have the answer to it. And that's a question that the
6 milk industry, I think, considers a really -- the
7 million-dollar question.

8 One answer would be that -- that they -- there
9 is -- there are so many more beverage -- competing
10 beverages out there than when you and I were children.
11 The parental structure is very different from when you and
12 I were children and were given, you know, a mother at
13 home. All the mothers worked at home -- or were at home
14 at the time and gave us milk, and -- and we don't have
15 that anymore. So those would be two speculative reasons
16 on my part. But I don't claim to know the answer to that.

17 Q. Well, the analysis of the proposal that at 1.49 --
18 \$1.49 per hundredweight, which results in a 1.6%
19 consumption drop, will apply to young people, correct?

20 A. Yes.

21 Q. Okay. And so how will higher prices help bring
22 more of those teens back to fluid dairy?

23 A. It won't.

24 Q. Do you agree with the following proposition: That
25 when the dairy industry loses consumers in the early
26 years, it is increasingly difficult to bring them back as
27 fluid milk consumers as adults?

28 A. Yes.



1 Q. So aren't we just by rising prices increasing the
2 problem in the long-term?

3 THE COURT: What problem?

4 MR. ENGLISH: The problem of fluid milk
5 consumption.

6 THE COURT: Reduced fluid milk consumption.

7 MR. ENGLISH: Reduced milk consumption.

8 THE WITNESS: I think that's consistent with my
9 testimony, what I said. I'm just saying that it's one of
10 the least important problems confronting declining milk
11 consumption.

12 BY MR. ENGLISH:

13 Q. But you agree it is a problem? I mean, it is not
14 that it is zero.

15 A. Yeah.

16 Q. It is going to contribute to it, correct?

17 A. Yes.

18 Q. Why would we make all those other problems worse
19 by raising minimum regulated prices?

20 A. To help dairy farmers.

21 Q. Do you know the program under which we're
22 operating for the Agricultural Marketing Agreement Act?
23 And you have testified before Congress about milk issues,
24 correct?

25 A. What -- what are you talking about in particular?

26 Q. I mean, so we're --

27 A. Are you talking about the dairy -- Federal Milk
28 Marketing Order system?



1 Q. Yes, the Federal Order system --

2 A. Federal Milk Marketing --

3 THE COURT: One at a time.

4 MR. ENGLISH: Sorry.

5 THE COURT: And we're going just -- you have been
6 very -- you have both been very good, but just a little
7 slower, because I'm having trouble hearing it, and I don't
8 have to write it down.

9 BY MR. ENGLISH:

10 Q. All right. Let me start over. We're here today,
11 we've been here already for over a week, and we're likely
12 to be here for at least another four weeks, at a
13 proceeding initiated by the Secretary of Agriculture and
14 AMS to consider amendments to Federal Milk Marketing Order
15 system, correct?

16 A. Correct.

17 Q. Do you know the statutory basis under which the
18 Secretary must operate, which is called the Agricultural
19 Marketing Agreement Act?

20 A. I'm -- I'm aware of it. I wouldn't be quizzed --
21 wouldn't want to be quizzed on all the provisions of it.

22 Q. So is the sole purpose of the Agricultural
23 Marketing Agreement Act as applied for milk orders to
24 increase prices to dairy farmers?

25 A. The sole purpose?

26 Q. Yes.

27 A. No.

28 Q. But that's all your testimony is about, correct,



1 raising prices to producers?

2 A. Correct.

3 Q. And yet you don't know for a fact whether they
4 will actually go up because of lost consumption, the
5 conversation we heard earlier? You didn't do an
6 analysis --

7 THE COURT: Wait a minute. Didn't that just
8 get -- I hate to interrupt, but didn't that just confuse
9 prices and revenues -- no questions the price will go
10 up --

11 MR. ENGLISH: Right. But I --

12 THE COURT: -- based on his testimony.

13 MR. ENGLISH: -- I asked a series of questions,
14 your Honor.

15 THE COURT: Yes.

16 MR. ENGLISH: And I thought his answer was he
17 stopped at the analysis of what the impact would be on
18 producers of the extra \$1.49 for Class I.

19 BY MR. ENGLISH:

20 Q. And I don't believe you considered what the impact
21 would be of lost consumption as to where that milk would
22 go and how that would work out in uniform prices, correct?

23 A. Correct.

24 Q. Okay.

25 A. But can I just say one other thing? Because I
26 kind of misspoke, I think. That wasn't the sole purpose
27 of -- that -- that you -- that -- the way you summarized
28 it. I also -- my -- the main purpose of my study is to



1 affirm that the demand elasticity for fluid milk is
2 inelastic. That's the main purpose.

3 Q. I -- I understand that, and I'm going to get to
4 that. You know, Mr. Rosenbaum may have gone first, but
5 somehow I drew the short straw for some of this, so we're
6 going to get to that.

7 But that's -- do you understand that that's an
8 analysis of why USDA decided many decades ago that it
9 could price discriminate between fluid milk and other
10 products?

11 A. I don't understand your question. Could you
12 rephrase it?

13 Q. The issue of alleged inelasticity is relevant to
14 the question of whether USDA can and does differentiate
15 between prices for fluid milk versus ice cream versus
16 cheese versus butter, correct?

17 A. That is correct.

18 Q. Okay. But as you said a moment ago, it is not the
19 sole purpose of the statute, right?

20 A. No.

21 Q. You know that the statute, when it says setting
22 milk prices, is also says, "to be in the public interest"?

23 A. Yes, I'm aware of that.

24 Q. And the public interest is understood to include
25 consumers, correct?

26 A. Correct.

27 Q. So I want to understand, going back to page 3,
28 your expert opinion on how the increased cost of \$1.49



1 will be passed through the system.

2 Is it your expert opinion today that fluid milk
3 processors can absorb the entirety of the price
4 increase -- can absorb the entirety of the increase in the
5 price of milk by passing it on to retailers?

6 A. Yes.

7 Q. 100%?

8 A. I don't know if it will be 100%, but it will be
9 predominantly -- it will be very close to that, in my
10 opinion.

11 Q. And on what basis do you have that opinion?

12 A. The extreme inelasticity of demand basically would
13 root that out, that it -- the cost -- the cost to -- of
14 processors to raising their price is primarily -- in
15 response to a cost -- a Class I increase, would be
16 primarily the opportunity cost that they would lose. They
17 would lose some quantity demanded. But that, as I
18 repeatedly have said, will be a much smaller percentage
19 decline than the respective percentage increase in the
20 price that they receive.

21 Q. But your study is an inelasticity of demand at the
22 retail level, correct?

23 A. Correct.

24 Q. Okay. Do you have any evidence that that
25 inelasticity of demand applies equally when a fluid milk
26 processor goes to a grocery store and says,
27 congratulations, your price just went up?

28 A. What was the question there?



1 Q. Given that your study is the inelasticity of
2 demand at retail --

3 A. Okay.

4 Q. -- do you have any study about what actually
5 happens when my clients go to their clients, a grocery
6 store, and say, congratulations, I have for you an
7 increase of \$1.49 per hundredweight translated as gallons?

8 A. Well, it wouldn't be a \$1.49, but I -- I'd have to
9 do the arithmetic. But if everybody would be treated the
10 same under this, I -- I think they -- they could do it. I
11 think they could pass it along to the retailers, and the
12 retailers would pass it along to the consumers. Because
13 this would apply to every processor -- that the increase
14 in cost would apply to every processor in the country.

15 Q. But isn't it the case that as consumers' taste
16 change and the dairy case that we understood growing up
17 that included just milk, that we call milk, now the
18 retailer has a choice of how much space they are going to
19 give milk versus oat products versus almond milk versus
20 soy milk, correct?

21 A. Correct.

22 Q. And if retailers are going to lose sales on fluid
23 milk, aren't they more -- aren't they likely to give up
24 more of that shelf space to those competing products?

25 A. Well, probably a little bit, but that would be --
26 that would be consumer driven. If there's consumers out
27 there that want to buy fluid milk, what retailer is not
28 going to sell it to them?



1 Q. But 1.6% down, so now the retailer has to fill
2 their shelf with that 1.6 volume in order to drive their
3 sales, correct?

4 A. I don't understand the question. Can you say that
5 again?

6 Q. All right. By your analysis, fluid milk
7 consumption would go down 1.6% --

8 A. Uh-huh.

9 Q. -- correct?

10 A. That was one of the bounds. The other one is .9%.

11 Q. Okay. I'm just using one of the bounds.

12 A. Okay.

13 Q. That means that retailers have the same size
14 shelves to fill, correct?

15 A. Yes.

16 Q. And so when their sales of fluid milk go down,
17 that means they are going to fill them with more water or
18 more plant-based beverages, correct?

19 A. Correct.

20 Q. Do you agree, based upon the studies that you have
21 seen, that these price increases will be most felt not in
22 the specialty milk products but on traditional fluid milk
23 sales?

24 A. Can you repeat the question? The price increases,
25 I don't --

26 Q. So -- so your inelasticity studies --

27 A. Yes.

28 Q. -- or those that you have seen, do you agree that



1 there is a difference between how the consumers react
2 between specialty milk products and traditional fluid milk
3 sales?

4 A. Yes.

5 Q. And where will the -- where will the impact be
6 felt more by the consumer?

7 A. I would believe that the highest valued milk
8 products would have more of an elasticity than the
9 lower -- the bulk milk, for example, the lower priced per
10 unit bulk milk. That would be more inelastic.

11 Q. So -- and that's the successful growing segment,
12 correct, of the fluid milk category, is the specialty milk
13 products?

14 A. Yes. Yes.

15 Q. So the impact on them is greater. And so doesn't
16 that mean the very segment that is growing is going to be
17 hurt the most?

18 A. I don't understand what you mean by the impact on
19 them is greater. Are you meaning that they have a higher
20 elasticity of demand for -- for those products? Is that
21 what you are saying?

22 Q. Yes.

23 A. Yes.

24 Q. Okay. And because of that higher elasticity of
25 demand, the very segment that is not completely dying will
26 be impacted negatively in the sense that consumers are
27 going to buy less of it because the price elasticity is
28 higher, correct?



1 A. Yes. But I don't know what the exact number is,
2 but the category that you are talking about is probably
3 10% or less of total fluid milk sales. Are you talking
4 about --

5 Q. I understand that. But given the fact -- and let
6 me back up.

7 You yourself said that I think until about 2011 or
8 2012 you were involved have fluid milk promotion, correct?

9 A. Correct.

10 Q. And, yes, there are other promotion programs like
11 the pork promotion and the soybean promotion, correct?

12 A. Correct.

13 Q. But the purpose of the dairy farmers and the
14 processors contributing to programs to assist in fluid
15 milk sales is to increase fluid milk sales, correct?

16 A. Correct.

17 Q. Okay. Why would we undertake a policy simply to
18 increase prices to dairy farmers which has the
19 countereffect of negatively impacting fluid milk sales?

20 A. Let me -- let me propose an alternative to that.
21 The -- what do you think about the data that the real
22 price of milk has declined by just the exact opposite of
23 what you are saying, by 8.3%? And what happened to milk
24 sales over that period? They dropped by 18%. So does it
25 follow from your logic then that if you cut the price,
26 that -- that it's going to be the savior of the fluid milk
27 industry? I wouldn't agree with that.

28 Q. Well, let me -- let me skip ahead, and I'll have



1 to come back.

2 If -- if demand was dropping, as you said in your
3 testimony, at 18.3%, when the price was declining 7%, how
4 can the fluid milk industry handle a price increase if
5 it's going down even when their price is going down?

6 A. What that -- what that fact tells me is that price
7 is very unimportant.

8 Q. You don't think in the face of the declines we
9 have already had, that a 1.6% decline simply because of
10 that one proposal in Class I prices, you don't think
11 that's significant?

12 A. I think that it -- it's important, but in the
13 grand scheme of things, it is relatively unimportant
14 relative to the main drivers that are driving that trend
15 downward. I mean that's pretty clear in my testimony. I
16 didn't say there's no impact. I'm just saying that it is
17 a very, very small impact, and in the grand scheme, not
18 that important relative to other demand drivers for fluid
19 milk.

20 Q. Even accepting your premise, the price increase
21 that you are talking about that you say is not going to
22 have a huge impact, it does have an additive impact? It
23 is like, you know, piling the insults on to the fluid milk
24 industry, right?

25 A. Yes, I have answered that question several times.
26 I said it does have an impact.

27 Q. So what are the main demand drivers in your
28 opinion, if it's not price?



1 A. The three that I mention in my testimony I think
2 are the main ones, at least those are the ones that I have
3 actually quantified in the past. And that is the -- the
4 growing competitive competing products to milk. There's
5 been an explosion over the last 25 years in that regard.
6 Now the consumers basically has at their -- at their
7 disposal, many, many more products, beverage substitutes
8 to milk than they used to have. I think that's a big one.

9 I think that the decline in the percentage of the
10 population, that is one of the biggest, if not the
11 biggest. Milk-drinking cohort has hurt -- that has driven
12 down average per capita consumption.

13 And then the trend in -- the trend in people
14 dining out, away from home, has also hurt. Most milk
15 consumption is done at home, not away from home, including
16 restaurants, convenience stores, gas stations, etcetera.

17 Q. And doesn't the growth of competing products make
18 demand more elastic for milk, for fluid milk?

19 A. Make it more elastic? I don't think the empirical
20 evidence bears that out.

21 Q. So let's go back to consumers. In your expert
22 opinion, are consumers hurt by higher Class I prices,
23 fluid milk prices?

24 A. Yes.

25 Oh, can I rephrase that? Fluid milk producers --
26 there have been many studies on this, on the impacts of
27 Federal Milk Marketing Orders on consumers. Fluid milk
28 consumers are hurt by classified pricing, but other dairy



1 consumers are helped because their prices are lower.

2 Those prices go down.

3 Q. But as you yourself said, there's growing demand
4 for competing products?

5 A. Correct.

6 Q. Let us all in this room, I hope, agree, that milk
7 has higher and better nutrition than bottled water,
8 correct?

9 A. Yes.

10 Q. That milk has higher and better nutrition than all
11 those milk -- those claimed products like oat milk or soy
12 milk, correct?

13 A. I can't answer that. I'm not a nutritionist.
14 I -- I do know that not everybody would agree with that,
15 that drinking whole milk is healthy for you. But I'm not
16 a nutritionist, and I'm not -- and I don't play one on TV,
17 so I'm not going to try to answer that.

18 Q. I know -- well, and I -- I --

19 THE COURT: Well, we are on TV.

20 BY MR. ENGLISH:

21 Q. I'm not an economist, and I am on TV, but anyway.

22 But -- so I know it's been a few years, you have
23 been away from the milk promotion programs. Isn't it the
24 case that -- that the milk promotion programs are now
25 touting the fact that real milk, what we call real milk,
26 has protein that comes from the actual milk that can --
27 that is actually absorbed by the human body much more
28 efficiently than these other products that add protein,



1 correct?

2 A. I -- I have heard that, correct.

3 Q. And would you agree that's true?

4 A. I don't know. I'm not a nutritionist, so I really
5 don't know. I mean, I believe -- if -- if -- if a
6 scientist tells me that, I'll believe it.

7 THE COURT: Mr. English, does it help if you ask
8 the witness to assume for purposes of this examination,
9 that that's true?

10 MR. ENGLISH: Thank you, your Honor.

11 BY MR. ENGLISH:

12 Q. Would you assume for the purpose of this
13 examination that it is true --

14 A. Sure.

15 Q. -- that fluid milk produced from cows has higher
16 nutrition that is more efficiently absorbed by consumers
17 than the competing products who put the word "milk" on --

18 A. Sure.

19 Q. -- their labels?

20 A. Yes.

21 THE COURT: He just answered yes, that you -- yes,
22 you would assume that.

23 THE WITNESS: Yes, I will assume that.

24 THE COURT: And that means you will take that as a
25 truth -- because I was thinking assume it for purpose of a
26 further question.

27 MR. ENGLISH: Thank you, your Honor. It's been a
28 long day already, and so thank you.



1 THE COURT: You are doing fine.

2 BY MR. ENGLISH:

3 Q. So at one time, I think, again, you worked with
4 the milk promotion programs, both the one that is the
5 producer-funded program and what's called MilkPEP, the
6 dairy processor program, correct?

7 A. Correct. I started off working for the dairy
8 farmer program, and then -- and I believe that the MilkPEP
9 program may have had their own study done, and then it got
10 brought into one through -- through the USDA AMS, and I
11 did those studies.

12 Q. But as part of that you got to know -- I mean, you
13 had to sort of get to know the processor industry a little
14 bill, didn't you?

15 A. Yes, that is correct.

16 Q. So if the proposal is adopted, and the increase of
17 \$1.49 per hundredweight translates in one bound of your
18 testimony to a 1.6% drop, that means that fluid milk
19 processors will have less volume of milk to run through
20 their plants, correct?

21 A. Correct.

22 Q. And to the extent their plants are expensive fixed
23 assets, that means that their relative costs are going up
24 per gallon, correct?

25 A. Correct.

26 Q. Okay. Doesn't that mean that the margins for
27 fluid milk processors will likely go down?

28 A. It's possible. I -- I would -- I haven't looked



1 at the margins. I have been only looking at the prices
2 and the quantity in this case. So I -- I can't say it
3 definitively.

4 Q. But are you aware -- so first let me draw a
5 distinction that I don't think has been in the record yet.

6 There are branded dairy products, correct?

7 A. Correct.

8 Q. And what does the term "branded" mean to you?

9 A. Branded means it's -- it's an effort, a marketing
10 effort by a firm to try to differentiate their product
11 from competitors, and it is designed to increase their
12 sales and perhaps capture more market share from the
13 competitors.

14 Q. And what does the term "private label" mean?

15 A. Private label, which I believe is synonymous with
16 generic -- oh, private label is usually like Wegman's, a
17 grocery store will adopt the label that -- that a whole --
18 a processor will make for them. And it's not branded, it
19 is -- basically, it's a -- it's a similar -- very similar
20 product, but it's not branded.

21 Q. Oftentimes it's not just a similar product, except
22 for the label, it's identical product, correct?

23 A. Correct.

24 Q. You know, it might have been the same plant code,
25 same day --

26 A. Correct.

27 Q. -- all of that, correct?

28 A. Correct.



1 Q. And typically, a branded product, will command a
2 premium in the marketplace, correct?

3 A. Correct.

4 Q. Over the private label, I meant?

5 A. Correct.

6 Q. Okay. Are you aware in your studies that when
7 prices go up, that consumers typically switch from branded
8 products to private label products?

9 A. I -- that -- that sounds very reasonable to me.
10 I'm not an expert on that, on that switching that goes on.
11 But, yes, that's seems reasonable.

12 Q. Now, that switch, in looking at your study,
13 wouldn't reflect a reduced demand in fluid milk, correct?

14 A. Oh, if -- if --

15 MS. HANCOCK: Your Honor, I'll object. He's
16 already said he doesn't have that. That's not part of his
17 study. We're kind of just going around --

18 MR. ENGLISH: No, this is --

19 MS. HANCOCK: -- what he just said.

20 MR. ENGLISH: This is different, your Honor.

21 THE COURT: Yeah, I think that's a -- I don't
22 think that requires a study. He's asking whether it's
23 being sold somewhere else, will that -- demand hasn't gone
24 down, it is being solid a different way. I think that's
25 what you're asking.

26 MS. HANCOCK: I think his answer was that he
27 didn't know. Then he followed up with a question as if he
28 did know.



1 THE COURT: Well --

2 MS. HANCOCK: That's my objection.

3 MR. ENGLISH: That's not my recollection.

4 THE COURT: Overruled for now.

5 BY MR. ENGLISH:

6 Q. But I think I said, is it reasonable to conclude
7 that consumers, when prices go up, would switch from a
8 branded product that's a premium price to a private label,
9 correct?

10 A. Yes, that sounds -- I said -- I said I -- I did
11 say I don't know, but it sounds reasonable.

12 Q. Okay. And if a consumer, instead of buying a
13 gallon of branded product bought a gallon of private
14 label, that would not be reflected as a lost gallon in any
15 of these studies, correct?

16 A. Correct.

17 Q. But to the extent those products commanded a
18 higher margin, that means the fluid milk processor who
19 lost that branded sale, lost that higher margin, correct?

20 A. Correct.

21 Q. Do you know if that's what contributed to the Dean
22 Foods bankruptcy in 2020?

23 A. I'm not familiar with it.

24 Q. So I jumped ahead at one point because you
25 answered a question about something I was going to ask
26 later, so let me come back to this issue about demand
27 dropping even when prices went down. Okay? Do you
28 understand that's -- you have already talked about that



1 with me, correct?

2 A. Correct.

3 Q. But that was three or four pages ahead, so now I'm
4 going to come back. I have some questions I wanted to
5 ask, but I wanted to set the stage.

6 A. Sure.

7 Q. Would it surprise you to hear that we had
8 testimony earlier this week from processors that they
9 cannot always pass along fluid milk cost increases to
10 their retailers?

11 A. No, it wouldn't surprise me.

12 Q. And wouldn't agree, you know, based upon some of
13 your studies, what you know, that if processors cannot
14 pass all along these cost increases to retailers, that
15 that will squeeze their margins further?

16 A. That's correct.

17 Q. So we talked briefly about the public interest.
18 Do you understand that the purpose of Federal
19 Order is to prevent disorderly market and to ensure a
20 sufficient supply of milk for fluid use?

21 A. Yes.

22 Q. Is it your expert testimony that there is an
23 insufficient supply of milk for fluid use?

24 A. That there's an insufficient?

25 Q. Yes.

26 A. No.

27 Q. You agree that there's more than a sufficient
28 supply of milk for fluid uses, correct?



1 A. Yes.

2 Q. And the raising of the price to Class I processors
3 with a resulting decrease, however small in your view, of
4 consumption, will not result in Class I processors
5 purchasing more milk, will it?

6 A. Correct.

7 Q. So I'm going to turn back to -- and try very hard
8 not to duplicate -- to pages 4 and 5 already discussed
9 with Mr. Rosenbaum.

10 Are there any other studies of which you are aware
11 that you have not included?

12 A. There are no other peer-reviewed studies that I'm
13 aware of. And I am aware of some other non-peer-reviewed
14 studies. But this -- these are all the peer-reviewed
15 studies that I found.

16 Q. So you view that we can only consider
17 peer-reviewed studies?

18 A. I think that is more of the gold standard is a
19 study that has been reviewed by experts that basically
20 deem it worthy. I'm not saying that non-peer-reviewed
21 articles are -- are inferior necessarily. I'm just saying
22 that this is a -- kind of a quality control. That's why I
23 use peer reviewed.

24 Q. Given our conversation and your conversation with
25 Mr. Rosenbaum about changes in the market, whether it's
26 changes in the youth cohort, whether it's changes in -- in
27 home demand, whether it's changes with the growing
28 competition from all those products that are in the dairy



1 case today that are not milk, at what point in time, in
2 your expert opinion, does the data reflected in studies
3 reflect the current market situation?

4 A. At what point in time? Well, I mean --

5 Q. Let me ask it a different way. The first study as
6 I see it is a study by Bartlett in 1964.

7 A. Right.

8 Q. That study wouldn't reflect any of these three
9 changes, correct?

10 A. Correct.

11 Q. Okay. And so asking that question now and coming
12 forward, when are those three categories --

13 A. I think --

14 Q. -- together?

15 A. Well, as I mentioned in my testimony, these
16 studies span 60 years going back to the study that you
17 just mentioned and going up to a study by Yang and
18 Dharmasena in 2021. And I think if you went back ten
19 years ago and asked that same question, you would
20 probably -- we could probably agree that the market is
21 different ten years ago than it was 15 years ago. So I
22 don't know why -- I don't know why -- what good it would
23 be for me to say how far back can you go to completely
24 explain the current market environment. Maybe it was six
25 months ago. I don't know. I -- I have no idea.

26 Q. Maybe it was six months ago.

27 A. Yeah.

28 Q. So you assert a number of reasons, and we just



1 chatted a little bit, for the decline of fluid consumption
2 that you claim does not include the price of fluid milk.

3 The Slutsky equation -- S-L-U-T-S-K-Y -- says
4 price elasticity of demand is composed of two parts,
5 correct?

6 A. Correct.

7 Q. Income is one, correct?

8 A. Correct.

9 Q. And the other is substitution, correct?

10 A. Correct.

11 Q. And so there's an income effect and a substitution
12 effect, correct?

13 A. Correct.

14 Q. The income effect is not relevant to the price
15 elasticity of demand for fluid milk? Would you agree?

16 A. I don't quite understand your question. Can you
17 rephrase that again?

18 Q. Is the income effect relevant to the price
19 elasticity of demand study for fluid milk?

20 A. It can be. It depends upon how -- what sort of
21 demand equation was estimated for. There are ways to
22 estimate what is called an income-compensated demand
23 curve, and there are ways to estimate an uncompensated
24 income -- uncompensated demand curve. I -- of these 38
25 studies I can't tell you which -- which ones did which,
26 but I would imagine, to guess, that there's a mixture of
27 both in here.

28 Q. But you don't know?



1 A. I don't -- I mean, I'd have to look at the
2 articles.

3 Q. What about any of yours, the recent ones of yours?

4 A. For some of them, that's true. Where we use
5 demand systems, we have that. And some of them, it's not
6 true, where we just estimated what's called an individual
7 single equation for milk. So some of them have it in
8 there; some of them don't.

9 Q. So in those cases where it's not involved,
10 substitution has to be the factor, correct?

11 A. Uh-huh. Yes.

12 Q. And so products that have more substitutes will
13 have more elastic demand, correct?

14 A. Correct.

15 Q. And you admit that the beverage market has become
16 increasingly competitive with all these competitive
17 products, correct?

18 A. Correct.

19 Q. And so doesn't that increasingly competitive
20 beverage market mean that prices matter more than others?

21 A. Not --

22 Q. More than ever before?

23 A. Not necessarily.

24 Q. You wouldn't think, with the substitution effect,
25 that the beverage market becoming more increasingly
26 competitive would mean that milk demand is becoming more
27 elastic?

28 A. No, I don't. I don't believe that. And the



1 reason I don't believe it is that the cross-price
2 elasticity as a demand with respect to milk is very, very
3 inelastic. People that are milk drinkers tend -- tend to
4 drink milk, and they are going to drink milk almost
5 regardless of what the prices of other competing beverages
6 are. And then there's the exact opposite, there are
7 people that don't drink milk, and the price of beverages,
8 the price of milk has no impact at all on their demand.
9 Hence, we would say that the substitutes are weak
10 substitutes for milk.

11 Q. And that is by way of saying, we could never get
12 them back, correct?

13 A. Yes.

14 Q. And so the few that we have got that aren't among
15 them are going to go down that 1.6% under your assumption,
16 correct?

17 A. Correct.

18 MR. ENGLISH: I have no further questions, your
19 Honor.

20 THE COURT: Very good.

21 Any other questions on cross?

22 CROSS-EXAMINATION

23 BY MR. MILTNER:

24 Q. Ryan Miltner representing Select Milk Producers.

25 Good afternoon, Dr. Kaiser.

26 A. Good afternoon, Ryan.

27 Q. I wanted to start with a few questions about your
28 statement that we didn't go over earlier.



1 On page 2, you cite a study by Davis of 2012 as
2 the only one that you cited that estimated milk price to
3 be elastic. Do you have any particular criticisms of that
4 study?

5 A. No. But I would say that I think one of the
6 reasons the -- in general, the elasticities in Table 1
7 that tend to be the most elastic, tend to be ones that
8 used scanner data from grocery stores, so they are a
9 subset of all milk actually. And the substitution,
10 basically -- they were done at a very disaggregated level.
11 So, for example, they would include maybe -- I'm just
12 going to make this up -- but maybe eight or nine, ten
13 products, milk products, rather than fewer, in which case
14 that tends to add just implicitly to the elasticity
15 estimates because of that, using that dataset and the fact
16 that it's not all milk that's consumed in society.

17 Q. So if I could summarize that, the limited dataset
18 affects the elasticity that's calculated; is that correct?

19 A. That is correct.

20 Q. Would you extend that to suggest that because of
21 the limited dataset, the usefulness of that study is not
22 as -- well, it is not as useful as a study that had a more
23 encompassing dataset?

24 A. That's my personal opinion, yes, because
25 especially when you want to talk about Class I, you should
26 really be talking about all Class I products, not just
27 those that are sold in a grocery store.

28 Q. At the bottom of page 2 -- and this was something



1 where what you said when you read the statement was
2 slightly different than what you wrote.

3 The second sentence, it's written as, "There are
4 at least three reasons for this." When you -- when you
5 read it, you said, "There are at least three reasons I can
6 think of."

7 Are there any other reasons other than the three
8 listed that -- that you wanted to add to that? I
9 understand when you read things, you -- we fill in words,
10 but I wanted to ask you about that.

11 A. That's a good question. I am -- I am sure there's
12 some -- some other factors out there that the dairy
13 industry would love to -- you know, to answer so maybe
14 they could -- they could approach a solution to it
15 perhaps.

16 I would say there might be some racial
17 demographics that could be important over time. And by
18 that, I -- I am going to quote this from memory, which may
19 not be precise, but I know that if there's any racial
20 changes in the population, it has an impact on milk
21 consumption. For example, Caucasians consume more milk
22 than African Americans consume but less milk than the
23 generalization of Hispanics do. And therefore, over time,
24 if those demographics are changing, for example, if
25 there's more African Americans in the population, that
26 will have an impact on milk demand. So -- so that would
27 be one possibility.

28 I'd want to explore it and investigate that in



1 more detail empirically, but that would be a hypothesis
2 that I would be interested in testing. So that would be
3 one factor that would be worth looking at.

4 And -- and I do have limited empirical -- a long,
5 long time ago I did a lot of demand work on milk demand in
6 New York City, and that was a market where I looked at
7 over 25 years of monthly data. And that was a long time
8 period, and there was these major changes in racial
9 demographics that had a profound impact on driving milk
10 demand in that market -- average milk demand in that
11 market. So that would be one that I left off here that
12 might be a candidate.

13 Q. Thank you.

14 In addition to your research on elasticities for
15 fluid milk, have you done any broader surveys or research
16 on the reasons why consumers may move away from consuming
17 fluid milk products?

18 A. No, I have always wanted to do that, but I have
19 not done that. In fact, I put in a proposal for -- for
20 doing just that, and the proposal wasn't funded,
21 unfortunately, back when I was doing a lot of work on the
22 dairy side and I had a team of researchers. We thought
23 that was a very important and interesting question, but we
24 weren't successful in getting that funded.

25 Q. Toward the bottom of page 3 you talk about the
26 average and the median elasticities from your study.

27 Do you have an opinion as to which of those
28 measures would be most appropriate to rely upon, the



1 average or the median?

2 A. In general, on any statistical measure, I prefer
3 the median -- like if I want to -- if I give an exam to my
4 class, I'll calculate the average and the median, and I
5 always think the median is a little bit more informative.
6 But I really -- I won't go on record as saying that .2 is
7 a more accurate estimate than .35. It is just a
8 different -- a different way of looking at it.

9 But what I particularly like about a median is it
10 is really easy to understand. It basically says half the
11 studies had an estimate that was .2 -- under .2 and half
12 had an estimate that was over .2, and so it kind of gives
13 you a nice little break.

14 And -- oh, and one other thing. And when you have
15 an average, really, really extreme numbers can bias it
16 up -- upwards, so it is not as good of a measure, in my
17 opinion, of central tendency as a median is for that
18 reason.

19 So let me just give you an example. Suppose you
20 had five numbers: 1, .5, 1.5, 1.75, and 1,000. The
21 average to that is going to be, you know, 500 maybe, and
22 that's not very reflective of those first numbers. That's
23 an average. The median of that would be something like
24 1.5, which is more accurate. So when you have an extreme
25 outlier, averages are not very good.

26 Q. I was going to say, in statistical terms, that
27 would be excluding the outliers?

28 A. Yeah. Yeah. And that's one of the reasons why



1 they sometimes take -- what is it called -- Olympic
2 averages, where they throw out the two lowest and the two
3 highest.

4 Q. Right.

5 A. And that can help solve the problem. I didn't do
6 that. The average here is just the average of all the
7 studies.

8 Q. A question about Table 1 on page 4. I think this
9 is just a stray character, but I want to make sure it
10 doesn't mean anything. There is a question mark after --

11 A. I -- I have corrected that. I apologize. Yes.

12 Q. Oh.

13 A. That -- that should be erased. There's no
14 question to it. I don't know where that question mark
15 came from.

16 Q. I'm sure as we present the testimony my clients
17 have prepared, we'll find a nit or two as well, so no need
18 to apologize.

19 A. But thank you for bringing it to the attention.

20 Q. Obviously you authored or co-authored a number of
21 these studies.

22 Can I ask, have you read all of the studies that
23 are in this -- this table?

24 A. I have skimmed them. I have not read them super
25 carefully. I was looking -- so the way I came up with
26 these, by the way, was I did a Google Scholar search for
27 milk elasticity and then a couple other things, and that's
28 how I found these. And they needed to be in peer reviewed



1 articles.

2 These are all journal articles with one exception,
3 the Capps article is -- it's not an article, it is the
4 report to Congress, which I used to do. But that is peer
5 reviewed. It's very much peer reviewed, so I included
6 that as the only non-journal article there. So -- but
7 I -- but that -- but I basically tried to get as
8 exhaustive of a peer reviewed list as possible, and that
9 is how I came up with the 38 articles.

10 Q. I appreciate that.

11 Have you -- with respect to the Capps report to
12 Congress, have you reviewed that --

13 A. Yes.

14 Q. -- that particular report?

15 A. Yes.

16 Q. Is it correct that report I think by statute has
17 to be presented to Congress annually?

18 A. That is -- that's technically correct. It isn't
19 always finished annually, unfortunately, because it takes
20 a long time, sometimes, to clear -- to get -- to get USDA
21 clearance. And I understand that that was a little bit of
22 an issue when the Texas A&M people were doing the studies.
23 I'm not criticizing them. It is just -- it -- that -- the
24 most recent study that was released I believe is 2019
25 and -- because it took a while to get through clearance.
26 And that, I believe, is the most recent. I don't know
27 when the next one will be coming out.

28 Q. When -- you have a date of 2022 on that.



1 A. Yes.

2 Q. Is that the 2019 report?

3 A. Yes. The 2019 report came out in 2022.

4 Q. Okay. Thank you.

5 Are the methodologies used in that report now
6 similar or even identical to the methodologies that you
7 used when you did that report?

8 A. They were initially identical, and now they're
9 very similar. The fluid -- the fluid one is almost
10 identical. But when I did the last couple of them, I only
11 did a fluid demand equation and then I did an all dairy,
12 which included fluid demand equation, did both on a milk
13 fat and a milk solids basis. I understand that the 2019
14 report has butter and a couple of other things that they
15 evaluated, so they have extended it a little bit. But the
16 fluid side is -- looks really similar to what -- what I
17 did, and the results are very similar too.

18 Q. And because the methodologies are so similar, I
19 assume it would have been improper for you to include a
20 number of those Congressional reports in your study here?

21 A. That's -- that's exactly why I didn't include any
22 of mine. I could have put like 15 of my studies in there,
23 and each -- each year we just add four data points, so of
24 course, the numbers are going to be very similar. So
25 that's why I only included Judd Capps' report to Congress.
26 Which, by the way, does have very similar findings.

27 It's even more inelastic, by the way, than my
28 study. It is one of the most inelastic results of all the



1 studies I quoted. The fluid milk price elasticity in that
2 study is minus zero-point -- minus 0.071, I believe.

3 Q. You -- that's correct.

4 A. Highly, highly inelastic. That says a 10%
5 increase in price would lead to a .7% decrease in quantity
6 demanded.

7 Q. And so although there's -- I mean, if you look at
8 the dates of the studies in here, there's perhaps a bit of
9 a gap between the early aughts or late aughts and 2022.

10 The studies have been performed. You could have
11 listed them all in here, but it would have skewed the
12 accuracy of your averages and median?

13 A. Exactly. And I really wanted to -- I didn't want
14 to do that. I didn't want to -- some of these studies
15 where they are really elastic actually are overweighting
16 this because I took the elastic -- some of them estimated
17 for like skim milk, one estimate whole milk, another
18 estimate, and so forth. Other studies, like the report,
19 just had all milk. So I tried to make sure that no study
20 was more heavily weighted in this table than -- than
21 others.

22 Q. There were questions asked of you about whether
23 these studies took into account the demand and the sales
24 of plant-based milk alternatives.

25 Do you recall those questions?

26 A. Yes.

27 Q. Do you know if the Capps report to Congress took
28 into account those alternative products?



1 A. Yes, I believe it did. The last three years that
2 I did the study, I had the -- the -- I had both the price
3 of soy milk -- soy milk, in quote -- and soy milk
4 advertising in -- as a -- as a factor that did impact milk
5 demand.

6 I believe, by the way, I called it soy beverage,
7 just to be politically correct.

8 Q. I'm sure everyone in the room here appreciates
9 that.

10 If you wanted -- let me just rephrase that, if I
11 could.

12 Would you find that the Capps report to Congress
13 represents an adequate and appropriate standalone measure
14 of the elasticity for fluid milk?

15 A. Yes. In fact, of all the studies on this -- of --
16 that I have done, I would stand by that one the most. It
17 was subject to the most scrutiny by USDA experts, went
18 under -- went -- underwent some -- more than four or five
19 revisions, so it was very, very rigorous. And I'm sure
20 they did the same thing -- AMS did the same thing when the
21 Texas A&M people, the Capps people did the study. So,
22 yes. And -- and -- and us agricultural economists in the
23 profession have a lot of respect for Judd Capps. He's
24 a -- he's a fantastic economist.

25 Q. Thanks. I don't think I have anything else to
26 ask. I appreciate your answers.

27 THE COURT: Let's keep going.

28 ///



1 CROSS-EXAMINATION

2 BY DR. VITALIANO:

3 Q. Peter Vitaliano with National Milk Producers
4 Federation.

5 Good afternoon, Dr. Kaiser.

6 A. Dr. Vitaliano.

7 Q. I have a few questions that are primarily for the
8 purpose of clarifying some of the previous questions and
9 discussions.10 On page 1, the last full paragraph states, The
11 overwhelming majority of empirical studies that have
12 measured the price elasticity of demand for milk have
13 found it to be inelastic. The studies spanning many years
14 have consistently shown the same result, the price
15 inelastic nature of milk.16 I'd like to focus on what I would characterize
17 your article as a survey article and the significance for
18 that for economic research.19 Would you agree that we -- that economics is a
20 social science that studies human behavior, and therefore
21 it's often considered to be a bit of a soft science?22 That -- to the extent that, you know, one
23 individual study is not necessarily -- no matter how well
24 done it is, no matter how well peer reviewed it is, is not
25 necessarily accepted as definitive. Often other studies
26 come up with different results. And that this -- this
27 contrasts with some of our fellow scientists in the hard
28 sciences.

1 Like let me cite two examples. Particle physics
2 that have received a lot of media -- attention in the
3 popular media. A few years ago they did -- a team of
4 researchers I believe discovered the Higgs boson particle,
5 and it was widely accepted to confirm a hypothesis that
6 had been longstanding, and the entire science breathed a
7 collective sigh of relief.

8 And more recently there was a team researching
9 for -- searching for a very subtle wobble in the --

10 THE COURT: Let him finish.

11 BY DR. VITALIANO:

12 Q. -- particle and that it is expected that if that
13 is confirmed, it will upend the entire foundation of that
14 science.

15 We don't have that luxury. If we do a study of
16 the elasticity of demand for fluid milk, even if it's a
17 stunningly brilliant study, we should not hold our breaths
18 awaiting a telephone call from the Nobel committee in
19 Stockholm informing us we have won the economics prize for
20 the year. Okay.

21 THE COURT: Is there a question mark there
22 someplace?

23 DR. VITALIANO: Yes. Is --

24 THE COURT: Before -- before you answer,
25 Dr. Kaiser, I would like to hear from Mr. English.

26 THE WITNESS: I not only agree with that --

27 THE COURT: Well, wait a minute. No, no, no. I
28 said before you answer, I want to hear from Mr. English.



1 MR. ENGLISH: Your Honor, I object. There were I
2 thought 12, 13 different thoughts in that. So if the
3 witness is now to agree, I don't know which one he is
4 agreeing with. It is not a question, and I think it
5 should be stricken.

6 THE COURT: I'm not going to strike the intro, but
7 I will -- I would like to hear a more specific question.

8 BY DR. VITALIANO:

9 Q. Yeah. I would just -- would you agree that
10 individual pieces of research in our field are not often
11 considered to be very powerful indicators by themselves as
12 a single article?

13 A. Not only do I agree with that, I try to practice
14 that. I'm a big, big believer in repeating studies,
15 the -- and using different data to kind of stress test.
16 And the more that you -- the more you see similar or even
17 identical results from different techniques, different
18 data sets, different studies, the more robust our
19 conclusions are and the more confidence we can have.

20 Q. So that means that a survey article like you have
21 done, that surveys many pieces of research on the same
22 subject, that come to roughly the same conclusion,
23 collectively can be considered much more powerful support
24 for their findings than a single study?

25 A. That is true. And -- and this is sometimes
26 referred to as a meta analysis.

27 Q. Yes.

28 A. So meta analysis has been used by, for example,



1 the AMA to prove a point, you know, in terms of the
2 efficacy of a drug or, you know, a thing that causes
3 cancer or whatever. Obviously, if you can survey all of
4 the literature and form your conclusions by the overall
5 literature, not just one study, the more robust the
6 findings will be in your conclusions.

7 Q. And that characterization of meta studies is not
8 necessarily weakened by the fact that those individual
9 studies may come up with different specific numbers. Like
10 in this case we're looking -- the studies are looking at a
11 single number, the own price elasticity of fluid milk.
12 And if you have a spread of numbers, that if 37 of them,
13 say, in your study show less than one --

14 THE COURT: Yeah. Mr. English stands up. It is
15 too much of an introduction here.

16 Also, I realize we allow friendly cross here, but
17 if -- we really have a situation here of, you know, you're
18 testifying, and then asking the witness to say, hey, ain't
19 that right?

20 DR. VITALIANO: Sorry --

21 THE COURT: Now, that's the witness, you know, I
22 think you are asking, are survey studies generally more --
23 thought to be more probative than individual studies, and
24 I think the witness has answered yes and that that's why
25 he did a survey study here.

26 How about that, Mr. English?

27 MR. ENGLISH: Your Honor, yes. The rules here are
28 what they are, and, you know, people get to prepare



1 written statements, so -- but at some level, if this
2 doctor standing next to me, as opposed to the doctor in
3 the witness stand, needs to get back on the stand for
4 rebuttal, it seems to me that's more appropriate than what
5 we're hearing right now because -- and I -- I want to
6 repeat our objection from earlier and say we did our part
7 over the break to as efficiently as possible create an
8 examination, and now it looks like we're going to have to
9 go back because of some of these things. And we were
10 trying to help this witness get off the stand at some
11 point.

12 I just worry that we're going to end up with our
13 having to get back up because I think there's issues being
14 raised here. But that's up -- that's up to them. But I
15 do think that the nature of the kinds of non-examination
16 that's been going on is not helpful for the record.

17 THE COURT: Yeah, I agree, and I'm not sure what
18 to do about it. I mean, we do allow friendly cross --
19 yes, Ms. Hancock, you may talk.

20 MS. HANCOCK: Yes, your Honor. I appreciate the
21 Court's guidance here, your Honor's guidance for this.
22 And -- and, you know, if -- if Mr. -- if Dr. Vitaliano is
23 not an attorney and didn't ask as precise of a question, I
24 think that that's fine to maybe, you know, help get the
25 record clear where we need it.

26 But in all fairness, Mr. English and Mr. Rosenbaum
27 have asked what is traditionally very objectionable
28 evidentiary questions, and we in the -- in the efficiency



1 of this proceeding have not been objecting. And so to
2 attack just one witness -- or one examiner here, I think
3 is unfair.

4 So I think that Dr. Vitaliano has heard the
5 message. He should be given an opportunity to conclude.
6 But we don't delineate between who is allowed to ask
7 questions. And I think that if we're going to create more
8 of a rules of civil procedure evidentiary standard, it is
9 going to apply to everyone.

10 THE COURT: Now, I mean, the criticism, there's
11 certainly nothing personal about it.

12 Doctor, I just think -- and we have allowed
13 friendly cross and leading questions on -- what's really
14 friendly cross really should be a direct examination. I
15 don't know what to do with this. But I will try to apply
16 the rules fairly.

17 But I do think -- is there something different in
18 your question? Do you -- that you want the question --
19 you asked the witness whether survey studies were better
20 than individual studies, right?

21 BY DR. VITALIANO:

22 Q. And the last question I asked was: That
23 conclusion is not weakened by the fact that the individual
24 numbers might be different, that's typical in economics;
25 do you -- would you agree with that?

26 A. Yes, I agree.

27 Q. Okay.

28 THE COURT: Thank you. And, again, I don't mean



1 to criticize you at all. You are -- perfectly appropriate
2 for you to be a representative of your client asking these
3 questions.

4 But I will, however, because you are not a lawyer,
5 give you more leeway in your questions.

6 DR. VITALIANO: I will try not to abuse that
7 leeway, your Honor.

8 BY DR. VITALIANO:

9 Q. On page 2, the last full paragraph in the bottom.
10 It says, Another way to demonstrate how unimportant price
11 changes are in terms of driving milk demand, consider the
12 fact that the real price of milk relative to all goods and
13 services has fallen, and that means that milk has become
14 less expensive to purchase relative to other products.

15 A. Yes.

16 DR. VITALIANO: Your Honor, may I approach the
17 witness?

18 THE COURT: You may.

19 The witness has been handed a document.

20 BY DR. VITALIANO:

21 Q. I have just handed the witness a document labeled
22 Exhibit 62. That was my testimony from the first day of
23 this procedure. Referring to the general economic impact
24 section on page 8. I showed a figure that charted for the
25 last 15 years the consumer price indices for all items,
26 food and beverages, dairy products, and fluid milk.

27 Dr. Kaiser, have you seen this before?

28 A. Not this specific graph, but I -- I calculated a



1 similar graph for the overall CPI and the CPI for milk.
2 But this has got additional products included.
3 Importantly, it includes all food and beverages and dairy
4 products and fluid milk and all other items. So it has
5 got more than what mine had.

6 Q. So would you agree that this figure, which is now
7 in the hearing record, is consistent with the point you
8 were making in that paragraph I just stated?

9 A. Yes. In fact, it is even more consistent in the
10 sense that I compared what's happening to the fluid milk
11 price to all goods and services in the economy, and in
12 your graph here you have all food and beverages, which is
13 more -- more -- closer related to fluid milk than all
14 goods and services. And that is going up -- I'm sorry --
15 all food and beverages prices are going up even faster and
16 more over time than fluid milk prices.

17 Q. Thank you.

18 On that same page 2, the second full paragraph
19 from the bottom, you make the case that the cross-price
20 elasticities of demand for milk are inelastic.

21 A. Correct.

22 Q. Which means that consumption of milk is not very
23 sensitive to price relationships with substitute products;
24 is that correct?

25 A. Correct.

26 Q. And then later on you say one of the -- one of the
27 major causes for the steady decline in per capita fluid
28 milk consumption is the growth of substitute and



1 alternative beverages.

2 A. Correct.

3 Q. There could appear to be a bit of a contradiction
4 to that, so I would like -- could you clarify the
5 relationship for the finding that the cross-price
6 elasticity of milk is low, but it's still losing share to
7 other products. Does that mean that it's not price of
8 milk compared to these others that's critical, but other
9 factors?

10 A. Yes, that's exactly right. It's -- price is not
11 driving -- driving -- the prices of other commodities or
12 substitutes that are -- that are mainly driving it. They
13 are driving some of it, but not driving, you know, a lot
14 of it. It's just the explosion of new products that are
15 available. It has nothing to do with price. New
16 products, it might be their advertising campaigns are real
17 successful. I remember when bottled water first hit the
18 scene, I mean, it was going up double digits, 20% a year
19 when it first -- per capita consumption when it was first
20 introduced. Had nothing to do with price, it was just
21 newly available and became a preference change, basically.

22 Q. There was some previous discussion in the
23 questions I think from Mr. English about the concept of
24 income effects on consumption.

25 Could you briefly explain that there is a separate
26 elasticity that is specifically called income elasticity?

27 A. Yes. I'm glad you reminded me. Probably all or
28 nearly all of the studies in Table 1 included income as



1 well as other demand shifters to estimate the price
2 elasticity.

3 So, for example, typical -- for me, a typical
4 demand equation for milk would include such variables as,
5 of course, the price of milk, the retail price for -- of
6 milk, the price of substitute products, maybe orange
7 juice, coffee, cola, whatever, income, and then,
8 population demographics, percent of food consumed away
9 from home, etcetera.

10 And so income is explicitly in probably all, if
11 not nearly all of these studies, and a separate elasticity
12 can be found. All of these elasticities for income tend
13 to be positive but very inelastic. So in other words, a
14 1% increase in -- in real income in the economy, for
15 example, leads to a small increase -- a positive increase
16 but a small increase in the demand for milk. So milk is
17 sometimes referred to as what economists call a normal
18 good, which simply means as income goes up, demand goes
19 up.

20 Q. Thank you. I was going to ask you to define
21 income elasticity as you just did.

22 You also listed a second cause of declining
23 demand, the increasing trend in food consumed away from
24 home. Can you clarify that that was not meant to be
25 just -- refer to food service restaurant eating, that it
26 could be it was a broader concept of literally all food
27 consumed away from home, like in automobiles or in --

28 A. Yes.



1 Q. -- workplaces?

2 A. Literally, if you don't -- if you consume food and
3 beverages away from home, that's what I'm talking about
4 there.

5 Q. And I'm -- I have observed personally that
6 shopping carts in grocery stores now have cup holders?

7 A. Yep.

8 Q. That would be another example of that?

9 A. Yep.

10 Q. You also talked about demographic change, and I --
11 I detected a little bit of confusion in some questions you
12 got on that.

13 In -- in terms of -- I interpret your paragraph --
14 the second full paragraph on page 3 of your statement,
15 that an important demographic change causing a decrease in
16 milk demand is the proportion of young people in the
17 population, which has been declining. And you give
18 numbers.

19 I sensed in some of the discussion on that there
20 was a bit of confusion between the rate of decline in
21 consumption for these individual population cohorts versus
22 the decline in their proportions. So if, for example,
23 let's assume that each population cohort was constant in
24 their consumption, a decline in the proportion of, say,
25 the youthful cohort would still result in an overall
26 decline in fluid milk consumption, even though no one
27 person or no one cohort was decreasing themselves.

28 A. That's exactly right. That's perfectly said.



1 Another question would be what's happening to milk
2 consumption in that cohort, but it is really the fact that
3 the cohort itself, regardless of their consumption level
4 changing, is decreasing, and that's what's causing -- so
5 per capita is simply total milk sales divided by pop- --
6 all the population. So that is going down because that
7 big consuming age cohort is going down.

8 Q. So that would have relevance, then, for, say,
9 promotion activities that would make it appropriate for
10 them to look at causative factors of fluid decline for
11 individual population segments --

12 A. That's --

13 Q. -- which could be very different?

14 A. That's exactly correct. Yes.

15 Q. You gave this analysis of price transmission, and
16 you used as an example the price -- Class I price
17 differential impact, which you worked through the
18 transmission and came up with an estimate of 1.6% decline.

19 Let's accept that just for the moment. I -- as I
20 understood it, I interpreted Mr. English to say, wouldn't
21 this result in increasing the problem long-term on top
22 of -- you know, a change of that sort on top of a steady
23 decline. Let me clarify whether or not this is a
24 long-term thing.

25 My understanding is that an increase in the
26 Class I differentials would be a one-time increase and
27 that it might -- by your numbers, it would reduce
28 consumption by 1.6%. But that would be -- wouldn't that



1 be a single one-time impact --

2 A. Yes --

3 Q. -- even though it might be --

4 A. -- it would be compounding every year --

5 (Court Reporter clarification.)

6 BY DR. VITALIANO:

7 Q. So even though that adjustment might lag over a
8 couple of years, it is a one-time impact, and then there
9 would be no further reaction in consumption strictly from
10 the price increase once that played out?

11 A. Correct.

12 Q. It would -- the next year there would be a --
13 relatively speaking, a 0% increase in the price, and it
14 would result in a zero impact on consumption, that's how
15 elasticities are applied?

16 A. Correct.

17 DR. VITALIANO: I think that completes my
18 questions.

19 THE COURT: Very well.

20 Further cross?

21 Yeah, Let's take a break. I was hoping we would
22 have a real short, but that's not a good assumption, I
23 don't think.

24 All right. It is 3:19. Let's come back at 3:30.

25 (Whereupon, a break was taken.)

26 THE COURT: Let's go back on the record. We're
27 back in session.

28 Who's up? AMS's turn? No one -- everyone -- we



1 finished everyone's cross. I'm not saying we finished
2 re-cross. I hope we are.

3 But, Ms. Taylor --

4 MS. TAYLOR: I'm sure Dr. Kaiser does too.

5 THE COURT: Ms. Taylor, the floor is yours.

6 CROSS-EXAMINATION

7 BY MS. TAYLOR:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. Thank you for coming today to testify.

11 A. You're welcome.

12 Q. I have a few questions that I don't think have
13 been covered in -- in -- from previous cross-examination.

14 So I had -- I wanted to talk on the top of your
15 testimony on page 2, you talk about how there are other
16 manufactured products that are more price elastic than
17 fluid milk. And so I wanted to know, if you could, for
18 the record, talk about if there's a distinction between
19 being more price elastic and being price elastic.

20 A. Yes, there is. One would -- for one, you would
21 use the term relative. When I talk about price
22 discrimination to my class, that's a really important
23 aspect of that, and that is this: To successfully price
24 discriminate doesn't mean that you have to have an
25 inelastic or an elastic product. You basically want to
26 price higher the product that is relatively more inelastic
27 than the other. And it may not be, in fact, inelastic,
28 but it is more inelastic than the other. So that's a



1 distinction.

2 So, generally speaking, we call demand inelastic
3 if its elasticity and absolute value is below one, and we
4 call it elastic if it's -- if it is above one. And I take
5 your question to -- to imply that you can also compare.
6 Cheese, for example, is more price elastic than fluid
7 milk. So that's a relative kind of comparison.

8 Q. But it is not to say that cheese is inelastic?

9 A. Correct.

10 Q. Okay. So your testimony generally talks about
11 price -- why milk is price inelastic, and you gave three
12 main reasons for those. If I can summarize for the
13 record, the first is increased competition in the beverage
14 market, so there's new products, there is alternative
15 products, etcetera. And your comment on that was people
16 may switch to those products, but they are not doing it
17 because of the price of milk, there's other reasons.

18 A. Correct.

19 Q. The second was there's increased food consumption
20 away from home and a lower proportion of young -- and a
21 lower proportion of young kids in the population.

22 And I'm wondering, while milk is, according to,
23 you know, your testimony and the surveys that you have put
24 in here, milk price inelastic, do you think at some point
25 there is a price ceiling for consumers that at some point
26 the price will matter?

27 A. Yes, of course. The hard part of that question
28 would be to predict what that would be. But, generally



1 speaking, as price goes up, people get more sensitive to
2 price changes.

3 So a perfect example of that is the demand for
4 salt. Salt is really an inexpensive part of our budget,
5 and it tends to be highly inelastic, our demand for that.
6 We just buy it when we need it. We probably don't even
7 look at the price because we know that it's so cheap.

8 On the other extreme, the price of a new house,
9 people when they go looking at, you know, a \$350,000 house
10 are going to be very price sensitive when they make their
11 purchase decisions.

12 And right now milk is not priced at -- at a price
13 point that would make it inelastic, but if you raised it
14 to \$100 a gallon, it most certainly would become elastic.

15 Q. On page 3 you state that the average Class I
16 differential change as proposed by National Milk would be
17 \$1.49. Is that a simple average or how did you come up
18 with that estimate?

19 A. I didn't actually come up with that estimate.
20 That was given to me by a colleague at the University of
21 Wisconsin, Chuck Nicholson, who I believe will be
22 testifying at this hearing in a week or two or something
23 like that.

24 Q. Okay.

25 A. And so I just took that as -- as another
26 expert's estimate. And he's well more -- he's way more
27 well versed on -- on this provision of the hearing than I
28 am, so I just took it as a given.



1 Q. Okay. And then is it your assumption in the later
2 part of your testimony -- I want to -- I think maybe
3 Mr. English touched on this a little bit -- but that
4 eventually that full price change does get passed on to
5 the consumer? I want to talk a little bit about, you
6 know, the farm-to-retail transmission --

7 A. Yes.

8 Q. -- part of that.

9 A. Yes. That is -- that is my assumption. I have
10 not modeled that -- I have not modeled that. But when you
11 have a very, very inelastic demand, like milk, my expert
12 opinion is that almost the full cost, if not all of it,
13 would be passed along to the retailer and then to the
14 consumer.

15 Q. Okay.

16 A. And by the way, I assumed that, and that's how I
17 got the decrease in quantity demanded. I assumed it --

18 Q. You did assume that --

19 A. Yep.

20 Q. So in your answers, I think, this morning to
21 Mr. Miltner's questions about retail price variable --
22 about the retail price variable you used in your analysis,
23 you mention that the price is multiplied by 8.6 to convert
24 a dollar per gallon retail price to a dollar per
25 hundredweight equivalent. However, on page 3, you
26 describe the price variable as a retail CPI for all milk
27 products.

28 Can you clarify whether it's a retail price used



1 or a price index?

2 A. I apologize for that typo. I originally used the
3 CPI, and then I went back in the -- in a more recent draft
4 and changed it to an actual retail price per gallon, and I
5 missed that. So it should not be the CPI. I used -- I
6 used the retail price.

7 Q. Okay. Thank you.

8 And then I wanted to turn to your table on page 9.
9 It's the regression analysis that you did.

10 I wonder if you could, at first, under the
11 variable column, you list four variables, if you could
12 discuss each -- what each of those are.

13 A. Yes. So don't worry about C. C is a constant,
14 and -- and it is not a variable.

15 And then what I did was -- so I -- I regressed the
16 retail price on a -- on the Class I price -- on the
17 current Class I price, the Class I price lag in the
18 previous month, in the previous two months, in the
19 previous three months, and the previous four months. I
20 tried previous five months, and it wasn't significant, so
21 I so I stopped there.

22 So I basically wanted to see how collectively both
23 a current as well as -- I wanted to see over time
24 dynamically how an increase in the Class I price would
25 ultimately manifest itself in a permanent increase in
26 the -- in the retail price for milk.

27 I also included a trend. That LOG(T), that's just
28 a trend variable, as a way to proxy marketing costs, which



1 I didn't have. We don't -- I don't have data on that.
2 That's obviously confidential data from processors. So I
3 included a trend term basically to be a proxy for omitted
4 variables, and the main omitted variable would be
5 marketing costs.

6 Q. Okay. And the PDL01 and 02?

7 A. That stands for polynomial distributed lag. It's
8 just an estimation technique that follows an imposed upon
9 structure of how the impact manifests -- how much of the
10 impact is felt currently versus over the last four months.
11 And -- and it's really the sum of the lags that gives you
12 the total impact over time. It's kind of like a long run
13 thing because, as I mentioned this morning in my
14 testimony, if the Class I price has increased this month,
15 it will impact the current retail price, but it will also
16 impact retail prices tomorrow, next month, and so forth.
17 And that's the way I kind of captured it with this PDL
18 specification.

19 Q. Okay. And on the line of the prices that you
20 used, since we have advanced pricing in the system, is
21 that factored in anywhere here where --

22 A. No. That's another reason I put the lags in
23 here --

24 Q. Okay.

25 A. -- because of that. So I'm capturing -- I'm
26 basically saying it takes four months to be -- to be fully
27 felt in terms of the retail price.

28 Q. Okay. So under this --



1 A. It would be captured -- it would be captured here
2 by that.

3 Q. Okay. And so to restate this in -- you make me
4 very glad I have a Ph.D. economist sitting behind here on
5 my side of the table to help me later.

6 But if I could restate it for those non-Ph.D.
7 scientists. So what you are saying is, in your
8 assumption, that \$1.49 that you talked about earlier, it
9 would take four months for that to fully be shown at the
10 retail price level?

11 A. Yes.

12 Q. Assuming that it all goes to the -- the assumption
13 that it would all go there?

14 A. Precisely. And furthermore, it wouldn't -- it
15 appears empirically that it won't go longer than that.
16 Four -- four months is the end of the impact, basically.

17 Q. Okay.

18 A. So five months it wouldn't be felt. Six months it
19 wouldn't be felt.

20 Q. Okay.

21 A. So what's kind of nice about this is it tells you
22 that the process, the full process, the full dynamic
23 process for it to transmit.

24 Q. So basically it would take four months for the
25 shift to be fully felt --

26 A. Correct.

27 Q. -- of a curve?

28 A. Right.



1 Q. Yeah. Okay.

2 A. And part of that was, by the way, because I had
3 monthly data. If I wanted to do this on a quarterly or an
4 annual basis, I wouldn't need to lag it because it would
5 be long enough periods of time that we're looking at.

6 Q. Okay. And I had a question. I think Mr. Miltner
7 asked the same question, so I apologize if I'm being
8 duplicative, but I might have been trying to come up with
9 other questions during that time.

10 So on the one study you talked about on page 2,
11 that's the outlier, did I hear correct it is because that
12 study looked at like a subset of milk products in the
13 grocery store, not just milk generally?

14 A. I was spec- -- I mean, I can't give a definitive
15 answer, but my -- my guess is it's due to the fact that,
16 number one, yeah, they used a sub sample of -- of fluid
17 milk products, that being only grocery store sales. And I
18 believe it might not even include Walmart in there because
19 for a while the A.C. Nielsen data did not get Walmart
20 sales, so it was a smaller sub sample of all milk
21 purchases.

22 And the other reason I believe it's more elastic
23 in their price elasticity is they had a much higher
24 disaggregation of fluid milk products than some of these
25 studies that just had milk as milk rather than organic,
26 1%, 2%, you know. And so I can't remember exactly how
27 many products they had, but it was much more
28 disaggregated. When you have more products available,



1 that adds -- that adds -- those estimates of elasticity
2 tend to be higher than if you just have one product.

3 Q. Okay. Thank you.

4 MS. TAYLOR: I think that's it from AMS. Thank
5 you so much.

6 THE WITNESS: Thank you.

7 THE COURT: Anyone -- that's all of AMS?

8 Cross?

9 Very well. Your witness.

10 MS. HANCOCK: Thank you, your Honor. We would
11 move to admit Exhibit 115.

12 THE COURT: Any objection?

13 Hearing none -- oh, Mr. Rosenbaum rises.

14 MR. ROSENBAUM: Out of an abundance of need to be
15 explicit, I'm not objecting to the contents of the exhibit
16 itself, but since I objected to the manner in which it was
17 presented --

18 (Court Reporter clarification.)

19 MR. ROSENBAUM: Since we have objected to the
20 manner in which it was presented and the time period that
21 we had to prepare for it, I just want to make that clear
22 so that we don't -- our silence in objecting to the actual
23 receipt of the exhibit would not be interpreted to be --

24 THE COURT: Yeah.

25 MR. ROSENBAUM: -- acquiescence.

26 THE COURT: That's fair.

27 Mr. English.

28 MR. ENGLISH: I join in that. That's all.



1 THE COURT: Yep. That's fair.

2 With that -- with those noted objections,
3 Exhibit 115 is admitted into the record.

4 (Thereafter, Exhibit Number 115 was received
5 into evidence.)

6 THE COURT: Mr. Miltner, I'm sorry.

7 MR. MILTNER: That's okay. I have no problem with
8 admitting the statement or anything. I do have a related
9 request, though.

10 THE COURT: Very well. But that exhibit is in the
11 record for the keeper of the exhibits.

12 MS. HANCOCK: Just to -- I'm so sorry. I'm going
13 to jump in front of Mr. Miltner because he's going to
14 change the subject.

15 Just in responding to the last two comments from
16 Mr. English and Mr. Rosenbaum, I do want the record to
17 reflect that we did take extensive argument on this
18 earlier this morning. The Court had already ruled. And
19 as a result, they both had an extended lunch hour. We put
20 the witness on before lunch, took some questions before
21 lunch, took a two-hour lunch hour to allow them time to
22 work on it. Both of them came back early from lunch in
23 the room and had full opportunity to conduct their
24 examination. I just want to make sure that our record
25 reflects all of that.

26 THE COURT: Okay. I think it will.

27 MS. HANCOCK: And it's 3:45 in the afternoon
28 today, with an hour and 15 minutes or more left of the



1 hearing.

2 MR. ROSENBAUM: Well, I don't know what this
3 notion is of what time I got back early. I mean, did I
4 get here five minutes before we started? I suppose I did.

5 MS. HANCOCK: 30.

6 MR. ROSENBAUM: No, I wasn't here 30 minutes
7 before we started, I assure you. I certainly wasn't here
8 30 minutes before the scheduled time for start, and I
9 wasn't here 30 minutes before anything else, I don't
10 believe. I don't want to reargue this, but I'm not going
11 to let someone characterize the evidence in ways I
12 don't -- of what happened today in ways that I don't
13 believe are accurate.

14 THE COURT: Well, I think the record will -- I'm
15 not sure what time you got back to the room is pertinent.
16 If the decision writer wants to take that into account
17 somehow, I suppose they can, but I'm not going to -- but
18 thank you, Ms. Hancock.

19 And I do appreciate everyone's good faith efforts
20 in trying to get this witness on and off today. I realize
21 not everyone's happy with it. I don't expect everyone to
22 be happy with what I allow and hear, but I think you all,
23 despite some strong views, pulled together to do the best
24 we could with this.

25 Yes, Mr. Miltner.

26 MR. MILTNER: Thank you, your Honor. I would like
27 to ask that official notice be taken of the report of
28 Professor Capps cited in the witness's statement. And the



1 reason for doing so is that although Professor Capps is
2 the author, it is published by the United States
3 Department of Agriculture, Agricultural Marketing Service,
4 and is a public document. It is an official report of a
5 government agency. It is submitted to Congress, and it is
6 reasonably available to the public. And pursuant to 7 CFR
7 15.121, it is appropriate to take official notice of that
8 document, and I request that we do so.

9 THE COURT: All right. What do we think?

10 MS. HANCOCK: Your Honor, we have no objection to
11 that, and it was my understanding that anything in the
12 public record that was a record of the USDA was already
13 capable of being cited. And so we understood that that
14 was already the case.

15 THE COURT: What's AMS think about this? Again,
16 I -- I -- I'm looking -- I'm doing the best I can here,
17 but I do consider AMS to be in a special position to try
18 to preserve the record as a quality record.

19 Are you asking -- Mr. Miltner, you are asking that
20 the Capps report referred to, among other places, at the
21 bottom of Exhibit 115, page 4, somehow come into the
22 record for the truth of what's written in that document?

23 MR. MILTNER: Yes. It is a government -- I'm
24 sorry, Brian.

25 As a government report, official notice allows it
26 to be admitted essentially as part of the administrative
27 record and then referred to by participants in their
28 post-hearing briefs as if it was presented in full.



1 THE COURT: Is that your understanding?

2 MR. HILL: Yeah, we don't -- we don't mind that.
3 What year is this?

4 MR. MILTNER: So it's -- it's on the AMS's
5 website. It was -- it reports -- it is the 2019 report to
6 Congress, submitted in 2022. And if it is helpful, I can
7 get the URL, and we can put that in the record, if
8 necessary.

9 MR. HILL: Okay. That would be fine.

10 MR. MILTNER: Thank you.

11 THE COURT: I'm not hearing any objection to it.
12 And I think it would be useful to have the URL just to --
13 for all I know, there could be more than one Capps report.
14 Let's make sure we agree to that one. But as you say, I'm
15 not sure I even have to rule on this if CFR 15.121 says
16 what you say it says, and you have been pretty accurate so
17 far, I think.

18 MR. MILTNER: I try to be. So thank you. And
19 we'll get that URL.

20 THE COURT: Again, thanks for everyone's
21 cooperation on these things.

22 And I will say the witness did -- in his testimony
23 did provide some testimony in support of those
24 conclusions. There's some testimony in this record,
25 actually which may be beyond what's required in that
26 Federal Register section. It supports the validity of
27 contents of that study.

28 Okay. Is that it? Can I let Dr. Kaiser --



1 Professor Kaiser step down and make his airplane back to
2 Syracuse and/or Ithaca, whichever it is.

3 THE WITNESS: Thank you, your Honor.

4 MS. HANCOCK: Thank you for your time, Dr. Kaiser.

5 Your Honor, I think we would pick back up with the
6 cross-examination of Mr. Hanson.

7 THE COURT: Yes, let's do that.

8 Welcome back to the stand, Mr. Hanson, you are
9 still under oath.

10 MR. ROSENBAUM: Your Honor, as a procedural
11 matter, International Dairy Foods Association. In my
12 examination of this witness earlier I had had marked
13 Hearing Exhibit 118, and the government -- which is simply
14 an excerpt from the Code of Federal Regulations -- the
15 government counsel correctly pointed out that the heading
16 was wrong in terms of the section.

17 THE COURT: Yes.

18 MR. ROSENBAUM: It should have been 7 CFR 1170.8.
19 In addition, he pointed out that this document only
20 replicates part A of that regulation. It's the one that
21 relates to cheddar cheese. That's why it is even really
22 relevant to the discussion.

23 So I have prepared an updated version of that
24 exhibit that both corrects the heading and then also has
25 ellipses at the end to indicate that I have removed
26 everything that comes after section A.

27 So I would ask that this document, which I'll now
28 provide copies to everyone, call -- which I have called



1 updated Hearing Exhibit 118 -- that this be substituted
2 for the previous document.

3 THE COURT: Yes, I think so. No objections to
4 substituting that exhibit, and by which we're going to
5 give this copy to the keeper of the official exhibits,
6 and Mr. Rosenbaum is going to hand it out. And I'm going
7 to write on mine, superseded. I suggest everyone else do
8 the same.

9 MR. ROSENBAUM: Thank you, your Honor.

10 THE COURT: Very good, sir. I admire the
11 diligence and precision.

12 Welcome back to the lectern, Mr. English.

13 MR. ENGLISH: Tradition has it USDA gets the front
14 row on one side, and dairy farmers get the front row on
15 the other side. So I'm as close as I think I'm allowed to
16 get, your Honor.

17 THE COURT: Your witness.

18 MR. ENGLISH: Thank you.

19 CROSS-EXAMINATION

20 BY MR. ENGLISH:

21 Q. Mr. Hanson, my name is Chip English. I'm attorney
22 for the Milk Innovation Group. Good afternoon.

23 A. Good afternoon, sir.

24 Q. I'm going to try to recall where we were, which is
25 to say where you were when Mr. Rosenbaum was finished with
26 you some hours ago. So -- and I am trying not to
27 duplicate.

28 But let me start with your testimony marked as



1 Exhibit 117, and I want to look at page 2 in your
2 overview.

3 A. Okay.

4 Q. You refer to "as a result of the strong
5 correlation, both price series" -- meaning block and
6 barrels, correct?

7 A. Yes.

8 Q. -- "were incorporated into the protein price
9 formula used in the Class III milk price through weekly
10 surveys of sellers and buyers."

11 Wouldn't it be more correct to say that because
12 both blocks and barrels were at that time, at least,
13 considered to be market clearing, that they were both
14 included, and the strong price correlation allowed USDA to
15 conclude that you would use one and subtract \$0.03?

16 A. I guess you could call it market clearing, but the
17 important thing is they were moving closer together, and
18 that spread was fairly consistent.

19 Q. But the critical thing in USDA's decision was that
20 they were market clearing, right?

21 A. I think the critical piece in my --
22 (Court Reporter clarification.)

23 THE WITNESS: I think the important aspect there
24 is those two series move together. And you -- the spread
25 was fairly consistent. It was predictable. I mean, I
26 don't remember looking at the spread back ten years ago,
27 but now, today, I have to report the spread every day to
28 my boss, who is the CEO, because it has that much of an



1 impact on the business.

2 BY MR. ENGLISH:

3 Q. Okay. So your view is that it was the strong
4 correlation that was more important than the fact that
5 they were both market clearing?

6 A. Yes, in my opinion.

7 Q. So in the next sentence you say, "FMMO pricing is
8 designed to provide dairy farmers with a fair price for
9 their milk" --

10 A. Yes.

11 Q. -- "based on the value of dairy products
12 manufactured by processors."

13 Where does the words "fair price" come from in AMS
14 policy as with the Federal Milk Order program?

15 A. I'm not sure if it's actually in there, but
16 it's -- my interpretation of that is dairy producers
17 should be getting the value that's in the marketplace for
18 cheese products. That should be translated back into the
19 milk price.

20 Q. And what makes that price fair or unfair?

21 A. Well, a fair price is if -- what manufacturers are
22 getting for their products, whether it is based on the
23 block or barrel market. And in this case, blocks
24 represent the majority of the commodity cheese that's
25 manufactured in the country. The dairy producers should
26 be getting a price based on block that represents what's
27 happening in the marketplace.

28 Q. Again, it's not that -- blocks themselves, it's



1 all the products you say that are priced off of blocks,
2 correct?

3 A. Yes.

4 Q. Okay. Because the survey doesn't price all those
5 products, it prices blocks, correct?

6 A. Right.

7 Q. Okay. And you know, of course, that the Federal
8 Milk Marketing Order system is not designed to be a price
9 support program, correct?

10 A. Correct.

11 Q. Okay.

12 A. But I don't think dairy producers should be
13 supporting the block manufacturers either.

14 Q. I'm sorry. What did you just say?

15 A. I don't think dairy producers should be supporting
16 the block manufacturers either.

17 Q. How are dairy farmers supporting the block
18 manufacturers?

19 A. Because what -- their price on the Class III is
20 going to be 52 -- based on 52% barrel, 48% block. And
21 over the past five years, barrel prices have been
22 significantly less than the block price, even though
23 barrels only represent 9% of the commodity cheese produced
24 in the country, which translates into a lower milk price
25 for dairy producers.

26 Q. Well, isn't that imbalance between block and
27 barrel capacity due to less flexibility today in the
28 plants?



1 A. I agree there's less flexibility in the plants. I
2 mean, I think plants today have very fo- -- they're more
3 focused than they were in the past. They are operating at
4 more full capacity to ensure they have viable economics.
5 And so there's not a lot of balancing that you can just
6 make barrels with excess milk. I mean, you are trying to
7 keep your plants full with the products that you are
8 intending to manufacture.

9 Q. So you agree that today there's less flexibility
10 for plants to flex between blocks and barrels?

11 A. Yes.

12 Q. Okay. And then isn't that the true issue then,
13 that there -- that insufficient capacity to flex is a
14 result of an unhealthy processing sector because of
15 outdated Make Allowances?

16 A. Well, I'm not getting into Make Allowances here.

17 Q. Well, but isn't your solution trying to deal
18 symptom -- deal with the symptom rather than the problem?

19 A. No. The solution here is to make -- is to ensure
20 that dairy farmers are getting their fair share of the
21 revenue generated from cheese sales and to take disruption
22 out of milk pricing for both processors and dairy
23 producers.

24 Q. And you don't think those outdated Make Allowances
25 are contributing to that lack of flexibility?

26 A. Like I said, that is a topic for a different day.

27 Q. Well, you don't think the topics here are
28 interrelated?



1 A. No.

2 Q. So on page 5 of Exhibit 117, you have some charts.
3 And I guess, as I see this, this is a carryover from
4 page 4 where you say that butter represents just 9% of
5 total U.S. butter production, correct?

6 A. Correct.

7 Q. Okay. So nonetheless, if your proposal were
8 adopted, right now you would basically exclude on Table 2
9 for NDPSR reporting the last line, which is barrels,
10 correct?

11 A. Correct.

12 Q. And so block, which represents only 16% of the
13 NDPSR, whatever's happening in the CME is not that, right?

14 A. Uh-huh.

15 Q. Correct?

16 A. It would represent 16%, yes.

17 Q. And so going next to the next -- the bottom part
18 of the table, even though cheddar, you know, is -- in
19 terms of volume is 3.9 billion pounds, if you -- if you
20 take this, you're reducing the reported volumes
21 percentage, which is that 644,226,963, plus the
22 702,431,327, that's in the first part of the table, you
23 are reducing that down so that the percentage that is
24 reported for cheddar will drop almost in half, correct --
25 or drop more than half, correct?

26 A. Correct. Correct. Yes.

27 Q. Okay. And -- and yet, whey powder, the reported
28 volume is 26.6%, correct?



1 A. Right. Yeah. 27% on the table.

2 Q. And the nonfat dry milk is 52%, correct?

3 A. Correct.

4 Q. So -- so for a product that is more than those two
5 combined, you want to have a representative sample that's
6 only 16%?

7 A. It would be 16%, yes. And still, I'd argue, it is
8 more representative of what the commodity cheese
9 production is in the country by removing a price series
10 that does not represent what's actually being produced in
11 the marketplace.

12 Q. Barrels not actually produced in the marketplace?

13 A. Only 9% of total commodity cheese.

14 Q. But you say 9% of the commodity cheese. You are
15 now calling mozzarella a commodity product?

16 A. Yes.

17 Q. Okay. Let's turn to page 7 and your Table 4.

18 Let's look at your highest monthly spread during this
19 period was a \$0.61 per pound. That was in 2020, correct?

20 A. Yes. \$0.27 on the table, yes.

21 Q. Well, the \$0.61 in the --

22 A. Oh.

23 Q. -- ahead of that, that high, that was also 2020,
24 correct?

25 A. Yes.

26 Q. That was largely -- a part of what contributed to
27 this you know, \$0.27 in 2020, correct?

28 A. Yeah. It was probably like July or November, one



1 of the two.

2 Q. So I want to suggest to you that 2020 data is not
3 the most -- most -- it's not the data I would rely on very
4 hard for what happened. Would you agree 2020 was an
5 extraordinarily unusual year?

6 A. It was an extraordinary year. And it was an
7 opportunity for dairy producers to capitalize, and they
8 weren't allowed to as much as they should have.

9 Q. Wasn't part of that capitalization that USDA
10 engaged at industry's request in the Food Box Program?

11 A. Yes.

12 Q. And didn't the Food Box Program contribute to that
13 difference?

14 A. Yes. Yes.

15 Q. Okay. So I would suggest to you that we might
16 want to consider excluding 2020 on the basis that industry
17 asked for something, industry got it, and it contributed
18 to that spread.

19 A. Yes. But it was more than one year. I mean, it
20 was five years of having the back and forth with the
21 block-barrel spread.

22 Q. But then in 2022, it's back to 0.01?

23 A. That's right.

24 Q. And you want to sort of discount that one?

25 A. No, I don't want to discount that one at all.

26 MR. ENGLISH: I have no further questions.

27 THE COURT: Next cross-examiner, other than AMS?

28 ///



1 CROSS-EXAMINATION

2 BY MR. MILTNER:

3 Q. Good afternoon, Mr. Hanson.

4 A. Good afternoon.

5 Q. Still Ryan Miltner, and I'm still representing
6 Select Milk Producers.

7 A. Okay.

8 Q. The milk that goes into Foremost's plants, is it
9 all milk from your own membership?10 A. Most of it, it's a very high percentage, call it
11 90-some percent, is our own milk. We have trades in place
12 where we swap milk with others for logistical savings, and
13 a few purchases here and there.14 Q. So when you say "a few purchases here and there,"
15 would you call those spot purchases?16 A. Some contractual. But, yeah, there's some swap --
17 or, no -- or just some spot purchases, yes.18 Q. And the milk that goes into plants from your own
19 membership, do you account for that or pay those producers
20 at the class price?

21 A. Pay them based off class components, yes.

22 Q. From a global perspective for Foremost, if you
23 take barrels out of the survey --

24 A. Uh-huh.

25 Q. -- the Class III price goes up as expected.

26 A. Potentially, yes.

27 Q. Would that not actually increase the total cost of
28 operations for Foremost's cheese plants?

1 A. In situations where you have block prices higher
2 than barrel prices, then, yes, our milk costs would go up.
3 We were doing this to support not just our dairy
4 producers, but dairy producers in general, and it takes
5 the disruption out of the marketplace, because it causes a
6 lot of uncertainty about what earnings are going to be
7 month to month, quarter to quarter. And we just want to
8 have more certainty regarding what our members get paid
9 and earnings that companies make.

10 Q. So despite that particular financial impact, this
11 issue is important enough to Foremost that they think that
12 it ought to be addressed?

13 A. Yes, absolutely.

14 Q. Have you done any, we'll call it research or
15 investigation or even discussions with others in the
16 industry about what is driving this increasing or -- or
17 what has caused the gap between blocks and barrels to
18 deviate from its historical three or three-and-a-half-cent
19 relationship?

20 A. Well, I think historically prior to 2017 you had
21 more of a stable production capacity in the marketplace
22 between blocks and barrels. In 2017, there was some
23 additional barrel capacity added, and you had some barrel
24 capacity being taken out later. But for those reasons, I
25 think you saw patterns of we had excess barrel production
26 weighing down in the marketplace.

27 Q. And you --

28 A. And, you know, it's fair, you had -- with the Food



1 Box Program, that added a lot more support to blocks and
2 barrels. But in general, over the past five years, you
3 have just seen more demand for blocks relative to barrels.
4 That's what drove the higher block-barrel spread. Now,
5 you have had a lot of occasions too where barrels got
6 tight, and then barrel price shot up over block for a few
7 months at a time. And then that trend reversed, and you
8 saw a positive block-barrel spread again. Again, you have
9 a lot of variability, and it is just -- it's disruptive to
10 a lot of -- for financial forecasting I'll say.

11 Q. There's been some questions around this topic, and
12 I want to see if I can put a fine point on it. Do you
13 have an opinion as to whether 40-pound blocks and
14 500-pound barrels are fungible commodities?

15 A. Define fungible for me.

16 Q. Are they substitutes for each other?

17 A. Not to a great extent. On the margin, they can
18 be. And you are going to see some arbitrage happen, and
19 you mentioned it before, when if you see a very -- if
20 blocks are \$0.30, let's say, above barrels, processed
21 cheese manufacturers are going to try to use more
22 blocks -- or excuse me -- if you had barrels above blocks
23 by \$0.30, you are going to see processed cheese
24 manufacturers try to use more blocks in their -- in their
25 operations.

26 Q. Are you at all familiar with the difference
27 between the types of whey that are produced by block
28 manufacturers versus barrel manufacturers?



1 A. Somewhat.

2 Q. Is it part of your responsibility to monitor those
3 prices or demands for the various types of whey in the
4 market?

5 A. Yes. Myself and the commercial team at Foremost.

6 Q. Do you have an opinion about whether the demand
7 for the whey produced from a barrel manufacturer is
8 different than the whey produced by a block manufacturer?

9 A. It depends on where that whey is going to go. I
10 mean, if you are looking at -- like a WPC80 operation,
11 white whey from a block manufacturer -- or barrel
12 manufacturer is probably more valuable. If you are
13 looking at a WPI manufacturer, it is probably more
14 indifferent to whether it is coming from a block or a
15 barrel manufacturer.

16 Q. So is WPC80 considered a value-added whey product?

17 A. I would say yes.

18 Q. And that's not included in the survey of whey
19 products that go into the Class III formula, is it?

20 A. No. Dairy producers don't get the benefit of
21 that.

22 Q. Do you have an opinion or an observation as to
23 whether any cheese manufacturers, including Foremost I
24 suppose, view the whey product coming out of their plant
25 as the primary product with the cheese almost as a
26 byproduct?

27 A. No, not for Foremost.

28 Q. Anybody else in the industry that you -- you have



1 an opinion as to what they view as their primary product?

2 A. I -- I would have to say, unless I'm incorrect,
3 cheese is always going to be the primary product.

4 Q. Are there situations where the whey coming out of
5 a barrel manufacturer could provide real substantial
6 income to that manufacturer?

7 A. Yes. But it would be secondary to the cheese.

8 Q. Are you familiar with the manufacturing of
9 640-pound blocks?

10 A. Yes.

11 Q. Does Foremost manufacture any 640-pound blocks?

12 A. Yes.

13 Q. I'm a little bit ignorant on that topic, but is it
14 as simple as cutting a 640-pound block into 16 40-pound
15 blocks? Are those -- do you now have equivalent -- if
16 I -- for instance, if I went to a 40-pound block
17 manufacturer and bought 16 blocks, and I bought a
18 640-pound block and cut it up, do I have the same thing?

19 A. Yes and no. I mean, you can do that. In our
20 operations, we -- we press a 640-pound block into one
21 block. It's not cut up and put together. It's one block.
22 But it -- I have heard of people taking 40-pound blocks
23 and collating them and putting them into a 640. But
24 that's -- I have heard of it, so -- but that's not how
25 Foremost manufactures 640s.

26 Q. I guess as far as the uses of those two different
27 blocks, would they be used for the same purposes?

28 A. A lot of it goes to cut-and-wrap operations for



1 chunking, slicing, and various forms. It depends how the
2 cut-and-wrap operations are set up. Some of them are set
3 up to handle 640s more efficiently; some are set up to
4 handle 40s more efficiently.

5 Q. Is the moisture content of a 40-pound block and a
6 640-pound block similar?

7 A. Similar, yes.

8 Q. Could a 640-pound block be moisture-adjusted on
9 price similar to the way we now moisture-adjust 500-pound
10 barrels?

11 A. I suppose if you wanted to you could.

12 Q. You could determine a price equivalency by
13 adjusting the moisture?

14 A. Sure.

15 Q. On page 7 of your -- your statement, at Table 4, I
16 understand you were looking at yearly averages, and so you
17 stopped at the end of 2022.

18 Do you know what the spread between blocks and
19 barrels is for 2023 thus far?

20 A. Yes. Through June, it was -- it was pretty wide.
21 It was blocks over barrels 20-some cents, I believe. And
22 then July it dropped way down. And I'm not sure where
23 August landed. Because you had a wide block-barrel spread
24 first half the year, then it inverted in about that June,
25 July time period on the CME.

26 Q. And would that suggest to you that this -- this
27 spread that, on an annual basis, I guess, peaked in 2020,
28 that that's not really a peak, is it, it's -- it just



1 happens to correlate with COVID and the Food Box Program?

2 A. Yeah, it would -- it -- I mean, 2020 was an
3 exceptional year, for sure.

4 Q. But now that we're through the pandemic and
5 there's no Food Box Program, that certainly doesn't mean
6 that the end of this broad spread has arrived, does it?

7 A. It's become much more variable. You get periods
8 of time, six months, where you have a wide block-barrel
9 spread, blocks above barrel, and that can flip around, and
10 then you can have extended periods of time or shorter
11 periods of time when barrels are above blocks.

12 Q. If this is something you'd prefer not to answer as
13 opposed to can't answer, I'm perfectly fine with that.
14 But is the cost to manufacture 640-pound blocks similar to
15 that for 40-pound blocks in Foremost's case?

16 A. There's some dissimilarities. You have
17 differences in packaging, you have differences in pack
18 size. So there are differences between manufacturing of
19 640s versus 40s.

20 Q. I don't think this was asked before. If it was, I
21 apologize.

22 I'm looking at page 9 of your statement at the
23 very top, and you -- you testified barrel cheddar cheese
24 represents 9% of natural cheese manufactured in the U.S.
25 And then at the end of that same paragraph: "The CME
26 barrel cheese price is used to price only around 9% of
27 total U.S. natural cheese."

28 Is the 9% that you reference second, is that in



1 addition to the 9% that barrels represent, or is it the
2 barrels only price -- the barrel price is only relevant to
3 barrels?

4 A. They go hand in hand. I mean, barrel -- barrel
5 volume is only 9% of total commodity volume, and barrels
6 only -- you only use a barrel index to price barrels. So
7 it means that 9% of cheese production uses the barrel
8 price index.

9 Q. In other words, where a mozzarella manufacturer
10 might say, the price of my cheese is the 40-pound cheddar
11 price plus or minus something, you're not aware of -- of
12 companies saying, my cheese is priced off the cheddar
13 barrel price plus or minus something?

14 A. I have not heard of any mozzarella being priced
15 off the barrel market. I mean, there's some -- there is
16 some differences in the price series, but in general,
17 mozzarella is -- in my experience, is priced off the CME
18 40-pound block market.

19 Q. In your experience can you think of any -- any
20 cheese other than -- any natural cheese other than
21 500-pound barrels who are -- whose price is indexed off of
22 the actual barrel price?

23 A. No. I can't.

24 Q. I want to return to this idea -- this topic of the
25 whey that comes from a 500-pound barrel.

26 Have you -- in your discussions with others within
27 Foremost or within the industry, has there been any
28 suggestion that the value of clean white whey has been the



1 driver for increases in manufacturing of barrels?

2 A. In recent history, no.

3 Q. Okay. When you say "recent history," how far back
4 would that go?

5 A. Let's say ten years.

6 Q. Ten years. Okay. Thank you.

7 A. Uh-huh.

8 THE COURT: Mr. Rosenbaum?

9 CROSS-EXAMINATION

10 BY MR. ROSENBAUM:

11 Q. Steve Rosenbaum for the International Dairy Foods
12 Association. A few follow-up questions to the ones you
13 just received.

14 Am I correct that in the commercial world, there
15 is no moisture adjustment for 640-pound blocks in terms of
16 adjusting the price?

17 A. As far as I know, no. Because 640s have a typical
18 moisture profile as 40-pound blocks, and there really
19 isn't a need to adjust for moisture.

20 Q. Excuse me, there is not a need, did you say?

21 A. Right. Yes.

22 Q. Okay. And then in terms of -- of the use of
23 barrels to price other cheeses, does -- does your company
24 export mozzarella?

25 A. Not on a -- just on a spot basis.

26 Q. Okay. Do you know whether, in fact, other
27 companies do price the mozzarella they are exporting based
28 upon the barrel price?



1 A. My experience is any time you export, it is a flat
2 price, to be competitive in the world market.

3 Q. Okay.

4 A. My experience.

5 Q. And does that -- okay. And does that result in a
6 pricing off of the barrel price?

7 A. The -- it's -- a lot of times I believe it's
8 priced off where the futures market is or it is priced off
9 of where the -- where the fair price is in the global
10 marketplace.

11 Q. And could that be -- and is that the barrel price
12 sometimes?

13 A. Not in my experience. Not -- that's not what I
14 have seen.

15 MR. ROSENBAUM: All right. Thank you.

16 CROSS-EXAMINATION

17 BY DR. CRYAN:

18 Q. Roger Cryan with the American Farm Bureau
19 Federation.

20 A. Good afternoon.

21 Q. Hello. How are you?

22 A. Good.

23 Q. I guess you made it clear, but let me ask. You
24 cannot convert 500-pound barrels into 40-pound blocks; is
25 that correct?

26 A. I have never heard of that before.

27 Q. And you can't convert 40-pound blocks into
28 500-pound barrels?



1 A. Never heard of that before either.

2 Q. All right. But you can convert 640-pound blocks
3 into 40-pound blocks?

4 A. Yes.

5 Q. Okay. And is it correct, are the specifications,
6 the grading specifications for cheddar cheese in 640-pound
7 blocks the same as the specifications for -- grading
8 specifications for cheddar cheese in 40-pound blocks?

9 A. I -- in -- in my -- I believe so, but I'm not
10 exactly sure on that.

11 Q. Is it -- is it your experience that -- that cheese
12 plants generally run full, that they -- cheese plant
13 operators strive to keep the plant full?

14 A. I think you put enough time in for maintenance,
15 preventative maintenance, and then you subtract that time
16 off, and then you try to maximize then, yes, that
17 remaining time.

18 Q. And when you talk about some of these products
19 being used for balancing, you are kind of talking about --
20 you know, when you talk about selling it to the spot
21 market to balance, you are talking about finding value for
22 the additional product that you are generating because you
23 are trying to keep the plant full, right?

24 A. Yeah. As a co-op, we're trying to do that because
25 you get better plant efficiency if you are running full.
26 But in most cases, we have member milk that we need to
27 process --

28 Q. Right.



1 A. -- and so we have to find a home -- we have to
2 find market access for that milk.

3 Q. Those are related, keeping the plant full and
4 using the -- all the members' milk?

5 A. Yes.

6 Q. Okay. Was it more common 25 years ago for cheese
7 plants to -- to be idle at times? If you don't --

8 A. No, I think that's true. I mean, it's -- it's
9 definitely you had more open capacity, that you could
10 seasonally bring in milk when milk was flush and then
11 better use the capacity.

12 Q. Okay.

13 A. That's less and less than it used to be.

14 Q. Sure. That's consistent with what we have seen in
15 the --

16 A. Right.

17 Q. -- block and barrel, you know, the tightness of
18 both.

19 A. Right.

20 Q. In your experience is there any separation between
21 the 40-pound block price and the 640-pound block price per
22 pound of product?

23 A. You -- you have some differences in packaging, but
24 they are generally -- they are close, in my experience.

25 Q. Do -- when you sell -- when you sell blocks, do
26 you typically -- do you typically quote the same price to
27 customers for 40s and 640s?

28 A. I'm not comfortable answering that question.



1 Q. All right. All right. That's fair.

2 And would you say that 640-pound blocks are
3 growing as a share of the market for cheddar cheese?

4 A. They have definitely grown over the past ten, 15
5 years. What it's done the past few years, we've seen a
6 lot more block capacity coming online. I'm not sure if
7 we're seeing more 40s or more 640s with that new capacity,
8 but definitely over the past 15 years there's been more
9 640 capacity.

10 Q. Wonderful.

11 DR. CRYAN: Thank you very much.

12 THE WITNESS: Thank you.

13 THE COURT: Any additional cross-examination by
14 parties other than AMS?

15 Seeing none, AMS.

16 CROSS-EXAMINATION

17 BY MS. TAYLOR:

18 Q. Good afternoon.

19 A. Good afternoon.

20 Q. I'll try to make it through my questions.

21 Mr. Miltner stole a few, so I will try to keep this a
22 little more organized.

23 I just want to summarize -- kind of as I read your
24 testimony this morning and you talked, I always like to
25 try to summarize what I think is the main message that was
26 trying to come across.

27 And what I gather from your testimony is the
28 reasons that National Milk doesn't want -- or is seeking



1 to drop barrels is, one, you do not see the two products
2 as interchangeable anymore?

3 A. Correct.

4 Q. Is that correct?

5 A. Correct.

6 Q. Okay. The second is that the NDPSR price no
7 longer reflects how milk is actually used -- producer milk
8 is used in the cheese market?

9 A. Correct.

10 Q. Okay. A third one you had in your testimony, but
11 hasn't been discussed about too much, was be able to
12 enhance risk management tools available to --

13 A. Correct. It makes risk management more efficient.

14 Q. Okay. So those are basically the three main
15 reasons?

16 A. Yes. And another one that's in there, too, is
17 that, you know, in the past -- over the past five years
18 dairy producers have not realized the benefits of the
19 higher block price to the extent that they should have in
20 the Class III milk price.

21 Q. When you say "to the extent that they should
22 have," and that's because, in your view, blocks are more
23 widely used -- or the pricing off blocks is not as
24 representative -- or let me rephrase this?

25 More of the cheese market is priced off blocks, so
26 that the NDPSR price is not recognizing that?

27 A. Correct.

28 Q. Okay. I would like to spend a little time on the



1 chart you have on page 3 because I don't think that was
2 kind of walked through in testimony. If you could walk
3 through what you're trying to show there and what some of
4 these columns mean.

5 A. What we were trying to do here was estimate the
6 value that was lost to dairy producers from 2017
7 through -- through first half of 2023 based on the
8 block-barrel spread, NDPSR block to block -- the
9 block-barrel spread in the NDPSR, and just said, okay, if
10 we did not have barrels in the index, what would have been
11 the financial impact to dairy producers. So we just -- we
12 just said, here's -- in the left column you have the
13 Class III annual milk pounds.

14 Q. That's pooled on the Federal Order?

15 A. That the pooled on the Federal Order.

16 Q. Uh-huh.

17 A. Yep. And the second column is Class I annual milk
18 pounds, because Class III impacts Class I but not 100%.
19 So the third one takes a look at Class I pounds that were
20 driven by Class III. So prior to May of 2019, it was the
21 higher of Class III or IV. So the months where the
22 Class III price was above Class IV, that volume was
23 included. After May of 2019, then it was just half of the
24 Class I volume because the Class I pricing -- the mover
25 was based on the average of Class III and IV.

26 We just take the total of that volume, convert it
27 to hundredweights, took the actual spread during those --
28 that time period and just subtracted \$0.03 off. I mean,



1 that may not have been necessary but trying to be
2 conservative here, because there's some assumptions that
3 there's a \$0.03 spread between block and barrels, so just
4 trying to make the estimate conservative. And then took
5 that spread and converted it to a hundredweight impact.

6 And so we ran the spread per pound through the
7 Class III model, and every penny in spread translates to
8 4.8 cents per hundredweight in the milk price. And then
9 took that per hundredweight impact times the hundredweight
10 volume, and that got to the dollar impact to dairy
11 producers.

12 Q. So to read this table then, it's showing that from
13 2017 to 2023, the impact of using blocks and barrels in
14 the prices --

15 A. Uh-huh.

16 Q. -- reduced revenue to dairy producers by
17 \$2 million and change?

18 A. At least, yes. Because, to your point, it
19 doesn't -- it's only pooled pounds, and if you look at
20 2020, the volume drops off dramatically because some of
21 the Class III pounds were depooled in 2020.

22 Q. Uh-huh.

23 In the footnote, then, can you explain the
24 sentence: "Calculations based on total Class III milk
25 volume" -- okay, I think I under- -- "plus Class I volume
26 impacted by the Class III price." I think that explains
27 those two columns there. I think I understand that more.

28 A. Yeah.



1 Q. I do think that perhaps the footnote got cut off
2 at the end. It says, "Based on Class III pricing
3 formulas," comma, "every," and then the sentence ends.

4 A. That should be "every penny in spread translates
5 to a 4.82 per hundredweight impact."

6 Q. Okay. So every penny in spread translates to a
7 4.82 cents per hundredweight impact?

8 A. Right.

9 Q. Okay. So I got that correct.

10 Okay. On page 4 you talk about how barrel cheese
11 manufacturers have been paying higher milk costs relative
12 to the prices that they receive for the barrel cheese?

13 A. Sorry, I was trying to get to that. Could you
14 repeat that again?

15 Q. Sure. On page 4, you talk about -- there's a
16 sentence: "Barrel cheese manufacturers have been paying
17 high milk costs relative to the prices received for barrel
18 cheese," towards the top of the page?

19 A. Yes.

20 Q. So if we only include blocks in the survey, what
21 would be the impact to barrel makers whose milk is pooled
22 on the Federal Order system if their price is no longer
23 reflected in the protein price?

24 A. Yeah. In that case when you have a high
25 block-barrel spread, initially, that's going to negatively
26 impact barrel manufacturers. You know, our thought is
27 that kind of puts them on the same playing field as other
28 types of cheese that aren't 40-pound block, like



1 mozzarella 640-pound blocks, and there would be an
2 evolution to where the -- you would have -- they would be
3 priced more off the block market.

4 It is definitely not a perfect solution, but it
5 gets you closer to what the reality of the marketplace is,
6 which is commodity cheese in the country is, at least, in
7 my opinion, 75% priced off the block market, and the milk
8 price should reflect that better than it does today.

9 Q. You mention 75% of the cheese market -- commodity
10 cheese market is priced off of blocks.

11 I asked a similar question to Dr. Vitaliano. What
12 would be your definition of a commodity cheese product
13 then?

14 A. A commodity product would be anything that really
15 is priced off a market index, which a lot of that cheese,
16 that 13.8 billion pounds, is done. It is priced off of a
17 block index. Not all of it, but the vast majority of it
18 is.

19 Q. So not necessarily a product that has to be the
20 product of last resort?

21 A. Right. Right. In all those -- a lot of those
22 categories, they do have some balancing, and a lot of
23 times it is going to be the product of last resort and --
24 and -- when you are trying to balance your network.

25 Q. Okay. And I think -- so does that go to the point
26 you were talking earlier, that in a company who has a
27 diversified cheese production, you try to balance in the
28 company?



1 A. Uh-huh.

2 Q. So you balance with whatever production capacity
3 you have, not necessarily barrels or blocks?

4 A. Yeah. We may have times where we don't have the
5 demand for mozzarella, but we have the demand for cheddar.
6 So the cheddar lines are running and it is getting sold,
7 but then we have to -- we may not have 100% sales for the
8 mozzarella, and so we still have to make the product, and
9 then sell that on the spot market. But that can change.
10 That can -- we can be full on mozzarella, which is a lot
11 of times the case, and we have to balance on the -- with
12 40-pound blocks, and then 40-pound blocks become the
13 balancing outlet.

14 Q. Okay. I did have a question. You know, we were
15 looking on page 6 where you have the NDPSR volumes of the
16 survey and, you know, the past three years barrels have
17 been actually a higher percentage of what's surveyed than
18 blocks.

19 A. Yes.

20 Q. And there's been -- I guess a question is, would
21 it -- would it be correct to suggest that perhaps we're
22 not capturing much of the 40-pound blocks in the survey --
23 in the NDPSR survey, and would there be reasons for that
24 that you can think of?

25 A. It does --

26 Q. There are very stringent requirements for what
27 gets surveyed.

28 A. It does surprise me a little bit that there's not



1 a higher percentage of blocks. We have added some block
2 capacity in the past couple of years. We do expect that
3 there's going to be more block capacity coming online
4 where that -- I would think that the block would become a
5 higher percentage, where those two might flip to 52 block,
6 48 barrel. That would be my thought.

7 But, yeah, I'm a little surprised that we have got
8 a higher percentage of barrel than block.

9 Q. And so you said that there's additional block
10 capacity coming online?

11 A. Yeah, based on what I have been hearing, that
12 there's more capacity coming online in the next few years.

13 Q. Okay. And could that result in an oversupply of
14 blocks at some point and then block prices decrease?

15 A. It's -- it's possible. I'm not going to speculate
16 on what the market prices are going to do.

17 Q. If we could all only do that correctly.

18 A. Yeah.

19 Q. Okay. Do you -- back on the 40s that might be
20 excluded in the survey, you guys make 40s?

21 A. Yes.

22 Q. And are they cut-and-wrapped in your facility?

23 A. No. We sell them as a bulk product to most -- to
24 companies that would further process them.

25 Q. Okay. On page 7 -- well, I think my question was
26 answered, but -- in my own head, so I'll answer it for the
27 record.

28 The last sentence there says, "The highest monthly



1 spread during this period was \$0.61 per pound, but the
2 lowest was \$0.20 per pound."

3 But the data you showed here is just annual data,
4 but that's in the monthly data?

5 A. Right. Right. Yeah, there's no table for the
6 monthly. We just pulled out a couple data points.

7 Q. On the top of 8, you talk about "Total U.S. cheese
8 production was 13.8 billion pounds," etcetera. And down
9 in the -- in that paragraph you talk about the 9% again,
10 which is total commodity cheese production.

11 And I'm wondering if there's a distinction between
12 just cheese production and commodity cheese production or
13 you use those terms interchangeably?

14 A. Yeah. I mean, we are referring to the cheese
15 products that are manufactured in Table 5. That's
16 reported by the USDA.

17 Q. Okay. And I did have a question on Table 5.

18 A. Okay.

19 Q. So to my next question. And you source -- have a
20 source there of that table from NASS. But NASS doesn't
21 report blocks and barrels, NASS reports cheddar. So I'm
22 curious if you can explain how you came up with those
23 numbers.

24 A. I mean, the source may need to be adjusted, but
25 that's the data that gets reported by USDA for those
26 specific product types.

27 Q. Okay. Yeah. We would be curious about the source
28 of that because --



1 A. Okay.

2 Q. -- I don't think NASS reports blocks and barrels
3 separately.

4 A. Okay.

5 Q. This 9% of barrel cheese production being barrels
6 has been discussed at length.

7 Can you expand on how you came up with that
8 estimate? I guess that just goes -- excuse me -- to the
9 NASS -- this number you are talking about in Table 5.

10 A. Right. Right. So 1.2 billion pounds of
11 cheddar -- or barrel cheese production out of 13.8 total
12 cheese production.

13 Q. I wanted to talk a little bit about mozzarella
14 since you all produce mozzarella.

15 A. Uh-huh.

16 Q. Were you here for Ms. McBride's testimony on
17 Monday?

18 A. Yes.

19 Q. Okay. At that time she talked about -- we asked
20 her questions about what would be considered a commodity
21 size for mozzarella.

22 Do you have an opinion on what would be considered
23 a commodity mozzarella product?

24 A. Yeah. The difficulty with mozzarella is you have
25 all kinds of different packaging sizes. A lot of -- like
26 with cheddar, you have 40-pound blocks, 500-pound barrels,
27 that's pretty dominant.

28 Within mozzarella, there's really not a standard



1 size. You have -- you have 20-pound blocks. You have
2 six-pound blocks. You just have a lot of different sizes.
3 I mean, 20-pound blocks is probably a bulk type size.

4 Q. And what do those get used for?

5 A. Mostly for further processing. For -- for slicing
6 and things like that.

7 Q. And in our NDPSR survey we have standards for
8 products and for cheese. Cheddar has to meet the FDA
9 standard of identity. There's been discussion about
10 mozzarella. A lot of it is not actual mozzarella
11 according to the FDA standard of identify.

12 A. Right.

13 Q. Do you have any knowledge on maybe how much
14 production meets that standard out there?

15 A. I don't have that knowledge.

16 Q. But -- but a lot of it probably wouldn't be -- we
17 would call it pizza cheese; is that correct?

18 A. Well, I think there's a lot of that manufactured
19 out there. Yeah, I just don't have a lot of information
20 on the breakdown.

21 Q. Okay.

22 MS. TAYLOR: I think Mr. Wilson has some questions
23 for you.

24 THE WITNESS: Okay.

25 CROSS-EXAMINATION

26 BY MR. WILSON:

27 Q. Good afternoon, Mr. Hanson.

28 A. Good afternoon.



1 Q. Thank you for coming. I have got a couple
2 questions related to Table 4 on your summarization of the
3 block-barrel spread history.

4 Just for clarification and the record, it's
5 labeled as NDPSR (NASS) Block and Barrel Spread History.

6 A. Yes.

7 Q. Beginning in May of 2012, AMS took that over. So
8 I just wanted to clarify that.

9 A. Okay.

10 Q. I would like to know on the computations of
11 this -- this is a yearly number.

12 A. Yes.

13 Q. Is it an average -- is it just a simple average of
14 each week's NDPSR price for each of those two things?

15 A. I believe it's the average -- it's the month -- it
16 is the -- you take the monthly averages that are reported,
17 and it's just the average of -- the annual average of the
18 monthly averages.

19 Q. Okay. So it is not the weekly NDPSR average. It
20 is -- it is an average of the announced --

21 A. Right.

22 Q. -- monthly. It could be a four-week period, it
23 could be a five-week period that that report --

24 A. I believe so. I believe so.

25 Q. Okay. Do you know if that is -- if the barrel has
26 been adjusted by moisture at that point?

27 A. Yes.

28 Q. And do you know if the \$0.03 has been added?



1 A. No, there -- the \$0.03 would not be added.

2 Q. Okay. And it would be the weighted price?

3 A. Yes.

4 Q. Okay.

5 A. Based on the monthly data.

6 Q. Yes.

7 MR. WILSON: That's all for AMS. Thank you, your

8 Honor.

9 THE WITNESS: Thank you.

10 THE COURT: Redirect.

11 MR. ENGLISH: Your Honor?

12 THE COURT: Yes, sir.

13 MR. ENGLISH: Chip English. A question or two
14 that follows up on two questions that Ms. Taylor asked in
15 different ways.

16 THE COURT: Very well.

17 RE-CROSS-EXAMINATION

18 BY MR. ENGLISH:

19 Q. Again, Chip English for Milk Innovation Group.

20 A. Uh-huh.

21 Q. So if -- going to two of the questions that
22 Ms. Taylor asked about what happens here with blocks and
23 barrels. If barrels were taken out of the class -- out of
24 the NDPSR, therefore out of the Class III price setting,
25 isn't there a risk that more manufacturers, in order to
26 clear the market, would dump excess cheese on the CME
27 block market?

28 A. There's a -- there's a possibility you could see



1 more product being put on the block market, I suppose.

2 Q. Well, the market has to clear, right?

3 A. Uh-huh.

4 Q. That's a "yes," right? Sorry. The court reporter
5 can't take down --

6 A. Yes, the market has to clear.

7 Q. And so if you take barrels out, and the market has
8 to clear, doesn't that suggest that manufacturers who need
9 to get that price to match with their barrels will need to
10 dump excess block cheese on the CME block market to help
11 clear the market?

12 A. I suppose that could be a scenario.

13 Q. Okay. And once that happens, won't that just
14 encourage others to do the same?

15 A. It's possible.

16 Q. Thank you.

17 MR. ENGLISH: I have no further questions.

18 THE COURT: All right. Further re-cross? Cross?

19 Dr. Cryan.

20 RE-CROSS-EXAMINATION

21 BY DR. CRYAN:

22 Q. Dr. Cryan for American Farm Bureau following up on
23 Mr. English's question.

24 A. Uh-huh.

25 Q. To the best of your knowledge, would dumping
26 product onto the CME for the purposes of depressing the
27 price be legal?

28 A. I'm not sure. I'm not a lawyer.



1 DR. CRYAN: All right. Thank you.

2 THE COURT: Anyone else?

3 Redirect.

4 MS. HANCOCK: Thank you, your Honor.

5 REDIRECT EXAMINATION

6 BY MS. HANCOCK:

7 Q. Mr. Hanson, is more cheese on the CME, more
8 liquidity that would offer a better price discovery?

9 A. If you had more volume on the CME, yes, you would
10 have more price discovery.

11 MS. HANCOCK: Your Honor, we would offer
12 Exhibit 117 into evidence.

13 THE COURT: Any objections?

14 Hearing none, Exhibit 117 is entered into the
15 record of this proceeding.

16 (Thereafter, Exhibit Number 117 was received
17 into evidence.)

18 THE COURT: Mr. Rosenbaum rises.

19 MR. ROSENBAUM: Your Honor, I would ask that
20 Hearing Exhibit 118 be entered into the record.

21 THE COURT: Any objections?

22 MS. HANCOCK: Your Honor, I don't believe that --
23 I mean, it's a regulation. I don't think we need to have
24 it admitted into evidence. And I don't think that this
25 witness can lay the foundation for that.

26 THE COURT: We have things like motions -- what I
27 consider motions in here. I think it is appropriate. It
28 was referred to, I think, by that number. We can put it



1 in this record. I mean, it's -- I think we can take
2 official notice of that too.

3 MS. HANCOCK: I think you can take official notice
4 of it. I guess I don't know what gatekeeping we're doing
5 if we just let everything in that's been referenced.

6 THE COURT: Well, I'm going to let it into the
7 record because it's -- you know, you didn't object to it
8 when it was marked, so --

9 MS. HANCOCK: I thought we would deal with that at
10 the end after all the testimony comes in.

11 THE COURT: Well, I think we have had -- I think
12 we have had cross-examination on it. It was referred to
13 as an exhibit number. I don't want somebody wondering
14 what this was. I guess they can look it up and see what
15 was identified. I don't think it has to come into the
16 record. But I don't think it costs us very much to put in
17 there, and I don't think anyone's disadvantaged by it.

18 Do you have something you want to say,
19 Mr. Rosenbaum?

20 MR. ROSENBAUM: The witness was questioned
21 regarding it, and there are many references to it as the
22 Hearing Exhibit 118. I think it should go into the
23 record.

24 THE COURT: Yes, I really think it is a
25 convenience, not a matter of whether there's a question
26 over the truth of what's asserted therein or anything.
27 But that's -- it is a fair point that it could be referred
28 to because it's a part of the federal -- federal



1 regulations.

2 MS. HANCOCK: I mean, your Honor, it is not about
3 the substance of this one. I don't care if this one is
4 in. My only point is I'm not entirely sure what the
5 gatekeeping function is if we don't have that -- if we
6 don't have a gatekeeping function.

7 THE COURT: Sure, we have a gatekeeping function,
8 and I'm part of that. And no one else -- does AMS have an
9 objection to this exhibit coming in?

10 MR. HILL: I don't necessarily have an objection,
11 but I do take Ms. Hancock's point on that, so -- but I
12 don't have an objection. It's been referred to at this
13 point. It's one page. We won't object at this time.
14 We'll give it whatever weight it deserves.

15 THE COURT: Yes.

16 Are you satisfied, Mr. Rosenbaum?

17 MR. ROSENBAUM: Well, I think your Honor has
18 admitted it, so -- has already admitted it, so --

19 THE COURT: Well -- okay. I mean, I could -- I
20 could reconsider my decision but -- and if this comes up
21 again, we can -- I'd have to think about it a little bit.
22 I mean, we don't -- you asked the witness questions about
23 it. You could show him a copy of the Code of Federal
24 Regulations, I suppose. This seems like a convenience to
25 me, and I am going to admit it.

26 Depends -- I don't think I would admit a whole
27 volume of the Code of Federal Regulations or anything like
28 that. In this case, it's a one-page document, or two,



1 whatever. So I'm going to let it in this time, and I
2 intend to perform a gatekeeping function.

3 (Thereafter, Exhibit Number 118 was received
4 into evidence.)

5 MR. ROSENBAUM: Thank you, your Honor.

6 THE COURT: Thank you.

7 All right. Mr. Kaiser, you may -- you are
8 excused.

9 Ms. Hancock.

10 MS. HANCOCK: Your Honor, I just note that we only
11 have ten minutes left. I don't believe that our next
12 witness can put on his direct testimony in that amount of
13 time. And given our earlier discussion, I think it might
14 be worthwhile to use this last ten minutes to set the
15 expectation for tomorrow.

16 THE COURT: Yes. You and I think alike. I was
17 about to raise the same thing.

18 Do we want to do that on the record or do we want
19 to have some discussion off the record and then put it on
20 the record? I don't know that we need to burden the
21 record with -- I don't know how controversial anything is.

22 MR. HILL: I would suggest going off the record
23 for that, your Honor.

24 THE COURT: Any objection?

25 Off the record.

26 (Off-the-record.)

27 THE COURT: Let's go back on the record.

28 Ms. Taylor -- I mean, I can try, but I think you



1 would probably do a better job of it, and just quickly lay
2 out on the record what the plan is for tomorrow.

3 MS. TAYLOR: Certainly. Tomorrow we'll start at
4 8:00 a.m. We'll start with Mr. Paul Bower. And the list
5 of witnesses who we may or may not get to tomorrow will be
6 Christian Edmiston, Emma Downing, Roger Cryan, Mike Brown.
7 And we will have six dairy farmer witnesses testifying
8 virtually starting at noon Eastern Time. And after they
9 are finished, Ms. Cashman from USDA will testify on a few
10 additional data requests we have received. And we will
11 finish up by 3:00 p.m. tomorrow.

12 THE COURT: Very well. I think that's everything.
13 With that, we're adjourned for the day.

14 (Whereupon, the proceedings concluded.)

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16 ---o0o---



1 STATE OF CALIFORNIA)
2 COUNTY OF FRESNO) SS

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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 18, 2023
FRESNO, CALIFORNIA



MYRA A. PISH, RPR CSR
Certificate No. 11613



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