

**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
September 1, 2023

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Reported by:

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Ryan Miltner

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1 FRIDAY, SEPTEMBER 1, 2023 - - MORNING SESSION

2 THE COURT: On the record. Good morning.

3 Mr. English.

4 MR. ENGLISH: Good morning, your Honor. Chip
5 English for the Milk Innovation Group. And so overnight
6 looking at the schedule and having conversations by e-mail
7 and otherwise early this morning, the lawyers who are here
8 have had a discussion about the submission deadline for
9 Issue 5, which is presently set for Wednesday,
10 September 13th. We have also consulted with USDA.

11 And I had a request, and National came back with a
12 response. And we have settled on a proposed resolution
13 where we are agreeing and we're asking that that deadline
14 for Issue 5 submissions, instead of being 8 a.m. on
15 Wednesday the 13th, be Saturday night -- Sunday morning --
16 at midnight, basically midnight Saturday night the 16th,
17 September 16th. Eastern Time. Eastern Time, yes. I'm
18 not going to get to the -- I guarantee you, it is Eastern
19 Time. I don't stay up that late.

20 And I believe I'm correctly stating what the
21 compromise is, and I want to express my gratefulness for
22 the fact that parties either said they had no position or
23 they were okay. And my understanding is USDA is also okay
24 with moving that one deadline.

25 MS. TAYLOR: That's fine.

26 MR. HILL: That's correct.

27 THE COURT: Okay. Great. I also appreciate the
28 parties being able to work well together on this. And



1 that works for me if it works for you all.

2 Which -- I'm sorry, Mr. English, I shouldn't let
3 you walk away. Which --

4 MR. ENGLISH: So this is Issue 5, which is
5 Proposals 19, 20, and 21. 19 is submitted by National
6 Milk; 20 is by the Milk Innovation Group; and 21 is
7 American Farm Bureau. And so, again, the deadlines will
8 be moved to midnight Eastern on Saturday, the 16th.

9 THE COURT: Very good, sir.

10 MR. ENGLISH: Thank you.

11 And I appreciate USDA, National Milk, and also
12 having consulted both with IDFA and the lawyer for Select.
13 And I am grateful. Thank you.

14 THE COURT: Very good, sir.

15 Ms. Hancock rises.

16 Good morning, Ms. Hancock.

17 MS. HANCOCK: Good morning, your Honor. And just
18 to the extent you want it on the record, we agree, think
19 that that's the right plan.

20 And then one more other administrative matter. We
21 had Darin Hanson testify yesterday. We left one issue
22 outstanding that USDA had asked about on a citation, and
23 we would like to just put him on really briefly just to
24 clear up that citation issue so that we can move on to the
25 next witness.

26 THE COURT: Yes.

27 Welcome back. I won't swear you in again. Let's
28 just say you are still under oath.



1 THE WITNESS: Thank you.

2 So -- should I just get started?

3 MS. HANCOCK: Hang on one second.

4 THE WITNESS: Okay.

5 REDIRECT EXAMINATION

6 BY MS. HANCOCK:

7 Q. Good morning, Mr. Hanson. Thank you for following
8 up from your testimony yesterday. We were looking at your
9 testimony, which has been admitted as Exhibit 117.

10 Do you have a copy of that in front of you?

11 A. Yes.

12 Q. And there were two questions that the USDA asked
13 that we left outstanding to address, the first one of
14 which was addressing your Table 4, which I believe is on
15 page 7 of your testimony, right?

16 A. Correct.

17 Q. And there was a question with respect to whether
18 those were weekly or monthly calculations there?

19 A. Yes. I spoke to the analyst on my team who put
20 the table together. That's weekly data, weighted average
21 block and barrel weekly with prices.

22 Q. Okay.

23 A. And it is aggregated into a monthly price.

24 Q. All right. Thank you for that.

25 The other question was with respect to the table
26 in which you have your calculation of 9% showing that
27 that's the percentage that barrels make up of the cheese
28 market?



1 A. Yes, that's correct.

2 Q. And let me try to find that page number.

3 That's on page 8 of your testimony, Table 5?

4 A. Uh-huh. Correct.

5 Q. And I think there was a question because cheddar
6 barrels are not reported at the citation that you have
7 there. I'm wondering if you could tell us how it is that
8 you got to that 9% calculation?

9 A. Right. So the 1.2 billion barrel pound number,
10 that's an estimate based on, you know, my experience in
11 the industry and data that we collect. That 1.2 billion
12 is a total capacity of barrel production.

13 And that's what we have outlined in that first
14 paragraph on that page, where it says that total barrel
15 cheese production in the U.S. is estimated at 1.2 billion
16 pounds annually, which is only 9%. And then we took that
17 barrel production capacity from all cheddar cheese
18 production that was -- that came from the USDA to arrive
19 at block production and then barrel production.

20 So I just wanted to make it clear that in that
21 Table 5 that cheddar barrel is my estimate of what total
22 barrel production capacity is in the U.S.

23 Q. And the other items that are noted in Table 5,
24 that comes from the source that's listed there below that?

25 A. Correct.

26 Q. And when you say the cheddar barrel estimate was
27 based on the total cheese production capacity in the
28 United States, does that mean that that 9% would be as if



1 it was at maximum capacity?

2 A. Correct.

3 Q. And so if that amount went down and there was a
4 barrel production at something less than 100% capacity,
5 that 9% number could potentially be less?

6 A. Correct.

7 Q. And could it go higher?

8 A. No, because the capacity number is -- would be the
9 maximum of what that could be.

10 Q. Okay. So when you were talking about the 9% not
11 being reflected in the cheese -- the 9% of barrel
12 production not being accurately reflected in the cheese
13 prices, it actually could be worse than what you even
14 talked about in your testimony?

15 A. Correct.

16 Q. Okay. Thank you for that clarification. I
17 appreciate it.

18 MS. HANCOCK: Your Honor, we would submit him for
19 any questions that anybody has.

20 THE COURT: Yes.

21 Cross-examination, Mr. Rosenbaum.

22 RE-CROSS-EXAMINATION

23 BY MR. ROSENBAUM:

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

26 Just following up on this explanation about
27 Table 5, and I'd like to compare Table 5 to Table 2, which
28 is on page 5 of your report. So if I understand you



1 correctly, you have explained that the cheddar barrel
2 figure you have here is your own estimate in Table 5 as
3 opposed to a USDA reported number.

4 A. Correct.

5 Q. And Table 2, by contradistinction, that is --
6 those are actually USDA figures as to how many pounds of
7 barrel cheese is included in the survey that is then used
8 to set the minimum price as compared to how many pounds of
9 blocks are included, correct?

10 A. Correct.

11 Q. And those are -- those are roughly -- those are
12 fairly close to each other --

13 A. Right.

14 Q. -- correct?

15 In terms of total pounds of block versus total
16 pound of barrels, correct?

17 A. The survey volumes?

18 Q. Exactly.

19 A. They are similar, yes.

20 Q. Okay. Now, yesterday, you recall, I showed you
21 the regulation which was marked as -- as marked and
22 admitted as Hearing Exhibit 118 as to the criteria for
23 inclusion in the survey, correct?

24 A. Correct.

25 Q. And do you recall that one of the criteria is --
26 strike that. Let me start that question over again.

27 Do you recall that both for barrel cheese and for
28 block cheese, one requirement is that the cheese can be



1 not less than four days or more than 30 days old on the
2 date of sale?

3 A. Correct.

4 Q. And is that the reason why there are more barrels,
5 relatively speaking, than -- than block cheese in the
6 survey, namely it is much more common to hold block cheese
7 before sale for more than 30 days?

8 A. I don't believe so. I think most cheese, whether
9 it is block and barrel, is sold when it is less than
10 30 days. And with blocks, there's an age requirement
11 anyway. If it goes for aging, it can't be included in the
12 survey.

13 Q. Right. And that's what I'm saying. Isn't it that
14 you are, in the industry -- I don't mean you personally --
15 but in the industry, it is more common to hold block
16 cheese for that purpose?

17 A. For the purpose of aging, yeah.

18 Q. Than barrel, correct?

19 A. Correct. I mean, you can hold barrel longer than
20 that too, but it is for a different purpose. And that --
21 those volumes do get included in the survey.

22 Q. The cheese that -- any -- the cheese that -- any
23 cheese that is -- that meets the other specifications and
24 is more than four days old and less than 30 days old will
25 be included in the survey, correct?

26 A. Correct, unless it -- yeah, unless it is block for
27 aging.

28 Q. Okay. And there's -- from a -- from a finished



1 product point of view, there is, generally speaking, not a
2 reason to age barrel cheese if it's going to be turned
3 into processed cheese; is that fair to say?

4 A. Generally, that's true.

5 Q. Okay. Whereas, by contradistinction, there are
6 certain cheeses that are made out of block cheese that --
7 for which aging is an important component of the process,
8 correct?

9 A. Yes.

10 Q. And is it your understanding the reason why there
11 is this 30-day limit is because the effort here is to
12 determine the relationship between price at which cheese
13 is sold and the cost of production and things of that
14 nature, and if you were to include cheese that were old,
15 that you would have a -- relatively speaking, old, you
16 would have a disconnect potentially between those two?

17 A. Right. I think the demand for cheese is less than
18 30 days. So that's when people want to make that
19 transaction. Once you start getting past 30 days, there's
20 going to be less demand for that -- in general, less
21 demand for that cheese. They want to keep it in that
22 window where the supply and demand is the most effective.

23 Q. Thank you.

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

25 THE COURT: Any further cross-examination?
26 Redirect?

27 MS. HANCOCK: I have nothing further, your Honor.
28 Thank you, Mr. Hanson, for your time.



1 THE WITNESS: Thank you.

2 THE COURT: Thank you, Mr. Hanson.

3 Thank you, all counsel, for the diligence and care
4 in creating a clear record.

5 MS. HANCOCK: Your Honor, we call Paul Bauer as
6 our next witness.

7 THE COURT: Raise your right hand.

8 PAUL BAUER,
9 Being first duly sworn, was examined and
10 testified as follows:

11 THE COURT: Your witness, Ms. Hancock.

12 MS. HANCOCK: Thank you, your Honor.

13 DIRECT EXAMINATION

14 BY MS. HANCOCK:

15 Q. Good morning, Mr. Bauer.

16 Would you mind stating and spelling your name for
17 the record, please?

18 A. Paul Bauer. Paul, P-A-U-L, Bauer, B-A-U-E-R.

19 Q. And could you provide your mailing address, your
20 business mailing address?

21 A. 232 North Wallace Street, Ellsworth, Wisconsin
22 5441.

23 Q. Did you -- where are you employed --

24 A. Excuse me. 54011.

25 Q. Okay. I thought there was a number short in
26 there. I looked at the court reporter, and she seemed to
27 get it, so I thought it was all right.

28 Where are you employed?



1 A. The Ellsworth Cooperative Creamery.

2 Q. And where is it located?

3 A. In Ellsworth, Wisconsin.

4 Q. Okay. Did you prepare a testimony in preparation
5 for the hearing and in support of National Milk's barrel
6 elimination proposal?

7 A. I did.

8 Q. And is that what's been identified as Exhibit
9 NMPF-8?

10 A. Yes.

11 MS. HANCOCK: Your Honor, if we could mark this as
12 the next exhibit for identification purposes.

13 THE COURT: Yes, 119.

14 (Thereafter, Exhibit Number 119 was marked
15 for identification.)

16 MS. HANCOCK: Thank you.

17 BY MS. HANCOCK:

18 Q. Mr. Bauer, would you mind providing us with your
19 prepared testimony?

20 A. My name is Paul Bauer, and since 2008 I've been
21 the CEO and general manager of the Ellsworth Cooperative
22 Creamery (Ellsworth), headquartered in Ellsworth. I have
23 worked 30 plus years in various senior leadership roles
24 with other cheese cooperatives and private companies.

25 Ellsworth Cooperative Creamery has been in
26 business since 1910 and has 220 member-owners producing
27 777 million pounds of milk annually. Ellsworth has three
28 dairy processing operations with 380 employees. In the



1 Village of Ellsworth, Wisconsin, we have a barrel plant in
2 which we sort cheese curds to sell at retail and to sell
3 in bulk to other businesses. At this location, we operate
4 a sweet drying whey plant which we sell condensed whey, as
5 well as a separate retail packaging operation for cheese
6 curds.

7 Our Menomonie, Wisconsin plant makes 40-pound
8 block cheese products, including #2 yellow USDA graded
9 cheddar, cheese in horns, and traditional brined Muenster
10 Cheese. The plant also has a cut-and-wrap operation. Our
11 New London, Wisconsin plant makes American processed
12 cheese into 42-pound blocks to 2.5 pound loafs. In all,
13 we manufacture over 130 million pounds of cheese a year.

14 I am here in support of removing the 500-pound
15 barrel ungraded USDA barrel cheese from the protein price
16 calculation. The Federal Milk Marketing Order (FMMO)
17 currently includes this value while the entire industry
18 has changed since it was included.

19 The original concept to include the 500-pound
20 barrel cheddar cheese price series in the Class III price
21 calculation was to get more input tonnage for the use in
22 estimating the most accurate price of cheese sales into
23 the market. The 500-pound barrel cheese price
24 incorporated adjustments to get to a synthetic 40-pound
25 block cheddar cheese price.

26 Today, including the 500-pound barrel cheese
27 prices is doing the very opposite of what was intended by
28 creating disorderly marketing in the FMMOs by artificially



1 pulling down the price that do not correlate to the actual
2 market, resulting in a reduction in Class III prices for
3 dairy farmers.

4 The protein component value in the FMMO is the
5 only value to use two different products to price a series
6 to establish its value. The number of pounds and value of
7 barrel cheese, adjusted to represent 40-pound block cheese
8 equivalent, and #2 yellow cheddar cheese sold to external
9 customers are reported to establish an average price of
10 cheese and to be used to calculate the protein price. The
11 volume of each type of cheese is reported and averaged so
12 the number of barrels or blocks will change over time.

13 Since the volume varies by week, there is the
14 added variability and volatility to the price discovery
15 process. The FMMOs have allowed the use of the two
16 different products to set the cheese price used in the
17 calculation of the Class III protein price. No other
18 component has this set up.

19 Whereas the 40-pound block cheddar cheese has a
20 robust market and many uses, 500-pound barrel cheese is
21 singularly focused on processed cheese, a market driven by
22 a few processors and purchasers. The smaller statistical
23 information captured by including the barrel cheese
24 results in skewing, rather than making the market more
25 accurate. The actual cheese price in the market because
26 of this small market report can be entirely disconnected
27 from the rest of the cheese market.

28 The long-term fix is to have the protein price



1 based off the same single block market. By continuing the
2 use of two markets of blocks and barrels, the industry has
3 no reason to change off of one market.

4 Impact to the Ellsworth Producers: The difference
5 between blocks and barrels on average has been stable
6 prior to 2017. Since 2017, the price differences between
7 blocks and barrels have led to disorderly marketing of
8 milk in cheese processing areas of the FMMOs with barrel
9 cheese manufacturing.

10 Producers who ship to these plants producing
11 barrel cheese are paid significantly less than they were
12 able to pay Federal Order minimums for price -- for milk
13 since the barrel cheese price is too low. Ellsworth
14 producers, for example, are losing \$0.84 per hundredweight
15 through April of 2023.

16 One of the intents of the Agricultural Adjustment
17 Act of 1933 (reenacted with amendments by the Agricultural
18 Marketing Agreement Act of 1937, Reference 2) was to
19 provide orderly marketing for the commodity at the farm
20 gate price against variations in supply and demands from
21 larger processors.

22 The introduction of the FMMOs was meant to create
23 a more stable method to price milk and create rules
24 preventing processors from having significant market power
25 over producers. With the inclusion of barrels within the
26 Class III formula, this results in having two separate
27 products price the same protein value that is being used
28 to effectively negate the intent of FMMOs.



1 The industry has changed, and the adjusted barrel
2 price is no longer a good substitute for pricing block
3 cheese. Thus, having barrel cheese not represent a fair
4 price to calculate protein in cheese is the exact opposite
5 of the intent of the orders.

6 The continued market disruption caused by the
7 widening and increased unpredictable spread between prices
8 of 40-pound block cheese and 500-pound barrel cheese is
9 affecting the members of Ellsworth Cooperative Creamery
10 and other cooperatives that produce barrel cheese.

11 Since 2017, our members have received \$0.84 per
12 hundredweight less than those counterpart cooperatives
13 without a barrel operation. This difference in value
14 "impairs the purchasing power of farmers and destroys the
15 value of agricultural assets." Because of this, pricing
16 is not accurately reflected in the market pricing.

17 The \$0.84 per hundredweight means less money to
18 Ellsworth producers, their families, farms, and
19 communities. It also means the cooperative has less money
20 to reinvest in assets to produce barrel cheese or keep
21 them as a viable asset to process milk. Long-term, the
22 lack of return will make barrel cheese production
23 economically obsolete in Federal Milk Marketing Orders.

24 Barrel cheese and block cheese cannot be
25 substituted at an equal exchange. White cheddar packaged
26 in 500-pound barrels is almost exclusively used for the
27 production of processed cheese. Processed cheese's main
28 customers are restaurants and fast-food outlets.



1 Because the current standard for processed cheese
2 is 500-pound barrels of ungraded white cheddar, a 40-pound
3 block of yellow cheese cannot easily be substituted. The
4 color in the block cheese would make some substitutions
5 impossible. The moisture difference would, again, change
6 the recipe and ingredient statements to some of the
7 processed cheese. A complete substitution between the two
8 products would not be possible or accepted for the
9 majority of the processed cheese industry -- cheese
10 manufacturers and processed cheese buyers.

11 According to the USDA in 2020, 2.399 billion
12 pounds of processed cheese was produced. According to the
13 information from Dairy Farmers of Wisconsin (the dairy
14 marketing checkoff group for Wisconsin dairy farmers), the
15 retail market for processed cheese was approximately
16 165.1 million pounds of cheese in 2020. The remaining
17 2.234 billion pounds of processed cheese volume was used
18 for food service, or 93.1% of the volume.

19 The best answer to address this issue is to price
20 protein off of one market and support the NMPF proposal to
21 not include barrel cheese in the calculation of protein.
22 The answer is not to proportion 500-pound barrel cheese
23 and 40-pound blocks in the formula as it would continue
24 the industry to use two markets in support of the value.
25 In essence, that would tend to blend the barrel price
26 problem which would make it worse for producers who ship
27 to barrel plants. In 2020, it would make the payment to
28 producers and barrel plants an additional \$0.90 less than



1 non-barrel processors (Table 5).

2 Table 2 was taken from reported information from
3 USDA website in 2020. Cheddar cheese was 30% of the total
4 cheese produced, reported to NDPSR for blocks was 4% of
5 all cheese, barrels represented 5% of all cheese. This
6 means 9% of the nation's cheese production was reported
7 and used in the Class III protein price.

8 When considering just cheddar cheese, the total
9 reported volume was just 31%, with blocks being 13 and
10 barrels being 17. In the end, 93% of cheddar cheese
11 production is most likely priced off of -- is not priced
12 off of barrels.

13 So if we assumed a blended price for which barrel
14 cheese is 17% of all cheese, and then 93% is block cheese,
15 it further concentrates barrels and provides a wider gap
16 on what can be paid to producers who own and operate
17 barrel cheese plants.

18 The value of cheese used in the calculation goes
19 from \$1.80 per pound to \$1.95 per pound for the
20 calculation of cheese. This will raise Class III price,
21 but it will make it harder for producers with milk going
22 to barrel cheese plants to get paid that value. This will
23 tend to lead to further disorderly marketing in Federal
24 Milk Marketing Orders.

25 The Table 4 above shows the different values as it
26 works through the same model to calculate Class III price.
27 The normal calculation shows a 17.81 value per
28 hundredweight, and the second run using the 17% barrel



1 model shows an 18.71 value per hundredweight. So using
2 the weighted model, it makes it worse for producers of
3 barrel operation and creates more disorderly marketing.
4 Producers in the orders shipping to barrel plants would
5 receive \$0.80 less per hundredweight in barrel weighted
6 option.

7 The best -- excuse me -- I support the National
8 Milk Producers Federation proposal to remove the 500-pound
9 barrels from the calculated -- calculation to establish
10 the protein price in milk. By amending the Class III
11 protein price, though it is based off of only money, one
12 market, all components will be treated the same. Having a
13 single market provides needed tools to processors and
14 producers alike.

15 I fully recognize that barrel processors and
16 processed cheese producers will need to find a new method
17 to price cheese. However, the simple answer is to base
18 Class III milk pricing on 40-pound block cheese market.
19 Doing so will lead to greater stability in the MMOs.

20 Thank you for your time, and I hope the Milk
21 Marketing Orders can be amended to treat all farmers
22 fairly. Thank you.

23 Q. Thank you, Mr. Bauer. I appreciate that.

24 I just have a couple of questions. One, I just
25 want to do a quick correction. If you turn to page 6 of
26 your testimony.

27 Under the first full paragraph that starts off
28 with Table 2. The last sentence there, it says, "In the



1 end, 83% of cheddar cheese production is most likely not
2 priced off barrels."

3 Do you see that?

4 A. Yes.

5 Q. I think when you were reading that you said 93%,
6 and I just want to make sure what your testimony --
7 whether your verbal testimony or your written testimony is
8 correct.

9 A. It's ninety- -- excuse me, 83. If I read it
10 wrong, I apologize.

11 Q. That's okay.

12 And then it's repeated again on the first sentence
13 of the next paragraph, another 83%. That's correct, it
14 should be 83%; is that right?

15 A. That is right.

16 Q. Okay. And -- and so the point that you are making
17 there is that 83% of the cheddar cheese production is most
18 likely not produced off of barrels. That's using that 9%
19 threshold that we heard about from Mr. Hanson; is that
20 right?

21 A. Correct.

22 Q. Okay. And did you get there in a different way
23 than Mr. Hanson did?

24 A. I did. I only used USDA numbers that were
25 available off their website.

26 Q. And even just using those numbers, you still got
27 to the same 9% estimate of barrels represented in the
28 cheese prices?



1 A. Correct.

2 Q. On the first page of your testimony, and I think
3 you say it again, something similar later on, the last
4 sentence of the first page says, "Today, including the
5 500-pound barrel cheese price -- prices is doing the very
6 opposite of what was intended by creating disorderly
7 marketing in the Federal Milk Marketing Orders by
8 artificially pulling down prices that do not correlate to
9 the actual market, resulting in a reduced Class III price
10 for dairy farmers."

11 Is that the point of National Milk's proposal in
12 eliminating barrels?

13 A. Yes. It's to increase the value to farmers, and
14 as we heard from yesterday's testimony, it is
15 approximately \$2 billion that in the last -- since 2017,
16 that dairy farmers have not received because of this
17 calculation.

18 Q. Okay. And when you say "disorderly marketing," I
19 am wondering if you could tell us what that means to you.

20 A. Well, in a Federal Milk Marketing Order, when they
21 announce a Class III price, that is in relevance what
22 would be the market-clearing price in order to stay on the
23 order, having a barrel plant means you can't pay that. We
24 do not have the ability on our barrel operation alone to
25 sufficiently pay the Class III price.

26 Q. Okay. Why is that?

27 A. Because the value we receive is less than in the
28 last six years because of various factors.



1 Q. And -- and what do you mean by "market-clearing
2 price"?

3 A. So the Federal Milk Marketing Order sets a minimum
4 Class III price, and it is -- if you pool milk, unless --
5 you are expected to pay that price to all farmers equally.

6 Q. And maybe I back up a smidge here.

7 What -- what products do you -- do you use to make
8 processed cheese?

9 A. We use barrel cheese, predominantly, and then,
10 it's approximately 60% depending on the recipe and the
11 type of cheese that we use. And then we use other
12 market-clearing cheeses in the industry in order to make
13 the rest of that process.

14 So at 2.3 billion pounds of processed cheese we
15 estimate only 1.2 billion pounds of barrel cheese of
16 maximum capacity. That difference of 1.1 billion pounds
17 is other cheese in the industry that has not found a home
18 or needs a market-clearing price.

19 So in reality, processed cheese is really the
20 market-clearing aspect to the market when it comes to
21 cheese.

22 Q. Do you consider barrels to be a market-clearing
23 product?

24 A. Absolutely not. Our plant has its production sold
25 out through 2024. That would not indicate that we are a
26 market-clearing price.

27 In the making of processed cheese, you have your
28 base cheese that you -- you make, and then as you find



1 opportunities to add to that processed cheese that still
2 will conform to the standard of identity and label, that
3 will be added to that processed cheese batch in order to
4 make that particular style of cheese.

5 Q. Okay. So if I'm understanding you correctly, you
6 said that you are sold out until 2024. So you use the
7 maximum capacity of barrels that you can get, and then you
8 have to look to other market-clearing products in order to
9 supplement, in order to make your processed products?

10 A. And we also buy additional barrels as well.

11 Q. Okay. From other -- other providers?

12 A. That is correct.

13 Q. Okay. And are processed cheese sales going down?

14 A. In total, no. Processed cheese sales are actually
15 going up. And it is a change in demographics. What's a
16 little misleading is that retail processed cheese is going
17 down, but the trend to eat away from home is continuing to
18 grow, and food service processed cheese sales are quite
19 strong and robust.

20 Q. So while overall it's your experience that
21 processed cheese sales are going up, a large portion of
22 what's driving that is coming from the food service
23 industry?

24 A. That is correct.

25 Q. Okay. I just want to maybe expand on a couple of
26 the tables and the data points that you have in your
27 testimony. Could you turn to page 3? I'm looking at
28 Table 1 where you have the impact to your producers of the



1 spread between blocks and barrels.

2 In the title there it says that you have the
3 spread between the blocks and barrels beyond the \$0.03 per
4 pound. I'm wondering if you could just take us through
5 this calculation and let us know what you have factored in
6 here.

7 A. So in the first column we have the average monthly
8 price for barrels, just a simple average for the month and
9 the average for blocks. And that spread is \$0.08. We
10 made 65 million pounds of cheese priced off the barrel
11 market. That's the number of producers that we had. The
12 difference between that \$0.08 and then three times the
13 number of pounds of cheese that we make came up to
14 \$3 million divided by the total number of producer pounds.

15 Q. Okay. So in this example that you are walking
16 through in 2017, it resulted in a negative \$0.43 per
17 hundredweight?

18 A. That is correct.

19 Q. Okay. And then you did that for each of the years
20 that you have listed here. And it looks like you have
21 year to date, in 2023 -- and I say year to date, but you
22 have through April of 2023; is that right?

23 A. Correct. That's when I put this information
24 together, that was the most current information I had.

25 Q. Okay. And so since 2017, it's an \$0.84 per
26 hundredweight negative number; is that fair?

27 A. That is correct.

28 Q. And -- and if you look at these numbers prior to



1 2017, what did you see?

2 A. Historically, it was within that \$0.03 range.
3 There were a few years that were slightly higher and a few
4 years that were slightly lower but no significant impact.

5 Q. Okay. And what is it that you believe is
6 contributing to the market changing so much in 2017 that's
7 driving this volatility that you have described?

8 A. I think there are several factors, not one single
9 factor, that are leading to the widening of this gap.

10 One is how the product is sold on the CME. We
11 have seen dramatic volume increase in the CME since 2017.
12 We have also seen a change in the cheese being sold. The
13 specifications that were outlined earlier do not include a
14 milk test on the cheese or the ability of the cheese to
15 function, which is why our cheese production in our plants
16 is sold out because it is a very consistent function,
17 whereas the cheese sold primarily on the exchange is
18 unknown to the end purchaser of what kind of cheese that
19 will be and how it will process in their mix.

20 In addition, the cost of transportation from that
21 cheese -- as all cheese on the exchange, on the CME, the
22 transportation allowance is huge. And that also factors
23 into the price discovery.

24 Historically, I -- I -- I can only say anecdotally
25 because I don't have data for this, but I do believe it to
26 be accurate -- the vast majority of cheese sold on the
27 cheese exchange comes from unregulated Western markets
28 that has a high cost of transportation to get back to the



1 processing plants that are primarily located in the
2 Midwest.

3 In addition, we have seen difficulties in the
4 market on new arbitrage products that are created, and
5 that creates less opportunity for producers of barrel
6 cheese and processors to mitigate their risk versus other
7 types of basically cheddar block cheese.

8 All those I think are leading to a significant
9 change. It's not just one factor, it's several factors.

10 Q. And do you anticipate that those items could
11 settle down in the future in a way that would make barrels
12 less volatile and make the current pricing formula a more
13 viable option going forward into the future?

14 A. I don't. I actually see it getting more volatile
15 in the future. One aspect of processed cheese making is,
16 is the base cheese needs to be under 30 days of age to get
17 the proper body of it.

18 So last year we saw a rise, somewhat -- a more
19 normalcy in the market where barrel cheese was higher
20 because fresh cheese was short. Cheese can be stored, but
21 in making processed cheese, it is -- they need a certain
22 requirement, depending on what they make, needs to be --
23 have a firm body, meaning under 30 days.

24 When that happens, then the market is short, and
25 therefore barrels move up. They certainly may have other
26 products in the mix. Certainly they use 640s, blocks.
27 Mozzarella is used. Everything is used in processed
28 cheese.



1 Q. Okay. I want to turn now, you have some testimony
2 about some efforts that you undertook to explore whether
3 barrels could just be reweighted in the formula
4 calculations to just have it be better reflected in the
5 cheese prices.

6 And can you just tell me a little bit more about
7 what process you went through to make that evaluation and
8 then ultimately what your conclusion was?

9 A. Well, when you -- when you use the USDA numbers,
10 it varies every year. So what weight do you put on barrel
11 cheese? I used a point in time of 2020 because that's
12 when I pulled the numbers to review it. I've been
13 reviewing this for many years because, obviously, it's a
14 huge financial impact to our producers.

15 And it -- it has the fundamental problem of
16 legitimizing barrel cheese as a synthetic substitute for
17 40-pound block cheese. And unless the market removes that
18 barrier, it will still continue to suffer low prices and
19 less income to producers. So all it does is legitimizes
20 two component -- two product calculation for a component
21 price, where none of the other component prices has that
22 aspect to it.

23 Q. Okay. So in your opinion, can barrels be
24 reweighted in a way that can take out some of that effect
25 that would allow it, though, to be brought with what you
26 would believe to be more of an orderly market condition?

27 A. No, it will actually legitimize a slight flaw in
28 the Federal Milk Marketing Order system.



1 Q. And --

2 A. At the end of the day, the industry -- excuse me.
3 And at the end of the day, the industry needs to price
4 cheese protein off of one source, just like all the other
5 commodities. And when that is achieved, then we can
6 have -- every other cheese product -- or every other dairy
7 product has one market that they price off of, and then we
8 can establish whether that's a good price or a bad price.
9 With this volatility, it almost makes it impossible to
10 continue the way it is.

11 Q. Are you concerned that by removing the volume of
12 barrels out of the cheese pricing, that somehow the
13 statistical sampling of the pool is too small?

14 A. I would contend that having a statistical sample
15 with erroneous numbers in it actually gives us a false
16 reading on where the market is going. By having accurate,
17 even though they are smaller numbers, gives a better
18 reading to the industry of where it should be going.

19 Q. And I think that you agreed with the calculation
20 as well that we heard from Mr. Hanson, in that the
21 industry has -- or the industry, when I say the industry,
22 I'm referring to dairy farmers, dairy producers -- that
23 they have as a result of the volatility since 2017 lost
24 approximately 2 billion pounds in their cheese prices; is
25 that right?

26 A. \$2 billion. Billion dollars.

27 Q. Did I say "pounds"?

28 A. Yes, you did.



1 Q. I'm sorry. My head moves faster than my mouth.
2 Let me say it again.

3 I think you agreed with Mr. Hanson that dairy
4 farmers have lost approximately \$2 billion since 2017; is
5 that right?

6 A. In only the areas where the Federal Milk Marketing
7 Order is pooling that milk.

8 Q. Okay. And so the milk that's not being pooled,
9 there can be additional losses as well?

10 A. That is correct.

11 Q. Okay. And we don't have a way to calculate those
12 numbers, do we?

13 A. Not to my knowledge, no.

14 Q. Okay. And so if -- if dairy farmers have lost
15 \$2 billion, who is it that would be benefitting from that
16 loss?

17 A. The simplest answer is, and probably the most
18 direct one is, those using the block cheese to price their
19 product off of have gained significantly in the last six
20 years, because they have been underpaying for their cheese
21 protein value, and because Class III is used to calculate
22 Class I, Class I value has been underreported or undersold
23 in the marketplace.

24 Q. Okay. So if I'm understanding you correctly, you
25 are saying that that would be anybody who is buying
26 Class I or Class III?

27 A. Correct.

28 Q. Thank you, Mr. Bauer. That's all I have right



1 now.

2 MS. HANCOCK: Your Honor, we would submit
3 Mr. Bauer for cross-examination.

4 THE COURT: Cross-examination?

5 CROSS-EXAMINATION

6 BY MR. ENGLISH:

7 Q. Chip English for the Milk Innovation Group.

8 So I'm going to start where you just ended.

9 Federal Orders establish a minimum regulated price,
10 correct?

11 A. They attempt to, yes.

12 Q. Okay. In what way do they not succeed if they
13 attempt to?

14 A. Because if it was really establishing a minimum
15 price in Federal Milk regulated areas, we would not have
16 this problem by having barrel cheese included in the
17 formula. They are significantly disadvantaged by using
18 the formula as how it is created.

19 Q. What you are saying is you don't like the minimum
20 price but -- right?

21 A. That's incorrect.

22 Q. Well --

23 A. I'm saying that USDA's numbers matter in how they
24 are calculated and how the industry has been affected has
25 changed over time, that 500-pound barrels no longer
26 represent a synthetic 40-pound block.

27 Q. So you are talking about representation. I'm
28 talking about, this still is a minimum price, correct?



1 A. If you pool the milk, there's a minimum price.

2 Q. Thank you.

3 And Federal Orders are, first, not a support price
4 mechanism, correct?

5 A. That's correct.

6 Q. And second, they do intend for the market to be
7 able to operate above the minimum price, correct?

8 A. That is their intent.

9 Q. Okay. Are you saying as to Class I that the
10 market price is somehow not valid?

11 A. I'm saying it is underreported in how the formula
12 is used in the Federal Milk Marketing Order.

13 Q. Does that mean that the market price for Class I
14 is undervalued?

15 A. In the last six years, I would say that is a fair
16 statement.

17 Q. Okay. So you think that market prices and minimum
18 prices are the same?

19 A. I would not say that.

20 Q. Okay. Well, so let me go back to your statement.

21 In the first paragraph, you say you have a federal
22 cheese plant, and you discuss a little bit what you are
23 making. I don't actually see that you say. Are you,
24 Ellsworth, making 500-pound barrels that are reported to
25 NDPSR?

26 A. Yes.

27 Q. Okay. You then state that the original concept to
28 include the 500-pound barrel cheddar cheese price series



1 in the Class III price calculation was to get more input
2 tonnage for use in estimating the most accurate pricing of
3 cheese sales in the market.

4 Do you have a citation for that statement?

5 A. I do not.

6 Q. Isn't it more correct to say that the purpose of
7 including 500-pound barrel cheese was because it is one of
8 the market-clearing products for cheese?

9 A. No.

10 Q. You disagree that that's what USDA said in Federal
11 Order Reform?

12 A. I do. The reason why I go further on that is
13 because in our task force, we discuss this at length, and
14 when we get to other proponents, and it is coming up
15 later, on Make Allowance, the Make Allowance is supposedly
16 on a 40-pound block price, and then the synthetic \$0.03
17 difference for conversion. So everything tends to lead to
18 that it was intended for a 40-pound block cheddar cheese
19 price, that was the intended minimum pricing mechanism for
20 Class III protein.

21 Q. And do you understand that in Federal Order
22 Reform, they were trying to establish a replacement for
23 the basic formula price?

24 A. Correct.

25 Q. And they were trying to be, quote, as close as
26 possible to be revenue neutral between the old BFP and the
27 new Class III and IV price, correct?

28 A. Correct.



1 Q. Do you know had they excluded barrels back in
2 Federal Order Reform, whether that would have then
3 increased the level of the new BFP -- I'm sorry -- the new
4 Class III price relative to the basic formula price?

5 A. I don't have knowledge of that.

6 Q. You and others have testified that no other
7 component has this setup of two commodities, right?

8 A. Correct.

9 Q. Okay. So what other product that's nonfat dry
10 milk that has a standard of identity could have been
11 included?

12 A. I have no idea.

13 Q. What other product for why could have been
14 included?

15 A. I have no idea.

16 Q. So you have this statement that the long-term fix
17 is to price off of a single block market. By continuing
18 with the two markets of blocks and barrels, the industry
19 has no reason to change to price off one market.

20 What -- first of all, the chick Chicago Mercantile
21 Exchange has a barrel price, correct?

22 A. Correct.

23 Q. What influence of the Federal Orders is there on
24 the Chicago Mercantile Exchange if it does drop barrels,
25 as you propose, to discontinue a CME barrel price?

26 A. First of all, that statement is incorrect.
27 There -- there is no influence on the CME. They are a
28 totally independent group.



1 Q. That's my point, actually. Thank you.

2 But the point is it is independent, and so we
3 should fully expect Chicago Mercantile Exchange to
4 continue to have a barrel market, correct?

5 A. They could have a mozzarella market. They could
6 have a 640 market. It is entirely up to them.

7 Q. Well, if they have a barrel market, isn't the case
8 that even if you eliminate barrels, you are still going to
9 have two markets?

10 A. They could or could not. All I know is that this
11 is the only component value, and the root cause of the
12 spread between the two is that it's included in the
13 Federal Milk Marketing Order calculation for Class III
14 protein.

15 Q. But you don't know --

16 A. The industry has failed to -- to -- to recognize
17 or look at this industry or come to consensus in how they
18 should fix it.

19 Q. So you -- on page 3 and 4, you discuss your view
20 of the Agricultural Marketing Agreement Act.

21 You are not a lawyer, correct, sir?

22 A. That's correct.

23 Q. And so you have quoted from the declaration in the
24 middle of Reference 2.

25 You wouldn't know whether there's a rule that the
26 specific governs over the general, would you?

27 A. I would not.

28 Q. Okay. What consideration in preparing your



1 statement, including the declaration, did you give to the
2 fact that there is a specific provision in
3 Section 608c(15) with respect to prices set for milk?

4 A. None.

5 Q. So now I want to explore at the bottom of page 4
6 and some other pages where you talk about the impacts on
7 Ellsworth.

8 And you talk about the \$0.84 per hundredweight
9 being less money to Ellsworth producers, correct?

10 A. Correct.

11 Q. That's their pay price in their milk check,
12 correct?

13 A. It is the lack of pay in their paycheck.

14 Q. Okay. The lack of pay in their paycheck.

15 But you own a plant that produces barrel cheese,
16 correct?

17 A. Correct.

18 Q. And as a result of this price disparity you are
19 talking about, the cooperative for accounting purposes for
20 the Federal Order has a lower accounting on that barrel
21 cheese, correct?

22 A. I'm not -- can you explain the question, please?

23 Q. All right.

24 Are you pooled on the Federal Order?

25 A. For many months, we do.

26 Q. Okay. So for those months that you do, can you --
27 you get a pool draw. That pool draw is based upon a
28 calculation that includes your barrel cheese volume at the



1 Federal Order barrel cheese -- I'm sorry -- at the
2 Class III price, which includes barrel cheese, correct?

3 A. I don't believe that's an accurate statement.

4 Q. Would you agree that to the extent you draw from
5 the pool, that amount that you draw is influenced by what
6 your handler obligation is?

7 A. I still would disagree with that statement because
8 handler obligation is different than what we're talking
9 about.

10 Q. Well, I agree. So you are talking about what the
11 producer gets paid. I'm talking about what the
12 cooperative does within the Federal Order. Okay? That's
13 a distinction. You agree that's different, right?

14 A. It depends on what your -- what your definition of
15 what the cooperative does.

16 Q. For -- so there are months in which Ellsworth is a
17 regulated pool handler under the order, correct?

18 A. Correct.

19 Q. Okay. For those months in which Ellsworth is a
20 regulated pool handler, you file with the Market
21 Administrator a pool report, correct?

22 A. Correct.

23 Q. And that pool report reflects the pounds of milk
24 processed as a handler, correct?

25 A. If it's pooled pounds, then we will -- we can
26 depool or pool, correct.

27 Q. Okay. To the extent those are pooled pounds,
28 those pounds are then multiplied by the classified prices,



1 correct?

2 A. The components are, correct.

3 Q. Yes, the components are.

4 And then that establishes what a minimum handler
5 obligation is to the pool, correct?

6 A. Not to the pool. To the producer.

7 Q. Okay. To the producer.

8 And because you are getting a pool draw, you get
9 money from the pool, correct?

10 A. Correct.

11 Q. Okay. And that level of a pool draw will be
12 higher than it otherwise would have been if barrels are
13 included in the survey price, correct?

14 A. Incorrect.

15 Q. Why is that incorrect?

16 A. Because barrels will lower the Class III price,
17 thus lowering the value of the pooled -- the dollars that
18 are available to be pooled.

19 Q. Okay. Does it not reduce your handler calculation
20 in calculating the pool?

21 A. No.

22 Q. So let's take a simple example. Under the current
23 Class III price, let's assume the value of your milk for
24 the pool is \$1 million. Okay?

25 A. Okay.

26 Q. Now, let's assume for the example that barrels are
27 dropped, and the obligation instead would be \$1,100,000.
28 Because now the Class III price has gone up, correct?



1 A. My obligation to the pool would not -- my
2 obligation to the minimum price would go up, my obligation
3 to the pool would not.

4 Q. Okay. Okay. Your obligation for the minimum
5 price goes up. Does that not mean that the level of your
6 pool draw will go down?

7 A. Incorrect.

8 Q. I guess what I'm getting at is, don't your dairy
9 farmers have two streams of income, one is their milk
10 price check and two is the fact they are owners of the
11 plant, correct?

12 A. Incorrect.

13 Q. They are not owners of the plant?

14 A. You had a two-part question. The first part was
15 incorrect.

16 Q. I'm sorry. What was the -- what was wrong with
17 the first part? They are dairy farmers, and they get
18 checks, correct, as dairy farmers for selling their milk?

19 A. That is correct.

20 Q. And the \$0.84 you are referring to is the \$0.84
21 less that they are getting in their milk check for the
22 value of the milk, correct?

23 A. For the value of the products that they get for
24 their milk.

25 I interpreted your question to assume, because
26 that's how you interpreted it, that the value of their
27 milk was coming from the pool, and that is not correct.

28 Q. Is the \$0.84 their farm gate price that you are



1 referring to? The loss of \$0.84, is that in your farm
2 gate?

3 A. Yes.

4 Q. Okay. So it doesn't include, the \$0.84 does not
5 include the profitability or losses on the assets that
6 they own, correct?

7 A. Correct.

8 Q. So on page 5, you say that processed cheese's main
9 customers are restaurants and fast-food outlets.

10 You agree that's a market for -- for producer
11 milk, correct?

12 A. It is a market, correct.

13 Q. And are you saying that if we adopt National
14 Milk's proposal, which you support, that restaurants and
15 fast-food outlets will be willing to pay more for barrel
16 cheese because you are going to change the market pricing
17 mechanism?

18 A. I have never known anyone to be willing to pay
19 more.

20 Q. So doesn't that mean that manufacturers of barrel
21 cheese will continue to have to sell at the market price,
22 but somehow they will be forced to price off the block in
23 your view?

24 A. Currently, we have no -- the system was set up
25 that the raw material was equal to what the approximate
26 value we could get for the milk. So up until 2017, there
27 was a pretty good correlation. That correlation went
28 haywire. We need to reset the industry to price protein



1 off of one price.

2 Q. Well, isn't part of what's gone haywire in 2017
3 and afterwards the fact that we have inadequate
4 Make Allowances?

5 A. It could be one of the factors.

6 Q. So I want to go back to what I was just asking
7 about, but now I want to turn to page 6.

8 You reference the fact -- you have the statement,
9 that the value of cheese used in the calculation goes from
10 \$1.88 to \$1.95. That's if we make a change -- that is
11 basically if we can make a change recognizing that barrel
12 cheese is only 17% of the market, correct?

13 A. Correct.

14 Q. Okay. And then you say, "This will raise the
15 Class III price, but it will make it harder for producers
16 with milk going to barrel plants to get paid that value."

17 A. Correct. To get paid equal to the value of the
18 Class III. If the industry doesn't change, we won't have
19 barrel plants in Federal Order systems.

20 Q. Isn't it just the opposite, if you try to
21 overvalue barrels, it will make it harder for producers
22 with milk going to barrel plants to get paid that value?
23 Isn't that what your statement is?

24 A. They will go out of business. They are going out
25 of business. We have less barrel plants than we've ever
26 had, the pure quantity in the Federal Order system.

27 Q. In the Federal Order system. But in the country,
28 there is capacity being built, correct?



1 A. In barrels? Not that I'm aware of.

2 Q. You didn't hear testimony earlier this week about
3 that?

4 A. On barrel --

5 Q. Yes.

6 A. On barrel plants being built, I am not aware of
7 any barrel plants that are being built. I'm more aware of
8 plants that are going out of business than being built.

9 Q. Well -- well, if they are going out of business,
10 even though they allegedly have this advantage, because
11 their price is being included in the survey, won't
12 adoption of your proposal make it worse?

13 A. We assume they have an advantage, so I don't agree
14 with the premise of the question.

15 Q. If their price is lowering the Class III price,
16 doesn't that mean, in your argument, that if you change
17 it, they have to account to the pool for a higher price,
18 and their losses would be greater?

19 A. Or they depool. The reality is, is when you get
20 money in from a sale, as a co-op, you only have so much
21 money you can pay out, period, and you either pool the
22 milk or you don't pool the milk. It is an entirely
23 different question.

24 The problem becomes is that there's \$2 billion
25 that dairy farmers are not receiving because of the split
26 between blocks and barrels.

27 Q. Co-ops have the right to reblend, correct?

28 A. Correct. And depool.



1 Q. A moment ago you said that barrel plants will have
2 the option to depool.

3 Is the purpose of the proposal to get barrel
4 plants not to pool?

5 A. That isn't what I said.

6 Q. I want to turn to Table 3 and Table 4 and see if I
7 can connect the dots, or not.

8 Table 3, your calculation is from 2020, correct?

9 A. Correct.

10 Q. Is the calculation that carries over to Table 4
11 based upon Table 3?

12 A. Correct.

13 Q. So you are using 2020, correct?

14 A. Correct.

15 Q. Do you think 2020 is an appropriate year to use
16 for comparisons given all the things that happened in
17 2020, including the USDA Food Box Program?

18 A. Certainly.

19 MR. ENGLISH: I have no further questions.

20 THE COURT: Further cross?

21 CROSS-EXAMINATION

22 BY MR. MILTNER:

23 Q. Good morning. My name is Ryan Miltner. I
24 represent Select Milk Producers.

25 A. Good morning.

26 Q. Good morning, Mr. Bauer.

27 I think I'd like to start with just some questions
28 somewhat related to where Mr. English finished up. If --



1 if you're manufacturing barrel cheese, you are -- at the
2 end of the day you have two products to sell, right? You
3 have got the cheese, and you have the whey coming off
4 that, correct?

5 A. Correct.

6 Q. And so let's assume that this barrel manufacturer
7 is buying all their milk at the Class III price. And
8 let's further assume that they are selling their whey
9 stream at a price that lines up with the announced whey
10 price under the federal system. Okay?

11 A. Okay.

12 Q. If that cheese plant then sells their barrels at
13 the NDPSR price, that plant pretty well makes money,
14 right?

15 A. Maybe. My experience in operations, there's more
16 to it than just the price, because it has a lot of ability
17 on how well you process, your efficiencies of operation,
18 most importantly, the amount of capital you have invested
19 in that plant in order to produce below the
20 Make Allowance.

21 Q. Okay. If your -- if that plant's Make Allowance
22 lines up with the federal formula presumptions, in that
23 example I laid out, would that plant at least break even,
24 do you think?

25 A. It depends.

26 Q. Okay.

27 A. The basis differs between blocks and barrels.

28 Would make the assumption highly unlikely that they would



1 make money.

2 Q. If that plant were able to sell its whey for more
3 than the Federal Order assumes it receives, would that
4 then allow that plant to sell its cheese at a lower price
5 and still maintain profitability?

6 A. If those assumptions were correct, that is true,
7 they could.

8 Q. For Ellsworth, what do you all do with the whey
9 that comes off of your barrel production?

10 A. We are a sweet whey drying plant that reports our
11 numbers, plus we have condensed whey that we sell as well.

12 Q. Okay. In Ellsworth's experience, is the whey that
13 comes off of a barrel plant more valuable than the whey
14 that comes off of a block plant?

15 A. If I can expand upon your question a little bit, I
16 would say it's at par to the market. If it's colored,
17 it's below -- it has a negative basis to the market.

18 So in our particular case, because we sell sweet
19 dry whey, we are at parity with the market for the price.
20 If we had colored whey and had to do some further
21 processing to it, it is unacceptable to many customers
22 and, therefore, would be sold at a discount.

23 Q. The sweet whey you produce, is it sold as a dry
24 whey or a 34 -- or what products do you sell?

25 A. It's a dried whey. It meets the standard
26 definition for one of the commodity pricing components.
27 Plus some condensed whey.

28 Q. As far as the dry whey portion of your facility,



1 do you have the capabilities to produce a more
2 concentrated whey product like a WPI or a WPC80?

3 A. No. I mean, technically, sure, you put equipment
4 in, you could. But as we are set up, no.

5 Q. You don't have that equipment today?

6 A. Not in that plant.

7 Q. Okay. Are those products, WPC80 and WPI, are
8 those higher value products than a simple dry whey?

9 A. They are. But they also have a higher conversion
10 cost, and, again, they have variability within the market.

11 Q. Earlier you referred to unregulated plants in the
12 Western part of the country that were producing barrels.

13 Do you have knowledge of about what those plants
14 do with their -- their whey?

15 A. Not firsthand knowledge, just general industry
16 discussions.

17 Q. What is that -- what is the understanding that you
18 do have about their whey?

19 A. Many of the plants out west look to find further
20 value in their byproducts, and one of those is whey. And
21 they -- in the industry press, etcetera, etcetera, they
22 find unique and creative ways to add value to those
23 byproducts. But exactly what they do with them is only
24 what I have read in industry trade journals.

25 Q. In those journals or otherwise in discussions, has
26 there -- have you seen or are you aware of any suggestions
27 that those plants, in fact, view their whey products as
28 their primary output and the cheese as a secondary output?



1 A. As I read the articles, I would interpret that to
2 be correct.

3 Q. And so if there's an incentive to produce barrel
4 cheese because of the whey that's coming off of it, would
5 that affect the supply and demand calculation for barrel
6 cheese?

7 A. It certainly would.

8 Q. In your experience have you observed those types
9 of effects in the market?

10 A. I have, because most of the cheese coming onto the
11 exchange has been from Western plants, where they are not
12 required or not pooling milk or have the opportunity to
13 pool milk and are not subject to Class III minimum
14 pricing.

15 Q. And so is the reality that you have a product,
16 barrel cheese, that's 5 -- I think 5% of the cheese
17 produced from your statement; is that -- did I interpret
18 that correctly?

19 A. Based on the numbers that I have from USDA, yes.

20 Q. Okay. So a product that's 5% of the cheese
21 produced, and it has a 56% impact on establishing the
22 protein price, but a chunk of that fifty- -- a chunk of
23 that 9% is -- is produced primarily to manufacture another
24 product; is that -- is that the reality?

25 A. I don't know if I agree totally with the
26 percentages because I haven't calculated them, but the
27 premise I believe is correct.

28 Q. And if you agree with that premise, and you have



1 also -- does that further establish that the barrel is not
2 a synthetic substitute for the 40-pound block?

3 A. Absolutely.

4 Q. And it also then helps to explain some of the
5 price divergence that has occurred in the last five years
6 or so?

7 A. I think it is a contributing factor. I can't tell
8 you how much it is. I mean, there's a lot of factors in
9 the dairy industry that accumulate to one point. But I do
10 believe that may have some impact.

11 Q. Does Ellsworth sell any of its cheese on the CME?

12 A. We have sold some block cheese on the CME and --
13 and directly. Because in the industry, you can sell
14 product to a broker, and then that broker can sell it on
15 the CME. So sometimes you can sell a product and don't
16 know where it goes.

17 Q. Who would be the reason for Ellsworth to sell
18 directly on the CME?

19 A. Additional product that we have no sale for, no
20 direct sale.

21 Q. Most -- can I infer from that that most of your
22 sales are contracted sales for a specified period of time?

23 A. That is correct.

24 And if I may further clarify, the only product
25 that we have sold on the CME is #2 yellow cheddar cheese,
26 not barrel cheese.

27 Q. Nevertheless, do you follow or track the barrel
28 market on the CME as part of your regular job



1 responsibilities?

2 A. Every single day, at 11:30 Central time.

3 Q. Good. I think we'll be in lunch then -- no,
4 actually, we won't. We'll be back in here, so set a
5 reminder.

6 A. Internal clock. I don't need a reminder.

7 Q. Very good.

8 I was somewhat unclear with some of the question
9 and answer you had with Mr. English about the CME barrel
10 market.

11 If the barrels are taken out of the price formulas
12 here, that doesn't -- that doesn't make the CME market
13 vanish, does it?

14 A. It does not. There's no control over the CME
15 market to add standards, change transportation, or to
16 modernize their process. There's no mechanism for the
17 dairy industry to do that. Dairy farmers to do that, I
18 should say.

19 Q. I mean, if -- if USDA were to decide tomorrow that
20 we were only going to survey 40-pound blocks through the
21 NDPSR, the next day there's still going to be a 500-pound
22 barrel price announcement at the CME, and there will still
23 be offers and bids and trades, right?

24 A. There could be. Most likely.

25 Q. So those -- so -- and -- and you agree that the
26 barrel market is the only market that uses that as a
27 reference price?

28 A. To my knowledge, correct. That is correct.



1 Q. And so --

2 A. There could be somebody that's using it, but I
3 don't know who, other than barrel manufacturers and
4 processed cheese.

5 Q. And lawyers like to throw people into traps with
6 "only" and "never," so let me rephrase that.

7 The vast majority, nearly all of the people using
8 the barrel price as a reference are barrel manufacturers
9 or people participating in the barrel market, correct?

10 A. And processors of -- and processed cheese
11 processors, yes. They would be the ones primarily using
12 the vast majority of the barrel pricing mechanism.

13 Q. And you don't see any reason why they would not be
14 able to do that, including your cooperative, if -- if
15 Proposal 3 is adopted?

16 A. That's correct.

17 Q. Yeah.

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

20 THE COURT: Further cross aside from AMS?

21 You want -- who wants to go first?

22 CROSS-EXAMINATION

23 BY DR. CRYAN:

24 Q. Good morning. Roger Cryan for the American Farm
25 Bureau Federation.

26 Mr. Bauer, I did -- I listened to your testimony.
27 I just want to make sure I understood you.

28 You do not make 640-pound blocks?



1 A. That is correct.

2 Q. Okay.

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

4 CROSS-EXAMINATION

5 BY MR. ROSENBAUM:

6 Q. Steve Rosenbaum for the International Dairy Foods
7 Association.

8 I'd like to follow up on something you said
9 before, which is that processors of cheese -- start that
10 question again.

11 Processors of manufactured cheese may use the
12 block price as a reference point; is that what you said?

13 A. I'm not -- I -- I think I need a little more
14 explanation of your question.

15 Q. Well, you provided some testimony or estimates as
16 to how much cheese is priced off of the block price versus
17 the barrel price, correct?

18 A. Correct.

19 Q. And -- and you have also stated that manufacturers
20 of processed cheese can use 500-pound blocks, but can use
21 other cheese as well, correct?

22 A. I believe I would have said 500-pound barrels.
23 Processed cheese manufacturers can use 500-pound barrels
24 plus other types.

25 Q. Mistake was my -- was mine, not yours. Thank you
26 for that correction.

27 A. Well, that was -- your first question was you used
28 three different terms to describe three different distinct



1 processes.

2 Q. All right. So let's start again?

3 A. Okay.

4 Q. I'm talking about people who make processed
5 cheese, correct?

6 A. Correct.

7 Q. And people who make processed cheese buy 500-pound
8 barrels to do so, correct?

9 A. In my opinion, primarily, yes, plus other cheese.

10 Q. Okay. Plus other cheese.

11 And when those process -- strike that. I'll start
12 again.

13 When those companies that are making processed
14 cheese are buying something other than 500-pound barrels
15 to make that processed cheese, do they sometimes use the
16 barrel price to price what they will pay for that other
17 cheese?

18 A. It -- it could -- they could. It could be a fixed
19 price or it could be referenced to the block price. It
20 all depends on the situation.

21 Q. But it can be referenced to the 500-pound barrel
22 price too, correct?

23 A. It could.

24 Q. And it does sometimes, in your knowledge?

25 A. Correct.

26 Q. All right. So you have -- but you have not --
27 when you say things like only -- when you attempt to
28 calculate what percentage of total cheese pounds are



1 priced using barrels, you haven't included one pound of
2 non-500-pound barrel cheese, even though you know that in
3 making processed cheese some people do price what they are
4 paying for the cheese that's not 500-pound barrels but is
5 going into that processed cheese; is that fair?

6 A. No, it's not, because the calculation is using the
7 numbers that the USDA would use in order to calculate a
8 Class III protein price.

9 Q. Yes. But --

10 A. And so the Class III protein price is currently
11 based off of two items: The 40-pound block and the -- and
12 the 500-pound barrels.

13 Q. And you -- but you have projected from the
14 production of barrel cheese what percentage of total
15 cheese is priced off of blocks versus barrels, correct?

16 A. I have.

17 Q. And in doing so, the only cheese you have
18 allocated to that which is priced off of 500-pound barrels
19 is the 500-pound barrels itself, correct?

20 A. Correct.

21 Q. And you have acknowledged that, in fact, there is
22 an extra billion pounds of cheese that goes into processed
23 cheese that is not 500-pound barrel cheese, correct?

24 A. Correct.

25 Q. And you have acknowledged in my earlier
26 questioning that some proportion of that extra cheese is
27 actually priced off of barrels, correct?

28 A. It could be.



1 Q. And is there other pricing that is out there in
2 the marketplace that doesn't use blocks or barrels but
3 uses an amalgamation of blocks and barrels for purposes of
4 setting the price that the buyer is going to pay?

5 A. The only other significant cheese quantity -- and
6 I don't believe it is all that significant anymore -- is
7 to my knowledge swiss cheese is based off of the prior
8 Class III pricing from the previous two months, which
9 would thus include a small proportion of the barrel cheese
10 pricing in there.

11 Q. But I -- but I take it -- in everything you are
12 describing, you are describing the terms of private sale
13 agreements between the manufacturers of the cheese and the
14 buyers who are using that cheese to make processed cheese,
15 correct?

16 A. That would be correct.

17 Q. You don't have access to those private agreements,
18 correct?

19 A. That is correct. And that's why when I use the
20 number for calculation, I only use the numbers that were
21 available from the USDA.

22 Q. Yeah. But you use them to try to tell us what
23 percentage of 500-pound barrels was being used to set
24 cheese pricing. That's what you are doing, isn't it?

25 A. That is incorrect. I was using that number to use
26 what the -- if it was used, to use a percentage of the
27 market of barrels.

28 Q. So let me just ask a few questions that go to the



1 sort of basics of -- of Federal Order pricing.

2 You do agree that the intent of the Federal Order
3 system is to set the minimum price, correct?

4 A. On regulated milk, yes.

5 Q. Yes.

6 And that is the milk going to make cheese, among
7 other things, correct?

8 A. No. Because milk going to cheese does not need to
9 be regulated. Milk going to the Federal Order needs to be
10 regulated.

11 Q. Well, to the extent that a plant is participating
12 in the Federal Order system and is making cheese, then
13 they are paying a regulated minimum price?

14 A. That is not correct, because you can depool
15 partially of your milk depending on what order you are in.

16 Q. If you have chosen to participate and you are
17 allowed -- if you -- well, in some parts of the country
18 you essentially have to participate, right, because the
19 restrictions on depooling are severe?

20 A. I'm not an expert on that, but I would assume that
21 that's correct.

22 Q. Okay. In some parts of the country, in fact, the
23 pooling requirements are not strict, and you can come in
24 or out, as you choose, if you are a Class III plant,
25 correct?

26 A. Correct.

27 Q. Okay. So let's -- and, obviously, in the real
28 world, part of the benefit of pooling is that, to the



1 extent that there is a higher Class I price and depending
2 upon how much of the utilization is going to Class I, by
3 participating in the pool, you get to share -- you get to
4 share in the money coming from those plants, those Class I
5 plants into the pool, correct?

6 A. Correct.

7 Q. I mean, that is the principal incentive to pool,
8 correct?

9 A. Correct.

10 Q. Okay. So let's just address the situation where
11 the -- where we have a Class III barrel plant that's
12 participating either because it has to or participating
13 because the economics make sense for it to because it gets
14 to have a draw from the pool based upon the higher Class I
15 price. Okay?

16 A. Okay.

17 Q. And, indeed, those are the scenarios under which a
18 Class III plant will participate, correct, either because
19 they as a practical matter have to because of pooling
20 requirements or because the draw they get out of the
21 Class I proceeds makes it economically advantageous to
22 participate, correct?

23 A. Correct.

24 Q. Okay. And when they just -- it's just -- when
25 they depool, it would typically be because they happen to
26 be in a time period when Class III price is higher than
27 the price that would include the Class I price, and so
28 they are better off not to be in the pool economically,



1 correct?

2 A. Correct.

3 Q. Okay. So just to orient ourselves.

4 So let's assume that we're in a scenario where the
5 market price for barrel cheese is \$2 a pound. Okay?

6 A. Okay.

7 Q. I'm just -- I'm making up a number. Don't chide
8 me if it is unrealistic.

9 A. I would love it to be \$2, by the way. That would
10 be great.

11 Q. Yeah. I'm doing that for simplicity sake. Okay?

12 And let's assume that the Make Allowance is \$0.25
13 a pound, correct?

14 A. Correct.

15 Q. And we're going to have a lot of discussion later
16 as to what the Make Allowance ought to be, but, you know,
17 \$0.25 I think is pretty close to what National Milk is
18 proposing, so I'm just using that because it's a sort of
19 round number.

20 A. Easy math is good, especially when you are on the
21 stand.

22 Q. And easy math is good when you are asking
23 questions too, I assure you.

24 So under that scenario, then, basically, what the
25 Federal Order system does is make you, as a manufacturer,
26 turn over the extra \$1.75, which is the \$2 minus the
27 \$0.25, the \$1.75 gets -- you have to pay that into the
28 pool, correct?



1 I recognize it's obviously translated into a --

2 A. It really doesn't get paid into the pool.

3 Q. Okay.

4 A. It -- it gets paid to the producer, because --
5 because on a Class III plant, we -- we have milk
6 available, so we have our own Class I silo. So it really
7 does not get paid into the pool.

8 Q. Let's just take a scenario where the
9 manufacturer -- in fact, it's not a co-op at all. It is
10 just a freestanding cheese plant. Okay?

11 So in that scenario, that plant essentially pays
12 \$1.75 to the -- for the milk it's receiving; is that fair?

13 A. It would -- yeah, in simplistic terms, because you
14 have to consider the butterfat and the other solids which
15 go into the calculation to get that. Assuming they got
16 \$1.75, that would translate into some equivalency. And
17 for simple sakes, you divide it by 10.1 based on the yield
18 factor, and that's what you get. It is certainly a lot
19 more complicated in component pricing because then it
20 depends on what protein level you get, what butterfat,
21 etcetera, etcetera --

22 Q. And I --

23 A. -- in the yield.

24 Q. But you do understand the Federal Order system to
25 know that -- with greater precision perhaps than my
26 simplistic, simplified hypothetical would provide, the
27 concept is that that plant is, under the scenario I have
28 set up, entitled to hold on to the \$0.25 that represents



1 the Make Allowance, and the rest is required to be paid to
2 farmers for the milk, correct?

3 A. Correct.

4 Q. Okay. So let's assume that we are in a month
5 where I have described to you what -- the market price for
6 barrels is \$2. Let's assume in that same month the market
7 price for block cheese is \$2.10, correct?

8 A. Correct.

9 Q. And, in fact, you have argued that that spread is
10 a realistic spread sometimes, correct?

11 A. Correct.

12 Q. And, indeed, under that scenario, the amount of
13 milk that has -- strike that.

14 Under that scenario, the amount that the
15 manufacturer has to pay its farmers, if the price were
16 being set for formula purposes based solely upon the block
17 price, the price that the manufacturer would have to pay
18 its farmers is \$1.85, correct?

19 A. My math would be different than that.

20 Q. Well, we're talking -- you want to -- okay. So --

21 A. If I can take your same example. If the block
22 market is 2.10 and the barrel market is \$2, and so the --
23 and using an approximately 50/50 weight, that would give
24 an average value for simplistic purposes of \$2.05 --

25 Q. Okay.

26 A. -- less the \$0.25 Make Allowance, would give
27 \$1.80, that would supposedly need to go back to the
28 farmer.



1 Q. Okay.

2 A. There's many other calculations that need to go in
3 there, but for our discussion purposes, I would say the
4 number is \$1.80.

5 Q. Okay. And I'll actually -- okay. I'll accept
6 that.

7 So under the current scenario, because we're
8 blending under the current regulations the barrel price
9 and the block price 50/50, we actually in the real world
10 start with \$2.05, subtracting the 25% Make Allowance, and
11 the pay obligation is \$1.80 for the barrel plant, correct?

12 A. Correct.

13 Q. Okay. But your complaint is that you think that
14 the block price over time is lower -- is -- start that
15 question again.

16 Your view is that over time the block price is, or
17 at least has been in recent years, higher than the barrel
18 price, correct?

19 A. It has extreme variability to it. But overall,
20 block prices have consistently been out of their
21 historical norm, higher than barrel prices in the last six
22 years.

23 Q. Okay. And so you are proposing a scenario as
24 Proposal 3, in which in every month where the barrel price
25 exceeds the block price, that a block manufacturer is not
26 able to cover its cost of manufacture because it's being
27 required to pay for its milk as if the amount it is
28 receiving for its cheese is the block price when, in fact,



1 what it's receiving is less, correct?

2 A. Incorrect. Because your calculation uses the
3 theoretical theory of blending. No matter what, whether
4 it's a private or a cooperative, they have always gotten
5 1.75 for that cheese, always. Just because the market
6 moved, it's not going to change what producers get at any
7 point. It's going to change whether they pool or depool
8 their milk. Overall, the industries would be healthier
9 and better without the barrel market being included as a
10 synthetic call for the 40-pound block.

11 Q. Well, I'm talking about what the minimum pay
12 obligation is by the cheese company, and I thought we went
13 through that and you agreed with me that the obligation
14 for the cheese company is under the scenario where the
15 market price for barrels --

16 A. The only --

17 Q. -- is \$2, and the market price for blocks is 2.10.
18 The formula averages them, treats the market price at
19 \$2.05, subtracts the \$0.25 Make Allowance, and therefore,
20 the pay obligation of that scenario is \$1.80, right?

21 A. But the reality is, is they only got \$1.75.

22 Q. The processor only gets \$1.75?

23 A. Absolutely.

24 Q. In terms of what the processor has to pay?

25 A. What the processor has to pay is irrespective of
26 what the Federal Order is. The processor only received
27 \$1.75 for the -- the \$2 less the .25 equivalency. Period.
28 That's all they have available to pay for milk.



1 Q. Exactly. That's the problem, isn't it, that they
2 only -- that they --

3 A. You are correct.

4 Q. -- that they --

5 A. They are undervaluing barrels inappropriately. So
6 you are correct.

7 Q. No, they are -- you are requiring the barrel
8 manufacturer to pay, under this scenario, a dollar --
9 well, under your scenario where the price would now be
10 \$2.10, right, because we're going to use the barrels as
11 the reference price solely, correct?

12 A. Correct.

13 Q. Okay. So we've got \$2.10 as the reference price,
14 \$0.25 as the -- as the Make Allowance. And so the pay
15 obligation for a block plant under that scenario is \$1.85,
16 correct?

17 A. Not under a block plant. Under a barrel plant if
18 they choose to pool.

19 Q. Yes. And -- and --

20 A. Yeah.

21 Q. Sure. And if they choose to pool --

22 A. But -- but the --

23 Q. If they choose to pool, they are paying \$1.85 for
24 their milk, meaning they only have \$0.15 left over to
25 cover their cost of manufacture, even though their cost to
26 manufacture is actually \$0.25. Isn't that just the very
27 simple explanation of how the system works?

28 A. You -- you are wrong because the barrel



1 manufacturer only got \$1.75. The only money that
2 exchanged their hands was \$1.75, assuming a \$0.25
3 Make Allowance.

4 Q. They are paying money, they are not getting money,
5 right?

6 A. The -- the problem -- if you had dollar bills in
7 front of you, if you are selling barrel cheese and you
8 make a million dollars on it, okay, and assume it is a
9 million dollars, your Make Allowance is \$250,000. Okay?
10 You only have \$750,000 to pay for that milk.

11 The other question is, it's never going to change.
12 It's always going to be that 750. What's going to change
13 is whether they pool or not pool within the Federal Order
14 system. It doesn't change -- until the industry changes
15 to price off of protein, off of one protein price, the
16 barrel manufacturer continues to not gain any value. They
17 are continuously behind, and the producers don't gain any
18 value on the barrel manufacturers.

19 Q. Aren't they better off by a nickel under the
20 current scenario --

21 A. Absolutely not.

22 Q. The minimum -- you are saying the minimum price
23 obligation has not gone up by a nickel?

24 A. No, it actually -- it has no impact to the
25 producer price, at all.

26 Q. I'm not asking to the producer price. I'm asking
27 what the manufacturer has to pay.

28 A. I am not concerned about the processor. I'm



1 concerned about what producers make.

2 Q. All right. Well, I'm -- I may -- maybe the --

3 A. There's \$2 billion that processors have gotten
4 from producers that -- in the last six years.

5 Q. But -- and if you change that, block manufacturers
6 are going to be paid a price -- strike that.

7 The obligation of block manufacturers will go up
8 to -- so that the amount it has to pay exceeds what it
9 needs to pay that and cover its costs. Isn't that just
10 the basics of the Federal Order system?

11 A. Currently, barrel manufacturers, because the
12 cheese has been included, have been subsidizing cheese
13 that's been priced off of the block market, as it goes
14 onto the Federal Order system, to the tune of \$2 billion.

15 Q. Isn't -- when the -- when the block price --
16 strike that.

17 When the barrel price is lower than the block
18 price -- strike that.

19 Do you agree that blocks provide a market-clearing
20 function today?

21 A. One of many products, correct.

22 Q. Well, it's a 1.2 billion pound contributor to
23 that, correct?

24 A. You said blocks, and so --

25 Q. If I said "blocks," once again, you have corrected
26 my mistake, which I appreciate.

27 A. I'm listening very closely.

28 Q. And I do not -- I do not question that whatsoever.



1 500-pound barrels provide a market-clearing
2 function, part of the time?

3 A. They are a part of the market that helps clear, as
4 many other products do as well.

5 Q. Okay. Now, you, on the first page of your
6 testimony here in Exhibit 119, say that the 500-pound
7 barrel cheese price incorporated adjustments to get to a
8 synthetic 40-pound block cheddar cheese price.

9 Do you see that?

10 A. Yes.

11 Q. The word "synthetic" is yours, I take it?

12 A. I actually have been talking to others and used
13 that as a term.

14 Q. Just -- do you know whether that term was used by
15 USDA when, in fact, it adopted order reform in 2000?

16 A. I could not confirm that.

17 Q. Were you -- were you personally involved in the
18 order reform effort back in 1998?

19 A. No.

20 Q. Or 1997, I think it even started?

21 A. No.

22 Q. Okay. Have you -- have you gone back and read the
23 USDA decision adopting the new reformed program, the
24 April -- I think it is April 4, 1999, or maybe it is
25 April 2, 1999, decision?

26 A. No.

27 Q. And don't quote me on the date. It is
28 approximately right.



1 I mean, do you know whether, in fact, that
2 decision in terms of reconciling 500-pound barrels and
3 40-pound blocks was focused entirely on the difference in
4 the cost of manufacture which it attributed entirely to
5 packaging costs?

6 A. I -- I cannot speak in one direction or another.
7 I rely on the information Dr. Peter Vitaliano provided.

8 Q. I mean, there is a \$0.03 adjustment between the
9 two in the current order, correct?

10 A. Correct.

11 Q. Do you know whether that \$0.03 was described by
12 USDA as entirely based upon differences in packaging costs
13 and nothing to do with differences in prices for selling
14 the two products?

15 A. I have no knowledge one way or the other.

16 MR. ROSENBAUM: If I could have one minute, your
17 Honor.

18 Your Honor, if I could have an indulgence. I am
19 having a mechanical problem on information I need for my
20 last -- my next question, and we've been going for a
21 while. Could we take our break, and then I can come back
22 and ask --

23 THE COURT: Yes, I think so.

24 Ten minutes. Let's come back at five of.

25 MR. ROSENBAUM: Thank you, your Honor.

26 (Whereupon, a break was taken.)

27 THE COURT: Let's come to order. Back on the
28 record.



1 BY MR. ROSENBAUM:

2 Q. On page 2 of your written statement, which is here
3 in Exhibit 119, you state that -- in the second paragraph,
4 and I'm just going to quote part of the sentence:

5 "500-pound barrel cheddar cheese is singularly focused on
6 process cheese, a market driven by a few processors and
7 purchasers."

8 Do you see that?

9 A. Yes.

10 Q. So I'm going to list some companies and ask you
11 whether or not they are, in fact, processors of 500-pound
12 barrels. Okay?

13 A. I'll do my best.

14 Q. Okay. Ellsworth Cooperative Creamery?

15 A. That one, I do know, yes.

16 Q. Okay. AMPI?

17 A. Yes.

18 Q. Which is Associated Milk Producers, correct?

19 A. Correct.

20 Q. First District Association?

21 A. Yes.

22 Q. Glanbia Foods?

23 A. Unknown.

24 Q. You don't know?

25 A. I believe they do, but I don't know for a
26 certainty. I believe that they have the ability to switch
27 in and out of the market.

28 Q. Agropur?



1 A. I do believe they have the ability to produce
2 some.

3 Q. Greenwood Milk Products?

4 A. They actually have converted their plant as of
5 September 1st to a butter manufacturing plant.

6 Q. Hilmar Cheese?

7 A. I believe they have the ability.

8 Q. Okay. Lactalis?

9 A. I believe they have the ability.

10 Q. Land O'Lakes?

11 A. Yes.

12 Q. Wisconsin Whey Products?

13 A. Wisconsin Whey Protein Specialties, yes.

14 Q. Okay. And when you say "they have the ability,"
15 which you have said for some of these plants, do you know
16 that, in fact, they use that ability and do actually make
17 500-pound barrels?

18 A. On occasion. They are not always readily
19 available on the market.

20 Q. So I'm counting ten companies -- no, you -- I
21 correct that. One of them you took off my list. So I'm
22 counting nine companies that make barrels, 500-pound
23 barrels, either some of the time or all of the time,
24 correct?

25 A. Correct.

26 Q. Now, on page 5, I know Mr. English asked you a
27 little bit about this, but you described the retail market
28 for processed cheese, which is the product that is most



1 commonly made from 500-pound barrels, correct?

2 A. Correct.

3 Q. And you indicated that a certain percentage went
4 to the retail market, and the remainder, which is the
5 bulk, goes to food service, correct?

6 A. Correct.

7 Q. Is -- is -- are you suggesting that that is
8 somehow a less legitimate aspect of the commercial market
9 for cheese that should be discounted by USDA for some
10 reason?

11 A. No.

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

13 THE COURT: Further cross? Other than AMS?

14 Seeing none, AMS.

15 CROSS-EXAMINATION

16 BY MS. TAYLOR:

17 Q. Good morning.

18 A. Good morning.

19 Q. How are you today?

20 A. A little nervous, to be honest.

21 Q. It is almost over. Thanks for testifying today.

22 A. Thank you.

23 Q. I'm going to try to work through this logically.
24 And I'm going to start with a really easy question because
25 I have never seen this term used before, and so I got to
26 ask.

27 What is cheese in horns?

28 A. It's a different shape. Horn cheese is -- you see



1 it in the delis. And they come in either four-, five- or
2 six-inch diameter, and they are generally around 21 inches
3 or longer.

4 Q. I never knew that was called horns.

5 A. A horn.

6 That is a good, easy question. Keep them coming.
7 I like where this is going.

8 Q. I have to go home and use that somewhere in my --
9 on my weekend.

10 Okay. A few times in your testimony you used the
11 phrase 500-pound ungraded USDA barrel cheddar cheese. And
12 I don't -- I think reportable barrels under NDPSR have to
13 be at least Wisconsin State graded or at least meet USDA
14 extra grade standards. So I'm just trying to understand
15 why you put ungraded in there. Does just that mean they
16 don't actually have to be graded?

17 A. That is correct.

18 Q. Okay.

19 A. And when you look into the standards on 500-pound
20 barrels, it is very unique on how they word the USDA extra
21 grade. It's very loose on standards.

22 Q. Okay.

23 A. And just so you know, further, there's only two
24 plants that I'm aware of that meets the USDA -- the
25 Wisconsin branded on barrels anymore because there's only
26 two of us left.

27 Q. Okay. On page 2, you talk about, you know -- and
28 your whole testimony is talking about the long-term fix to



1 what you all, Ellsworth and National Milk, considers a
2 disorderly marketing condition is to price protein off a
3 single block market.

4 Does that mean you wouldn't want to see 640s added
5 to the survey, or will there be somebody testifying in
6 regard to any other proposals we have before us on adding
7 additional commodities?

8 A. My -- my position is we should have one product
9 that prices cheese protein in Class III. Adding anything
10 else will add confusion. How well intended it will be, it
11 will add confusion further, 10, 15, 25 years later like we
12 are today.

13 Q. Okay. And at the bottom of page 2 you talk about
14 how prices have been different since 2017. And I know
15 Ms. Hancock asked you some -- a question about trying to
16 piece out the reasons for that change, and I'm not sure I
17 caught all of those.

18 I think I heard one, there's a change in the type
19 of cheese being sold on the CME in which you talked about
20 was just the functionality, that people buying cheese on
21 the CME don't necessarily know how it will function in
22 there when they use it?

23 A. Correct. Which goes back to my earlier statement
24 on the exhibit that was presented on cheese being sold on
25 the -- you know, extra grade barrels, that that standard
26 is so wide, the advancement in cheese-making technology
27 has allowed cheese to be processed differently and quicker
28 in different settings. So we have a really robust dairy



1 industry that can be quite creative, but because of the
2 CME standards that doesn't necessarily equate to the same
3 product that Ellsworth would make or others in the Upper
4 Midwest, equal to the same cheeses being sold on the
5 cheese exchange.

6 Q. Okay. And then another reason you talked about
7 was the transportation allowance in the CME, or CME
8 prices?

9 A. Yes, which is a little bit out of the realm of the
10 Federal Milk Marketing Order, but it does have an
11 implication to pricing, in that when you see the trucking
12 cost from out west, i.e., I'll just say Idaho, to
13 Wisconsin where the cheese processing has been, the cost
14 of transportation has steadily gone up, but the change or
15 the allowances within the CME have not changed, I think,
16 since they were established. But I don't know for sure,
17 but it's considerably a long time. So in our task force
18 group we have had many discussions on how that creates an
19 imbalance on the cheese market to the actual sale of the
20 cheese.

21 Q. So what you sell it for on the market isn't
22 ultimately what you get?

23 A. Well, it becomes an advantage to buy it off the
24 CME because of they have the delivery point in Green Bay,
25 Wisconsin.

26 Q. Right. So if you have to ship it somewhere else,
27 it will cost you?

28 A. Yeah.



1 Q. Yeah.

2 You mentioned something about risk, and I didn't
3 quite get that one.

4 A. So what's interesting is, is many financial
5 products have been developed since the component pricing
6 has been installed. Every single component value, with
7 the exception of barrel, has a counterability to lay off
8 risk. There is a dry whey futures market. There is now a
9 block market after several years of only having all
10 cheese. There is a butter market. But barrels are --
11 have -- do not have a futures market. That adds extra
12 basis risk to producers and, by extension, processors,
13 because we are an extension of the producer.

14 Q. Okay. And then the last reason I missed,
15 something about how the CME product is sold but -- does
16 that ring a bell? I might have misheard.

17 A. I think that's with the -- the standard of the
18 cheese.

19 Q. Okay.

20 A. It's a combination of the other ones as we have
21 talked about earlier.

22 Q. Okay. And then you further talk about, since
23 these changes we just discussed, the difference in prices
24 have led to disorderly marketing of milk in cheese
25 processing areas of the Federal Orders with barrel cheese
26 manufacturing.

27 Can you expand on that? Are you meaning, you
28 know, up where you are in Wisconsin, specific to Federal



1 Order areas with this processing?

2 A. Well, the previous list, most of those barrel
3 plants are in the Upper -- in Order 30, and those that
4 were also on the list were in -- the vast majority of them
5 were on unregulated areas. I don't know about the
6 California plants.

7 So it puts our producers at a distinct
8 disadvantage because we only get so many dollars in that
9 we can pay our producers. We don't have the ability to
10 create a loss because it is their -- it's all their money.
11 And if we're not getting that value from the marketplace,
12 they are getting less value than what the Class III
13 minimum price would be, so we either depool or pay less to
14 our producers.

15 Q. Okay. And in comparison to what barrel
16 manufacturers can do in an unregulated, if they are not
17 regulated?

18 A. If they are not regulated, they can pay whatever
19 they want. So when our farmers compare to prices when
20 people are pricing their product off of a block market,
21 they have the ability or there's some residual value based
22 on how they buy their product.

23 Q. And so the discrepancy between how these
24 producers -- different sets of producers are paid is what
25 you would consider disorderly?

26 A. Correct.

27 Q. Okay. And you -- well, I want to move to Table 3
28 on the table -- Table 1 on page 3, excuse me.



1 And you went through this, and I think I caught
2 most of it, but I would like to just review it one more
3 time.

4 A. Table 3.

5 Q. Table 1, excuse me, on page 3.

6 So if you could just go through that one more time
7 to make sure we're clear on what each column represents.

8 A. So the first one is the average monthly barrel.
9 Then the average monthly --

10 Q. Is that the NDPSR price?

11 A. No. CME.

12 Q. Okay.

13 A. Likewise for block. So the -- obviously the
14 spread is the math.

15 Q. Uh-huh.

16 A. The number of pounds of cheese that we made that
17 were attributed to the barrel market. Next one would be
18 our producer pounds.

19 Q. In that cheese?

20 A. No. Our producer pounds. Because not all our
21 cheese goes into Class III. The impact would be greater.
22 But we do sell milk to other processors from time to time.

23 Q. So this is all of Ellsworth?

24 A. All of Ellsworth producer pounds. Not cheese --
25 not pounds allocated to cheese. All producer pounds.

26 Q. Okay.

27 A. And then the math is basically the spread. And
28 then the \$0.03 times the pounds of cheese produced gets



1 the value that was lost. And then that negative million
2 dollars is divided by the producer pounds.

3 Q. I think I just got lost. So --

4 A. The \$3 million is divided across all producers,
5 all producer milk.

6 Q. Okay. And the producer pounds is in millions as
7 well?

8 A. Correct.

9 Q. And that's not just pooled pounds, that's all
10 pounds?

11 A. That's all pounds.

12 Q. So in summary, this table, you have calculated
13 that the spread has resulted in receiving \$0.84 less per
14 hundredweight on average since 2017?

15 A. Through the month of April. It varies every
16 month. But that is correct.

17 Q. But on average in 2017 through April of 2023 --

18 A. It's --

19 Q. -- that's been the impact?

20 A. Correct.

21 Q. Of having barrels on the -- in the price formulas?

22 A. As having the spread. It is not the impact to
23 having it in there. It's the spread.

24 Q. Okay. Okay.

25 On -- at the bottom of page 3, in the middle --
26 well, in the middle of that paragraph. And I'll quote:
27 "With the inclusion of barrel cheese within the Class III
28 pricing formula, this results in having two separate



1 products price the same protein value that is being used
2 to effectively negate the intent of Federal Orders. The
3 industry has changed, and an adjusted barrel price is no
4 longer a good substitute for pricing block cheese."

5 When you talk about "the industry has changed," is
6 that what you -- are you talking about what we
7 discussed --

8 A. Yes.

9 Q. -- on the 2017 changes?

10 A. Correct.

11 Q. And I think in your testimony you talked about why
12 the blocks and barrels are not substitutes.

13 So would you no longer consider barrel cheese a
14 commodity cheese?

15 A. It would -- it would still be a commodity cheese,
16 like many other cheeses are commodity. I would also
17 consider bulk swiss a commodity or even, you know, loaves
18 of mozzarella as a block -- as a commodity product. It
19 just so happens that they have a market on the CME that
20 they have a reference to.

21 Q. And is it your intention that -- or it's your
22 opinion, though, that barrels are no longer a
23 market-clearing product? That's not where the milk
24 necessarily goes as a last resort?

25 A. I actually take offense at that a little bit, I'm
26 sorry, because there was earlier testimony that blocks are
27 nothing more than a market-clearing product, and I
28 disagree with that. We sell out our production ahead of



1 time, which would therefore indicate that it's not
2 market-clearing.

3 My contention is, is that trying to find a
4 Class III protein price using the block as -- and then --
5 price, and then adding a calculated value to add more
6 barrels to get to the block price is no longer
7 appropriate. The industry standard, in my opinion, should
8 be block cheddar cheese, and that should be used to price
9 protein levels.

10 Q. Okay. At the top of page 5, and this is on the
11 section -- well, you discuss the \$0.84 again, and at the
12 end of that paragraph that's on the top of page 5, you
13 say, "Long term the lack of return will make barrel cheese
14 production economically obsolete" in Federal Orders.

15 Can you explain what you mean by that?

16 A. We're going to go out of business. We're bleeding
17 red ink.

18 Q. Because you are paying a Class -- is it because
19 you are paying a Class III price that's higher than what
20 you get in the market?

21 A. More simply, milk will find its highest value use,
22 and if we can't compete with other manufacturers that can
23 pay more, our milk supply will leave, and therefore, we
24 won't be able to produce product. Or we'll have to
25 convert our plants to something else. We have seen a
26 dramatic reduction in the number of barrel cheese plants.
27 I.e., just earlier discussed, Greenwood just converted
28 their plant from a barrel plant to a Class IV plant. And



1 I believe we'll see more of that. Not to Class IV, just
2 conversion of plants, or they will go out of business.

3 Q. Right. Okay.

4 In that page in the middle, you say, "According to
5 the USDA in 2020, 2.399 billion pounds of processed cheese
6 was produced."

7 We are unable to verify that number. Where did
8 that number come from?

9 A. It's a USDA website where you go through and you
10 list it. It is unique in that you have to look for
11 processed cheese. It also includes processed cheese,
12 cheese spread, and cheese food.

13 Q. Okay.

14 A. It -- it is in there. You guys got the numbers.
15 But it's -- you got to look beyond natural cheese.
16 Because what's interesting is that 2.39 billion, if we can
17 round it to 2.4 billion, is not included in the total
18 cheese production. I had to verify those numbers twice.
19 Because we produce 13 billion pounds of cheese, and, oh,
20 by the way, we do 2.4 billion pounds of processed cheese.
21 They are not totaled in there, they are separate.

22 Q. Okay. I'm sure my data people back here will
23 figure that all out for us.

24 A. It is interesting because you have to look for it.
25 It's not part of natural cheese production.

26 Q. Right.

27 A. It is its -- its own category.

28 Q. Right. I agree with that. We were just looking



1 for that number and weren't able to find it. But I'm sure
2 they are going to go back and look based on this
3 conversation?

4 And then you also talk about the dairy farmers of
5 Wisconsin estimate that retail processed cheese sales in
6 2020 are 165.1 million pounds.

7 Do you know how they came up with that estimate?

8 A. I e-mailed them, asked their data department to
9 tell me how much retail cheese sales there were in
10 processed cheese, and they gave me the last three years.
11 And so I wanted to compare that to where we -- so I had
12 the same year reference. But, no, I do not know.

13 Q. But that's supposed to be a U.S. -- an all-U.S.
14 estimate?

15 A. I'm not sure where they got their estimate from.

16 Q. Okay. I wanted you to walk us through again
17 Tables 3 and 4, at the top -- and 5, I guess, because I
18 think you used those tables to get to Table 5 to come to
19 your \$0.90. I just wanted you to walk us through how
20 those work together and how you did the math.

21 A. So in Table 3, I used the reference to Table 1, I
22 used the average barrel price of 1.72 and the average
23 block price of \$2. So that's where those numbers come
24 forward in Table 3.

25 Q. From Table 1?

26 A. From Table 1.

27 Q. Okay.

28 A. And then I used the numbers from Table 2 to get



1 the next percentages. And then I obviously multiplied
2 those out. And then I came up with the estimated average
3 of that percentage based on the value that we had, so --
4 then I came up with a percentage of what they were to
5 equal that last number of \$0.29, so -- does that make
6 sense?

7 Q. No.

8 A. Okay. So 75 --

9 Q. I got you to the \$0.75.

10 A. Okay.

11 Q. Okay.

12 A. So -- and then take the estimated average of 17%,
13 which is again referenced in Table 2.

14 Q. Okay.

15 A. And then times that should equal 29. I don't have
16 a calculator to --

17 Q. Okay. So it is \$0.75 times your 17% to equal
18 \$0.29?

19 A. Correct.

20 Q. Okay.

21 A. And then the next line would do the same.

22 Q. And that's per pound?

23 A. Correct.

24 Q. Okay. So you added \$0.29 to \$1.66 to get the
25 1.95?

26 A. Correct.

27 Q. What is the 1.95 supposed to represent?

28 A. So if we used the weighted average of barrels, we



1 would have the calculated protein price for Class III, use
2 a different number. We are currently using the simplistic
3 table -- because it is more complicated than this -- using
4 that same percentages, the simple calculation was in the
5 year 2020, we used \$1.88 to base protein for Class III.
6 If we adjust that to the amount of cheese that was
7 produced for barrels in the amount that is estimated to be
8 used or priced off of blocks, we would come up with a
9 different number. It would actually be higher. If we
10 used no weighting, we would come up with a \$2 price, but
11 by weighting it, we come up with \$1.95.

12 Q. So what you are saying, if you weighted it, the
13 Class III price would be higher, but you are advocating
14 not weighting it --

15 (Court Reporter clarification.)

16 BY MS. TAYLOR:

17 Q. So am I understanding this correctly, if we
18 reweighted it according to the weight you are assuming
19 under here, you would end up at, in your simple example,
20 \$1.95?

21 A. Correct.

22 Q. You are advocating not weighting it at all and
23 just using blocks, and you would end up with \$2?

24 A. Correct.

25 Q. Okay. So -- okay.

26 And then what's Table 4 show us?

27 A. It's my simple way to come up with what the
28 Class III price would be. I used the price of cheese,



1 which is bringing that number forward, 37.5 cents for whey
2 and butter, because they impact how you calculate
3 Class III. So the top section uses the existing simple
4 formula to come up with what milk costs would be. When
5 you run through those formulas less the Make Allowance,
6 you come up with 17.8139 per hundredweight. I take the
7 same formula and run it through with a different cheese
8 price going out to four decimals, and I come up with
9 18.7168, which is exactly what you would expect, that if
10 you use a higher cheese price, you will come up with a
11 higher Class III price.

12 Q. Where did the \$1.86 come from?

13 A. I believe that was the actual average. And if I
14 look back, it should probably have been \$1.88.

15 Q. Okay. So under your simple calculation -- hold on
16 a second.

17 Sorry. Okay. I have some less weedy questions
18 for you.

19 A. Good.

20 Q. Sorry. This is our only opportunity to ask
21 questions on the math, or else we get back and think we
22 have no idea what we should be looking at.

23 A. It is a little nerve-racking. It's like, oh, my
24 God, I missed \$0.02 there.

25 Q. No problem?

26 So you -- Ellsworth produces barrels.

27 And did I hear they also produce blocks? Did I
28 hear that correctly?



1 A. Yes.

2 Q. Okay. So can you share with us any measures you
3 have taken or how Ellsworth as a cooperative has -- what
4 you have been -- what you have done to remain financially
5 viable due to the spread between blocks and barrels?

6 A. Well, first and foremost, we just built a brand
7 new plant that will make blocks. It does make blocks.
8 It's a pretty significant investment for the Ellsworth
9 Cooperative Creamery to do that. We have diversified into
10 other value-added segments, and we also purchased a
11 processed cheese plant. So we have totally diversified --
12 in the 15 years that I have been there, we moved from
13 strictly barrels and -- and sweet dried whey to multiple
14 different products.

15 I believe -- I did a presentation for my members
16 the other day. I think we went from approximately 15
17 SKUs, standard stock keeping units, to over 380.

18 Q. Okay. So I realize that your testimony here has
19 been mostly about wearing your producer hat for Ellsworth,
20 not necessarily your manufacturing handler hat for
21 Ellsworth.

22 A. It's hard to wear both.

23 Q. It is.

24 But a question is, if a barrel plant today can't
25 pay the Class III price because blocks are in it and it is
26 higher than what they get out of the market, how will
27 removing the barrel survey improve its abilities to pay
28 Class III?



1 A. Because the industry is locked in the concept that
2 that's what we have. When we deal with the industry, and
3 I have for many years, different task forces brought
4 together, no one can move off the concept that barrel
5 price is used in the Class III formula, so therefore, it
6 should be included in how we price and process other
7 products.

8 As I said in my testimony, I fully recognize that
9 there will be a transfer period. But this is the only
10 commodity price that has two separate units to price, and
11 that has caused disruption in how plants process and move
12 and have the ability to pay producers.

13 Q. So --

14 A. It will not be an overnight thing to fix the
15 industry.

16 Q. So eventually, then, what I'm hearing, you think
17 the industry will evolve, barrels will be priced plus or
18 minus off of blocks --

19 A. Yes.

20 Q. -- and eventually people will figure it out, and
21 then perhaps expect that that barrel cheese might not be
22 pooled?

23 A. What was the last part?

24 Q. I mean, what would be the incentive to pool?

25 A. Pool or pull?

26 Q. Pool. I'm from Maryland. They say I have an
27 accent, even though I don't hear it. My nieces will be
28 finding this funny that you asked me this question.



1 A. The question on whether to pool milk in the Upper
2 Order 30 where most barrel plants exist is not related
3 to -- solely related to whether they make blocks or
4 barrels. There are other factors. And I greatly
5 appreciate the USDA Federal Milk Marketing Order putting
6 on an estimate of what the pool is. That will determine
7 whether we pool or not. There are so many other factors
8 determining whether that milk will be pooled. What I am
9 most concerned about is the \$2 billion that have not been
10 distributed producers because of the calculation that has
11 been in effect for 25 years.

12 Q. And so then it's not necessary the pool draw that
13 makes a big part of your decision-making on whether to
14 pool that milk or not? There's a bunch of other factors?

15 A. There are many factors, correct.

16 Q. Okay. If I can ask another question in regards to
17 your producers. I think in the beginning of your
18 statement you said, you have 220 member-owners?

19 A. Correct.

20 Q. Can you talk about your membership, about the size
21 and --

22 A. I was waiting for that question, because I know
23 you're trying to distinguish what the size is.

24 Q. Yes.

25 A. And out of the 220 members -- since I wrote this,
26 we're down to about 216, so we have lost a few members --
27 I have calculated that four farms would exceed the --
28 would be on the large farm category. So approximately the



1 other 200 farms would be considered small farms.

2 Q. Okay. And do you know a little bit about -- if
3 your members utilize risk management tools?

4 A. They use all kinds of risk management tools. And
5 one of the distinct problems with the risk management
6 tools as they are today is they cannot protect their basis
7 because of the difference between blocks and barrels. So
8 why they think they are perfectly hedged and have all
9 their -- their income relatively secure, the basis changes
10 make it very difficult for them to secure adequate or
11 estimated revenue because of that large swing in blocks
12 and barrels. That basis is huge for our producers.

13 Q. Okay. One last question, I think on the last
14 page. You talk about how -- you mention -- oh, there's a
15 sentence that reads: "Having a single market provides the
16 needed tools to processors and producers alike."

17 Could you expand on what the needed tools are you
18 are talking about there?

19 A. Well, I have already started discussion with many
20 of my customers, and what's a unique aspect of going to a
21 single protein price market is they have the tools in the
22 futures market to know what they are going to pay for
23 processed cheese should the industry or -- start moving
24 towards having protein priced off of a single component.

25 So we have others that ask us, hey, can you give
26 me a fixed price for X, Y, or Z, whether it is barrel
27 cheese, cheese curds -- I forgot to mention cheese curds,
28 by the way, we do a lot of cheese curds -- I don't have



1 the ability to protect that because there's not a
2 reasonable way to protect where that range is going to
3 come in between blocks and barrels, with any degree of
4 certainty.

5 Q. Okay. Thank you.

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

8 THE COURT: Yes, Mr. Rosenbaum.

9 CROSS-EXAMINATION

10 BY MR. ROSENBAUM:

11 Q. Steve Rosenbaum for the International Dairy Foods
12 Association.

13 I want to follow up with some of AMS's questions
14 about your table. So if you could look at page 6 for me,
15 please.

16 So in Table 2, you have information with a heading
17 called -- or I should say a row called "NDPSR Blocks," and
18 you show that as 44% of the NDPSR.

19 Do you see that?

20 A. Yes.

21 Q. And then you have the next row being "NDPSR
22 Barrels," and you show that as being 56%.

23 Do you see that?

24 A. I do.

25 Q. Okay. Now, in the -- in Table 3, you have a row
26 called barrels, a row called blocks, and a column called
27 percent NDPSR, but the numbers there are the reverse of
28 the numbers in Table 2.



1 And my question is, is that just an error in the
2 table, or is that -- or is -- and if not an error, can you
3 explain?

4 A. It's an error I made. It should be reversed. I
5 apologize for that.

6 Q. Okay. And in the next column in Table 3 is called
7 "NDPSR," and you have 0.75.

8 Is that -- is that dollars --

9 A. Yes.

10 Q. -- that's \$0.75?

11 And then for blocks it is \$1.12, correct?

12 A. Correct.

13 Q. And then you have the next row is called spread.
14 And this -- you know, the simple math indicates to me,
15 with maybe a slight rounding, that the spread is adding
16 the entry for barrels and the entry for blocks, which is
17 not at least in my common understanding what spread would
18 normally be, which normally a spread is the difference
19 between two things.

20 So can you tell me, is that an error, or if not,
21 can you explain what it is you mean when you use the word
22 "spread" in this context?

23 A. Well, there's actually two parts to that.

24 The first one is just the difference, you know, \$2
25 versus \$1.72 is \$0.28.

26 Q. Right.

27 A. And then the next column, it should be the total.

28 Q. So you mean \$1.88 should be called the total and



1 not the spread?

2 A. Correct.

3 Q. And in that context, what does \$1.88 represent to
4 you?

5 A. It would be representing the approximate value of
6 the cheese value to be used to calculate Class III
7 protein.

8 Q. Okay. And the fact that you -- you accidentally
9 flipped those numbers, the 44% and 56%, in Table 3, I
10 guess my question is, does that mean that the numbers in
11 your column "NDPSR" are incorrect?

12 A. You are correct. I would have to recalculate
13 that.

14 Q. Okay. So the number -- so the number for
15 barrels -- let me be more specific. Start that question
16 again.

17 In the row in Table 3 called "Barrels," with the
18 column "NDPSR," that should be whatever the result is of
19 1.72, or \$1.72 -- I'm going to have to start that again.
20 I messed that up.

21 In Table 3 in the row "Barrels," if we want to
22 figure out what number should be in the column "NDPSR," we
23 should multiply \$1.72 times 56%, correct?

24 A. Correct.

25 Q. And similarly, in the row for "Blocks," in order
26 to figure out what should appear in the column "NDPSR," we
27 should multiply \$2 times 44%, correct?

28 A. Correct.



1 Q. And -- and then in the row that's called "Spread,"
2 you have indicated that the figure in the first column,
3 which indicates \$0.28, that -- that would remain the same,
4 correct?

5 A. The first number times 17.

6 Q. I'm sorry, I asked you a question while you were
7 doing math.

8 A. Yeah, I'm just double checking.

9 Q. I think I asked you a question that's different
10 than the math you were doing, so let me just -- so I mean,
11 if you're going to provide corrected numbers for that
12 "NDPSR" column, then why don't you go ahead and do that.

13 A. I had it all perfectly calculated.

14 The first column should be .53. Be 1.72 times 56%
15 equals .53. \$2 times 44% would be .88.

16 Q. All right. I think there's something wrong there
17 because you -- you're multiplying barrels now by a higher
18 percentage, and yet you are coming up with a lower number.
19 I think it's got to become a higher number.

20 \$1.72 times 56%. It's got to be higher than
21 \$0.75, just doing the math in my head.

22 A. You are correct, .9632.

23 Q. I'm sorry, I didn't catch that.

24 A. .9632.

25 Q. Okay. So the number that appears in the row for
26 "Barrels" under "NDPSR" should be -- I'm sorry, just say
27 it one more time.

28 A. .9632.



1 Q. .96. So that's 96.32 cents?

2 A. Correct.

3 Q. And then four blocks, what should the number be in
4 the "NDPSR" column?

5 A. .88. .8800.

6 Q. Okay. All right. And then does that -- that
7 seems -- sorry.

8 A. That actually widens the spread.

9 Q. What is -- well --

10 A. So I came up with a total of 1.8432.

11 Q. Yeah. Okay. It is lower. It is not -- it is
12 lower. It's 1.84 rather than 1.88, correct?

13 A. That is correct.

14 Q. Okay. But spread in this context, that's not the
15 difference between the two, it is -- between barrels and
16 blocks, that's adding them together, correct?

17 A. Correct.

18 Q. And so as you said already, the term really isn't
19 spread, it's total for that, correct?

20 A. Correct.

21 Q. Okay. Now, you have -- and the next column is
22 called "Estimated Average," where you have 0.17 for
23 barrels and 0.83 for blocks.

24 And my initial question is, do -- do any of the
25 corrections of the errors that we have been discussing for
26 the last few minutes affect those numbers?

27 A. It doesn't appear so, no.

28 Q. And then you have an average, which is your last



1 column, which currently is \$0.29 for barrels, \$1.66 for
2 blocks, and a spread of \$1.95.

3 First of all, is the term "total" more correct
4 than "spread" in that context?

5 A. Correct.

6 Q. And then second, does correcting the errors that
7 we have corrected affect those numbers?

8 A. It -- it does slightly.

9 Q. Okay. Can you give us what the correct numbers
10 would be?

11 A. Well, the --

12 Q. I don't know how you calculated those numbers, so
13 I can't take you through a calculation.

14 A. So -- if you could repeat the question.

15 Q. I'm just trying to see -- given the fact that we
16 know that you flipped the 44% and 56%, the barrels should
17 have been 56%, the blocks should have been 44%, I'm trying
18 to figure out now that we know that error and you have
19 explained how that -- correcting that error, what the
20 number should be in the "NDPSR" column, I'm asking you
21 whether you can provide me corrected numbers for the
22 "Average" column.

23 A. The average on that column would still be the
24 same.

25 Q. That's -- okay.

26 So it would still be the \$0.29 for barrels, the
27 \$1.66 for blocks, and the total -- and the total, as you
28 said, which is more accurate than spread, would still be



1 \$1.95?

2 A. Correct.

3 Q. That's all I've got -- oh, no, sorry, that's not
4 all I have.

5 So do these things affect Table 4?

6 A. They do slightly.

7 Q. All right. And so -- so the price would -- that
8 appears in Table 4, there's a row called "Price," a
9 heading called "Cheese." You currently have \$1.86 in that
10 for the number -- for the sale that reflects the price in
11 cheese.

12 And that would be now \$1.84 rather than \$1.86
13 under your approach; is that right?

14 A. Correct.

15 Q. Okay. And that would affect -- so the net would
16 come down by \$0.02; is that right, in the row called "Net"
17 under "Cheese"?

18 A. Approximately.

19 Q. Okay. The yield, I presume, does not change; is
20 that -- that's a -- that's just a yield -- cheese yield
21 number or something?

22 A. Correct.

23 Q. Okay. And the hundredweight would change,
24 correct, because you are using a different net at that
25 point, right?

26 A. Correct.

27 Q. And what about the -- do the whey -- does the whey
28 column or the butter column get affected by these



1 corrections?

2 A. It does not.

3 Q. And -- okay. And then there's a -- what I have
4 been asking you is questions relating to the information
5 under the heading in Table 4, "Should Value Based on
6 Selling Price."

7 And now let me ask you, with respect to the second
8 heading in Table 4, "If based on only a percentage of
9 cheese the impact," do any of these numbers get affected
10 by the corrections that you have made?

11 A. They do not.

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

13 THE COURT: Mr. Cryan.

14 CROSS-EXAMINATION

15 BY DR. CRYAN:

16 Q. Good morning.

17 A. Good morning.

18 Q. I'm Roger Cryan for the American Farm Bureau
19 Federation.

20 Ms. Taylor asked some wonderful questions, and I
21 have some follow-up based on those questions and your
22 answers to those.

23 I appreciate your response and talking about these
24 cheeses of last resort, and I would like to ask you to
25 confirm that it is always the intent of cheese makers to
26 run their plants full?

27 A. Correct.

28 Q. Because it is too expensive to maintain idle



1 capacity because cheese capacity is expensive?

2 A. There's full, and then there's super full, so --

3 Q. Right. Right. But it is -- okay.

4 And I guess I also want to mention, I appreciate
5 that you are bringing cheese curds across the country,
6 even if they don't necessarily squeak by the time they get
7 to Washington, it is nice to have them.

8 Also, could you talk generally about -- since you
9 are speaking as a -- with your co-op hat on and you
10 brought up depooling, and you brought up basis, could
11 you -- could you talk about the impacts on your members
12 and on the co-op of depooling and negative PPDs, such as
13 the kind of chaos we had in 2020 and to a lesser degree in
14 other years?

15 A. Well, it is interesting as a manufacturing co-op,
16 I don't believe we're as affected as many others that have
17 a high Class I utilization. In the Order 30 we have a
18 very low Class I utilization. So depooling becomes a
19 necessary tool in order for survival of the co-op.

20 Q. Okay.

21 A. So without it, it would be detrimental.

22 Q. Okay. Any other thoughts on that, the impact on
23 farmers?

24 A. Because we're an extension of farmers, our job is
25 to make sure we get as much income as we can for them.

26 Q. Okay. And the negative PPDs, how does that affect
27 producers?

28 A. Well, obviously, it takes money away from them,



1 but at the end of the day, the co-op gets whatever money
2 in, less what it costs, all go back to the producer.

3 DR. CRYAN: Very good. Thank you very much.

4 THE COURT: Anything else before we get to
5 redirect? AMS doesn't have any.

6 Re-cross after that, re-cross?

7 Very good, Ms. Hancock, your witness.

8 MS. HANCOCK: Thank you, your Honor.

9 REDIRECT EXAMINATION

10 BY MS. HANCOCK:

11 Q. And thank you, Mr. Bauer, for providing the
12 on-the-fly calculations. I appreciate that.

13 I just have a couple of follow-up questions I want
14 to -- to chat about.

15 Let's see. For the other cheeses that are used in
16 processed cheese we talked about, whether it's
17 market-clearing or not, I'm curious to know that those
18 other cheeses -- not the barrel cheese, but the other
19 cheeses that Mr. English was talking with you about -- has
20 most of that sold already prior to you having -- or you
21 being able to use that in your processed cheese?

22 A. I would say the vast majority has already gone
23 through one sale. So therefore, it would not be --
24 either, one, it is not the type of cheese that would be
25 reported to AMS or, in addition, it would be a flat sale
26 of some sort. Generally there's some pre-arranged, but
27 it -- it's really cheese that is off -- does not meet the
28 standards, as they would, to package it in one form or



1 another.

2 Q. Okay. So if I'm understanding that correctly, it
3 means that if it's already been sold once, to the extent
4 that it was subject to a Federal Order price, it would
5 have already received that price the first time it was
6 sold?

7 A. That is correct.

8 Q. And so a secondary sale, do you have an
9 understanding about whether that would be subjected to the
10 Federal Order pricing?

11 A. Second order sales are not reported on AMS.

12 Q. Okay. This is just if somebody can capture some
13 additional value for this other cheese, they can have a
14 secondary resale market?

15 A. Correct.

16 Q. And does that just get sold under whatever market
17 prices are in effect at that time?

18 A. It could be whatever market. It could be flat
19 price. It could be relative to the barrel price or it
20 could be relative to the block price depending on the
21 manufacturer and how they want to purchase it. So it is
22 an individual basis contract.

23 Q. You were also asked about how -- or I think, if I
24 understood it correctly, you were asked about whether this
25 proposal, is it really just an out -- a consequence of
26 inadequate Make Allowances.

27 Do you remember that discussion?

28 A. I do.



1 Q. Would inadequate Make Allowances
2 disproportionately impact barrels versus blocks?

3 And maybe I can say it another way.

4 A. Yes, please.

5 Q. Yeah. Is there any reason to believe that an
6 inadequate Make Allowance would be to blame for the spread
7 between barrels and blocks?

8 A. It would be -- it would be hard to draw that
9 conclusion that -- that the spread is solely caused by an
10 inadequate Make Allowance.

11 Q. Okay. And I think you -- you conceded that it
12 could be a factor in there, but even if you changed
13 Make Allowances, in your opinion, would it remedy the
14 spread that we're seeing in the volatility -- or the
15 volatility of the spread between block and barrels?

16 A. No, it would not.

17 Q. Okay. And you also have now spent a good amount
18 of time talking about Tables 2 and 3 and the fact that you
19 had gone through all that calculation we just did with
20 Mr. Rosenbaum.

21 A. Yes.

22 Q. And you did receive a question about -- you know,
23 you used -- the example that you had there was based on
24 the 2020 numbers from Table 2, I believe; is that right?
25 From Table 1.

26 A. Correct.

27 Q. And we know that Table 1 shows 2020 had a higher
28 impact per hundredweight than some of the other years; is



1 that right?

2 A. That's correct.

3 Q. If you used the calculation with the other
4 numbers, do you still see the spread in the example that
5 you have performed in Tables 3 and 4?

6 A. For all years except 2022 where the spread
7 narrowed considerably --

8 Q. Okay. And in --

9 A. -- for half the year.

10 Q. Excuse me.

11 And in 2022, we see that that impact is actually a
12 positive number in Table -- in Table 1; is that right?

13 A. That is correct.

14 Q. And then in 2023, it -- so far, at least up until
15 April of 2023, the spread was considerably larger than
16 even what we saw in 2020; is that right?

17 A. That's correct.

18 Q. Okay. Thank you, Mr. Bauer. I appreciate your
19 time.

20 MS. HANCOCK: Your Honor, we would offer Exhibit
21 Number 119 into evidence.

22 THE COURT: Any objections?

23 Exhibit 119 is entered into the record.

24 (Thereafter, Exhibit Number 119 was received
25 into evidence.)

26 THE COURT: You are dismissed. Thank you. You
27 didn't seem nervous at all.

28 We were going to do lunch I think starting at



1 11:00 today. Let's go off the record.

2 (Whereupon, a luncheon break was taken.)

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1 FRIDAY, SEPTEMBER 1, 2023 - - AFTERNOON SESSION

2 THE COURT: Let's go on the record. We're back
3 from lunch and off into the virtual world.

4 Who wants to talk first? Who wants to --

5 MS. TAYLOR: I'll go, Judge.

6 THE COURT: Give a little introduction, I guess.

7 MS. TAYLOR: Thank you.

8 This is Erin Taylor from AMS. We're going to
9 start our virtual dairy farmer testimony via Zoom.

10 So, Josh, thank you for being our guinea pig and
11 helping us make this work. I don't think you will be able
12 to see us in the room, we haven't figured out how to make
13 that part work, but we can see you. So I will turn it
14 over to you to introduce yourself.

15 THE COURT: Or did we have --

16 MS. TAYLOR: Oh, I think we have some exhibits to
17 go on the record. So we'll let Mr. English introduce
18 those.

19 MR. ENGLISH: Good afternoon. This is Chip
20 English for the Milk Innovation Group. And we
21 presubmitted this morning and have provided copies to USDA
22 and the participants of what is labeled MIG Exhibit 6,
23 which is the testimony of Josh, and MIG Exhibit 7, which
24 is an attachment. And I would like to have them marked,
25 if possible, and then I'll get out of the way.

26 THE COURT: Yeah. I don't have open my list of
27 exhibits -- what's the next exhibit?

28 Okay. Let's mark MIG Exhibit 6, Exhibit 120 for



1 identification in the record.

2 (Thereafter, Exhibit Number 120 was marked
3 for identification.)

4 THE COURT: And Exhibit MIG Exhibit 7,
5 Exhibit 121.

6 (Thereafter, Exhibit Number 121 was marked
7 for identification.)

8 MR. ENGLISH: Thank you, your Honor. And I'll sit
9 down.

10 THE COURT: Okay. Mr. Tranel -- Ms. Hancock has
11 risen.

12 MS. HANCOCK: I didn't know if we were labeling
13 all of them right now.

14 THE COURT: Okay. Well, I'll take all the help in
15 the housekeeping that I can get.

16 Very well. Mr. Tranel, thanks for being with us,
17 and the floor is yours. You may proceed with your
18 statement, testimony.

19 JOSH TRANEL,

20 Was examined and testified as follows:

21 THE WITNESS: Thank you.

22 And good afternoon, USDA Dairy Programs.

23 First, I would like to take the time to thank all
24 of you for making time for us dairy farmers to give
25 testimony to this very important issue. Additionally, I
26 understand I get the honor of being a little bit of a
27 guinea pig for this process, and I cannot express my
28 gratitude enough for allowing all of us to virtually give



1 witness as it wasn't 20 minutes ago I was still in the
2 barn feeding cattle.

3 My name is Josh Tranel, and I operate an organic
4 dairy farm with my wife Kalyn, my three first cousins and
5 their wives, and a few other children in Grant County near
6 Cuba City, Wisconsin. We also operate, in conjunction
7 with various other family members, operating another dairy
8 and custom heifer operations.

9 As a family, we manage 2500 organic acres and milk
10 600 cows along with managing as many as 1,000 young stock
11 in a given year. We have a crossbred of Holstein and
12 Jersey herds, but also practice beef on dairy to maximize
13 our opportunity in the conventional-fed cattle market.

14 Our family has been dairy farming since coming
15 over to America and our family has transitioned to organic
16 dairy production about 20 years ago. We have marketed
17 milk through CROPP Cooperative for 20 years and employ up
18 to 10 full-time people on our dairy, as well as offer many
19 part-time opportunities for extended family members. We
20 also offer some custom bailing and harvesting services to
21 local farmers in the area.

22 In 2020, I was appointed to the Wisconsin Farm
23 Service Agency executive committee, and I currently am the
24 committee chair. Other family members associated with
25 Tranel Family Farms are extensively invested in the
26 community and agricultural industry. For example, we have
27 a family member that serves in the Wisconsin State
28 Legislature, where he chairs the Agriculture Committee, a



1 family member heavily involved with Iowa State University
2 Extension, the Grant County Township board, the Organic
3 Meat Company Board of Directors, as well as a few of CROPP
4 Cooperative's other committees.

5 Additionally, I get the opportunity and the
6 pleasure to serve as one of seven elected board members
7 for CROPP Cooperative, which is more commonly known by our
8 flagship brand Organic Valley.

9 Our cooperative is made up of over 1400 organic
10 dairy farmers in over 32 states. The farmer-owned
11 cooperative that makes organic dairy products across all
12 four FMMO classes as either branded products or as bulk
13 and ingredient offerings for commercial organic dairy
14 buyers.

15 That said, the majority of our business is
16 dedicated to fluid within Class I. The cooperative relies
17 on an extensive network of co-manufacturers to bottle for
18 us.

19 We continue to bring on new farms and are actively
20 in procurement mode, with over 140 farms expected to join
21 the cooperative over the course of the next three years.
22 We are the cooperative of small family farmers, and our
23 average herd size is 78 cows.

24 While the organic market has grown over the last
25 decade using -- over the last decade, existing USDA FMMO
26 pricing regulations have placed an inequitable burden on
27 our members of our cooperatives. Let me describe a little
28 more of how we operate and the impact this has.



1 Our pay price is determined annually by the Board
2 of Directors and the cooperative leadership. It is set by
3 our expected performance in the marketplace and the
4 ability to manage inventories and supply. We strive for
5 an organic product utilization of 98% of all of our milk
6 received.

7 The co-op seeks to provide farmers with a
8 predictable and fair pay price which does not fluctuate on
9 a monthly basis outside of agreed-upon seasonal
10 adjustments and typical quality premiums.

11 Like most in the dairy industry, CROPP Cooperative
12 farmers are paid on components for farm gate milk. While
13 monthly FMMO classified pricing gyrations do not impact
14 the monthly base price offered to farmers, it for certain
15 does impact our pay price decisions on an annual basis and
16 impacts things such as our co-op's operations and cash
17 flow positions.

18 In aggregate, this cooperative faces a
19 multi-million dollar draw each year with extreme
20 variability month to month, all of which is detached from
21 our actual business of sourcing, processing, and selling
22 organic fluid milk.

23 I strongly disagree with the USDA's decision to
24 accept -- to not accept what's in the scope of this
25 hearing, Proposal 6, that would exempt organic milk from
26 pooling obligations if producers are paid above Class I
27 premiums.

28 The USDA's response to myself and 174 other



1 organic dairy farmers on 11 -- urging inclusion of organic
2 exemption in the hearing proceedings was insufficient and
3 we believe in error. I urge the USDA and Judge Strother
4 to reconsider that decision.

5 The USDA Action Plan issued on June 1st stated,
6 "The USDA is providing the opportunity for invested
7 parties to submit additional proposals regarding potential
8 amendments to the current pricing provisions acceptable to
9 all FMMOs."

10 It did not specify in that Action Plan that only
11 amendments directly impacting uniform pricing formulas
12 would be in scope, an assertion made only once a hearing
13 was announced.

14 Even with that arbitrary narrowing of scope, the
15 USDA cannot consider an assortment of proposals that
16 increase Class I differentials, that modify the Class I
17 mover, and ultimately the spread between Class I and
18 Class III, and somehow assert that these will not impact
19 the pricing we are able to offer cooperative farmers.

20 Many of these changes will take price away from
21 organic dairy farmers who do not benefit at all from the
22 Federal Milk Marketing Orders. As a specialty milk
23 defined under federal law, organic milk is not
24 substitutable with non-organic milk.

25 The imposition on our Class I business position is
26 a constant multi-million dollar draw, undercuts better
27 pricing opportunities for our farmers, end-of-year
28 dividends for our farmers, or operational enhancements



1 that could enhance the farmer-owners' security and equity.

2 This frustration is further amplified by the fact
3 that the organic industry has historically offered farmer
4 pay prices far above the uniform regulated minimums
5 mandated by the orders.

6 The essential question of how do organic dairies
7 fit in the FMMO system needs to be addressed at this
8 hearing.

9 Organic dairy farming requires significant ongoing
10 investments and innovative methods to improve soil health
11 and animal health, for example. These investments are
12 directly competing with payments into the FMMO system. As
13 farmers, we cannot fund a system that does not directly
14 support our farming operations.

15 In addition to reinserting the organic exemption
16 proposal within these proceedings, I want to voice support
17 for Proposal 20 that demonstrates the lack of logic and
18 economic justification for current Class I differentials.

19 I'll also note other proposals that seek to expand
20 Class I differentials only further burden organic dairy
21 farmers and the market by demanding more from our portion
22 of the industry, which receives no benefit.

23 I appreciate the opportunity to share these
24 remarks and the farmer letter with the USDA and Judge
25 Strother. I welcome any questions.

26 THE COURT: Mr. English.

27 DIRECT EXAMINATION

28 BY MR. ENGLISH:



1 Q. So, sir, this is Chip English with the Milk
2 Innovation Group, and I just -- I just want to try to do
3 something that's maybe hard to do. But on -- you twice
4 referred to draw. The second time you called it a draw
5 from our cooperative. But the first time, in the written
6 statement, the term was pool obligation.

7 Do you view pool obligation and draw from the
8 cooperative as being the same thing?

9 A. Yeah, the pool obligation and our cooperative --
10 can you mute.

11 Q. We heard you, yes.

12 A. The pool obligation our cooperative has to face is
13 indirectly a draw from our farmers. The payment we have
14 to pull into there we could use in much better ways and
15 give back to our farmers if we weren't pulling into the
16 system.

17 MR. ENGLISH: Thank you, sir. I just wanted to
18 clarify that.

19 THE COURT: Okay. Are we going to have cross for
20 these virtual witnesses?

21 I guess we're going to have the opportunity for
22 cross of these virtual witnesses.

23 Anyone have any questions other than AMS for
24 Mr. Tranel?

25 Does AMS have any questions for Mr. Tranel?

26 MS. TAYLOR: We do, your Honor. I'm over here,
27 hidden.

28 THE COURT: Oh. I see you now. Yes, Ms. Taylor.



1 MS. TAYLOR: Thank you.

2 CROSS-EXAMINATION

3 BY MS. TAYLOR:

4 Q. Good afternoon. Thank you for being with us to
5 testify today. I appreciate it.

6 I wanted to ask a question -- well, first, you
7 talk about your crop farm. I think you said the average
8 herd size is 70? I can't find that right now.

9 A. 78, yeah.

10 Q. And for your farm specifically, we're asking
11 questions of dairy farmers, the Small Business
12 Administration defines a small business for dairy farms as
13 one that receives \$3.75 million or less in annual gross
14 revenue on their farm.

15 Would you qualify as a small business?

16 A. So, technically, Tranel Family Farms is slightly
17 larger than SBA's definition of a small business for a
18 dairy.

19 But you should know that the farm has four
20 principal owners, and if you divide the total number of
21 cows or the total number of income by us four owners, we
22 would for sure meet the definition of an SBA.

23 I'll also note that the cooperative, by market
24 milk, with an average I said of 78 cows, so the vast
25 majority of our 1400 farmers do qualify as small
26 businesses.

27 Q. Okay. Thank you.

28 And can you talk a little bit about if your farm



1 uses any risk management tools? We have had some
2 discussion here, I don't know if you have been listening
3 virtually at all this week and last week, on risk
4 management and how farmers are able to utilize those tools
5 when making decisions.

6 A. So we do not use any risk management tools or do
7 any milk -- or do any options on our milk sales. Since we
8 engage in the organic market, there is no tool set up for
9 us to trade across or use any kind of risk management tool
10 because there's not a futures market for the organic dairy
11 industry.

12 We do, however, use some risk management tools on
13 our input side of our dairy, so example, for fuel or
14 cropping needs. And we also use crop insurance and some
15 other programs that are offered by the USDA.

16 Q. Okay. Thank you.

17 And then in the middle of page 2, you are talking
18 about CROPP, and it says, "We strive for an organic
19 product sales utilization of 98% of all milk received."

20 Can you talk a little bit more about that and, in
21 particular, what happens to the other 2%?

22 A. Yeah. So that's actually a pretty big piece of
23 our cooperative stability, we feel, is that if we are able
24 to utilize 98% or more of our milk into the organic
25 marketplace, we feel we can keep that stable pay price way
26 above the federal minimums.

27 There's a few more people at the CROPP who can
28 provide more -- able to explain how this all happens. But



1 we do sell some milk into the conventional market on
2 occasion if we have areas that we can't find a home or a
3 processor for that milk organically. Typically, it's a
4 very, very, very minute volume, and in many cases, we're
5 selling that at a huge loss compared to the organic
6 marketplace and usually well under class prices.

7 Q. Okay. Thank you.

8 And then just I wanted to summarize in regards to
9 your supporting Proposal 20 and opposition to any other
10 proposals and that impact any of the Class I prices. And
11 I take it, if I could summarize what I heard, that your
12 opposition is because that would raise the Class I price,
13 it would impact the obligation CROPP has as a co-op, and
14 that impacts the pay price you all -- you farmers get from
15 your co-op; is that correct?

16 A. Yes. That's exactly correct.

17 Q. Okay. Thank you.

18 MS. TAYLOR: I don't have any more questions. I'm
19 not sure if anyone else does in the room.

20 THE COURT: We'll find out.

21 Any -- anybody -- anything in the nature of
22 follow-up to AMS's questions?

23 Back to you, Mr. English.

24 MR. ENGLISH: First, I want to thank you very
25 much, Mr. Tranel, for taking your time.

26 And, your Honor, I would move admission of
27 Exhibits 120 and 121.

28 THE COURT: Exhibits 120 and 121 are admitted into



1 the record.

2 (Thereafter, Exhibit Numbers 120 and 121 were
3 received into evidence.)

4 MR. ENGLISH: Thank you, sir.

5 THE COURT: Wait a minute. Before we let the
6 witness go, I do have a procedural question. This witness
7 has asked that the scope of the -- I'm not sure I'm using
8 the right words here. He has asked that we consider
9 proposals rejected by the Administrator, as I understand
10 it, similar to contentions by MIG and NAJ.

11 What am I -- and he asked me, he hopes I can do
12 something with that. What am I to do -- what do the
13 parties think I should do with that?

14 MR. ENGLISH: I think you -- at -- you can fold it
15 in. I don't think it's, you know, anything really new.
16 It is not certainly new legal argument. Doesn't
17 constitute any briefing. I think you can just fold it in.
18 I don't think it -- I mean, it adds his personal
19 perspective, but more than that, I don't think it changes
20 the transcript you have already received.

21 THE COURT: Okay. I mean, one question would be
22 whether I should give other participants the opportunity
23 to respond to those.

24 MR. ENGLISH: If they want to, fine. I think it's
25 the statement of a producer. We have had other
26 statements, obviously, different on proposals, that we
27 could have asked about. But I don't -- I don't think it's
28 sub- -- my view, I don't believe -- while it is his view,



1 and it is very important because it's a witness testifying
2 rather than a lawyer, I think that at least in my view --
3 well, I'll leave it -- if people want to respond, they can
4 respond, but I think you have the legal arguments already
5 before you.

6 THE COURT: I don't want to preclude anybody.

7 AMS has nothing to add.

8 National Milk doesn't wish to answer.

9 All right.

10 MS. HANCOCK: Well, I just want to clarify. It is
11 not that we don't want to answer. We just -- I agree with
12 Mr. English. I think that we have already addressed this
13 in briefing and argument. This is just testimony. So
14 there's not really a rebuttal to testimony unless we put
15 it through our own witnesses, which we'll -- if we're
16 going to do, we'll do.

17 THE COURT: Well, now I'm beginning to see why you
18 are concerned about housekeeping. We did put in the other
19 request to consider as exhibits. We didn't have a witness
20 testify to it, so --

21 MR. ENGLISH: She and I agree.

22 THE COURT: Oh, let's get that on the record.

23 Okay. Yeah, I think I can roll with -- when I get
24 to the other two requests.

25 Very well, sir. Thank you, Mr. Tranel. Really
26 appreciate you taking time and going through the effort
27 with the virtual equipment to testify before us today.
28 You're dismissed.



1 And we have another witness.

2 MR. TRANEL: Thank you for the opportunity to.

3 MS. TAYLOR: And, Judge, we do have another
4 witness, who should be coming on there momentarily. I'll
5 give him a second.

6 I believe it will be Gerben -- I'm afraid to
7 attempt -- Leyendekker. Thank you. Assist from the
8 audience.

9 THE COURT: The only thing I didn't do is swear in
10 the last witness.

11 Everybody agree to waive the swearing in?

12 Okay. I'll swear you in, though, Mr. Leyendekker.
13 And we may have enough time to get it right.

14 Please raise your right hand.

15 GERBEN LEYENDEKKER,

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

18 THE COURT: The witness is available for
19 examination.

20 Any direct?

21 Is anyone managing this witness?

22 MS. HANCOCK: I am, your Honor. We're just asking
23 if we could move that -- there we go.

24 Okay. Your Honor, we would ask that Exhibit
25 NMPF-64 be marked for identification purposes.

26 THE COURT: Yes, the next in order I have is 121,
27 so -- I'm sorry -- 122. Exhibit NMPF-64 is marked for
28 identification 122.



1 (Thereafter, Exhibit Number 122 was marked
2 for identification.)

3 MS. HANCOCK: Thank you.

4 Mr. Leyendekker, if you want to proceed with your
5 testimony. It is identified as Exhibit 122.

6 THE WITNESS: Okay. Thank you.

7 MS. TAYLOR: If I may interrupt for a quick
8 second. If you could spell your first and last name for
9 the court reporter before you begin, that would be great.

10 THE WITNESS: Okay. I will.

11 Gerben, G-E-R-B-E-N, Leyendekker,
12 L-E-Y-E-N-D-E-K-K-E-R.

13 THE COURT: The floor is yours, Mr. Leyendekker.
14 You may proceed.

15 THE WITNESS: Okay. Thank you.

16 Well, thank you for the opportunity to allow me to
17 testify. And my name is Gerben Leyendekker. I have been
18 in the dairy business in California all my life. My
19 father immigrated from Holland, coming from a dairy
20 family. He started his own dairy in California in 1958
21 with my mother, and raised their children to work and know
22 dairy.

23 I started my own dairy business with my wife
24 Pauline in 1983, and I have been dairying in Visalia,
25 California, for 40 years. My two sons are now having
26 their own business with their families. So we continue as
27 a dairy -- family to dairy.

28 My wife and I have two dairies and milk



1 approximately 4,000 cows. I am currently serving on the
2 Board of Directors for California Dairies -- California
3 Dairies, or CDI, currently in the ninth consecutive year
4 of service on the board and 18 years of service overall
5 since CDI was created in 1991. I am also serving on the
6 board of National Milk Producers Federation.

7 I am in full support of National Milk's package of
8 the Federal Milk Marketing Order amendments.

9 Specifically, I support:

10 Proposals 1, the updates on milk composition,
11 which I'll be talking about in a minute;

12 The elimination of barrels from Class III
13 calculation and relying only on cheddar blocks for monthly
14 price discovery;

15 Adjustment to Make Allowances for butter, nonfat
16 dry milk, cheddar cheese, and dry whey. The cross of
17 processing keeps getting higher and higher with no
18 adjustment in these formulas for 15 years to capture those
19 increases;

20 The return of higher-of calculation of the Class I
21 skim price. Dairy farmers left a large amount of money on
22 the table with a previous change following the 2018 Farm
23 Bill;

24 The updates to the Class I differentials. The
25 cost of producing and transporting milk has continued to
26 escalate, supporting an update in this county-by-county
27 map, most of which is more -- now more than 20 years old.

28 National Milk's proposal reflects a comprehensive



1 approach which is critical for the future of our industry.
2 We must look collectively at the needs of the dairymen,
3 processors, and our farmer-owned cooperatives. The
4 proposal takes a measured approach with the information we
5 have available.

6 Going forward, NMPF is fully engaged in Farm Bill
7 efforts to grant USDA with the ability to collect plant
8 cost data for future milk price formula adjustments. This
9 information will be critical in the future as the industry
10 seeks to make necessary adjustments to our milk price
11 formulas in a timely manner.

12 Now, I would like to specifically address
13 Proposal 1 on milk composition. It is important to update
14 our current formula for the monthly skim milks and ensure
15 they reflect the current industry norms. It is also
16 important to provide a mechanism for those updates to be
17 implemented as they occur going forward.

18 The current formulas are using outdated
19 assumptions about the average composition of U.S. milk
20 production, and these need to be updated to reflect more
21 current realities. The average component levels in the
22 U.S. milk production have continued to rise. Dairy
23 farmers have improved what cows produce by utilizing
24 technology to get better and quicker information about
25 what our animals need, enhancing animal comfort using
26 nutritional information to improve our feed rations, and
27 continually improving genetics of our overall U.S. dairy
28 herd.



1 When we look back at the milk -- when we look back
2 at our average milk components in my home state of
3 California 20 years ago -- you see the attachment of
4 California Department of Food and Agriculture Report, 2001
5 to 2005, the statewide average components -- we can see
6 that the average butterfat levels had ranged from a 3.67
7 to a 3.68% and the average solids nonfat levels ranged
8 from an 8.71 to 8.8%.

9 Compare that to the average test of the producer
10 receipts reported by the California Federal Milk Marketing
11 Order in 2022 -- and this is also attached -- which shows
12 an average butterfat levels of 4.04% and an average solids
13 fat level of 9.06%. And there's 3.31 protein and 5.75%
14 other solids.

15 While most of our milk produced in California
16 falls into either Class III or IV, which does
17 appropriately value our milk based on actual components,
18 the Class I formula is still structured in a way that made
19 sense in 2000, but not in 2023.

20 We have worked hard to increase our components
21 with improvements and have also increased our costs,
22 without appropriate adjustment in the Class I formula --
23 without the appropriate adjustment in the Class I formula.
24 That needs to change, and I am in support of both
25 immediate change and an ongoing opportunity to be updated
26 without a hearing when the information supports an
27 adjustment.

28 I appreciate the opportunity to speak today, and



1 once again, I want to say that I fully support the
2 broad-based comprehensive package of amendments proposed
3 by National Milk Producers Federation. We have a balanced
4 approach that considers the producers, processors,
5 farmer-owned -- farmer dairy-owned cooperatives, and the
6 consumer that rely on the industry to produce a nutritious
7 milk and dairy products they consume each day. Thank you.

8 THE COURT: Questions for this witness?

9 Looking at you, Ms. Taylor.

10 MS. TAYLOR: Thank you, Judge.

11 CROSS-EXAMINATION

12 BY MS. TAYLOR:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. Thank you so much for joining us to testify today.
16 Just a couple quick questions.

17 On your first page when you talk about returning
18 to the higher-of calculation, you mentioned dairy farmers
19 left a huge amount of money on the table with the previous
20 change following the 2018 Farm Bill.

21 Can you just tell us what you mean by that?

22 A. Before -- before that, we had -- we had the
23 higher-of, and we took that off on the Farm -- 2018 Farm
24 Bill, and which we left several hundred millions of
25 dollars that we did not receive, or could have received.

26 Q. Could have received if you had the old formula in
27 place?

28 A. That's correct.



1 Q. Okay. Thank you.

2 And a couple quick questions. We have been asking
3 of all of our producers who've testified over the past two
4 weeks, you mentioned in your statement that you milk
5 approximately 4,000 cows. The Small Business
6 Administration defines a small dairy farm as one receiving
7 \$3.75 million or less in annual gross revenue.

8 And just if you could indicate for the record
9 whether you meet that definition.

10 A. No, I do not.

11 Q. Okay. And the last question, there's also been
12 discussion -- and I'm not sure if you have been able to
13 tune in at all for the last couple of weeks -- but on risk
14 management and the impact that any changes to the pricing
15 formulas could have on dairy farmers' ability to utilize
16 risk management tools.

17 And I'm just curious if you could indicate whether
18 or not you are able to use any of those risk management
19 tools to help you manage your risk?

20 A. Yes, I do use some of the tools. I don't use them
21 all. But I do use the tools that are available as I -- I
22 go forward. So I'm not going to say I don't use them. I
23 do look into it.

24 Q. Okay. Thank you.

25 MS. TAYLOR: That's all the questions I have.

26 THE COURT: Anyone else have any questions?

27 Ms. Hancock.

28 MS. HANCOCK: We would move to admit Exhibit 122,



1 your Honor.

2 THE COURT: Exhibit 122 is admitted into the
3 record.

4 (Thereafter, Exhibit Number 122 was received
5 into evidence.)

6 THE COURT: With that, you're dismissed from the
7 stand. Mr. Leyendekker, thank you for testifying today.

8 THE WITNESS: Thank you.

9 MS. TAYLOR: Thank you so much. I think next on
10 deck will be coming Mr. Raymond Diederich. I'm not sure
11 if I said that right. My apologies.

12 THE COURT: All right. Welcome. I need to swear
13 you in. Please raise your right hand.

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

17 THE COURT: Okay. Whose witness?

18 I mean, I could handle -- well, Ms. Hancock, you
19 are doing a lot of the work around here.

20 MS. HANCOCK: I agree.

21 THE COURT: We're grateful. I'm grateful anyway.
22 Do we have a statement for this witness?

23 MS. HANCOCK: I don't have a statement for this
24 witness.

25 And so maybe I'll just start off with,
26 Mr. Diederich, would you mind stating your name and
27 spelling it for the record, and letting us know who you
28 are here to represent.



1 THE WITNESS: Okay. My name is Raymond Diederich,
2 R-A-Y-M-O-N-D, D-I-E-D-E-R-I-C-H. And I represent
3 Diederich Farm, LLC.

4 MS. HANCOCK: And did you -- did you prepare a
5 written statement, Mr. Diederich?

6 THE WITNESS: No, I did not.

7 MS. HANCOCK: Okay. Would you go ahead and offer
8 us your testimony now, then?

9 THE WITNESS: Okay. Will do.

10 As I said, my name is Raymond Diederich. We milk
11 500 cows up by Green Bay, Wisconsin. Go Packers. And we
12 milk with robust milkers. So we are a high technical
13 operation.

14 I've been milking cows all my life. You can tell
15 by my gray hair, those of you that can see me, that I have
16 been around for a while.

17 I'm not representing any organization. I'm here
18 representing dairy farmers of Wisconsin, which has just --
19 I'm talking specifically dairy farmers.

20 I'd like to have this opportunity today, and I
21 appreciate doing it virtually because, like the other
22 gentleman mentioned, I was out moving heifers in our
23 grazing pasture just this morning, and it is really nice
24 to be able to do this without having to travel very far
25 and be a part of it.

26 We ship our milk to a private milk plant, and
27 really appreciate their taking our product and making it
28 into quality cheese and putting it on the market.



1 Therein lies part of my concern. We really need
2 to protect our processors. They are part of our
3 three-legged thing here: Consumer, me, and the
4 processors. It takes all of us to make this work.

5 But in the last ten, 15 years, since they changed
6 the Make Allowance, we haven't lost a lot of processors,
7 but we did lose a lot of farmers. So in my opinion, it
8 seems like we have a disconnect between the consumer and
9 me. We need to somehow get that back together.

10 Federal Orders were created years back so that we
11 could create a good, stable market product for consumers.
12 And today, that is really being disrupted by some of our
13 new technologies and some of the way we can utilize the
14 processors that are out there.

15 Depooling, in my opinion, is not very good. We
16 were supposed to all share in the profit, share in the
17 loss. And if we're depooling, that means we're not all
18 sharing.

19 As I said before, there's a big disconnect between
20 me and the consumer. I think somehow or another we need
21 to get our price more connected to the consumer. We need
22 to get our money out of the consumer and not out of the
23 government.

24 The government has done a really good service for
25 us with the DMC program. We utilize that. And it's
26 really great that we had it this year because, otherwise,
27 we'd been gone a long time ago too.

28 Year to date, we are \$209,000 off from gross



1 receipts just because of lost revenue in dairy. That
2 needs to change.

3 And it gets me to my next point, which is better
4 price discovery. As was stated before about taking barrel
5 cheese out, making it all cheddar, but most of our cheese
6 today is mozzarella cheese, and that's not even part of
7 the equation. Somehow or other I think that ought to be
8 part of the equation. I know it is not in what the
9 Federal Orders are talking about, but it's something you
10 need to think about as you are going through this process.

11 And then the other one is, for the Make Allowance,
12 every processor should be included. What they are doing,
13 how they are doing it, how they are making cheese, that
14 all needs to be part of the equation. So every processor
15 needs to be part of the discovery process in getting our
16 price discovery.

17 In closing, I'd like to say that I think the
18 Make Allowance should be adjusted because processors, like
19 everybody else, needs to have their price adjusted every
20 now and then. The Class I price differential, which we
21 lost before, we want back. And, quite frankly, we
22 shouldn't have lost it. I'm not sure why we did. I
23 follow the markets, follow everything really good, but it
24 just really seems to me like there's some disconnect
25 there.

26 At this time, I would like to thank you for
27 listening to my testimony as a dairyman who is out here
28 milking cows every day. And I'm part of a lot of



1 organizations but not representing any of them today.

2 Thank you for your time.

3 THE COURT: Any questions from anyone for this
4 dairy farmer witness?

5 CROSS-EXAMINATION

6 BY DR. CRYAN:

7 Q. Roger Cryan with the American Farm Bureau
8 Federation.

9 Good afternoon, Mr. Diederich. How are you?

10 A. Good afternoon.

11 Q. Are you a Farm Bureau member?

12 A. Yes, I am.

13 Q. Were you aware Kevin Krentz was here yesterday to
14 testify?

15 A. Yes, I was aware that he was there.

16 Q. Good.

17 You talked about depooling. Could you -- could
18 you talk about the impacts that depooling has specifically
19 on you and your neighbors, the sort of impacts in terms of
20 depooling and negative PPDs in terms of your milk check
21 and your risk management and other things that are
22 disruptive to your operations?

23 A. It did have a great impact on our operation
24 because we did lose revenue, but I don't have those
25 numbers in particular to share with you. I guess I felt
26 it wasn't really important. The whole number, which is
27 what all dairymen are involved with, is what really needs
28 to be brought out in the conversation. But we did lose a



1 lot of money because we did have a negative PPD in our
2 milk check.

3 Q. And I'm sorry. I wasn't really asking for
4 numbers. But the principle that you are laying out is
5 really what I was asking about.

6 A. Okay.

7 Q. And you talked about price discovery, and you
8 talked about having everybody involved in the price
9 discovery.

10 Would you -- would you say that it would be
11 reasonable to -- would you like to see all the -- before
12 there's a Make Allowance increase, to have it be based on
13 a mandatory audited survey of processing costs and yields?

14 A. Well, I think that would be important to have a
15 better understanding of what's really going on today.
16 They -- in the price discovery now they ask, and I think
17 the processors that responded to it isn't the majority and
18 isn't probably the best run ones. I'm not really sure. I
19 mean, we can't really say it is or isn't. But how do you
20 get an excellent picture of what's going on if you don't
21 ask everybody and kind of get it out of everybody?

22 Q. Very good. I appreciate your opportunity -- your
23 time. Oh, and I appreciate your participation in our
24 forum last fall in Kansas City. That was an important --

25 A. Excellent. Thank you.

26 DR. CRYAN: Thank you.

27 THE COURT: Anybody else have any questions other
28 than AMS?



1 Seeing none, Ms. Taylor, you again?

2 MS. TAYLOR: Yes. Thank you, Judge.

3 CROSS-EXAMINATION

4 BY MS. TAYLOR:

5 Q. Thank you, Mr. Diederich, for joining us today and
6 testifying. This is Erin Taylor from USDA AMS.

7 A. Yes. Thank you.

8 Q. Just a few quick questions.

9 For your farm up there in Wisconsin, how many cows
10 approximately do you milk?

11 A. Right around 500.

12 Q. 500. Okay.

13 And the Small Business Administration defines for
14 a dairy farm a small business is one making \$3.75 million
15 or less in gross revenue annually.

16 Would your farm meet that definition?

17 A. We're pretty close to that definition. We have
18 two operators, so I guess if you split our gross in half,
19 you would be well under that.

20 Q. Okay. Thank you.

21 And can you speak a little bit about -- and I
22 don't know if you have been able to tune in the past few
23 weeks. There's been discussions on risk management and
24 the availability of those tools to help dairy farmers
25 manage their risk and issues that could arise with any
26 Federal Order price changes and their ability to utilize
27 those tools.

28 So do you use risk management tools?



1 A. We do use DMC. And we did use some forward
2 contracting back right at the beginning of COVID when --
3 when the negative PPDs came in. And so, of course, we
4 paid a lot of money to be in that program and really
5 didn't get anything out of it, which really discouraged me
6 from participating going forward. Part of me says that if
7 you are involved in those programs, it levels the playing
8 field but doesn't give you more money at the end of the
9 day. And, quite frankly, in our business today, we're
10 really struggling to make ends meet, and we kind of got to
11 watch every dollar that comes in and goes out. So we
12 really don't use it a lot.

13 Q. Okay. Thank you.

14 And then from your testimony what I gather is that
15 you support better price discovery, and I think I heard
16 that you wouldn't indeed support including mozzarella in
17 that price discovery series, which we do have a proposal
18 here that would do that.

19 A. Right.

20 Q. Okay. And then you do support adjusting
21 Make Allowances, but you don't have any -- I don't expect
22 you to have specific numbers, but do you -- you do
23 generally, in theory, support adjusting Make Allowances
24 some to reflect different numbers than they do now?

25 A. Right. The Make Allowance need to be adjusted.
26 But then the other caveat to that is, of course, we need
27 the price discovery from more processors and not just a
28 few that are out there.



1 Q. Okay. And then the last note I wrote down is you
2 do support adjustments in the Class I differentials?

3 I would assume you mean an increase in Class I
4 differentials?

5 A. That's right.

6 Q. Thank you.

7 MS. TAYLOR: I think that's all I have. I don't
8 know if anyone else in the room has another question.

9 THE COURT: Okay. Anything further for this
10 witness? Redirect? Anything?

11 We didn't have any documents to put into the
12 record for this witness.

13 Thank you very much, Mr. Diederich, for coming in
14 and talking to us. We very much appreciate it. Thanks
15 for all --

16 THE WITNESS: I appreciate the opportunity.

17 THE COURT: Very good, sir. You may step down
18 from the virtual stand.

19 THE WITNESS: Thank you.

20 MS. TAYLOR: All right. Thank you.

21 I think next is Jared Fernandes. There he is.
22 We're getting quick now. Give us one second to get you
23 spotlighted on the screen, please.

24 Ms. Hancock.

25 MS. HANCOCK: Good afternoon, Mr. Fernandes.

26 THE COURT: I should swear in the witness. My bad
27 again. I got to be quicker.

28 Hi, Mr. Fernandes. I need to swear you in.



1 Please raise your right hand.

2 JARED FERNANDES,

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

5 THE COURT: Your witness.

6 DIRECT EXAMINATION

7 BY MS. HANCOCK:

8 Q. Good afternoon, Mr. Fernandes. Would you mind
9 stating and spelling your name for our record?

10 A. Name is Jared Fernandes, spelled J-A-R-E-D,
11 F-E-R-N-A-N-D-E-S.

12 Q. Thank you, Mr. Fernandes.

13 Did you prepare a written statement for testimony
14 today?

15 A. Yes.

16 Q. And has that been identified as Exhibit NMPF-68?

17 A. That's correct.

18 MS. HANCOCK: Your Honor, if we could mark this
19 Exhibit 123.

20 THE COURT: Yes. Exhibit previously marked top
21 right-hand corner, NMPF-68, is marked as Exhibit 123 for
22 identification.

23 (Thereafter, Exhibit Number 123 was marked
24 for identification.)

25 MS. HANCOCK: Thank you.

26 BY MS. HANCOCK:

27 Q. Mr. Fernandes, would you mind sharing your
28 statement with us?



1 A. Okay. Thank you.

2 Thank you for the opportunity to testify today.

3 My name is Jared Fernandes, and I am a third-generation

4 dairy farmer operating just south of Tulare, California.

5 My family partnership consists of myself and two brothers.

6 Together we own and operate two dairy farms. We milk

7 about 5,000 cows and collectively farm approximately 1800

8 acres, devoted primarily to forage for feeding our cows.

9 My milk gets pooled on the California Federal Milk

10 Market Order Number 51. I currently serve on the Land

11 O'Lakes Board of Directors. I have held this position for

12 three years. I also hold other leadership positions in

13 the industry as a board member of the California Dairy

14 Research Foundation and Dairy Cares, as well as my local

15 DHIA board.

16 As a member-owner of Land O' Lakes, I support all

17 five proposals put forth by National Milk Producers

18 Federation. Today, I am testifying in support of National

19 Milk's proposal listed in the Notice of Hearing as

20 Proposal 7, Class III and Class IV Formula Factors.

21 I support the National Milk proposal to increase

22 the current manufacturing cost, or Make Allowance, in

23 butterfat, nonfat solids, protein, and other solids

24 component formulas listed in the Notice of Hearing as

25 Proposal Number 7.

26 I also support enacting the authority for the USDA

27 to conduct mandatory, auditable plant processing cost

28 studies, conduct such a study under that authority, and



1 present the resulting data to the industry, which will
2 enable interested parties to make requests for further
3 Make Allowance adjustments based on proper, adequate data.

4 As stated by Christian Edmiston, Land O'Lakes vice
5 president of Procurement, these proposed changes do not
6 fully correct for the increases in butter, nonfat dry
7 milk, cheddar cheese, and dry whey manufacturing costs
8 experienced by manufacturers since 2008 when the current
9 Make Allowances took effect.

10 Instead, these Make Allowance increases strike a
11 fair balance between the producer's margin impact of
12 higher Make Allowance and the manufacturer's impact of
13 Make Allowance that more closely reflects the current cost
14 of manufacturing commodity style butter, nonfat dry milk,
15 cheddar cheese, and dry whey.

16 National Milk has estimated that this
17 Make Allowance proposal will reduce the Class III price by
18 \$0.58 per hundredweight and reduce Class IV prices by
19 \$0.52 per hundredweight.

20 While these class price reductions, if
21 implemented, will negatively impact my farm's margin, I as
22 a member-owner of Land O'Lakes understand the importance
23 of Federal Milk Market Orders' Make Allowances being
24 updated to reflect current manufacturing costs more
25 closely for commodity style products.

26 As you know, Land O'Lakes operates several dairy
27 plants that manufacture butter, nonfat dry milk, cheddar
28 cheese, and sweet dry whey. Outdated Make Allowances have



1 negatively impacted the financial performance of our Land
2 O'Lakes manufacturing plants.

3 Accordingly, patronage paid to our dairy members
4 has been reduced in recent years as a result of these
5 outdated Make Allowances. Additionally, compressed
6 margins at manufacturing plants have led to delaying and
7 underspending on routine plant maintenance that can
8 negatively impact plant performance.

9 In short, outdated, undervalued, inadequate
10 Make Allowances compress margins at cooperatively-owned
11 commodity manufacturing plants and place an unfair burden
12 on cooperative producer members compared to producers who
13 are not members of milk cooperatives that own and operate
14 commodity manufacturing plants.

15 I fully realize that increasing Make Allowances
16 will negatively impact producer milk prices and their
17 margins will be further compressed. Make Allowance
18 increases larger than those proposed by National Milk will
19 have a larger negative impact on milk producer's margins
20 and increase the likelihood of jeopardizing the milk
21 supply going forward.

22 Inflationary cost has affected every producer, but
23 in California, the decreased water supply has dramatically
24 increased forage cost. With feed being our primary
25 expense, I have noticed a large increase in dairy
26 retirement and dispersals. Thankfully, we had a wet year
27 this year, but we are feeding off old higher priced
28 inventory, and we know that our lack of new water



1 infrastructure will continue to inflate our forage costs.

2 Producer margins have become significantly
3 compressed in the first half of 2023 and may be more
4 compressed in the second half of 2023, into 2024.

5 Class III and Class IV prices have averaged \$5.47 and
6 \$6.08 per hundredweight lower through June compared to the
7 same six-month period in 2022. That have translated into
8 major decreases in FMMO uniform prices.

9 On my farm, our milk price has decreased
10 significantly since June. For example, Federal Order 51
11 blend price in June 2022 was \$25.59 compared to the blend
12 price in June '23 of \$16.42. This represents a decrease
13 of \$9.17 per hundredweight in 12 months and represents a
14 decrease of over 35% over 12 months. Our current milk
15 price is well below our break-even prices.

16 USDA projects the 2024 U.S. All Milk price will
17 drop to \$19.10 per hundredweight. That represents a
18 decrease of \$6.24 from the 2022 All Milk price of \$25.34,
19 representing a decrease of 25%. This drastic drop in milk
20 price, without a similar decrease in other milk production
21 costs, has narrowed margins on many dairy farms to the
22 point of being below their cost of production.

23 The larger increases in Make Allowances proposed
24 by the International Dairy Foods Association and the
25 Wisconsin Cheese Makers Association would narrow producer
26 margins to levels that would significantly impact my
27 farm's profitability and collectively could put the
28 availability of adequate supplies of milk at risk. Simply



1 put, we cannot absorb these additional class price
2 decreases proposed by IDFA and WCMA.

3 For the reasons I have outlined in my testimony, I
4 strongly urge the USDA to accept and implement the five
5 proposals put forth by National Milk Producers Federation.

6 Thank you for the opportunity to testify today.

7 Q. Mr. Fernandes, on the first page of your statement
8 it says, "As stated by Christian Edmiston."

9 I just wanted to note for you, because you are not
10 in the room, that we've moved a little slower than
11 anticipated, so he hasn't quite gone on yet.

12 But that's what you understand Mr. Edmiston is
13 going to be testifying to; is that right?

14 A. Yeah. He told me has not been able to testify
15 today, but his testimony has been submitted.

16 Q. That's true.

17 MS. HANCOCK: Your Honor, we -- I have no further
18 questions for him.

19 THE COURT: Did anyone have any questions for this
20 witness?

21 Ms. Taylor?

22 I'm sorry, Mr. Miltner.

23 CROSS-EXAMINATION

24 BY MR. MILTNER:

25 Q. Hi, Mr. Fernandes. My name is Ryan Miltner. I
26 represent Select Milk Producers. I just have a couple of
27 quick questions for you.

28 Are you a member of any trade associations in



1 California? I know there's I think at least three
2 producer associations out there separate from
3 cooperatives. Are you a member of any of those?

4 A. Yes. I am a member of the Western United
5 Dairymen.

6 Q. Okay. Great. If you were a member of CDC, I was
7 going to ask you your thoughts on their proposal, but
8 since you are not, I don't have anything else.

9 MR. MILTNER: Thanks for testifying today.

10 THE WITNESS: Thank you.

11 THE COURT: Does AMS have questions, Ms. Taylor?

12 MS. TAYLOR: Yes, your Honor. Thank you.

13 CROSS-EXAMINATION

14 BY MS. TAYLOR:

15 Q. Good afternoon, Mr. Fernandes. This is Erin
16 Taylor from USDA.

17 A. Good morning -- or afternoon.

18 Q. Good morning for you, yes.

19 Thank you for joining us virtually today to
20 testify. I wanted just to ask a few questions on your
21 operation. You said you milk about 5,000 cows and farm
22 approximately 1800 acres.

23 I don't know if you have been able to hear
24 questions I have asked of similar witnesses before you in
25 regards to if your farm would meet the small business
26 definition that I had outlined to them.

27 A. No, it would not.

28 Q. Okay. And can you speak -- well, there's been a



1 lot of discussion on the impact price changes could have
2 on risk management tools, and so there's discussions on --
3 if -- if USDA did make the recommended change to the
4 formulas, how would those be implemented.

5 Can you speak if your businesses use -- excuse
6 me -- if your farm utilizes risk management tools and how
7 that might be impacted?

8 A. I used to use risk management tools as far as
9 futures and options and puts. But currently, I'm only
10 using DMC and DRP, and I like the simplicity of it. And
11 it's a little -- I just try to stay consistent and do
12 about the same amount of milk so that I have some
13 protection out there.

14 Q. Okay. Thank you.

15 I think I had one more question. At the end you
16 talk about -- you know, your testimony talked about the --
17 recognizing the need to increase Make Allowances because
18 of the impact it has on manufacturers, and particularly
19 Land O'Lakes. But you don't want them to be too high and
20 impose the increases proposed by IDFA and WCMA. And you
21 state that collectively those proposals could put the
22 availability of adequate supplies of milk at risk.

23 And I was just wondering if you could expand on
24 that thought for the record.

25 A. Well, I -- we always get nervous if the
26 Make Allowances -- you know, we have to find -- strike a
27 fair balance because if we get it too high, and they can
28 make a profit just by making a product, without truly



1 needing it in the marketplace, just off of a -- an
2 advantage of efficiency of Make Allowance, it will throw
3 things out of balance.

4 And we are already, as dairymen, operating on such
5 thin lines that we realize that there is need for
6 Make Allowance adjustment, but we think that the proposal
7 set forth by IDFA is going to be way out of line and is
8 going to cause -- it's going to cause either a lot more
9 consolidation or -- and a decrease of farms is my opinion.

10 Q. Okay. Thank you.

11 So what I think I took from that was, if
12 Make Allowances are too high, some manufacturers might
13 make more product than necessary just because it would be
14 a profit maker for them?

15 A. Exactly.

16 Q. Okay.

17 MS. TAYLOR: That's all the questions I have.

18 Thank you.

19 THE WITNESS: Thank you.

20 THE COURT: Thank you, Ms. Taylor.

21 Anyone else?

22 Redirect.

23 MS. HANCOCK: Your Honor, we would move to admit
24 Exhibit 123 into evidence.

25 THE COURT: Any objections?

26 Hearing none, Exhibit 123 is admitted into the
27 record.

28 (Thereafter, Exhibit Number 123 was received



1 into evidence.)

2 MS. HANCOCK: Thank you for your time,
3 Mr. Fernandes.

4 THE COURT: Yes, thank you for coming in,
5 Mr. Fernandes. You are dismissed from the stand. And we
6 much appreciate having you.

7 MR. CRINION: Thank you.

8 MS. TAYLOR: Thank you so much.

9 I think next on deck -- let's give us a second. I
10 have Michael Crinion. Give us a second. I think we have
11 the wrong Michael. Give us one quick second.

12 Okay. Mr. Crinion, can you -- and I apologize if
13 I'm saying that wrong. Can you turn your video on?

14 There we go. Let me spotlight you. There we go.

15 Okay. And, Mr. Crinion, it looks like you are
16 from Edge Dairy Farmer Cooperative; is that correct?

17 MR. CRINION: That is correct.

18 MS. TAYLOR: Okay. So I will take this one,
19 Judge, because I don't think anyone else from Edge is here
20 to introduce him.

21 I do --

22 THE COURT: Okay. Let me swear the witness in.
23 Raise your right hand.

24 MICHAEL CRINION,
25 Being first duly sworn, was examined and
26 testified as follows:

27 THE COURT: Your witness, Ms. Taylor.

28 DIRECT EXAMINATION



1 BY MS. TAYLOR:

2 Q. Thanks for joining us. I believe you do have a
3 statement. There aren't paper copies. For those
4 listening and looking online, it looks to be Edge-3,
5 online.

6 MS. TAYLOR: Your Honor, if I could ask it be
7 assigned an exhibit number, and we will have paper copies
8 available on Monday so they can officially be put in the
9 record.

10 THE COURT: Yes. Let's -- let's assign -- is
11 there a --

12 MS. TAYLOR: This is Edge-3.

13 THE COURT: The document statement of this
14 witness, I take it, Edge-3, will be marked for
15 identification Exhibit 124.

16 (Thereafter, Exhibit Number 124 was marked
17 for identification.)

18 MS. TAYLOR: 124?

19 THE COURT: Yes.

20 MS. TAYLOR: Okay. Thank you.

21 BY MS. TAYLOR:

22 Q. Could you state and spell your name for the
23 record, please?

24 A. Good afternoon. Michael Crinion, M-I-C-H-A-E-L,
25 C-R-I-N-I-O-N.

26 Q. Thank you. And if you can go ahead with your
27 statement.

28 A. Thank you very much.



1 Good afternoon, everyone, and thanks for the
2 opportunity to be able to testify here today. My name is
3 Michael Crinion. I'm a partner with Ash Grove Dairy in
4 Lake Benton, Minnesota.

5 Originally from Ireland, I studied Agriculture and
6 Farm Management at Warrenstown Agricultural College in
7 Ireland. And then to extend our farming operations, my
8 family and I moved to Brookings, South Dakota, in 2004.

9 Ash Grove Dairy is a partnership between the
10 Crinion and Gross families. We milk 2100 cows in a
11 cross-ventilated barn. I currently serve as vice
12 president of Edge Dairy Farmer Cooperative and have served
13 on the Edge board since 2018. I am also an alumnus of
14 South Dakota Ag & Rural Leadership program and currently
15 serve as Secretary of the U.S. Farmers and Ranchers in
16 Action Board.

17 And for Erin, while our dairy does not meet the
18 USDA small business definition, approximately 66% of Edge
19 members do.

20 On our farm, we utilize Dairy Revenue Protection,
21 and our farm would lose a tool to manage risk if this were
22 suspended for any amount of time. Like any risk
23 management program, we have a plan and then execute that
24 plan when the market conditions are right for our farm.

25 I know USDA has heard debate on how far out to
26 delay any changes that would impact open interest on the
27 CME Group offerings, Livestock Gross Margin for Dairy, and
28 DRP programs. I agree with Edge Dairy Farmer



1 Cooperative's stance that over five quarters is the best
2 option to ensure the entire supply chain can continually
3 manage risk and urge USDA that any potential changes to
4 the standard milk composition, Make Allowances, or AMS
5 service, be implemented no sooner than January of '26.

6 I am also supportive of Proposals 16 and 17,
7 submitted by Edge Dairy Cooperative that further enhance
8 dairy farmers' ability to effectively manage their price
9 risk.

10 Elimination of advanced pricing is one issue that
11 I don't believe has received enough attention before this
12 hearing. I am glad to see that it will be discussed in
13 Proposals 16, 17, and 18.

14 Advanced pricing is no longer required with the
15 other hedging options available to milk bottlers and other
16 manufacturers. Dairy farmers like me manage constantly
17 changing conditions, and our milk check shows up twice
18 monthly. We can hedge to assure ourselves of some bounds,
19 but ultimately, we have no advanced price to tell us where
20 prices will settle.

21 In conclusion, I want to thank the USDA for
22 allowing farmers the opportunity to provide virtual
23 testimony throughout this hearing. Farmers need their
24 voices heard on this critical dairy policy but cannot
25 always take time away from the farm. Thank you for the
26 added flexibility given to accommodate the farmer's voice.

27 THE COURT: Questions for this witness?

28 ///



1 CROSS-EXAMINATION

2 BY DR. CRYAN:

3 Q. Roger Cryan. Good -- trying to remember where you
4 are.

5 DR. CRYAN: Where is he?

6 THE WITNESS: I live in South Dakota and our dairy
7 farm is --

8 BY DR. CRYAN:

9 Q. Good morning. It is still good morning. Good
10 morning, Mr. Crinion.

11 A. It is afternoon here. 12:06 here.

12 Q. Okay. Good afternoon. I'm sorry.

13 I appreciate your testimony support of getting rid
14 of advanced pricing. Could you talk -- that's one of the
15 things that contributes to depooling. I was hoping you
16 could talk a little bit about the impact that depooling
17 and negative PPDs has on your farm and on your neighbors.18 A. All right. Well, when there was a -- the middle
19 of COVID, a lot of the cheese plants in our area depooled,
20 and it actually was to our benefit. But I have friends
21 who were -- locally, and they had very significant
22 negative PPDs. So I would encourage a system where all
23 manufacturers, it's in their benefit to stay pooled so
24 there's -- all milk can be counted.25 Q. Thank you very much. Have a wonderful day. Thank
26 you.

27 A. Thank you very much for your time.

28 THE COURT: Anyone else besides AMS?



1 Seeing no one, AMS?

2 MS. TAYLOR: Well, Mr. Crinion, I appreciate that
3 you were listening earlier to questions, and you have
4 already answered all my questions in your testimony. It
5 is good to know people are actually watching and
6 listening.

7 So I don't have any questions, your Honor.

8 THE COURT: Very well. Thank you.

9 THE WITNESS: Thank you very much for your time.

10 THE COURT: I guess we have -- should I go ahead
11 and move in -- any objection to -- well, let me see, we
12 didn't actually have a document. We reserved that --
13 reserved the document number. I think what I would like
14 to do is just let's -- let's have this exhibit, even
15 though we don't actually have a copy, go into the record,
16 subject to reopen when we get copies if anyone has a
17 problem. And then that way, it doesn't fall through the
18 cracks. We're so grateful to have this witness come here,
19 we want to make sure his testimony makes it into the
20 record.

21 MS. TAYLOR: Thank you, your Honor. And USDA will
22 make sure there's paper copies on Tuesday when we get
23 back.

24 (Thereafter, Exhibit Number 124 was received
25 into evidence.)

26 MS. TAYLOR: Our last producer here is Mr. Kris
27 Scheider. And Ms. Hancock will introduce him -- oh, he
28 needs to be sworn in first, actually.



1 THE COURT: Yes. Please raise your right hand.

2 KRISTOPHER SCHEIDER,

3 Being first duly sworn, was examined and

4 testified as follows:

5 THE COURT: Your witness, Ms. Hancock.

6 DIRECT EXAMINATION

7 BY MS. HANCOCK:

8 Q. Good afternoon, Mr. Scheider. Would you mind
9 stating and spelling your name for the record?

10 A. Kristopher Scheider, K-R-I-S-T-O-P-H-E-R,
11 S-C-H-E-I-D-E-R.

12 Q. And did you prepare a written statement on behalf
13 of your testimony today?

14 A. I have.

15 Q. And is that identified as Exhibit NMPF-69?

16 A. Yes.

17 MS. HANCOCK: Your Honor, if we could mark this, I
18 believe it is Exhibit 125.

19 THE COURT: Yes. NMPF-69 is marked for
20 identification as Exhibit 125.

21 (Thereafter, Exhibit Number 125 was marked
22 for identification.)

23 MS. HANCOCK: Thank you.

24 BY MS. HANCOCK:

25 Q. Mr. Scheider, would you mind providing us with
26 your testimony?

27 A. Okay. Good afternoon. Thank you for allowing us
28 to testify via Zoom. It has been a great opportunity for



1 us going forward.

2 Again, I'm Kristopher Scheider. I'm a co-owner at
3 Zirbel Dairy Farms, LLC, located outside of Green Bay,
4 Wisconsin. I am an active board member with Foremost
5 Farms USA. Foremost is a large milk cooperative with 850
6 members, producing 6.2 billion pounds of milk annually and
7 manufacturing 500 million pounds of cheese annually. Our
8 members are located in Wisconsin, Michigan, Indiana, Ohio,
9 Iowa, and Minnesota.

10 In addition to being involved with NMPF, National
11 Milk Producers Federation, I am also diligently active in
12 the FARM Program, FAC, the Farmers Advisory Council, as
13 the vice-chair, and I sit on the FARM Task Force Group for
14 Version 5, animal care.

15 I would like to begin my testimony speaking to the
16 Class I mover calculation, Proposal Number 13, submitted
17 by NMPF. As a board member of Foremost, I am requesting
18 that the USDA revert back to the higher-of for
19 Class III/IV calculation, replacing the average
20 Class III/IV plus 74.

21 Since May 2019, when the implementation of the
22 Class III/IV plus the 74 occurred, we have encountered
23 dramatic shifts in milk markets which have caused
24 significant financial losses to dairy producers. This
25 higher-of Class III/IV calculation has exposed our dairy
26 farm members to endless risk on the downside, while the
27 benefits to our dairy farmers have hampered us on the
28 upside.



1 Our dairy farm members would benefit greatly by
2 reverting back to the original higher-of Class III/IV
3 pricing method. This loss of value for our products has
4 greatly impacted our members' profitability, especially
5 during the volatile markets and continual increases in
6 input costs.

7 Regarding the removal of the 500-pound cheddar
8 barrel price from the protein price in the NMPF Proposal
9 Number 3, we feel, Foremost members, this should be
10 eliminated from the pricing altogether.

11 FMMO pricing was designed to provide dairy
12 producers with a fair price for their milk based on the
13 value of the dairy products manufactured by processors.
14 Block and barrel prices prior to 2017 were very similar.

15 The average NDPSR spread between the block/barrel
16 was \$0.01. Since 2017, we have seen the spread go from
17 \$0.07 in 2017 to a high of \$0.27 in 2020. The NDPSR
18 spread since 2017 between the block and the barrel has
19 averaged \$0.11. As a result, this has undervalued the
20 Class III pricing because the proportion of barrel volume
21 driven the protein calculation is overstated.

22 To have the classes of milk undervalued is a
23 detriment to the dairy industry, not only from a producer
24 standpoint, but also from a manufacturing standpoint,
25 which includes cooperatives like Foremost. Allowing the
26 elimination of the barrels would help both dairy producers
27 and manufacturers have the ability to capitalize on the
28 true value of dairy products.



1 In 2022, barrel prices represented 9% of the
2 natural cheese manufactured in the United States. The
3 other 91% of the natural cheeses were mostly based off the
4 40-pound block market. Trying to price off the barrel
5 versus block market would be the same as pricing one acre
6 of farmland for commodity production versus one acre of
7 farmland for real estate development. Neither belong in
8 the same category, but both are tied to pricing.

9 Regarding the Make Allowances, I would say that
10 out of all the proposals, NMPF Proposal Number 7 should be
11 considered the most crucial because the Make Allowance
12 changes have a significant impact on the prices dairy
13 farmers receive.

14 Make Allowances used in the Federal Order pricing
15 formulas have not been updated since 2008, and
16 manufacturing costs have risen in the past 15 years. I
17 agree that Make Allowances should be adjusted but such
18 changes need to be done in a timely matter.

19 The NMPF proposal has outlined the best two-step
20 situation for dairy farmers. Changing the Make Allowance
21 needs to be addressed at a slower pace and the levels
22 don't need to be severely impacted to the farmer's ability
23 to survive. I see this as taking a portion of someone's
24 salary or hourly rate and cutting it by a third to a
25 quarter instantaneously. No one wants this.

26 I'm here to provide a solution that's best for the
27 dairy farming industry. Let's take the current
28 Make Allowance and move it to the higher level as NMPF has



1 proposed. This will allow dairy farmers to financially
2 survive.

3 I understood the Wisconsin Cheese Makers
4 Association and the International Dairy Foods Association
5 would like to increase the Make Allowances to what they
6 consider true costs or at a much higher level in just a
7 matter of a few years span. Instead, let's recognize
8 plant costs have risen and have increased outlined in NMPF
9 Proposal Number 7.

10 But more importantly, I am much in favor of the
11 support for NMPF's efforts to provide the USDA with
12 authorization and funding to conduct mandatory plant cost
13 surveys, which the industry would be able to see the USDA
14 results, and then the industry would determine whether or
15 not to go for -- another hearing should be taking place to
16 consider increasing Make Allowances.

17 Allowing the Make Allowances to increase
18 dramatically in a short time frame would seriously hinder
19 the dairy farming community. NMPF's proposal is looking
20 at a negative price impact of approximately \$0.58 a
21 hundredweight while WCMA/IDFA proposals would negatively
22 impact the price by approximately \$1.58 a hundredweight.

23 Allowing the adoption of the WCMA/IDFA proposal,
24 some, if not many, dairy farmers would be forced into
25 selling and others would be forced into retirement. At
26 that end of the day, the Make Allowance needs to be
27 continually updated and reviewed to allow for the changes
28 in a reasonable and acceptable manner with data supporting



1 pricing.

2 In summary, I'm here to support all five proposals
3 by NMPF. Using good data information, the USDA would then
4 be able to provide dairy farmers with accurate,
5 sustainable metrics for pricing. I would like to thank
6 Secretary Vilsack for allowing me this opportunity and
7 thank you for presenting it today.

8 THE COURT: Questions?

9 CROSS-EXAMINATION

10 BY DR. CRYAN:

11 Q. Roger Cryan for the American Farm Bureau
12 Federation.

13 Hello, Mr. Scheider. How are you today?

14 A. I'll great. How are you, sir?

15 Q. Very well.

16 Are you a Farm Bureau member?

17 A. I am.

18 Q. I appreciate your dues.

19 I also appreciate that you -- what you are saying
20 about the support for National Milk's efforts at
21 implementing -- you know, directing and funding a survey
22 by USDA to do manufacturing costs and yields, we're
23 working on that, along -- as is IDFA, and ultimately, we
24 think that's a good basis for future changes.

25 Would you -- would you say that you think it's
26 important that we don't go too far before we have that
27 kind of data, and that's why you support National Milk's
28 increases?



1 A. I think you need to spread it out over a
2 shorter -- or over a longer period of time. Because, yes,
3 prices have increased, and especially, okay, so let's look
4 at 2020, since COVID, you know, we had the war in Ukraine,
5 we have had higher inflation prices the last few years.
6 Yes, prices have risen. But we need to do this gradually.
7 And, you know, really, 15 years to wait to, oh, hey, I
8 need to bump it up, it is kind of like going to a
9 restaurant. You go in one day and, you know, the pricing
10 was from 2008, and, oh, hey, I'm going to bump it up 10
11 bucks a plate or 30 bucks a plate, kind of the same
12 difference in my opinion.

13 Q. Very good.

14 And could you -- could you talk about the impact
15 the depooling and negative PPDs have had on you and your
16 neighbors?

17 A. So the depooling, yeah, personally. So it did
18 affect us tremendously. I think we were fortunate that
19 some of that was absorbed by the cooperative that we
20 shipped to, and the majority of it was done by the
21 farmers, I know some of it. Other farmers in the area had
22 to take the full cost. So I think we were fortunate to
23 share some of that. But it has significant --
24 significantly put us in a -- behind the eight ball in a
25 few years.

26 Q. So it -- it cost money, and it also undermined the
27 concept of everybody getting a uniform price?

28 A. Yes, that's correct.



1 DR. CRYAN: Thank you very much.

2 THE COURT: Any other questions before we get to
3 AMS?

4 Seeing none, Ms. Taylor.

5 CROSS-EXAMINATION

6 BY MS. TAYLOR:

7 Q. Good afternoon, Mr. Scheider. How are you today?

8 A. I'm great. How are you?

9 Q. Good. Thank you for joining us testifying
10 virtually today. This is Erin Taylor with AMS.

11 I was wondering if you could give us some
12 information, a little bit about your farm specifically,
13 how big your farm is. I imagine you heard my questions on
14 small businesses of other farmers. So if you could speak
15 to that as well.

16 A. So we milk 1,000 cows, and we would be greater
17 than the 3.75.

18 Questions in reference to risk management, we
19 utilize DMC and DRP. We have done futures in the past,
20 but have kind of rolled off from that a little bit.

21 Q. Okay. Thank you.

22 And in regards to Foremost, you mentioned that
23 they make 500 million pounds of cheese annually. What --
24 can you describe for the record what types of cheese they
25 make? Do they make blocks or barrels or other varieties?

26 A. Mostly blocks. Mostly blocks, but it goes into
27 different types of cheeses.

28 Q. Okay. I think Mr. Cryan touched on my last



1 question, but just to make sure I'm correct. When it
2 comes to Make Allowance changes and wanting them to be at
3 a slower pace, that's in regards to National Milk's
4 efforts, which you support, of having a survey done
5 through -- authorized through the Farm Bill?

6 A. Yes, that's correct.

7 Q. Okay.

8 MS. TAYLOR: That is all the questions I have.
9 Thank you so much.

10 THE WITNESS: Thank you.

11 MS. HANCOCK: Thank you for your testimony.
12 Your Honor, we would offer Exhibit 125 into
13 evidence.

14 THE COURT: Seeing no objections, Exhibit 125 is
15 admitted into the record as received.

16 (Thereafter, Exhibit Number 125 was received
17 into evidence.)

18 MS. HANCOCK: Thank you Mr. Scheider.

19 THE WITNESS: Thank you.

20 THE COURT: Thank you, Mr. Scheider. We really
21 appreciate you talking to us, and you may step down.

22 MS. TAYLOR: Okay. Your Honor, that was our last
23 dairy farmer witness for today.

24 THE COURT: Yes.

25 MS. TAYLOR: If I might suggest maybe a 15-minute
26 break so we could reset and perhaps gather on how we might
27 want to finish the day out.

28 THE COURT: Sure. But I thought we were -- we



1 were going to put up Ms. Cashman?

2 MS. TAYLOR: Yes, but I need a minute before we do
3 that.

4 THE COURT: Right. I mean, are you suggesting
5 that we may not want to put her up?

6 MS. TAYLOR: No, she can go up after the break.
7 The question is if there's anybody else that one of the
8 parties here would want to put a witness up before we end
9 at 3 o'clock or not today.

10 THE COURT: Yes. Absolutely. Let's take a
11 15-minute break. It is 1:25. So, I don't know, let's
12 just come back at a quarter to.

13 (Whereupon, a break was taken.)

14 THE COURT: Okay. Looks like we have everyone we
15 need.

16 Yes, Mr. Cryan.

17 On the record, by the way.

18 DR. CRYAN: I'm Roger Cryan with the American Farm
19 Bureau Federation. And I have discussed with the
20 advocates for the other groups that are here and with
21 Ms. Taylor to move the submission deadline for Category 4
22 from 8:00 a.m. on September 6th to 8:00 a.m. on
23 September 8th.

24 Is there any objection -- well, first of all, let
25 me just confirm that everyone I have talked to has no
26 objection to that. It was submitted by e-mail, and we'll
27 share it with the other advocates.

28 THE COURT: Yes, Mr. English.



1 MR. ENGLISH: I absolutely agree. Mr. Cryan said
2 something very important, that after we had our
3 conversation earlier about Issue 5, it occurred to us by
4 submitting on midnight on Saturday, might not get it
5 posted.

6 So the lawyers/parties have agreed, both for now
7 Issue 4 that Mr. Cryan's bringing up, and Issue 5, that we
8 will exchange by e-mails. So I thought it would be
9 helpful for the record to know that in case there is
10 somebody else who wants to submit.

11 But the bottom line is we made that agreement
12 that -- you know, submitting it to USDA at midnight on
13 Saturday, it doesn't accomplish the goal that some people
14 wanted. So we have all agreed that all of these dates
15 that are being moved would result in an e-mail to people.

16 THE COURT: Yes. That's a great idea. Furthers
17 our goal of utilizing electronic help or whatever we call
18 it. But USDA thinks it is a good idea, and I do too.
19 Thank you. Thank you for coming forward. I haven't seen
20 any objection to your proposal.

21 As I recall, we have a list on the website
22 established by AMS for this case of those deadlines. Can
23 we adjust that?

24 MS. TAYLOR: Yes, your Honor. We already made an
25 adjustment online to the move date that we discussed this
26 morning to September 16th for Class I and II
27 differentials. We'll make the same change to base Class I
28 skim milk price, which will now be due Friday,



1 September 8th by 8:00 a.m. Eastern. That change might not
2 be reflected today on the website.

3 THE COURT: Of course.

4 MS. TAYLOR: So just so everybody knows, but we'll
5 get it done by Monday.

6 THE COURT: Thank you. I thought you'd be ahead
7 of me.

8 Thank you, Mr. Cryan.

9 Thanks to all the participants for the good
10 coordination on these procedural matters, which helps
11 things go so smoothly.

12 We have some preliminary business. I'd ask you,
13 Ms. Taylor, to lay out where we're going for the rest of
14 this day.

15 MS. TAYLOR: Thank you, your Honor. I think next
16 we'll have Ms. Cashman up to put on the -- a few more data
17 requests that got in USDA. And then I believe after her
18 will be Christian Edmiston, on behalf of National Milk,
19 and that will probably bring us to the end of the day with
20 that direct testimony.

21 Next week on deck for Tuesday, I have Emma Downing
22 from National Milk, Roger Cryan from American Farm Bureau
23 Federation, and then Mike Brown from the International
24 Dairy Foods Association to start us off on Tuesday at
25 8:00 a.m.

26 THE COURT: Yes. And which proposal are we on
27 now?

28 MS. TAYLOR: We're still on Proposal 3. Mr. Cryan



1 will discuss Proposal 4.

2 THE COURT: Very good.

3 MS. TAYLOR: If those numbers line up. 4 and 5,
4 thank you.

5 And Mr. Brown will have rebuttal opposition
6 testimony to something. Some of those, I don't know. I
7 haven't seen --

8 MR. ENGLISH: All of them.

9 MS. TAYLOR: All of them. I haven't seen it yet.

10 THE COURT: Ms. Hancock, I recognize you.

11 MS. HANCOCK: Thank you. I just wanted to clarify
12 the schedule on Tuesday. Ms. Downing Reynolds is
13 traveling back, and the first nonstop flight -- she's
14 pregnant, and the first nonstop flight that would get her
15 in doesn't get her in until 1 o'clock. So we have talked
16 with the other parties, so -- and then Mr. Cryan I believe
17 is not going to be here until 9:30.

18 So Mr. Rosenbaum is working on getting Mr. Brown
19 to put in the first couple of his rebuttals, and then we
20 will likely go to Mr. Cryan. Then we'll go back to
21 Ms. Downing Reynolds, and then finish up with Mr. Brown
22 with the rest of his rebuttals. So the same witnesses,
23 just reconfigured a little bit in another order.

24 MS. TAYLOR: And any leftover cross-examination
25 from today's witness.

26 MS. HANCOCK: Correct.

27 MS. TAYLOR: If there is any. Okay.

28 THE COURT: Okay. Great. Thank you. Thank you,



1 again, for working these things out off the record. Well
2 done.

3 Okay. We have Ms. Cashman back on the stand. I
4 think we can just say that you are still under oath from
5 the time I swore you in last time.

6 LORIE CASHMAN,

7 Having been previously sworn, was examined
8 and testified as follows:

9 THE COURT: And your witness, Mr. Hill, it
10 looks like.

11 DIRECT EXAMINATION

12 BY MR. HILL:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. So can you, again, please state your name for the
16 record?

17 A. Yes, it's Lorie Cashman, L-O-R-I-E, C-A-S-H-M-A-N.

18 Q. And your occupation one more time, please.

19 A. Director of the economics division for AMS Dairy
20 Program.

21 Q. Okay. Now, you've had the pleasure of presenting
22 evidence before, have you not?

23 A. I have.

24 Q. So I will skip some of the preliminaries and just
25 get straight to it.

26 Do you have the document that for now is just --
27 well, I guess it is marked on our document as Exhibit 59,
28 but it is actually not Exhibit 59.



1 A. Well, I think it is because we asked to reserve
2 59.

3 Q. That is correct. We withheld that number. Thank
4 you.

5 MR. HILL: So I would like to have that officially
6 marked as Exhibit 59, your Honor, for identification.

7 THE COURT: Yes, AMS or USDA, depending on how
8 we're marking these, it's just Exhibit 59 in the top
9 right-hand corner, is now marked for identification as
10 Exhibit 59.

11 (Thereafter, Exhibit Number 59 was marked for
12 identification.)

13 BY MR. HILL:

14 Q. So is this document something that you had a hand
15 in preparing?

16 A. Yes.

17 Q. And since you testified before, it is true that in
18 preparing this document you are not taking any sides for
19 or against any proposals during the hearing?

20 A. I am not.

21 Q. So this was presented -- you are presenting this
22 because of a data request; is that true?

23 A. That's correct.

24 Q. Okay. So if you could just walk us through the
25 document, we would like to hear that now.

26 A. Okay. So this is Package Sales of Total Fluid
27 Milk Products, in Million Pounds -- well, each one's going
28 to be a different Federal Order, so page 1 of 11 is



1 Federal Order 1, for the years 2018 through current of
2 2023.

3 Per footnote 1, "In-area sales are dispositions
4 (deliveries) of fluid milk products in consumer type
5 packages from milk processing (bottling plants) to outlets
6 in Federal Order marketing areas that sell directly to
7 consumers. These outlets include food stores, convenience
8 stores, warehouse stores/wholesale clubs, non-food stores,
9 schools, food service industry, and home delivery."

10 So the first column is years. The second column
11 is going to be regions. And this particular instance,
12 this is for Federal Order 1, so it's also known as the
13 Northeast region.

14 And so per footnote 2, "Pounds represent
15 disposition of packaged fluid milk from pool plants
16 regulated by the respective order to outlets within the
17 respective order." For example, this would be
18 dispositions of packaged fluid milk plants regulated by
19 Federal Order 1 to outlets within Federal Order 1.

20 The second one is for all other regions, so:
21 "Pounds represent dispositions of packaged fluid milk
22 products from plants not fully regulated by the respective
23 order to outlets within the respective order. All other
24 regions may include Orders 5, 6, 7, 30, 32, 33, 51, 124,
25 126, and 131," as well as "producer handler, exempt, and
26 partially regulated."

27 And then the total line is "pounds represent the
28 total disposition of packaged fluid milk products within



1 the respective marketing area."

2 So then all the pounds are listed by month, and
3 the final column is annual.

4 And per footnote 5, the "totals may not add due to
5 rounding."

6 Q. Okay. So I'm looking at this. I see there are
7 11 pages. Can you kind of just tell me --

8 A. Right.

9 Q. -- if there are any differences between those
10 11 pages?

11 A. Yes, it's all the same data, all the same
12 footnotes. It's just the order changes. So it is for all
13 the orders in the system, all 11.

14 Q. So it is just for the 11 different orders?

15 A. Correct.

16 Q. Is there any other information you would like to
17 add besides this?

18 A. Not at this time.

19 Oh, on this one in particular or all the other
20 stuff?

21 Q. This one.

22 A. No.

23 Q. Do you have any other information requests, data
24 requests?

25 A. Yes, I do.

26 There was a request for unsalted and salted butter
27 that was graded for 2005 and 2022. These requests do not
28 have tables for because it just would have been one number



1 on a table.

2 But -- so for salted, we had 697 million pounds
3 graded in 2005, and 816 million pounds graded in 2022.
4 And for unsalted, it was 106 million pounds in 2005 and
5 355 million in 2022. And this was for all butter types
6 that were presented for grading, so it includes retail,
7 bulk, and etcetera.

8 Then there was a request for Class IV used to
9 fortify Class I. So, first of all, I'm going to read the
10 specific reference in the CFR to this. And it's
11 CFR 1000.40, little (d), number (3).

12 And so the little (d) section is "Class IV shall
13 be all skim milk and butterfat," and then it has several
14 other items listed there. But in (3), it says, "in the
15 skim milk equivalent of nonfat milk solids used to modify
16 a fluid milk product that has not been accounted for in
17 Class I." And for that number, it is 652 million pounds
18 in 2022.

19 Q. And just to make it clear, when you say
20 CFR 1000.40, you mean 7 CFR 1000.40, correct?

21 A. Yes.

22 Q. And then the final item was for Exhibit 88, which
23 I think was the California Dairy Campaign Exhibit 3.
24 There's a footnote on page 2 of 2 that states: "Due to
25 reduced personal contacts, first-person reporting is no
26 longer used to report mozzarella prices. The prices
27 reported are adjusted week to week based on the CME cash
28 futures settlement."



1 So to clarify some of this, some of it's correct
2 and some of it's half correct. Market News did stop
3 collecting these prices by phone contact about ten to 15
4 years ago. It is -- but it is not based on the CME cash
5 futures settlement. It is based on the daily cash close
6 prices for 40-pound blocks. It's a weekly average of the
7 prices reported that week. And then we calculate a
8 difference between the weekly average of the current week
9 minus -- or -- and the weekly average of the prior week
10 and subtract that and apply it to the mozzarella price for
11 the previous week.

12 That's all I've got.

13 Q. Okay.

14 MR. HILL: I'll turn her over for examination at
15 this point.

16 THE COURT: Yes, Mr. Rosenbaum.

17 CROSS-EXAMINATION

18 BY MR. ROSENBAUM:

19 Q. Steve Rosenbaum for the International Dairy Foods
20 Association.

21 I want to follow up on the exhibit you were just
22 talking about, which is Hearing Exhibit 88. So these are
23 mozzarella cheese prices that are represented here; is
24 that right?

25 A. Yes.

26 Q. And how -- how -- and does USDA report mozzarella
27 cheese prices?

28 A. Well, we don't collect the information from the



1 primary source, so to speak. It is a calculated number
2 based on the 40-pound block cheese sales on the CME.

3 Q. But that's a cheddar cheese price, isn't it?

4 A. Well, it was applied to some previous mozzarella
5 price in the past.

6 Q. Well, okay. How -- how is that being done now?
7 Well, I mean, in -- I'm not -- I'm not understanding how
8 you're -- you are using movement in the cheddar cheese
9 price to say something about the mozzarella price.

10 A. Correct.

11 Q. So I -- so -- and so the changes that are
12 represented here over time, those are changes that are
13 based entirely upon changes in the cheddar cheese price?

14 A. That's correct.

15 Q. Okay. Well -- so what's the starting point for
16 the mozzarella price?

17 A. I don't have that information.

18 Q. That -- because that's before -- I mean, this is a
19 USDA publication, right?

20 A. It is. It was prior to my time. I -- I don't
21 have any answer for that.

22 Q. And what -- what -- what is your time? I'm sorry,
23 you may have said that already. How long have you been
24 doing this?

25 A. I have been with AMS 12 or 13 years.

26 Q. So --

27 A. I mean I stated earlier that they stopped
28 collecting this ten to 15 years ago.



1 Q. Okay. So are -- is the -- is it -- strike the
2 question again.

3 Is it your understanding that there is a
4 mozzarella price that was collected ten or 15 years ago by
5 calling up somebody and asking them what the price of
6 mozzarella cheese was at that particular point in time,
7 and then since that phone call took place, the reported
8 mozzarella cheese price is simply whatever that mozzarella
9 cheese price was ten or 15 years ago adjusted by whatever
10 changes have happened in the cheddar cheese block price
11 since then?

12 A. That's my understanding.

13 Q. Okay. And -- and do you know who it is that ten
14 or 15 years ago received the call asking them what the
15 mozzarella price was?

16 A. I do not.

17 Q. And are you the person within USDA who is most
18 knowledgeable about these questions?

19 A. I would think so. Yes.

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

21 CROSS-EXAMINATION

22 BY DR. CRYAN:

23 Q. I'm Roger Cryan with the American Farm Bureau
24 Federation, and I have a very difficult question for you.
25 Could you repeat all five of those numbers just to make
26 sure everybody in the room has the same thing?

27 A. Yep.

28 Class IV fortification used to fortify Class I was



1 652 million pounds in 2022.

2 Q. Okay.

3 A. And then for butter graded, it was salted is
4 697 million pounds in 2005, and 816 million pounds in
5 2022. Unsalted is 106 million pounds in 2005 and
6 355 million in 2022.

7 Q. And that's graded -- grade AA butter grade?

8 A. Yes.

9 Q. Sorry to be so hard on you. Thank you.

10 A. Terrible, Roger. Thank you.

11 Q. And thank you for the data.

12 A. You're welcome.

13 CROSS-EXAMINATION

14 BY MR. MILTNER:

15 Q. Ryan Miltner representing Select Milk Producers.

16 Ms. Warren, thank you for putting together
17 Exhibit 59, that was a request of Select Milk Producers.
18 I did want to ask about the -- what is comprised in the --
19 in the rows where it says "all other regions." And I
20 looked back at the request that we sent in, and I think
21 they had -- we had requested that broken out by -- by
22 order.

23 Was it consolidated because of confidentiality
24 restrictions?

25 A. Yes, it was.

26 Q. Okay. And then just so I'm clear, I want to ask
27 about a partially regulated distributing plant.

28 So if we have a partially regulated plant that's



1 in Order 1, and that's where -- it's partially regulated
2 under Order 1. All of that plant's volume -- well, that
3 plant's volume that is sold into Order 1 would be in all
4 other regions, correct?

5 A. Yes. Correct.

6 Q. And then the volume of that plant that would be
7 sold in Order 5, that would show up on the Order 5
8 spreadsheet under all other regions on Order 5, correct?

9 A. Correct.

10 Q. Okay.

11 MR. MILTNER: I think that's all the clarification
12 I needed. Again, thank you very much for putting it
13 together.

14 THE WITNESS: You're welcome.

15 THE COURT: Any other questions for this witness?
16 Other than AMS?

17 AMS, it is your witness, so I guess you are
18 redirect.

19 MR. HILL: No, we have no further questions, your
20 Honor.

21 THE COURT: All right. Let's -- I'll put
22 Exhibit 59 into the record of this hearing unless there's
23 objection.

24 Seeing none, Exhibit 59 is part of the record.

25 (Thereafter, Exhibit Number 59 was received
26 into evidence.)

27 THE COURT: Thank you, Ms. Cashman.

28 MS. TAYLOR: I believe we have a National Milk



1 witness next.

2 THE COURT: Yes. Thank you for making a witness
3 available.

4 Raise your right hand.

5 CHRISTIAN EDMISTON,

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

8 THE COURT: Your witness.

9 DIRECT EXAMINATION

10 BY MS. HANCOCK:

11 Q. Good afternoon, Mr. Edmiston. Would you mind
12 stating and spelling your name for the record?

13 A. Absolutely. Christian Edmiston,
14 C-H-R-I-S-T-I-A-N, E-D-M-I-S-T-O-N.

15 Q. And can you provide your mailing address for the
16 record as well?

17 A. 4001 Lexington Avenue North, Arden Hills,
18 Minnesota, 55126.

19 Q. Thank you.

20 And where were you employed?

21 A. Land O'Lakes.

22 Q. Did you in your role with Land O'Lakes prepare a
23 written statement in support of National Milk's proposal?

24 A. Yes, I did.

25 Q. Is that identified as Exhibit NMPF-9?

26 A. Yes, ma'am.

27 MS. HANCOCK: Your Honor, if we could have this
28 exhibit marked as the -- for identification purposes.



1 THE COURT: Yes. That exhibit's marked
2 Exhibit 126 for identification.

3 (Thereafter, Exhibit Number 126 was marked
4 for identification.)

5 MS. HANCOCK: Thank you.

6 BY MS. HANCOCK:

7 Q. Mr. Edmiston, would you provide us with your
8 testimony at Exhibit 126, please?

9 A. Absolutely.

10 My name is Christian Edmiston, and I am vice
11 president of Procurement at Land O'Lakes. I have worked
12 in the dairy industry for over 20 years, including roles
13 with Informa Economics, Kraft Foods, and Land O'Lakes.

14 My primary areas of responsibility have been
15 procurement and sales of dairy products such as milk,
16 cheese, butter, whey, and cream, as well as dairy
17 commodity market analysis and risk management. I have
18 personally bought and sold bulk cheese varieties for my
19 employers, and also draw upon the experience of others
20 within Land O'Lakes that have done the same.

21 I have served on committees and represented my
22 current and former employers with groups such as the
23 International Dairy Foods Association (IDFA), National
24 Milk Producers Federation (NMPF), Chicago Mercantile
25 Exchange (CME), and American Dairy Products Institute
26 (ADPI).

27 Land O'Lakes is a dairy cooperative with over 1200
28 dairy farmer member-owners. Land O'Lakes has a national



1 membership base, whose members are pooled on five
2 different Federal Orders. Land O'Lakes' members own
3 several cheese (block, barrel, processed, and dry),
4 butter-powder, and value-added plants in the Upper
5 Midwest, East, and California. Land O'Lakes thanks the
6 Department for calling this hearing to consider the
7 modernization of Federal Milk Marketing Orders (FMMOs).

8 I present this testimony on behalf of Land
9 O'Lakes, Inc. Land O'Lakes fully supports all the
10 National Milk Producers Federation proposals, and this
11 testimony is submitted in support of Proposal Number 3:
12 Remove the 500-pound Barrel Cheddar Cheese Price from the
13 Protein Price.

14 As others have stated in their testimony, dairy
15 producers have been negatively impacted by the current
16 cheese pricing structure in the Class III formula. This
17 primarily occurs in two ways:

18 (1) The ratio of volume in NDPSR block cheddar
19 cheese versus NDPSR barrel cheddar cheese is not
20 representative of cheese pricing in the United States. In
21 my experience, most cheese in the United States is priced
22 off of the 40-pound block cheddar cheese markets with only
23 a very small fraction of cheese priced off of 500-pound
24 barrel cheddar cheese. However, the Class III formula is
25 weighted nearly equally with block and barrel cheese
26 prices. Consequently, when block cheese prices trade well
27 above barrel cheese prices, as has mostly been the case
28 since 2017, the result is a Class III milk price that is



1 artificially lower because of the overrepresentation of
2 barrel cheese price;

3 (2) When the price of block cheese exceeds that
4 of barrel cheese, barrel cheese manufacturing plants
5 struggle to maintain profitability with a regulated milk
6 price based on the weighted average of block cheese and
7 barrel cheese, and with the barrel cheese sales limited to
8 the lower value of barrel cheese price only. Producers
9 either absorb this financial impact through direct
10 ownership of the milk processing asset via a cooperative
11 or through lower milk prices paid to producers by the
12 manufacturer in areas outside FMMOs.

13 I'll skip the quote from USDA.

14 The original goal was to increase statistical
15 volume on the survey by adding barrel cheddar cheese,
16 while adjusting by \$0.03 per pound to reflect the
17 difference in cost for the lower barrel cheddar cheese
18 prices. The effect of this was to put block cheese and
19 barrel cheese on equal price terms, which meant no major
20 impacts to milk producers or processors of barrels.

21 Since that time, barrel cheese prices have become
22 increasingly more distant from block cheddar cheese prices
23 and the \$0.03 addition to barrels is not enough to cover
24 the delta between the two.

25 The price spread between block cheese and barrel
26 cheese was relatively stable from 1999 to 2016. Without
27 volatility in this price spread, the flaws in the current
28 Class III pricing formula structure were not evident. The



1 departure of the historically stable price relationship
2 between block cheese and barrel cheese has become evident
3 since 2017 and has created the financial impacts detailed
4 above.

5 To address several concerns that have arisen
6 during industry association meetings:

7 (1) Price discovery will not be impacted. The
8 NDPSR survey can continue to include barrel cheese and
9 provide visibility to changes in the market price, but it
10 does not have to be included in the Class III Protein
11 Price calculation;

12 (2) The CME cash barrel market would not be
13 impacted. While removal of the barrel price from the
14 Class III Protein Price calculation may change trading
15 interest in the CME cash barrel market, trading can still
16 occur;

17 (3) The impact on risk management and futures
18 position limits should be negligible. As mentioned in
19 other testimony, the percentage of total product
20 represented by survey volume would remain above the level
21 seen in the butter market. Single month position limits
22 are currently the same in butter as for cheese futures and
23 block cheese futures.

24 Given these considerations, Land O'Lakes supports
25 the National Milk Producers Federation proposal to remove
26 the 500-pound barrel cheddar cheese price from calculation
27 of the protein price. Land O'Lakes thanks the Department
28 for calling this hearing to consider the modernization of



1 Federal Milk Marketing Orders.

2 Q. Thank you, Mr. Edmiston.

3 MS. HANCOCK: Your Honor, we would submit Mr.
4 Edmiston for cross-examination.

5 THE COURT: Cross, Mr. Rosenbaum.

6 CROSS-EXAMINATION

7 BY MR. ROSENBAUM:

8 Q. Steve Rosenbaum for the International Dairy Foods
9 Association.

10 If you could please turn to the second page of
11 your testimony.

12 MR. ROSENBAUM: I'm sorry. If I could have the
13 hearing -- the exhibit number again, your Honor. I'm
14 sorry.

15 THE COURT: 126.

16 MR. ROSENBAUM: 126.

17 BY MR. ROSENBAUM:

18 Q. And you state at the end, "to address several
19 concerns that have arisen during industry association
20 meetings," and then you list three different points,
21 correct?

22 A. Correct.

23 Q. Point number one is, "Price discovery will not be
24 impacted. The NDPSR survey can continue to include barrel
25 cheese and provide visibility to changes in the market
26 price, but it does not have to be included in the
27 Class III Protein Price calculation."

28 Do you see that?



1 A. Yes, I do.

2 Q. So this is a scenario under which barrel cheese
3 prices would no longer be included in calculating the
4 Class III protein price, correct?

5 A. Correct.

6 Q. And I assume that means that barrel cheese would
7 play no role in setting minimum milk prices, correct?

8 A. That is correct.

9 Q. Have you actually looked at the legal authority
10 the Secretary has to gather information for purposes of
11 the NDPSR survey?

12 A. I do not have familiarity of that legal authority.

13 Q. Do you know whether, in fact, that legal authority
14 makes it illegal for the Secretary to collect information
15 unless that information is being used to collect -- to set
16 minimum prices?

17 A. I do not have that knowledge.

18 Q. So I will draw your attention to 7 U.S. Code
19 1637b, which is the provision that provides for mandatory
20 reporting for dairy products. Section (a), Establishment,
21 says, quote: "The Secretary shall establish a program of
22 mandatory dairy product information reporting that will:
23 (1) provide timely, accurate, and reliable market
24 information; (2) facilitate more informed marketing
25 decisions; and (3) promote competition in the dairy
26 product manufacturing industry." That is section (a).

27 Section (b), number (1): "In general, in
28 establishing the program, the Secretary shall only" --



1 emphasize the word only -- "(A)(i) subject to conditions
2 described in paragraph (2), require each manufacturer to
3 report to the Secretary information concerning the price,
4 quantity, and moisture content of dairy products sold by
5 the manufacturer; and" -- and then there's some other
6 things that are irrelevant here, but say that's subject to
7 the conditions in paragraph (2), which I'll now get to.

8 Paragraph (2), "Conditions: The conditions
9 referred to in paragraph (1)(A)(i) are that, (A) the
10 information referred to in paragraph (1)(A)(i)" -- namely
11 the information being collected -- "is required only with
12 respect to those package sizes actually used to establish
13 minimum prices for Class III or Class IV milk under a
14 Federal Milk Marketing Order; and (B) the information
15 referred to in paragraph (1)(A)(i) is required only to
16 extent that the information is actually used to establish
17 minimum prices for Class III or Class IV milk under a
18 Federal Milk Marketing Order."

19 Now, doesn't that suggest that, in fact, your
20 statement is incorrect and, in fact, it would be illegal
21 for the National -- for the survey to include barrel
22 cheese under a circumstance where barrel cheese is no
23 longer being used?

24 THE COURT: Hold up.

25 Ms. Hancock.

26 MS. HANCOCK: Your Honor, I would object to this
27 question. The witness has already said he's not familiar
28 with the standards. And he's just read the law in. It's



1 either a question of law, which we can agree, or
2 Mr. Rosenbaum is just asking for the witness to do his
3 legal research for him, either one of which is --

4 MR. ROSENBAUM: I have done the legal research,
5 your Honor, and he's making a statement that I'm trying to
6 get him to -- to -- to indicate whether or not his
7 statement is -- is, in fact, valid.

8 THE COURT: Well, I -- I don't know that this
9 witness has to interpret the regulation. I mean, he can
10 certainly rely on his own counsel.

11 Would it do for your purposes if you asked the
12 witness to assume for purposes of the question that the
13 regulation that you cited and read -- and I do think it's
14 useful to have that text in that part of the transcript --
15 precludes the Secretary from collecting that data?

16 MS. HANCOCK: Your Honor, I would object on that
17 basis that it is outside the scope of this witness's
18 testimony and what he's being offered here for. He's not
19 a legal expert. He's not being -- he's not being offered
20 to interpret the law or even provide an opinion about what
21 the Secretary has or has not -- no authority to do.

22 MR. ROSENBAUM: Your Honor, this witness -- it is
23 a statute, by the way, your Honor. It is not a
24 regulation.

25 THE COURT: I'm sorry.

26 MR. ROSENBAUM: Just so the record is clear. It
27 wouldn't make any difference, I don't think.

28 But in any event, this witness has said, quote,



1 "The NDPSR survey can continue to include barrel cheese,
2 end quote." And do you have a basis for -- I'm trying to
3 understand, do you have a basis for making that --

4 THE COURT: Yes, I overruled the objection given
5 what the witness has said. The witness has said this --
6 as I understand, which is where we continue to be.

7 MR. ROSENBAUM: Okay.

8 THE COURT: And it sounds like maybe -- maybe it
9 won't be. And I think it's appropriate to explore what
10 the witness based that statement on and what -- really to
11 give him the opportunity for that matter to explain.

12 Yes, Ms. Hancock.

13 MS. HANCOCK: Your Honor, I have no objection to
14 asking the witness what he bases his statement on. My
15 objection is to the witness being asked to interpret the
16 law. I don't think that's appropriate under any
17 circumstances, but certainly not within the scope of what
18 he's testifying here to.

19 THE COURT: Well, I think it is appropriate for
20 this witness to ask whether he considered whether -- and
21 you already did that -- whether the law precluded this. I
22 mean, we're stretching this out a bit. But, I mean, I
23 think you could -- he's not really being asked to
24 interpret the law. It's, do you consider whether this
25 precluded you from -- the information from being collected
26 by the Secretary. And I think that's a fair question
27 since he said it would continue to be collected.

28 BY MR. ROSENBAUM:



1 Q. Did you consider whether the language I read, in
2 fact, would preclude the Secretary from engaging in
3 mandatory reporting of barrel cheese prices?

4 A. Mr. Rosenbaum, do you have a copy of that that I
5 can look at?

6 Q. No. I was informed -- the answer is I don't. You
7 know, I got a hard time yesterday for giving -- for
8 marking as an exhibit a regulation, and so I am -- I
9 decided to skip that.

10 THE COURT: You didn't get a hard time from me.

11 I think we can -- if the witness is putting
12 together his testimony -- I don't think we should ask this
13 witness to opine -- he's not -- you're not a lawyer,
14 right, sir?

15 THE WITNESS: No, sir.

16 THE COURT: Okay. And you -- I don't think we
17 need to present him with something new and ask for his
18 interpretation of it. I think your position is that
19 it's -- the Secretary is precluded from collecting the
20 information. He said that the Secretary would continue to
21 collect it. If you assumed for purposes of the question
22 that the Secretary is precluded from doing that, do you
23 have any other reason to think the information will
24 continue to be collected? I'm not -- I'm out of practice.

25 MR. ROSENBAUM: No, you -- no, actually, I think
26 you're -- I think you are in very good practice, your
27 Honor.

28 BY MR. ROSENBAUM:



1 Q. Are you aware of any other authority than the
2 statute that I quoted that would allow the Secretary to
3 mandate the reporting of barrel cheese prices?

4 A. So correct me if I'm wrong, but I believe the
5 beginning of the statement that you just read said "in
6 general."

7 Q. Yes, "in general," but that -- what they mean, in
8 general, subject to these conditions, and that was the
9 condition I read, that the information is required only to
10 the extent the information is actually used to establish
11 minimum prices.

12 A. So I guess I would consider that -- I would read
13 that as to say in general but not necessarily in all
14 cases, in all situations.

15 Q. Okay.

16 A. And we haven't -- we haven't taken a look at this
17 issue in 15 years, so I guess I would view it as a
18 once-in-a-very-unusual situation, not necessarily subject
19 to in general.

20 Q. All right. Is there any other authority you would
21 point to?

22 A. No, sir.

23 Q. All right. Now, I want to ask you about the
24 language you quoted on the -- let me start that question
25 again.

26 At the bottom, the very bottom of page 1, you're
27 addressing what USDA had to say in 1999, as part of
28 Federal Order Reform, regarding the question whether to



1 include barrels in the survey that was going to be used to
2 set minimum Class III prices, correct?

3 A. Yes, sir.

4 Q. Okay. And you are quoting from that decision, so
5 I assume you -- you have read it.

6 A. Yes, sir.

7 Q. Okay. So I would like to --

8 MR. ROSENBAUM: If I could approach the witness?

9 THE COURT: Yes.

10 MR. ROSENBAUM: This is an excerpt from the
11 Federal Register that is being quoted by the witness.

12 And, your Honor, I don't know whether -- I can --
13 I mean, it's easy for me -- I have given him a copy so he
14 can look along. I don't think I need to mark this as
15 an -- as an exhibit. I have copies for anyone who wants
16 to be able to follow along.

17 THE COURT: Now, I -- it sounds like it is the
18 type of thing that's -- well, do we have -- I don't even
19 think we have to take official notice or judicial notice
20 or anything of it. It's -- I'll take a copy. I'm
21 intrigued. Mr. Rosenbaum, if you have got a copy for me,
22 I'll read along. I'm intrigued.

23 And we can identify what this is in the
24 transcript, right?

25 MR. ROSENBAUM: Yes. This is -- this is -- just
26 to be clear, this is Volume 64 of the Federal Register,
27 starting on page -- well, the cover page, which is 16026,
28 and then I have excerpted several pages, but the very last



1 page on the back of the document is page 16098, which is
2 the page that the witness is citing, and that's what my
3 questions are going to be limited to that page, I believe.

4 BY MR. ROSENBAUM:

5 Q. So as you indicate, the decision was made by the
6 USDA to include barrels in setting the price, correct?

7 A. I'm sorry. Can you say that again?

8 Q. The decision was made by USDA that it was going to
9 include 500-pound barrels in determining the cheese price
10 that would be used to set minimum milk prices, correct?

11 A. Correct.

12 Q. And that was over the objection of National -- of
13 the NMPF, correct?

14 A. I believe that's right, but I do not have all of
15 the objections in the testimony committed to memory from
16 1999.

17 Q. Okay. So the -- now -- now, you would agree with
18 me, just on the basic very simple minded principle, that
19 there is a difference between the cost of making cheese
20 and the price at which a cheese is sold, correct?

21 A. Difference in the definition or difference in the
22 numerical values?

23 Q. Well, definition.

24 A. Well, both, I'm sure, I mean --

25 Q. But that depends on the market condition.

26 I'm juvenile saying, by definition, there's a cost
27 to make cheese, and there's a price at which you sell
28 cheese, and those just are two -- conceptually two



1 different things, right?

2 A. Conceptually, yes. Numerically, not necessarily.

3 Q. Exactly. And obviously, there's a relationship
4 where you are going to hopefully sell the cheese for more
5 than it cost you to make it, but --

6 A. Hopefully.

7 Q. -- in any event, conceptually, they are different.

8 So -- and what you have pointed out in your
9 quotation is that there was \$0.03 added to the barrel
10 cheese price, and it is generally considered to be the
11 industry standard cost difference, cost difference,
12 between processing barrel cheese and processing block
13 cheese, correct?

14 A. Yes, sir.

15 Q. And really my purpose of -- of providing you this
16 document is -- and you quoted it correctly -- but if you
17 just go up, that's -- that language appears in the middle
18 column on page 16098, correct?

19 A. Yes, sir.

20 Q. And if you go up a little further, really just
21 like a paragraph and a half earlier on, there's a sentence
22 that says, quote: "Other commenters suggested that if
23 barrel prices are included, they should be increased by
24 \$0.03 per pound to make up for the difference in packaging
25 costs."

26 Do you see that?

27 A. I do.

28 Q. Okay. And that's the same -- the exact same \$0.03



1 that, in fact, USDA in 2000 adjusted barrel prices for,
2 correct, \$0.03?

3 A. Yes. And the quote that I provided states that
4 specifically.

5 Q. Yes. And, indeed -- and that remains the
6 adjustment today, correct?

7 A. It does. However, at the time, you know, as I
8 made that delineation between make cost and market price,
9 at the time there was very little difference in barrels
10 plus three and blocks on the market.

11 Q. Okay.

12 A. And so retroactively, trying to consider whether
13 or not the Department would have adjusted differently,
14 would have adjusted by \$0.03, I think is difficult because
15 the difference between barrel cheese and block cheese
16 really didn't -- didn't show up, didn't do different
17 things in the market until 2017.

18 Q. But -- but every statement that's made here is a
19 statement relating to the -- by "here," I mean in the
20 decision, the April 2nd, 1999, decision -- they are all
21 talking about the difference in the cost to make cheese,
22 correct?

23 A. That's right.

24 Q. Okay. I mean, there's -- there's no statement
25 that USDA was doing this in order to make the price of the
26 two be the same --

27 A. Because at the time there was -- I'm sorry.

28 Q. -- for purposes of setting minimum milk prices,



1 correct?

2 A. Correct. Because at the time I don't believe
3 there was a need, given that the markets acted in relative
4 harmony with about a \$0.03 spread.

5 Q. But, I mean, you can point to nothing in this
6 decision that says USDA was trying to equalize price or
7 ensure that the price would be the same. All of their
8 statements are about the effort to equalize cost; isn't
9 that true?

10 A. That is true. But what I point out in my
11 testimony is that under those market conditions versus the
12 market conditions in 2017 through 2023, unintended
13 consequence of not considering that back in 1999 is some
14 of the things that I delineated out, a couple of the
15 unintended consequences I delineated out.

16 Q. Okay.

17 A. Put differently, how could they have considered
18 what they might need to address in 1999 when those
19 conditions in the market hadn't surfaced yet.

20 Q. Well, they had addressed the fact that block
21 cheese was a meaningful participant in the market, and
22 barrel cheese was too. They did talk about that, correct?

23 A. Yes. In terms of volume, correct.

24 Q. Okay. And they made a determination that they
25 were going to include both in the survey, correct?

26 A. Correct.

27 Q. And they made an adjustment so that the fact that
28 it cost less to package 500-pound barrels, presumably,



1 because it's one big thing --

2 A. It is a big thing.

3 Q. -- packed into little different things than
4 40-pound blocks -- I'm using technical terms here -- that
5 there was a -- there was a difference in that cost,
6 correct?

7 A. Given the best information they had at the time,
8 correct.

9 Q. Okay. So -- well, you are certainly not here
10 proposing to change because you think the -- there's
11 something inaccurate about \$0.03 as a difference in the
12 cost of packaging between the two, correct? I mean,
13 that's not the basis --

14 A. No, sir. I have provided no testimony along those
15 lines.

16 Q. And no one from National Milk is using that as a
17 basis for the proposal?

18 A. Not that I'm aware of.

19 Q. Okay. So let's go back to the first page and look
20 at your example of how dairy producers have been
21 negatively impacted. And your -- your point two,
22 actually, I think talks mainly about the impact on
23 processors, although there's some reference -- obviously,
24 sometimes those processors are owned by producers.

25 But you say here, quote: "When the price of block
26 cheese exceeds that of barrel cheese, barrel cheese
27 manufacturing plants struggle to maintain profitability
28 with a regulated milk price based on the weighted average



1 of block cheese and barrel cheese, and with the barrel
2 cheese sales limited to the lower value of barrel cheese
3 price only."

4 Correct?

5 A. Correct.

6 Q. So I just want to focus on that. And let's just
7 use the example of prices that I used in earlier
8 questioning, which I think is not unrealistic, although
9 perhaps somewhat higher than current prices, which is --
10 let's assume that block prices today are \$2 a pound --
11 sorry. Let me start that example again.

12 Let's assume that barrel prices are \$2 a pound and
13 block prices are \$2.10 a pound, correct?

14 Now, under the current formula, those would be --
15 and let's assume that the surveyed price -- the survey
16 cheese, let's just make it easy and say it is 50% block
17 and 50% barrel. Which is not too far off from where it
18 really is, correct?

19 A. Correct.

20 Q. Okay. So under that scenario, the minimum milk
21 price is going to be set based upon an assumed selling
22 price of cheese of \$2.05, right, halfway between the \$2
23 barrel price and the \$2.10 block price?

24 A. Not to pick nits, but you would actually increase
25 the barrel price by \$0.03, so you would average together
26 2.03 and 2.10 for an average of 2.065 doing it off the top
27 of my head.

28 Q. Okay. All right.



1 A. But, yeah, I hear you.

2 Q. Well, no, I'm glad you made that correction. So
3 I'm going to correct my example because I like my numbers.

4 So let's assume that the barrel -- that the barrel
5 prices is a \$1.97.

6 A. Fair enough.

7 Q. And the block price is \$2.10.

8 A. Now 2.05 works.

9 Q. And so under that scenario, the first thing you do
10 is add the \$0.03 -- no, I appreciate you being more
11 accurate -- you add the \$0.03 to the barrel price to
12 reflect the fact that it's actually cheaper to make the
13 barrel cheese by \$0.03. And so you end up with an
14 adjusted price for barrels of \$2 and then a price for
15 blocks of 2.10. Okay?

16 A. Yes, sir.

17 Q. You are with me?

18 And so under that scenario when it comes to
19 setting the Class III price, USDA will look at the
20 weighted amount of production covered by the survey, which
21 we're going to assume here is 50/50, which is close to
22 accurate. And that -- and then you would end up with a --
23 an assumed selling price of \$2.05.

24 And that's what USDA would use to then set the
25 Class III price, correct?

26 A. Yes, sir.

27 Q. And you would deduct from that selling price the
28 Make Allowance -- and let's just -- let's assume



1 Make Allowance -- let's assume a Make Allowance of \$0.20,
2 which is really what it is, and let's -- currently,
3 although everyone's proposal is to increase it -- you
4 know, everyone, most people here today are proposing to
5 increase it, not necessarily by the same amount, but that
6 would mean you would have -- you subtract that \$0.20 from
7 the \$2.05, and you end up with \$1.85, which represents the
8 minimum price that has to be paid for the class -- for the
9 milk used to make that product; is that right?

10 A. Correct.

11 Q. Okay. So going back to our scenario, the price of
12 the -- of the barrel cheese at \$1.97, you are going to
13 subtract the same \$0.20 cost to manufacture. We've
14 already gotten rid of the \$0.03. We're not going to get
15 rid of it again. So that means that you would end up
16 with -- talking about the manufacturer -- would end up
17 with \$1.77; is that right -- I'm sorry. No, no. Sorry.
18 Do it again.

19 Okay. You take the \$1.97, and you subtract the
20 \$1.85 that it has to pay at a minimum milk price, and you
21 have \$0.12 left over, correct?

22 A. \$1.97 minus \$1.85 is \$0.12, correct.

23 Q. Which is less than the actual cost of making the
24 barrel cheese, correct?

25 A. Yes. Although you haven't gone into the part of
26 your scenario where you have actually gotten rid of the
27 barrel price in the calculation of milk yet, so something
28 went awry, I think.



1 Q. Okay. Well, and I'm getting there. But that's --
2 that -- when you -- when -- I'm really at this point just
3 describing your sentence. Okay? That is to say, "When
4 the price of block cheese exceeds that of barrel cheese,
5 barrel cheese manufacturing plants struggle to maintain
6 profitability with a regulated milk price based on the
7 weighted average of block cheese and barrel cheese, and
8 with the barrel cheese sales limited to the lower value of
9 barrel cheese price only."

10 I think that's what I've just gotten through
11 describing is that scenario. I'm going to get to your
12 proposal in a minute. I just want to make sure we're --
13 the agreement -- that under my assumptions as to what the
14 price is of -- of -- of barrel cheese and block cheese,
15 assuming a 50/50 split in the survey, am I describing the
16 economics to a barrel cheese manufacturer?

17 A. So the cheese price used to calculate Class III,
18 we have 2.05, right. Hold out \$0.20 in the
19 Make Allowance, you get to \$1.85.

20 Q. That's what you have to pay for your milk,
21 correct?

22 A. Right.

23 Q. Okay.

24 A. The market for barrels is \$1.97.

25 Q. Right?

26 A. \$0.12 left over. I'm with you.

27 Q. Okay. And that's -- that \$0.12 -- I mean, a
28 barrel manufacturer under the current regulations is not



1 covering its costs to manufacture --

2 A. True.

3 Q. -- because the cheese price is a 50/50 split
4 between barrel and blocks, and in our hypothetical
5 scenario, barrels -- blocks are higher, and so you are
6 raising the reference price -- if that's the right way to
7 use the term -- to a level that's in excess of the -- of
8 the actual barrel price, correct?

9 A. The barrel manufacturer's profitability is
10 negatively impacted by the wide block-barrel spread --

11 Q. Okay.

12 A. -- with the numbers that you brought in.

13 Q. Okay. So now let's got to the scenario -- your
14 scenario -- well, strike that.

15 So let's assume that in -- in the marketplace the
16 pricing is exactly the same as the hypothetical we just
17 went through. Okay? That is to say the price of barrels
18 is \$1.97. The adjusted price is \$2 because you -- there's
19 a \$0.03 adjustment in the formula. The price of blocks is
20 2.10. Okay?

21 Now, let's assume a scenario under which barrels
22 are no longer used to set the Class III price. All right?
23 Which is your proposal. Okay?

24 So under that scenario, you'd start with \$2.10 as
25 the price of cheese. Let's assume a \$0.20 Make Allowance.
26 That would mean the amount that the manufacturer has to
27 pay for its milk as a minimum regulated price is \$1.90,
28 right?



1 A. Correct.

2 Q. It is a -- the milk -- minimum milk price has gone
3 up by a nickel as a result of the elimination of barrels
4 from the formula, correct?

5 A. Correct.

6 Q. Okay. But the -- so under that scenario, the
7 barrel manufacturer is receiving for its finished product
8 \$1.97, correct? And you are deducting from that \$1.90.
9 Now he only has \$0.07 left over to cover his cost to
10 manufacture, correct?

11 A. Assuming that the barrels are still sold based
12 upon the barrel market, that's correct.

13 Q. So under the current regulations, he's not doing
14 fantastic to begin with because he's already only left
15 with \$0.12 to cover his \$0.20 of cost of manufacture, but
16 under your proposal, he is now having only \$0.07 to cover
17 his \$0.20 of cost to make the product, correct?

18 A. Assuming that the barrels are still sold upon the
19 barrel market -- sold based upon the barrel market, that's
20 correct.

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

22 THE COURT: Further cross?

23 CROSS-EXAMINATION

24 BY DR. CRYAN:

25 Q. I'm Roger Cryan with the American Farm Bureau
26 Federation.

27 Hello, Christian.

28 A. Hello, Roger.



1 Q. Nice to see you.

2 A. Nice to see you as well.

3 Q. You -- there was talk about the -- just now you
4 all were talking about the prices, cost and about -- about
5 value, demand value, if -- the cheese plants are typically
6 running full; that's the objective?

7 A. As best you can.

8 Q. Because it's an expensive proposition to run a
9 cheese plant, and letting it sit idle doesn't make you any
10 money?

11 A. Correct.

12 Q. And you can't really run blocks through a barrel
13 line, and you can't really run barrels through a block
14 line; is that right?

15 A. Processing milk into cheese, or are you talking
16 about making processed cheese for --

17 Q. I'm talking about making barrels or making blocks.
18 You have separate lines and --

19 A. Correct.

20 Q. -- you can't just swap them out?

21 A. Correct.

22 Q. So that given if, in the long run, the processing
23 capacity for blocks and barrels is balanced, there's --
24 plants are going to be running full all the time, and
25 there's going to be differences in the short run in demand
26 and -- and that there's going to be balances in the price,
27 they are not going to -- they are not going to converge --
28 when those plants are all running full, the price for



1 blocks and barrels isn't necessarily going to converge,
2 like it might have, again, 30 -- 30 years ago when more
3 cheese plants had more slack capacity?

4 A. There's limited flexibility, I think is part of
5 what you are saying.

6 Q. Right.

7 A. There's limited open capacity --

8 Q. Right.

9 A. -- I think is part of what you are saying.

10 Q. Right.

11 A. And then obviously those markets, block and barrel
12 have different demand characteristics as well that could
13 keep them from converging.

14 Q. Okay. And -- and if the -- would you say that
15 there's some -- to some degree the reason that the barrels
16 are still priced separately is because they can be,
17 because there continues to be a CME price, and there
18 continues to be an NDPSR price, and that that's kind of
19 maybe the biggest thing that's driving barrel users to use
20 a separate price?

21 A. That's the structure of the industry today. And I
22 think that that structure was put in place when conditions
23 were such that adding \$0.03 to the barrels to calculate
24 the Class III price didn't create any unintended
25 consequences, negative profitability for barrel producers
26 as an example. And so the hangover of that structure of
27 the industry persists today, correct.

28 Q. All right. So it's changes in structure that have



1 made this -- have created this imbalance, this volatility
2 of the spread?

3 A. And the current structure of how we calculate our
4 Class III protein price, correct.

5 Q. Do you sell block cheese?

6 A. Yes, sir.

7 Q. Do you quote customers the same price for 40s and
8 640s per pound?

9 A. I view that as proprietary, sir. I don't want to
10 give that.

11 Q. Very good.

12 Do you -- do you understand that there would be
13 any difference between 40s and 640s other than packaging,
14 other than essentially the size of the packaging? Grading
15 standard is the same and --

16 A. Yes, sir.

17 Q. -- and the uses are the same, aside from handling?

18 A. For the most part, I agree with that. I have seen
19 640s that are sold specifically for processed cheese. I
20 think there was some testimony earlier that alluded to the
21 potential or ability to adjust the price of a 640 based
22 upon moisture. I've seen that. It's not very common.

23 So I would say for the most part, your statement
24 is direct.

25 Q. Would those meet the grade standard that are
26 applied to 640s on the CME?

27 A. They meet the grade -- so I'm talking about 640s.

28 Q. I understand.



1 A. Okay.

2 Q. You can take 640 and cut it into 40s. You can
3 turn a 640-pound block into 40-pound blocks?

4 A. Sure.

5 Q. If the 640s are made for processing, would you be
6 able to cut those into 40-pound blocks and sell them on
7 the CME, or is that a different standard? Is that
8 different from the grade standard?

9 A. When I have seen that happen, they've carried a
10 different moisture. So I don't know that that would be
11 possible.

12 Q. Okay. But when they meet the same grade
13 standards, they are basically the same product?

14 A. Yes. When they meet the grade --- you know, if
15 they are the same moisture, if they meet the standards for
16 40s, you can cut up a 640 and make 40s out of it, correct.

17 Q. Fantastic. Thank you, Christian.

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

19 THE COURT: There's no questions by anyone other
20 than AMS?

21 Mr. Miltner?

22 CROSS-EXAMINATION

23 BY MR. MILTNER:

24 Q. Ryan Miltner from Select Milk Producers.

25 Does Land O'Lakes sell any WPI?

26 A. No, sir.

27 Q. Are you familiar with the wholesale prices of WPI?

28 A. Mostly.



1 Q. Would \$7 a pound be in a range -- a reasonable
2 range for WPI?

3 A. Well, it's a market, right, and so prices change
4 regularly. It would depend upon what time period you
5 are -- you're quoting to -- for me to answer that.

6 Q. Do you -- do you have an idea what you would
7 consider a reasonable price for WPI in the market today?

8 A. I would put it below \$7.

9 Q. Okay. Five?

10 A. Sure.

11 Q. Okay. I think in the last weekly report dry whey
12 was \$0.27 a pound or thereabouts.

13 Does that sound about right?

14 A. Sure. Yes.

15 Q. So that's a heck of a difference between those two
16 products with the same base ingredient, isn't it?

17 A. It is. But I think there was other testimony that
18 spoke to the cost of processing. WPI as well as the value
19 of the byproducts from turning the whey stream into WPI
20 has an impact as well.

21 Q. Absolutely. I agree with that.

22 When Mr. Rosenbaum was talking with you about the
23 various profitability calculations for a barrel
24 manufacturer, that doesn't take into account any of the
25 income or profit that that barrel manufacturer could
26 obtain from the sale of its whey products, though, does
27 it?

28 A. Correct.



1 Q. And if they are able to capture value from a high
2 value whey product, wouldn't that allow them to sell their
3 barrels at a lower price and still maintain overall
4 profitability?

5 A. Theoretically.

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

7 THE COURT: Anything additional from anyone other
8 than AMS?

9 AMS?

10 MS. TAYLOR: Your Honor, given the time and our
11 hard stop at 3 o'clock, I did check with Ms. Hancock, and
12 it looks like this witness will be available Tuesday
13 morning, and we could finish his cross then. I would
14 prefer to do it that way so we are not shortchanging our
15 answers to our questions, if that's possible.

16 THE COURT: Yes. We did say we would have a hard
17 stop at 3:00, and we'll come back to Mr. Edmiston.

18 MS. HANCOCK: Your Honor, I was just going to say,
19 he has a flight to catch right now anyways, so he's going
20 to run while we clean up the rest.

21 So go ahead and go.

22 THE COURT: Very good, sir. Thanks for being
23 here. Have a safe flight.

24 MS. TAYLOR: Your Honor, I did want to mention
25 while we're still webcasting that for anyone else
26 listening, the producer testimony opening for next Friday
27 will be available starting on Tuesday, September 5th at
28 12:00 p.m. Eastern. That's different -- Monday is the



1 holiday, so it will open up Tuesday at noon, and I just
2 wanted to make sure everyone was clear about that.

3 THE COURT: Thank you.

4 Let's go off the record.

5 (Off-the-record.)

6 THE COURT: Back on the record.

7 Off the record it appeared that no one had
8 anything further that needed to be raised today on the
9 record or off, and so we adjourn to reconvene Tuesday,
10 September 5th at 8:00 a.m. Thank you.

11 (Whereupon, the proceedings were concluded.)

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1 STATE OF CALIFORNIA)
) SS
 2 COUNTY OF FRESNO)

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4 I, MYRA A. PISH, Certified Shorthand Reporter, do
 5 hereby certify that the foregoing pages comprise a full,
 6 true and correct transcript of my shorthand notes, and a
 7 full, true and correct statement of the proceedings held
 8 at the time and place heretofore stated.

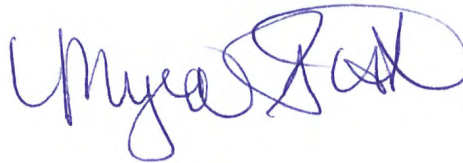
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10 DATED: September 20, 2023

11 FRESNO, CALIFORNIA

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16 MYRA A. PISH, RPR CSR
 17 Certificate No. 11613

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