

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 5, 2023

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Reported by:

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

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Todd Wilson
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FOR THE AMERICAN FARM BUREAU FEDERATION:

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Ryan Miltner

FOR THE EDGE DAIRY FARMER COOPERATIVE:

Dr. Marin Bozic

FOR LEPRINO FOODS:

Erik G. Nielsen

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

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1 TUESDAY, SEPTEMBER 5, 2023 - - MORNING SESSION

2 THE COURT: Let's come to order. Welcome back,
3 everybody. I understand -- let's go on the record. We
4 have at least one piece of preliminary business. We have
5 a new appearance.

6 MR. NIELSEN: Good morning, your Honor. Erik
7 Nielsen here on behalf of Leprino Foods Company.

8 THE COURT: Welcome.

9 MR. NIELSEN: Thank you.

10 THE COURT: Anything else preliminary?

11 Seeing nothing, I guess we have a witness? We
12 have a questioner?

13 MS. TAYLOR: Good morning, your Honor.

14 THE COURT: Good morning.

15 MS. TAYLOR: I think it's down to AMS if nobody
16 else has any other questions.

17 THE COURT: Your witness, Ms. Taylor.

18 CROSS-EXAMINATION

19 BY MS. TAYLOR:

20 Q. Good morning.

21 A. Good morning.

22 Q. We all have to refresh our memories of where we
23 left off on Friday.

24 A. Indeed.

25 Q. Okay. Can you tell me just a little bit about the
26 dairy farmer members of Land O'Lakes?

27 A. Yeah. So we have over 1200 members, kind of sea
28 to shining sea, but mainly concentrated in three areas:



1 California, the Upper Midwest, and the Northeast. Upper
2 Midwest being South Dakota, Minnesota, Wisconsin; the
3 Northeast being mainly New York and Pennsylvania; the West
4 being mainly California.

5 Q. And the size ranges for your farms?

6 A. I don't have exact numbers, but, you know, less
7 than 50 cows to thousands of cows, over 5,000.

8 Q. Thank you.

9 On your statement on page 1, towards the bottom,
10 your number one, you talk about -- well, I was wondering
11 if you could expand on your experience when you refer to
12 how more cheese is priced off the 40-pound block cheddar
13 market, if you could just talk a little more about that.

14 A. Yeah. I mean, I mainly lean on the testimony of
15 others prior to -- to mine. But generally, in my
16 experience, you know, a good portion of cheese is priced
17 off of -- a majority of cheese is priced off of blocks as
18 opposed to barrels. You know, as others have stated,
19 barrels basically price barrels; they don't tend to price
20 much of anything besides barrels. And in the scope of all
21 cheese that is made out of Class III milk, you know,
22 barrel cheddar is the minority.

23 Q. Okay. And for Land O'Lakes you produce blocks; is
24 that correct?

25 A. And barrels.

26 Q. And barrels.

27 And do you do intercompany transfer -- or sales of
28 blocks?



1 A. Intercompany or sales?

2 Q. Intercompany.

3 A. Yes.

4 Q. Okay. I'm just trying to get an -- peruse a
5 little bit about, you know, there's some discussion, of
6 course, barrels would reduce the survey volume. And
7 National Milk and your members contend that everything's
8 priced off of blocks. And so then the question is, well,
9 if we drop barrels, yes, we will only have a smaller
10 percentage of blocks surveyed, so does the survey really
11 capture a lot more of the market because perhaps there's
12 intercompany sales and, you know, those things aren't
13 reported through the NDPSR.

14 So I was wondering if you could talk a little bit
15 about that, and maybe that's part of the reason. I'm
16 trying to explore if that's part of the reason why the
17 survey of blocks is not as robust as one would think given
18 NMPF's testimony that most cheese is priced off of blocks.

19 A. Yeah. So I think a good portion of blocks are
20 ageable. And the exclusion of aged, you know, cheese
21 specifically for aging programs, I think deducts from the
22 percentage of blocks that reach NDPSR. Intercompany
23 transfer, at least for us, is relatively small, is a small
24 portion of our production. I would cite -- I would
25 show -- I would -- I would expect that ageable is a bigger
26 category to deduct.

27 Q. Okay. Thank you.

28 Your second point talks about how barrel cheese



1 plants struggle to maintain profitability when the blocks
2 exceed barrels, and that makes intuitive sense, of course.
3 But how will adoption of NMPF's proposal impact these
4 barrels makers when, if your proposal was adopted, then
5 their Class III price wouldn't reflect barrel prices at
6 all?

7 A. Yep. And it would -- and it would raise milk
8 price, I think is the point you are getting towards.

9 I think, you know, the current state, is -- is
10 untenable for barrel manufacturing. I think you heard
11 that from Paul Bauer as well. And so I think, you know,
12 there's need to do something different. And I think
13 that -- you know, Paul kind of mentioned as well. I
14 thought he put it really well, actually, when he said that
15 the industry -- under the current structure, the
16 industry's kind of stuck on they've got a barrel market,
17 they are pricing barrels off of that barrel market. And
18 it's a situation that, you know, as I mentioned in my
19 testimony, it doesn't -- doesn't do well for barrel
20 manufacturers. So it's an attempt to -- to do something
21 different.

22 Q. I understand the different part. But what will it
23 mean for barrel makers if their price -- if they pool
24 their milk, and they don't have to pool, but it doesn't
25 reflect at all the barrel market?

26 A. Yep. So today, if mozzarella is priced off of
27 blocks, mozzarella is a lot different than block cheddar
28 cheese, then barrel cheese is different than block cheddar



1 cheese.

2 When Mr. Rosenbaum asked about this very topic,
3 what I stated was, if -- you know, my answer was, if
4 barrels continue to be priced off of barrels. So, you
5 know, I think that individual companies would have to make
6 individual decisions around how they react to something
7 like this, but it would be -- the goal would be to unstick
8 the market, if -- you know, to kind of co-op Mr. Bauer's
9 words -- from relying on barrels -- relying on barrels
10 solely to price barrels.

11 Q. Okay. On the second page you talk about increased
12 volatility beginning in 2017 and before that it was
13 relatively stable.

14 If you could expand for the record what you think
15 is the cause of that increased volatility since that time.

16 A. Yeah. I don't think there is a single driving
17 factor. I have had plenty of conversations in industry
18 with folks on -- on all sides of this conversation. I
19 don't think anybody has the aha moment of, oh, that's
20 what's driving it. So I -- you know, I -- I think there
21 is -- there's a multitude of drivers. One -- you know,
22 one that has been explored in other testimony is the --
23 you know, the whey byproducts and what kind of
24 contributions those provide. I think that's -- I think
25 that's -- that's one obvious driver.

26 I think, you know, there was some expansion in --
27 in barrel capacity in the 2016, 2017 range, that probably
28 provided some of it as well, but I don't know that



1 anybody's got the full answer.

2 Q. Okay. And on the second page you state in one of
3 your points that the CME cash barrel market would not be
4 impacted.

5 I was wondering if you could expand on why you
6 think that, and would you expect the barrel market on the
7 CME to be of any value?

8 A. So what I meant by that statement was that the CME
9 barrel market would likely continue to trade afterwards.
10 If interest in that barrel market were to change,
11 that's -- you know, I don't know that I can necessarily
12 predict that. But the market structure is really what I
13 was speaking to. The CME barrel market structure would
14 persist.

15 Q. So Land O'Lakes produces both blocks and barrels.

16 Can you share with us any measures that the co-op
17 has had to take to make sure you can remain financially
18 viable because of the spread?

19 A. Yes. So actually our production fairly closely
20 mirrors the spread in NDPSR. So we produce about as many
21 blocks as barrels. And the other consideration for us, is
22 our barrel plant generally makes hard Italian, so it's a
23 different -- it's a different product with its own -- its
24 own pricing considerations. So it's not a huge -- it has
25 not been a huge impact to us.

26 However, we're also -- we also produce a couple
27 hundred -- over 200 million pounds of processed cheese a
28 year. We buy a lot of barrels. And so we've certainly



1 interacted with barrel manufacturers quite a bit over
2 the -- you know, over my time at Land O'Lakes. And that's
3 I would say really where we see the -- that disconnect
4 driving on profitability among barrel manufacturers.

5 Q. There was some talk -- and now I can't remember
6 who said it last week because it's been so long ago -- and
7 about how different cooperatives, at least, are doing more
8 intercompany balancing of their milk supplies, and so
9 relying less on I guess just trying to do the balance
10 internally and manage that, process and manage your
11 supply.

12 And I just wondered if you could talk a little bit
13 about how Land O'Lakes has attempted to do that, because
14 there's -- you know, there -- the discussion -- it kind of
15 goes to the discussion of selling milk in the market of
16 last resort and putting it in, you know, the product of
17 last resort. And I just kind of wanted to hear your
18 thoughts on what you all have done to try to manage that.

19 A. Yeah, absolutely. So we don't have the luxury
20 that some others have of an extensive plant network
21 that -- for milk receiving plants, specifically, that
22 allow us a lot of flexibility or a lot of ability to move
23 milk -- balance milk the way you mentioned.

24 So our four milk receiving plants are Tulare,
25 California; Melrose, Minnesota; Kiel, Wisconsin; and
26 Carlisle, Pennsylvania. It's a long way from Tulare to
27 Melrose; it's a decent distance from Melrose to Kiel; and
28 it's a long way from Kiel to Carlisle.



1 So, you know, while we can balance some milk
2 internally between Melrose and Kiel, that's the only real
3 lever we have internally. But we lean on -- we lean on
4 our third-party milk sale partners quite a bit in terms of
5 balancing milk.

6 And that's really based, again, on geography. So
7 I mentioned where our milk is. We have milk sales
8 obviously in those same areas. And our milk sale partners
9 are customers, you know, that could be -- you know, they
10 could make all different kinds of cheese, end up being the
11 kind of destination for milk that doesn't have another
12 home at times. So that could be into, you know, barrels
13 or blocks or mozzarella or other products.

14 From a -- from a Class III perspective, you know,
15 I would consider barrels only shouldering a portion of the
16 market-clearing responsibility while, you know, blocks
17 would shoulder some of that, and mozzarella would shoulder
18 some of that, among other -- among other products.

19 The only -- the last thing I'll add to that is,
20 you know, our two coastal plants, if you want to call them
21 that, Tulare, California, and Carlisle, Pennsylvania, are
22 both Class IV plants. And, you know, we see Class IV
23 playing a bigger role for market balancing than Class III.

24 Q. I think that's all we have.

25 MS. TAYLOR: Thank you.

26 THE COURT: Redirect, I guess.

27 REDIRECT EXAMINATION

28 BY MS. HANCOCK:



1 Q. Good morning, Mr. Edmiston.

2 A. Good morning.

3 Q. Just a brief follow-up from last week. You
4 received some questions from Mr. Rosenbaum as to the
5 whether the USDA has authority to collect data.

6 Do you recall that?

7 A. I do.

8 Q. And he proffered to you that he believed that it
9 was unlawful for the USDA to collect that data.

10 Is that what you understood he was suggesting?

11 A. Yes.

12 Q. Let's say, for example, it was unlawful or they
13 didn't have authority -- the USDA did not have authority
14 to do a mandatory collection.

15 Is there anything that you're aware of that would
16 stop USDA from voluntarily collecting any data?

17 A. Not that I'm aware of.

18 Q. And, in fact, are you aware of any examples in
19 which data is voluntarily collected?

20 A. Absolutely.

21 Q. And what would those be?

22 A. Dairy Market News would be the best example I
23 have.

24 Q. Okay. And -- and if for some reason that
25 provision that you had suggested in your testimony to
26 collect the data was not permitted, does your -- does
27 National Milk's proposal rise and fall on whether USDA has
28 the ability to collect that data?



1 A. No. And the intent of the statement was to say
2 that primary price -- or that price discovery would be
3 relatively unimpacted.

4 My view of the market is that the CME barrel
5 market is primary price discovery for barrels.

6 Q. Okay. And I think you were just talking with
7 Ms. Taylor about market-clearing, and you said at the tail
8 end there that -- that you thought that Class IV was
9 market-clearing, or the place for market-clearing
10 products.

11 Can you expand on that?

12 A. Yeah. I mean, I think it's in reference to the
13 idea of balancing plants, which, you know, there are -- I
14 think there are fewer and fewer of over time. But I
15 think -- my view of the market is that Class IV plays a
16 bigger role in the clearing of milk that doesn't otherwise
17 have a home than Class III. We certainly see that with
18 our two milk receiving plants, as I mentioned in
19 California and Pennsylvania.

20 Q. And do you -- do you define barrels as a
21 market-clearing product?

22 A. I think they shoulder part of the responsibility,
23 but certainly not all, even within Class III. But the
24 then as you add Class IV, obviously, even a smaller
25 portion of the total responsibility for balancing milk.

26 Q. Okay. Thank you.

27 MS. HANCOCK: That's all I have, your Honor.

28 THE COURT: Anything else?



1 You may step down, Mr. Edmiston. Thank you.

2 MR. ROSENBAUM: Your Honor, Steve Rosenbaum for
3 the International Dairy Foods Association. We will recall
4 Mike Brown to the stand to address the block-barrel issue.

5 MS. HANCOCK: And, your Honor, while he's making
6 his way up here, we'd just move to admit Exhibit 126.

7 THE COURT: Yes. Any objections?

8 Exhibit 126 is admitted into the record.

9 (Thereafter, Exhibit Number 126 was received
10 into evidence.)

11 THE COURT: Mr. Brown, welcome back. I guess I'll
12 swear you in again. Raise your right hand.

13 MIKE BROWN,
14 Being first duly sworn, was examined and
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. ROSENBAUM:

18 Q. Good morning, Mr. Brown. I have put before you a
19 document marked IDFA Exhibit 30.

20 MR. ROSENBAUM: Your Honor, I would ask that this
21 document be marked with the next Hearing Exhibit Number.

22 THE COURT: Yes. The next exhibit number I have
23 is 127. So marked.

24 (Thereafter, Exhibit Number 127 was marked
25 for identification.)

26 BY MR. ROSENBAUM:

27 Q. Mr. Brown, does this document represent your
28 testimony regarding Proposal 3, the proposed elimination



1 of the cheddar cheese 500-pound barrel price series?

2 A. Yes, it does.

3 Q. All right. Could you please read your testimony?
4 It's relatively short, so if you could please read your
5 testimony into the record.

6 A. Okay. Unless people need to hear it, I'm going to
7 skip who IDFA is. We've covered that before. And I'm
8 going to go directly to the core of the arguments.

9 Bottom of page 1. Since January 2000, Federal
10 Milk Marketing Orders have utilized the price of finished
11 products to determine the minimum milk prices that must be
12 paid to farmers through a mechanism commonly referred to
13 as product price formulas.

14 Oversimplifying slightly, a product price formula
15 sets a minimum price that farmers must be paid for their
16 milk, at least by proprietary handlers, as the price
17 handlers receive for the finished products, cheddar
18 cheese, dry whey, butter, and nonfat dry milk, minus the
19 cost handlers incur in turning farm milk into those
20 finished products, commonly referred to as cost of
21 manufacture or Make Allowance.

22 In performing this calculation, USDA must make
23 assumptions as to how much of the finished product can be
24 made from a given quantity of milk, the yield factors.

25 Accordingly, step one in the formulas by which
26 USDA sets the minimum price for milk used to make
27 Class III and IV products starts with a survey of the
28 price paid for specified manufactured dairy products.



1 Proposal 3 would change that step in the process by
2 eliminating one of the products whose price is included in
3 the price surveys.

4 For the reasons I shall now explain, Proposal 3
5 should be objected.

6 Class III products consist principally of cream
7 cheese and other spreadable cheeses, hard cheeses of types
8 that may be shredded, grated, or crumbled, under the CFR.
9 In order to set the protein price component of the price
10 of milk used to make Class III products, the orders, since
11 2000, have in step one relied upon the weighted average of
12 the U.S average price for 40-pound block cheddar cheese
13 and the U.S. average price for 500-pound barrel cheddar
14 cheese at 38% moisture. 7 CFR 1000.50(n)(1) is where that
15 comes from.

16 These prices are obtained through a survey of:
17 (i) the National Dairy Product Sales Report of prices
18 based for 40-pound block cheddar cheese; and (ii) the
19 NDPSR prices paid for 500-pound barrel cheddar cheese
20 adjusted to 38% moisture.

21 To be included in these sales reports, cheese must
22 meet various criteria, including age (no less than four
23 days or more than 30 days from date of sale); color
24 (within the specified color range for 40-pound blocks;
25 white for 500-pound barrels); and moisture content (no
26 more than 37.7% moisture for 500-pound barrels, according
27 to CFR.

28 Proposal 3 would eliminate the cheddar cheese



1 500-pound barrel price series from the protein price
2 formula used to price milk used to make cheese; thus, the
3 price survey would be limited 40-pound blocks.

4 Whether 500-pound barrel cheese should be included
5 in the surveys is a question USDA has previously
6 addressed, and on two separate occasions resolved in favor
7 of inclusion. IDFA believes that the USDA's reasoning in
8 reaching that conclusion was sound and continues to be
9 valid today.

10 When USDA, in 1999 and 2000, was for the first
11 time in the process of adopting product price formulas to
12 set minimum milk prices, NMPF argued, as it does now, that
13 the survey should be limited to 40-pound blocks. "NMPF
14 urged that the barrel price not be included because
15 barrels don't have uniform composition and because the use
16 of such prices would have the effect of unnecessarily
17 reducing prices to producers." USDA, Milk in the New
18 England and Other Marketing Areas; Decisions on Proposed
19 Amendments is where this came from.

20 Other industry participants disagreed and USDA
21 rejected NMPF's position, concluding that including both
22 block and barrel cheese in the price computation increases
23 the sample size by about 150%, giving better
24 representation of the cheese market from the same document
25 known above.

26 An identical proposal to eliminate 500-pound
27 barrels was subsequently advanced in connection with the
28 hearings that led to the 2008 revision to Federal Milk



1 Marketing Orders. Milk in the Northeast and Other
2 Marketing Areas; Tentative Partial Final Decision on
3 Proposed Amendments and Opportunity to File Written
4 Exceptions to Tentative Marketing Agreements and Orders,
5 as listed.

6 USDA, again, rejected that proposal, concluding:

7 "This decision finds that retaining the cheese
8 barrel price in the protein price formula is necessary to
9 ensure that the protein price is representative of the
10 national cheese market. The Class III product price
11 formula needs to be as reasonably representative of the
12 market for cheese that determines the value of milk.

13 "Record evidence reveals that barrel production in
14 the NASS survey is often in excess of 50% of the total
15 cheese volume surveyed. Eliminating the barrel price from
16 the protein price formula would significantly and
17 needlessly reduce the volume of cheese used in the
18 Class III product price formula, which could lead to
19 protein prices that are not as representative of the
20 national cheese market. Accordingly, Proposal 13 to
21 eliminate 500-pound barrels is not adopted."

22 The reasons behind USDA's decision to include
23 500-pound barrels in their product surveys are equally
24 valid today. First and foremost, volumes from both forms
25 of cheddar cheese remain very robust. In 2022, reported
26 NDPSR 40-pound cheddar block sales totaled 643 million
27 pounds, and 500-pound barrel sales were 701,415,050
28 pounds. This data was pulled from the Datamart, USDA's



1 database, from weekly final block and barrel cheese
2 prices.

3 Thus, both forms play a substantial role in
4 setting the market value of cheddar cheese, which is the
5 goal of step one of the process of setting minimum milk
6 prices for -- used for Class III purposes. Eliminating
7 500-pound barrels would reduce by more than half the
8 market pricing information upon which USDA currently and
9 appropriately relies.

10 In the words of USDA in 2008, "Eliminating the
11 barrel price from the protein price formula would
12 significantly and needlessly reduce the volume of cheese
13 used in the Class II product price formula, which can lead
14 to protein prices that are not as representative of the
15 national cheese market."

16 Both 40-pound blocks and 500-pound barrels are
17 traded at the Chicago Mercantile Exchange. It would make
18 no sense for a product such as a commodity cheese
19 marketplace to be so traded on the CME cash exchange and,
20 yet, not taken into account when the Federal Order system
21 assesses the market value of cheddar cheese for purposes
22 of setting minimum milk prices.

23 Nor does IDFA or the many members they have
24 discussed this issue with see any indication that the CME
25 would cease trading 500-pound barrels simply because they
26 were no longer included in the milk pricing formulas.

27 40-pound blocks and 500-pound barrels are
28 undoubtedly commodity products with different functions,



1 and the failure to include both in the pricing formulas
2 would provide a distorted view of the commodity cheddar
3 market.

4 40-pound blocks are typically sliced, diced,
5 shredded, or cut into smaller blocks and sold in its
6 current form, while 500-pound barrels are typically
7 further processed to make processed cheese and other
8 cheese flavored products.

9 Critically, because 500-pound cheddar barrels are
10 further processed through melting, they can be stored at
11 28, 29 degrees for up to 180 days for six months. Kroger
12 has had success with this method on 40-pound organic
13 cheddar blocks, but I do not believe the block aging is a
14 wide industry practice of all temperatures.

15 This storage method has been an active part of
16 block inventory management for about a decade -- excuse
17 me, that should say barrel inventory management -- and has
18 been widely adopted by both manufacturers and buyers of
19 barrel cheddar. This process certainly allows 500-pound
20 barrels to successfully balance seasonal inventories and
21 provide a good market outlet for milk going into barrel
22 cheese.

23 This tool to balance cheese market and demand
24 further supported by the fact that facilities that can
25 process 500-pound barrels tend to have more available
26 capacity than 40-pound cheddar block manufacturers and,
27 thereby, more readily serve the necessary outlets for
28 milk. These market functions can only be captured by



1 including 500-pound barrels in the formulas.

2 The CME itself has noted the differences between
3 the usage of block and barrels and how the marketplace for
4 one does not capture the market conditions affecting the
5 other.

6 "Although blocks and barrels are both cheddar
7 cheese products, their end uses are diverse. Typically,
8 manufacturers use block cheddar cheese for chunks, loaves,
9 shreds, and snack-size natural cheeses, while barrels are
10 often consumed in the processed cheese category. The
11 different channels can create unique and often dissimilar
12 demand for cycles and trends as well as seasonal
13 varieties." Quoted from CME Block Cheese Futures - a New
14 Hedging Tool, which is available online.

15 The assertion that all cheese other than cheddar
16 barrels are sold based on block prices is simply not the
17 case. Even the witnesses for NMPF are not consistent with
18 their estimates, ranging from 75 to 90%.

19 From my personal experience, there is a growing
20 piece of the cheese market that is not priced on either
21 blocks or barrels markets. More and more small cheese
22 manufacturers are turning to the NDPSR price as their base
23 for its simplicity in hedging. Others are using the
24 Class III price for cheese value base because it
25 eliminates whey price volatility in the Class III price
26 for plants with limited opportunities for return on their
27 liquid whey.

28 Some exporters are using the barrel price for



1 setting export values in very competitive markets where
2 the block price simply isn't competitive. Using the
3 barrel price for these products moves the milk solids
4 overseas and away from the CME in either block or barrel
5 form.

6 Against this backdrop, eliminating 500-pound
7 barrels will reduce the efficiency of the milk order --
8 efficacy of the milk pricing formulas. IDFA does not take
9 the position because it results in any particular
10 advantage to processors. Whether the 40-pound block price
11 is higher or lower than the 500-pound barrel price varies
12 from year to year, particularly when one adds \$0.03 to the
13 barrel price as provided in the milk order formulas.

14 The following chart shows the cheese price when
15 all cheese, i.e., 40-pound blocks and 500-pound barrels,
16 are included versus only 40-pound blocks are used. And
17 the chart below compares NDPSR monthly block price with a
18 weighted average cheese price, which is where the cheese
19 for Federal Order pricing.

20 If you go through the years: 2009, we had blocks
21 for \$0.01 behind the weighted average; 2010, there a were
22 a penny; 2011, they were \$0.02; 2012, they were a penny;
23 '13, '14, '15, they were a penny; '16, they were \$0.02
24 below; '17 was plus 2; '18, plus 4; '19, plus 2; '20, the
25 year of the Food Box Program and COVID, plus 12; 2021,
26 plus 6; and 2022, back to minus .1.

27 As shown, in most years since 2009, only 40-pound
28 blocks would reduce the survey cheese price and,



1 therefore, reduce minimum milk prices to farmers. While
2 that relationship shifted for a few years in 2017 to 2021,
3 it shifted back in 2022. In any event, these shifts
4 reflect actual market conditions, and that is what product
5 pricing formulas are designed to do.

6 NMPF Proposal 3 should be rejected for the same
7 reasons it was rejected by USDA in 2000 and 2008. The
8 barrel market is an important part of the supply demand
9 balance of the commodity cheddar sector of the cheese
10 industry and needs to remain part of the NDPSR monthly
11 price.

12 Q. Mr. Brown, as you were giving your testimony you
13 made one correction, and I want to just make sure that
14 everyone marks that on their copy of the Hearing Exhibit.

15 If we go to page 5, and go -- from the bottom, go
16 up to the fourth line. It says -- the first words of that
17 sentence -- of that line are, "an active part of block
18 inventory management."

19 And did you say the word "block" instead should be
20 "barrel"?

21 A. Yes, that is correct. It should be barrel.

22 Q. Okay.

23 MR. ROSENBAUM: Your Honor, I tender the witness
24 for cross-examination.

25 THE COURT: Cross aside from AMS? No one?

26 Please.

27 CROSS-EXAMINATION

28 ///



1 BY DR. BOZIC:

2 Q. Good morning, Mike.

3 A. Good morning.

4 Q. Not a high demand for cross this morning.

5 A. Pardon?

6 Q. Not a high demand for cross-examination this
7 morning.

8 A. I figured this was coming.

9 Q. Can you -- if -- let's say that the Proposal 3 is
10 adopted and barrels are no longer priced in Class III. In
11 your professional opinion, would that change how barrels
12 are priced? Would they be priced off blocks?

13 A. I don't think so. The reason is very simple. It
14 is very much a commodity market. Pricing historically has
15 been based on CM- --

16 (Court Reporter clarification.)

17 THE WITNESS: Barrels are generally priced off the
18 CME barrel market. That market would not go away with the
19 adoption of this proposal.

20 My experience as a commodity buyer of cheese at
21 Kroger and selling cheese at Glanbia is that the most
22 important thing with commodity often is point of
23 reference. And so if there's a barrel cheese CME market,
24 other processors -- or other buyers are going to look at
25 that as the benchmark price for that product, and they
26 will not want to move from that, their concern being if I
27 do go to blocks and that barrel still exists, my
28 competitors are using that barrel market, we won't have



1 alignment in price. And certainly processed cheese is a
2 commodity just like barrels are and blocks are.

3 Q. Thank you.

4 If -- if -- continuing with this thought
5 experiment. If Proposal 3 is adopted and barrels are no
6 longer part of the NDPSR, would you expect there to be a
7 consensus within the industry between processors,
8 cooperatives, and others, to request from CME to remove
9 the spot market for barrels?

10 A. No, I don't. I think there will be requests. I
11 don't think it will be consensus.

12 Q. And in your knowledge of the history of CME, has
13 CME ever enacted a change without there being a consensus
14 in the industry?

15 A. It needs to be a very strong agreement. I won't
16 say it's got to be 100%, but it's got to be very high
17 before they are going to make a change, just because they
18 service -- they want to keep their customer base as broad
19 as it can be, and if they have customers that feel that
20 market is important, they are going to be reluctant to
21 remove it, whether it's -- it doesn't matter what the
22 product is, but certainly that would be true with barrels.

23 Q. So let's change to a different thought experiment.
24 If I'm a manager of a cooperative and I make both blocks
25 and barrels, and barrels are no longer part of NDPSR, but
26 they are still priced off -- they still have their own
27 price discovery, could you explain if there is -- how
28 adoption of Proposal 3 could, or maybe could not, increase



1 my revenue as a cooperative?

2 A. Well, the challenge you have is there's about
3 130 billion pounds of milk in this country used a year to
4 make cheese. That's assuming 11% yield on all cheese
5 production, which I think is generous.

6 On Federal Orders last year, 81.8 billion pounds
7 were pooled, which is about 63%. As long as you have
8 unregulated plants who have their own independent milk
9 pricing systems, for the most part, they are going to do
10 what they need to do to move cheese. And so, they will
11 use -- if they can sell off of blocks -- I mean, everybody
12 is opportunistic. They would love to be able to do that.
13 The reality is they need to move product. They will price
14 it as it needs to be priced. And some of those plants,
15 transportation-wise, we're at a bit of a disadvantage,
16 which also tends to lead to some discounts in price.

17 Q. So, in other words -- and please correct me if
18 this is not a fair restatement of your words -- there is
19 really no clear and plausible causal mechanism that would
20 make revenue from selling barrels be higher if barrels are
21 not in NDPSR; is that a fair statement?

22 A. That is -- that is -- in my opinion, that is very
23 much the truth because of the traditional mechanism used
24 in just a competitive market.

25 Q. So therefore, if -- if my revenue -- again, as a
26 manager for a cooperative -- my revenue for selling blocks
27 is still based on blocks, on -- on block in NDPSR or CME,
28 etcetera, and my revenue on barrels is still based on



1 primary discovery for barrels, would my revenue actually
2 go up or not if Proposal 3 is adopted?

3 A. It -- it may or may not. In my view, barrels
4 would be priced the way they are, so it's opportunistic
5 markets adjust. And I mean, more supply in your pricing
6 mechanism.

7 Q. So it will be driven -- so whether my revenue goes
8 up or not will be driven by market supply and demand
9 shocks, not by regulatory changes?

10 A. That's always the case with dairy from my
11 experience.

12 Q. Right. Right.

13 So in your understanding of the industry, the
14 block-barrel spread that started going -- you know, being
15 less stable in 2017, to what extent could we ascribe that
16 to the increase in barrel-producing capacity or -- in
17 2016, 2017?

18 A. Certainly plays a role. The other thing that
19 plays a role is -- is, frankly, export market. And if you
20 have an export market for a certain product, I mentioned
21 in my testimony, that those export prices, they don't
22 follow up a lot. They can, but generally if you are going
23 to export, you need to come up with a longer term price.
24 You also need to be able to move product in the spot.
25 Because even though we all think of exports in three- to
26 six-month contracts, there's a fair amount of that that
27 remains the spot market.

28 And so you are going to -- if you think -- if your



1 plant can make mozzarella in barrels, I'm going to make
2 mozzarella as long as it's more profitable, even if it
3 isn't the block price, because you come from an
4 unregulated market. At some point, if barrels are better
5 off or there's simply no outlet for that cheese, I'm going
6 to move your barrels. In other words, their balancing is
7 something their export trade.

8 Q. Would it be fair to restate your statement as the
9 overseas demand for our cheese export is more price
10 elastic than domestic demand?

11 A. I -- I'm not thinking of an economist. I think
12 it's very -- well, you just have so many more players. So
13 it definitely -- it definitely moves around because you
14 have more places to go for supply, generally and depends
15 on world production, but --

16 Q. In other words, whether we remove barrels from the
17 survey or not, that's not going to make our mozz exports
18 any more guaranteed.

19 A. No. That's correct.

20 Q. And therefore, there might be periods when we are
21 less or more competitive than our overseas competitors?

22 A. Yes.

23 Q. So if we remove barrels and -- from the NDPSR, and
24 our cheese exports are not less stable, how would -- what
25 would be -- would there be any change in how a rational
26 exporter would manage their revenue in periods when they
27 are not competitive overseas with mozz exports?

28 A. It's going to depend on a couple things. First of



1 all, the competitive market which they are buying milk,
2 which in the -- in a lot of unregulated markets tends to
3 be -- well, obviously, they're a commodity, but also tends
4 to be a good mix of block and barrel cheddar, so there's a
5 good mix. That's one.

6 I think the other thing is, they are going to --
7 as long as they have milk supply and they have flexibility
8 in how they price, because they do, they will flex to --
9 to basically keep their margins as consistent as they can.
10 And they will move -- they will move their pricing
11 regardless of what happens to Federal Orders. Which
12 leaves your barrel producers in Federal Orders, they could
13 be at a significant competitive disadvantage, and there's
14 a lot of those.

15 Q. So and that flex between mozz and alternative
16 products has been traditionally between mozz and barrels;
17 is that correct?

18 A. From my understanding, yes. I mean, export
19 markets are relatively new. There's been some that have
20 been in it for a long, long time. And so I think there's
21 still learning going on. But, generally, I would say that
22 is the case.

23 Q. Would removing barrels from NDPSR change what a
24 rational owner of such a plant would do? Would they be
25 more likely to flex from exporting mozz to producing
26 blocks?

27 A. They could. It depends, again, what there's an
28 immediate market for, what they feel that they can sell



1 the easiest. I think it is -- and I'll be honest, the
2 whey being white, that isn't worth as much as you all
3 think it is.

4 Q. So -- but if they do flex from -- not to barrels
5 but to blocks, would that not then make the block price
6 more volatile than it is today?

7 A. Oh, absolutely. I mean, any time you have excess
8 product on the market, it's going to -- it's going to
9 affect that price, and it doesn't matter what you -- if
10 you've got ten loads of blocks to sell or ten loads of
11 barrels to sell, once already at not a particularly strong
12 demand market, but your normal market, of course it's
13 going to affect price.

14 Q. And at least for those producers that are not
15 hedged, and we know that most of them are not hedged, how
16 would more volatile block cheese -- if barrels are removed
17 from NDPSR -- how would that impact their pay price?

18 A. Well, it becomes 100% the price for protein. And
19 so it could -- it could have a very large significant
20 impact. Again, if that's, if processors went to balance
21 markets, and they will have some incentive to do that.
22 Some of them -- obviously it would involve investment.
23 And there's other ways to sell cheese, too, including,
24 particularly 640s, they are often at auctions because
25 there isn't a CME market for 640s.

26 Q. Okay.

27 A. There's still a step in that demand for cheese and
28 that will put pressure on the CME price.



1 Q. Thank you.

2 Having explored the export pathway, I want to
3 return briefly to the capacity increases. And if I am
4 summarizing your statement correctly, you said that
5 increase in barrel capacity in 2016, 2018, played part of
6 the role in more volatile spread.

7 To your knowledge, are there any significant
8 expansion projects right now in the barrel making
9 capacity?

10 A. No. None that I'm aware of.

11 Q. Are there any significant projects -- cheese plant
12 expansions right now in the block capacity?

13 A. Oh, several. You look at Texas, Kansas, South
14 Dakota year-round, right now currently being built, 10 and
15 12 million pounds of milk a day, and that will grow with
16 time. Those are the big ones I can think of off the top
17 of my head.

18 Q. When do you anticipate that a majority of the
19 projects that are currently under construction would be
20 commissioned, the milk would start flowing?

21 A. One already is. I would say all of them within
22 two years, maybe within a year and a half.

23 Q. Within a year and a half.

24 So what could be the short-term impact on
25 block-barrel spread with the addition of all that new
26 block capacity?

27 A. Boy, do I have experience with that. Yes, it
28 will affect -- it will affect barrels, too. And the



1 reason is this: When you first start a plant, your cheese
2 isn't perfect, although, some recent startups came awfully
3 close, have gotten pretty good at it. As a result, you
4 have more off-grade cheese.

5 One thing you have to remember when you make
6 processed cheese, it isn't all barrels. When you are
7 running a cut-and-wrap plant, 10 to 15% of your trim,
8 which is basically to make the squares for blocks or
9 slices or whatever it maybe, ends up we call it in the
10 cooker. It ends up being sold to someone for processed
11 cheese. That price is a barrel base price, even though
12 they bought the cheese on block.

13 And that market will depend on the availability
14 and demand. If you have a new plant that's having trouble
15 with some off-grade cheese, they will sell to that
16 processing manufacturer, generally at barrel base price or
17 worse, and that will put pressure on that market. But,
18 again, it's simply supply and demand. You have added
19 capacity to the business.

20 And we don't -- at this point, I don't see a lot
21 of restriction in -- any interest in restricting the
22 growth of those plants. We across the country have been
23 dumping milk because there wasn't enough capacity.

24 Q. Would it be fair to say that the block-barrel
25 market could get inverted in 2025 as a result of new block
26 capacity?

27 A. It has before when we've had expansions, yes, it
28 could.



1 Q. And if that does happen, would dairy farmers, at
2 least in 2025, be better off if the Proposal 3 is rejected
3 or adopted?

4 A. They would be worse off that year. And I guess
5 the whole point, there's two demand markets. They are
6 different products. They both can play roles in
7 balancing. They both can be stored successfully. And so
8 it really depends on, A, where the capacity is and where
9 the milk is or being made. You are not going to have
10 plants say, oh, barrels are stronger, I'm going to put in
11 a barrel line this year. It doesn't happen. But we do
12 have plants already with that flexibility to move back and
13 forth. They are fairly large.

14 Q. Would it be fair to say that there's more
15 flexibility in the industry today than -- than there was
16 in 2017 when the spread first started becoming volatile?

17 A. Yes, because -- there's been several plants that
18 have expanded, so they could do both block or barrel
19 depending on the market conditions.

20 Q. And if there's more flexibility today, what would
21 be the impact on how long lived the shocks of the
22 block-barrel spread are going forward versus last few
23 years?

24 A. Oh, we're already planning -- you can see it
25 already. You can see where capacity is going. I mean,
26 the industry will respond to that -- to that mix. And I
27 don't necessarily see barrel plants closing, but I
28 certainly -- I certainly see block plants expanding



1 because, you know, that is the market they are chasing.
2 After the last few years it made sense. Think about '16,
3 '17, before that, as far as revenue, it was kind of
4 neutral, so it didn't make so much difference. Now, of
5 course, it does.

6 Q. So would it be fair to conclude then that the
7 volatility of the block-barrel spread will be addressed
8 through the free market developments in some cases?

9 A. Absolutely. Particularly if you consider that,
10 you know, basically 15 billion pounds of milk a year are
11 going to cheese plants that's not regulated in price.

12 Q. And then the last point, I think, for your -- your
13 answers, previous testimonies from other persons indicated
14 that some block cheese is excluded for a variety of
15 reasons. Could you speak to what percent in your
16 professional opinion of barrel cheese is excluded from
17 NDPSR and for what reasons?

18 A. I can't -- I can tell you the why, exact if it's
19 science, I can't tell you. It's obviously less. Probably
20 as a percentage of barrel production, two to three times
21 more on the total production.

22 The main thing I see in barrels, if it's a
23 flavored barrel, for example, if you make processed Swiss
24 cheese, you are buying a barrel with cheese culture in it,
25 and so it's going to be -- it's going to be priced -- I
26 mean, it's going to be priced -- not viewed by USDA as a
27 standard cheddar barrel, which it shouldn't be, although
28 the process is the same.



1 Other than age, when you are making processed
2 cheese, the functionality of barrels changes with age. I
3 gave the example of they are strong after six months now,
4 and that's fairly common practice. Part of -- part of the
5 strategy behind that is that if you keep it for six months
6 at that very low temperature, it will go to kind of a
7 medium, as far as flavor profile, and it is perfectly
8 neutral in processed cheese.

9 Because when you are making processed cheese, you
10 want a mix. I mean, I have heard more than once at
11 Kroger, the processed cheese plant, which is in Rochester,
12 Minnesota, saying, we are getting too much of this kind,
13 we need more of that, to get our proper mix.

14 And so to get the right functionality, flavor
15 profile, binding, you want both very fresh cheese and some
16 older cheese. In my experience selling barrel cheese,
17 there was a remarkable amount, from my personal
18 experience, that was sold less than four days old. It was
19 basically put into a barrel and shipped to a processing
20 plant. So it wasn't recorded.

21 DR. BOZIC: Those are all the questions I have.
22 Thank you very much.

23 THE COURT: Anyone else before we get to AMS?
24 Yes, Ms. Hancock.

25 CROSS-EXAMINATION

26 BY MS. HANCOCK:

27 Q. Good morning, Mr. Brown.

28 A. Good morning.



1 Q. I want to chat about a couple of the things that
2 you talk about in your testimony in Exhibit 127.

3 So help me put this into context. In 2000, where
4 were you employed?

5 A. In 2000, I was employed by National All-Jersey.

6 Q. And in 2008, where were you employed?

7 A. Glanbia.

8 Q. And on page 2 of your testimony, you say, "The
9 orders since 2000 have in step one" -- this is referring
10 to your calculation -- "have in step one relied upon the
11 weighted average of the U.S. average price for 40-pound
12 block cheddar cheese and the U.S. average price for the
13 500-pound barrel cheese (38% moisture)."

14 I'm wondering if you recall what the percentage in
15 2000 was of the total surveyed amount representing the
16 barrel market?

17 A. I don't, year by year. I do not. It tends to run
18 either side of 50.

19 Q. Okay. Was that in the case in 2000?

20 A. I believe it was, but I can't say for sure. I'm
21 not going to vouch for that.

22 Q. Okay.

23 A. Yeah.

24 Q. And -- so you don't know how it compares to what
25 the percentages are today?

26 A. No. I really only look back as far as 2008 or '9.
27 After -- after the last change is where I did my
28 evaluation on.



1 Q. And do you know if the block -- the total volume
2 of block cheddar has increased since 2000?

3 A. Oh, I think all has. But blocks, yes, certainly
4 have.

5 Q. Okay. Do you think it's doubled?

6 A. I think it's possible, but I'm not going to say.
7 Again, I don't -- I don't have that in front of me.

8 Q. Fairly close to doubling at least?

9 A. I'm not going to say that. I just don't know.

10 Q. Okay.

11 A. Yeah.

12 Q. If it had doubled, would removing the barrel
13 sampling size from the total volume sampled cause you as
14 much concern, if the total volume being sampled today for
15 just block would be the same or close to the same volume
16 as being sampled in 2000?

17 A. I think -- not necessarily, and this is why.
18 Because both markets reflect supply and demand for
19 commodity product, which is cheddar. And so absolute
20 pounds isn't the whole -- isn't the whole story. When you
21 have more barrels exchanged on the CME, for example, and
22 they have been fairly strong over the last few years, it's
23 simply that there is -- there are more barrels available.
24 That has been what's been elected to meet the market. You
25 can go back to 2021. Barrels were tight. Milk was tight.
26 And that's -- that's one of the things it reflects.

27 So those barrels play a role in reflecting the
28 overall balance as for cheddar. The block market alone



1 doesn't do that. Blocks -- we had some conversation here
2 earlier, we had a barrel manufacturer that does a lot of
3 specialty barrels, and they are very, very good at it.
4 They are probably not your typical commodity barrel
5 manufacturer who is going to, you know, make -- make
6 barrels to demand, but also, if they have extra milk, then
7 they have to process it. They will make barrels or blocks
8 depending what they have a market for. And if they don't
9 have a market for blocks, they are going to make barrels,
10 which is an overall expression of supply and demand for
11 cheese -- cheddar cheese.

12 Q. Okay. And I think you said that they are both
13 necessary for balancing the market. Is that in part of
14 your --

15 A. Oh, yeah, it depends on what the capacity --
16 what's available. In fact, it was said earlier, I think
17 it was Christian, nonfat dry milk is still, and butter are
18 probably the preferred products for balancing the market,
19 but cheese does, to some extent, primarily because that's
20 what the capacity is available that's what you are going
21 to do with it.

22 Q. And is it your opinion that barrel and block
23 products are interchangeable?

24 A. No. They are not.

25 Q. Okay. You don't believe that they are
26 interchangeable?

27 A. I know they are not, with a couple of exceptions.
28 Curds, which are very fresh -- they like 'em squeaky --



1 and you will see some barrels that are processed for
2 shred. And, again, for immediate use, although it's a
3 fairly small portion of them, I believe.

4 Q. And for IDFA, do you know what percentage of the
5 cheese manufactured by IDFA is barrel production?

6 A. I do not.

7 Q. Is it about 11%?

8 A. I have no idea.

9 Q. Is that in the right range?

10 A. I don't know.

11 Q. Okay.

12 A. I know -- I know barrels are roughly a third of
13 production of cheddar. I don't know whether in their own
14 membership, what that percent would be.

15 Q. Okay.

16 A. We have two -- three -- three large barrel
17 processors, and they easily can make barrels -- only
18 barrels, blocks, or barrels and another kind of cheese.

19 Q. Okay. So let's say if it was a third of the
20 production, then that would mean that 66% would be cheddar
21 production or other cheese production, a higher price
22 cheese production?

23 A. Not necessarily higher price, but different cheese
24 production. You got to remember, there's a supply and
25 demand for everything. I mean, if you look at mozzarella
26 the last few years, it's -- there's been a lot of growth,
27 and so those markets become competitive. Having bought a
28 lot of mozzarella in my career at Kroger and watching what



1 happened, those market dynamics changed. That's why, for
2 example, you need to really survey a market almost monthly
3 to get a good feel for what the -- what the relative
4 market is for commodities other than cheddar.

5 Q. You cite on page 4 of your testimony an excerpt
6 from the 2008 hearing; is that right?

7 A. Yes.

8 Q. And -- and you cite this for the proposition that
9 USDA had considered removal of barrels and decided not to
10 remove them from the surveyed prices?

11 A. That is correct.

12 Q. And I want to look at the language -- well, first
13 off, were you involved in that hearing?

14 A. Oh, God, yes. I'm old.

15 Q. Okay. It's -- I wasn't trying to suggest that.
16 But --

17 A. No, actually, just for -- for full disclosure, I
18 started out the hearing working for Darigold, ended up
19 working for Glanbia, so --

20 Q. Okay.

21 A. Didn't change positions but changed -- changed
22 employer.

23 Q. Okay. So that's helpful.

24 So -- so you started off by working for Darigold.
25 And that's NDA?

26 A. Yes. NDA owns Darigold, that's correct.

27 Q. Okay. And NDA was one of the proponents of barrel
28 elimination for that hearing, weren't they?



1 A. Yes. But we didn't testify on it.

2 Q. Right. And that was going to be my next question.
3 So NDA along with DFA were both supporters of barrel
4 elimination, at least in initiating the proposal for that
5 hearing; is that right?

6 A. Yeah. Again, a long time ago from what I
7 recollect. Obviously, there was a proposal, so we must
8 have, yes.

9 Q. Yeah. And then when the hearing was underway,
10 neither DFA nor NDA, which is who you were working for,
11 offered any testimony in support of that barrel
12 elimination?

13 A. What I remember, yes, that's correct.

14 Q. But there were some people who testified in
15 opposition to removing barrels at that hearing; is that
16 right?

17 A. That would be true.

18 Q. And then based on the totality of that record, the
19 USDA noted all of those facts, that even though there had
20 been proponents of it, they offered no testimony in
21 support?

22 A. Yes. They did.

23 Q. And you read that in the hearing decision as well,
24 in the paragraph that immediately precedes the one that
25 you quoted?

26 A. Yes.

27 Q. And then when we get to this quoted paragraph, the
28 USDA actually notes the importance of the protein price



1 being representative of the whole cheese market; is that
2 right?

3 A. Yes.

4 Q. In fact --

5 A. Yes.

6 Q. -- they note it multiple times in this one
7 paragraph, don't they?

8 A. Yes.

9 Q. And they don't just note it, but they actually
10 said that it needs to be reasonably representative of the
11 market for cheese; is that right?

12 A. Yes. But what's reasonable?

13 Q. Well, they are not saying that it has to be
14 reasonable. They are saying it needs to be reasonably
15 representative.

16 A. Yes. But what does reasonably representative mean
17 what you have two products, when you have two different
18 ways a market can be balanced, and either product can play
19 that role? So I don't think that means percent of cheese.
20 It means what's the -- what's the effect they are having
21 on keeping that overall market balance.

22 Q. And because no one put in any evidence in support
23 of it, they didn't have any data in that hearing to
24 suggest that it was not reasonably representative; is that
25 fair?

26 A. From my recollection, NDA didn't have, I want to
27 say -- we didn't think we had a strong argument.

28 Q. Okay. And even if we look at the chart that you



1 have put together on page 7 -- actually, we don't have
2 that information on the chart that you have on page 7,
3 right, because it starts in 2009?

4 A. Yes, that's correct.

5 Q. Okay.

6 A. It started -- started post -- last time we changed
7 pricing is when I started doing this.

8 Q. But you are --

9 A. So --

10 Q. You are familiar with the numbers before 2009 as
11 well, aren't you?

12 A. Yeah, but I don't have them in front of me. But
13 reasonably so, yes.

14 Q. Okay. Were you here for Mr. Hanson's testimony?

15 A. Yes.

16 Q. And I think his written statement was in
17 Exhibit 117.

18 Do you recall that?

19 A. I do, but I don't remember the table.

20 Q. Okay. And his -- his Table 4 had the block and
21 barrel spread on the actual numbers of what the spread was
22 for each year.

23 Do you recall that?

24 A. I do.

25 Q. Did you look at his numbers to see if any of those
26 were incorrect?

27 A. I did not. But did he include -- did he add \$0.03
28 to the barrels would be my only question off the top of my



1 head.

2 Q. Okay.

3 A. We didn't look at those because these are
4 different -- because this is actually the NDPSR reported
5 price for pricing milk in blocks. It isn't block versus
6 barrels. So the differences will be roughly half.

7 Q. Okay. And in 2008, I'll represent to you, his --
8 his chart reveals that the spread was zero.

9 Does that sound right?

10 A. That's certainly possible, yes.

11 Q. Okay. And, in fact, even in 2006, the spread was
12 zero as well.

13 Does that sound about right?

14 A. It could be. I mean, most years until '17 we
15 didn't start seeing particularly large fluctuations.

16 Q. And historically, up until 2017, there hadn't been
17 a whole lot of volatility in the difference between
18 cheddar and barrels, had there?

19 A. Best of my knowledge, that is true.

20 Q. And do you know what happened in 2017 to initiate
21 the volatility that we have seen since then?

22 A. Well, we have had -- certainly we've had some
23 expansion of plants. Exports is becoming a bigger, bigger
24 part of sales, which are volatile. So -- so you had some
25 issues with that. And because the spread had been so
26 small until then, there wasn't -- there was actually still
27 incentive to put in barrel capacity, whether it is a
28 barrel-only plant, which I can't think of any that had --



1 well, there was one in Wisconsin that did in recent years.
2 That was before that.

3 But it was having that flexibility, that capacity
4 to -- to meet a need. In a lot of cases it is just if you
5 are -- if you are a cheese manufacturer, and somebody
6 loves your blocks, and you think you can sell them barrels
7 as well, you may put in the capacity to do that. It's a
8 response -- it was a response to what was viewed as market
9 demand.

10 Q. Okay. And when you talked about that flexibility,
11 it's true that there are plants that built in some
12 flexibility into their processing capabilities; is that
13 fair?

14 A. That is true.

15 Q. And oftentimes that was taking a barrel plant and
16 allowing capacity to produce block cheddar?

17 A. Yeah. It went both directions, actually.

18 Q. Okay. Which way was more common since 2017?

19 A. Since '17, barrels to blocks --

20 Q. Okay.

21 A. -- I would say for sure, especially in the last
22 three or four years.

23 Q. And that's in part based on that volatility and
24 response to that volatility?

25 A. It's market signal. Yes, I would believe that
26 would be true. It just makes business sense that they
27 would want to do that.

28 Q. Okay. Are you aware of any plants that went the



1 other direction?

2 A. I know one added barrel capacity as part of an
3 expansion, yes. I know another one that added barrel
4 capacity as part of an expansion, too.

5 Q. Okay.

6 A. Off the top of my head. I'm just trying to -- in
7 my head. But, yeah, two.

8 Q. And then the overwhelming majority is that it went
9 the other direction?

10 A. It went to blocks, yes.

11 Q. Can we look for a second at your table on page 7?

12 A. Yes.

13 Q. And I just want to make sure I understand what's
14 in the columns here. Can you walk us through those
15 columns?

16 A. Certainly. First -- first column is the 52-week
17 average block-barrel price, and, again, the resources
18 here, it comes from -- from a -- I mean, it comes from
19 dairy products.

20 Second, is the NDPSR block price, which was a
21 price they reported for blocks only. The block-barrel
22 price includes a \$0.03 adjustment on barrels, so it's the
23 one that was used to determine the protein price.

24 Third column is the blocks versus that weighted
25 average. And so, as you can see, most years it was fairly
26 close to zero for a few years, and it obviously got
27 higher.

28 And then the last column is the percentage of the



1 reported product that was blocks.

2 Q. Okay. So when you have the weighted average in
3 the block -- you have the block versus weighted average in
4 that fourth -- in the fourth column over, what is -- is it
5 that you weighted there?

6 A. The weighted average is the NDPSR weighted average
7 price. So it is block minus the price used to determine
8 the Class III protein price.

9 Q. Okay. So you just took -- you just took the
10 second -- or the third column and subtracted it from the
11 second?

12 A. I took the second -- I took the second column and
13 subtract from -- yeah, third -- I guess you're calling
14 years, yes. The block minus the weighted average, that's
15 correct.

16 Q. I'm picturing the Excel spreadsheet and just
17 counting over.

18 A. I just wish it was this small. Got a lot of stuff
19 in it. This is my doodle spreadsheet.

20 Q. Okay. So you took -- you just took the column
21 titled "NDPSR Block Price" and subtracted it from the
22 "NDPSR Weighted Average"?

23 A. That is correct.

24 Q. Okay. So not the actual spread between block and
25 barrels, right?

26 A. That is correct.

27 Q. And oftentimes, if you are just looking at the
28 actual spread, it is more significant, especially when you



1 are looking at the years 2017 to the present?

2 A. It is. But this is the one that affects pricing
3 and orders and margins. Because you are going to pay on
4 the NDPSR weighted average, which is the most important
5 price.

6 One thing I'd also like to add, for the years '17
7 through '21, particularly getting to 2021, we started
8 having significant inflation in cost of manufacture. That
9 spread is an implied -- basically increases your make if
10 you are a block guy. It increases -- decreases if you are
11 a barrel guy and helps some stay in business.

12 If you look at what's been reported on financials
13 for 2022, they are a lot weaker, and part of that reason
14 why is that that spread went away. It was no longer
15 something that could help balance that. But for the
16 barrel guys, it was probably their best year in five or
17 six years, but not for the block guys.

18 So it does -- it does matter what that is, but it
19 also depends -- it also goes the other way. I mean, it
20 works both ways. And part of the -- part of the idea and
21 part of what we see -- I think what we're seeing in
22 response when we're seeing increasing block capacity,
23 people see opportunity in that relative to barrels.
24 Blocks are what you export. We don't export a lot of
25 barrels, if any, that I'm familiar with. And so, again,
26 the market is responding to demand versus capacity.

27 We have seen the same thing in whey for years.
28 When you go back to 2005 to 2015, everybody put in WPCA



1 capacity, so we had too much, and it took years for that
2 to kind of balance back as well.

3 Capacity is -- as you know, is a two- or
4 three-year process, so it doesn't follow markets directly.
5 I think we're seeing the signals are what they are. But I
6 also think, let's see what happens with blocks when we add
7 all this new capacity, and if that pulls some milk out of
8 barrels, which it may or may not, what that does to that
9 block-barrel spread. Because I think over time, if you
10 look at margins from clients, they need to be relatively
11 consistent; otherwise, one is going to grow and the other
12 one is not. And right now we're seeing that growth in
13 blocks. Particularly -- again, a lot of it is areas that
14 either are unregulated or tend not to be heavily
15 regulated, I guess I would say, kind of a balancing out of
16 the orders.

17 Q. And I think I heard you say in there that the
18 inflationary effect on block versus barrels is in part
19 what allowed some of the barrel processors to be able to
20 stay in business when times got tough?

21 A. No. It's actually the other way around.

22 Q. The other way around?

23 A. Yeah. Block guys did better when times got tough
24 because -- keep in mind, take 2021 -- and pardon my
25 voice -- we have a \$0.06 spread. What that means,
26 basically, the USDA's price they use for cheese, that
27 weighted average price, was \$0.06 below the block price,
28 which means that it priced used to price their product was



1 below that market. But if you go to most years on here,
2 it's the other way around. And so if you were a block guy
3 in 2021 dealing with makes that hadn't been updated since
4 2008, it look a little pressure off, but it put more
5 pressure on barrel guys. But, again, you go back to
6 what's the market? It isn't blocks, it's both.

7 Q. Do you know what percentage of the cheese market
8 is -- is priced off of NDPSR?

9 A. Off of NDPSR directly, it is mostly smaller
10 processors that do that. A lot of people use it with risk
11 management. In my experience, I have been able to buy
12 cheese in the past based off the NDPSR price. Generally
13 there's an adjustment. You may pay a premium if people
14 think the spread is going to be wide, but it just makes
15 forward value solution really simple. And that's, by the
16 way, not only true with cheese, it's true with other
17 products as well.

18 Q. So it's just a smaller percentage is that, for the
19 smaller processors?

20 A. Well, if you look at -- no -- well, yes and no.
21 Direct -- indirectly, yes. I mean, if you look at the
22 volume on the block market, if that block market was used
23 to the extent that people might think it would be, there
24 would be a lot more value in it. There's not. Why?
25 Because they figured out ways to use the NDPSR price to
26 forward sell their cheese or forward buy their milk. And
27 the NDPSR price, of course, goes back to farm price, so it
28 also gives you a natural hedge at the farm side.



1 If you -- if you take barrels out of that, it
2 becomes, I would argue, less useful for a fair amount of
3 the market.

4 Other things -- I'll go a step farther. Even
5 whey, if you are a small plant and you can't process your
6 own whey, some of those price cheese off of Class III
7 because the whey price gets blended into the cheese price
8 so that they don't have to worry about whey price
9 volatility. I bought cheese all of those ways: NDPSR,
10 Class III, blocks, barrels.

11 Q. And in 2022, your weighted block -- your weighted
12 average versus block has negative .01.

13 Do you see that?

14 A. Yes.

15 Q. But throughout the year in 2022, it was a pretty
16 volatile year; is that fair to say?

17 A. Remarkably so. Particularly early fall it got
18 pretty tough for the block guys.

19 Q. And so that weighted average that you have noted
20 there, it's not reflective of the volatility that actually
21 occurred in calendar year 2022?

22 A. It isn't, but that's true in a lot of years. This
23 is not the only time barrels have gone below blocks -- I
24 mean, barrels went above blocks. It's happened before.
25 That's the fallacy of an average is it is a monthly
26 number.

27 Q. And then in 2023, did you -- have you calculated
28 the year-to-date weighted average?



1 A. I have not.

2 Q. It's much larger again?

3 A. Yes, I would agree that that's the case. What the
4 number is, I don't want to speculate because I don't have
5 it in front of me.

6 Q. And we're nine months in, so we know with some
7 certainty that the spread should be much larger, again, in
8 two thousand -- or at the end of 2023 than what we saw in
9 2022?

10 A. I would say nine months in, your -- it's going --
11 your weighted average, probably, you're right, that that
12 would be the case. But I'm not going to speculate. I
13 have given up guessing the spreads. I have never been
14 able to forecast them. I've tried forever.

15 Q. And if you look forward into the future, can you
16 think of anything that is suggesting that the market will
17 not continue to remain as volatile as we have seen since
18 2017?

19 A. Yes. The expansion of block capacity I think is
20 going to bring those prices back into alignment, just like
21 it did with barrels in the past. I just don't see that
22 continuing, because if you're a barrel plant, you can't
23 operate at the current spread either, and so it moves back
24 and forth, which is the problem with regulated price,
25 that's why it is a minimum.

26 Some people would say, well, let's just price off
27 of barrels because that is the market. And I would say,
28 no, it's blocks and barrels that are the market.



1 But you do need to consider both, because barrels
2 play an important role in balancing the market. I would
3 disagree with some of my friends who have spoke before, it
4 does. And we have ways to keep them. And we have ways to
5 use them. And so that's what's happening. Again, that's
6 not -- 20 years ago, I would say no. Today? Absolutely.
7 There's millions of pounds of barrels in storage now.

8 Q. And when you say you disagree with some of your
9 friends who've said otherwise, that's because when we look
10 forward into the volatility of the market, we're
11 speculating?

12 A. Yeah. I mean, you just don't know, I mean,
13 they -- everybody's got a right to their opinion, but you
14 just -- you simply don't know.

15 Q. But it's fair to say that what we have seen from
16 2017 is somewhat of a demarcation line where the
17 volatility started and we haven't yet seen that settle
18 out?

19 A. You can't look at trends. You have to look at
20 capacities. And we are significantly growing block
21 capacity, which I think is going to put pressure on that
22 market again and bring things more back into alignment.

23 Q. And --

24 A. The other thing you got to remember, 50 billion
25 pounds of milk that goes into cheese plants isn't pooled
26 on the Federal Order. Now, some of that's pooled and
27 depooled, some of the it's never on the pool. And that --
28 that has a factor, because there are, to a great degree,



1 particularly if you are in an unregulated market and you
2 don't ever pool, your pricing doesn't reflect Federal
3 Order pricing, you are going to flex that pricing, which
4 means that the Federal Orders always have to keep that in
5 mind and make sure that plants are within the Federal
6 Orders can remain competitive with that 50 billion pounds
7 of milk that's being -- which makes about 55 billion
8 pounds -- makes about 5.5 billion pounds of cheese, isn't
9 -- is going to impact the market. Because you put people
10 at a competitive disadvantage because those folks do flex
11 between those markets, and their pricing, from my
12 experience, reflects that mix.

13 If you go -- you are going to put folks, in my
14 mind, whether block or barrel, when that market is the low
15 at a competitive disadvantage because they don't -- they
16 will not have the flex that the folks in the unregulated
17 market has.

18 The unregulated market has grown significantly.
19 It didn't used to be this large. If you look over time
20 the amount Class III milk's pooled, it's changed some, but
21 nothing like the cheese capacity has changed. We have
22 more and more cheese being produced in plants that either
23 the plants aren't regulated or the market is totally not
24 regulated.

25 Q. And when you talk about looking at the capacity,
26 there's more capacity in barrels than there is block.

27 A. No, there's more capacity in blocks. You mean --
28 you mean, on the margin capacity or capacity overall?



1 Q. No. Capacity for production.

2 A. Oh, God, nowhere close. Blocks are at least twice
3 as much as barrels.

4 Q. Capacity to increase production is greater in
5 barrels right now than it is for blocks?

6 A. Yeah. It depends on the time, but I would say
7 right now that -- that has been true. It also depends --
8 you got to look also at the locality. If you are -- I
9 mean, some markets will have block capacity, some will
10 have barrel, some will have none. We look to the Midwest,
11 we've got milk all summer and spring, not so much summer,
12 a lot of it is lack of capacity. We had plants close last
13 year because they couldn't make money and we could have
14 used them this spring, but they weren't there.

15 So, again, I get back to that question, we need to
16 make sure those regulated plants get competitive, because
17 particularly a lot of your cheddars for aging, your
18 specialty kind of cheeses, they're all priced off of the
19 market some way or shape or another. They -- they are
20 made in the Midwest or the Northeast, mostly Midwest, and
21 we need to make sure those plants stay competitive because
22 they're an important part of the business.

23 And those specialty plants play a specifically
24 important role because they tend to be smaller because
25 demand is smaller, and we need to make sure that they can
26 be -- be competitive, because it is a competitive market
27 no matter what you buy. I don't care if I'm buying Colby
28 horns for a deli, which is the long tubes, or whether I'm



1 buying, you know, what we call short hole, fresh cheddar
2 to put into a block. Those markets are all competitive,
3 and you always have multiple people trying to just get
4 that market.

5 Q. Okay.

6 MS. HANCOCK: Thank you.

7 THE COURT: Any further questions not AMS?

8 AMS?

9 CROSS-EXAMINATION

10 BY MS. TAYLOR:

11 Q. Well, I'm shocked on this Tuesday morning no one
12 else has questions.

13 Good morning.

14 A. Good morning. Welcome back to Indiana.

15 Q. Yeah. You too. Great.

16 On page 2 into 3 of your statement, you talk about
17 the volume of sales of both forms of cheddar cheese, and
18 you state that they remain robust. Maybe I got my pages
19 wrong. That's on page 4. Excuse me. I'm citing the
20 wrong page.

21 The size of the NDPSR volumes that you cite, what
22 other information can you add to the record about sales or
23 production of both forms of cheddar production?

24 A. Well, they are both significantly higher than is
25 reported, and that's because there's a lot of cheese
26 that's made outside the USDA requirements for reporting.
27 More so with blocks than with barrels because I would say
28 blocks are more apt to have a specific purpose. For



1 example, cheddar for aging is a different product. It
2 tends to be a little lower in moisture, a little higher
3 fat, and so it often doesn't meet the spec, and it also
4 tends to be older, obviously. But if the plant sells it,
5 an older age or not is another question, but obviously
6 keep it for a certain period of time. It's not a fresh
7 commodity cheddar, per se. Cheddar for aging, to me, is
8 no different than a provolone as far as it's a special use
9 product, but there's a lot of that in the market.

10 To me, as far as the sample is pretty rigorous,
11 and quite honestly, until the NDPSR became in place, I
12 can't remember when AMS took over that survey and it
13 became audited, they became much better. I was working
14 for Glanbia at the time that that happened. And, for
15 example, we were reporting white blocks. Idaho NASS
16 hadn't picked that up. You did. So, of course, we quit
17 reporting them.

18 So I think it's become a very -- because of the
19 audits, because of the meticulousness of the records, I'm
20 very confident that the right product is being reported.

21 The other thing is, is just even though it may be
22 a small portion of the market, statistically, if you have
23 a sample size of billions of pounds of cheese, a total of
24 1.3 billion, that's a pretty amazing sample size. And so
25 I think it does accurately reflect the milk value of that
26 commodity based, like I said, off kind of base cheese.

27 Q. Okay. Thank you.

28 On page 5 and that first full paragraph, this is



1 your discussion about how the blocks and barrels are
2 traded on the CME. And in your second sentence, and I'll
3 read it because I would like you to expand on that a
4 little bit more: "It would make no sense for a product
5 Central to the commodity cheese marketplace to be so
6 traded on the CME cash exchange and yet not taken into
7 account when the Federal Order system assesses the market
8 value of cheddar cheese for the purposes setting minimum
9 prices."

10 All right. I was wondering if you could explain
11 on that because my takeaway from that is it's your opinion
12 that Federal Order prices should -- or the survey should
13 only look at those products that are traded on the CME.

14 A. No. I think what I'm saying is just the opposite.

15 Q. Okay.

16 A. And that is, you think hard about having a product
17 on the CME that isn't part of pricing when it's got a
18 significant value like barrel cheddar does, because CME
19 trades commodities. I mean, they're a little bit
20 different specs than USDA, but it's essentially the same.
21 And as a result, it's that commodity market that we --
22 everybody uses to market and sell products. If you pull
23 away from that and you keep that market there, as sizeable
24 as the barrel market is, I think you can end up with some
25 real disruption between market values and -- and what the
26 regulated minimum value would be, for example, with blocks
27 only.

28 And the reason I say that, is I feel very strongly



1 as long as there's a CME barrel market, there's people who
2 are going to use it, because that is the benchmark for
3 barrel cheese, and it is a different market than block.
4 It is not the same product. It's got a different function
5 as USDA spelled out very clearly in some of your past
6 decisions. And so -- but it is a building block for
7 cheese. I mean, I think, in sum, that's why it needs to
8 be considered.

9 I think you can have some significant problems
10 with disruption, and plus the fact that the size of the
11 unregulated market's gotten so large that it's easier
12 to -- to see -- see dissimilarity in value of milk for
13 cheese in unregulated and regulated markets. Because
14 unregulated markets generally take into account both
15 blocks and barrels, as USDA is now --

16 Q. So when you --

17 A. -- for reasons they're -- and that works for
18 hedging, too, using both, because that -- that 50/50 gives
19 you a decent tool for hedging cheese, roughly 50/50 that
20 we have now in block-barrel.

21 Q. Okay. So just to keep everybody straight on the
22 type of markets we're talking about. When you say
23 unregulated markets, you mean not federally -- a Federal
24 Order market --

25 A. Yeah. And they choose either to not be in the
26 order they are located where there's isn't an order, yes.

27 Q. Okay. Okay. So it's your contention, then, if
28 the barrel price is removed from the cheese formula but



1 the CME keeps the barrel market, that will create some
2 unintended consequences?

3 A. Yeah. It's going to change the alignment for that
4 commodity value of product. And, again, we know from past
5 history, it doesn't necessarily mean barrels are going to
6 be lower or higher, but it just means that that
7 relationship, in my opinion, is important because they
8 both reflect commodity markets.

9 Q. Okay.

10 A. We -- we -- unlike powder, we don't have just one
11 commodity market, we have two in cheddar.

12 Q. So we have heard testimony last week and this
13 morning about -- and I think from National Milk witnesses
14 talking about, yeah, there would be a transition if we
15 didn't collect and include barrel prices in the -- in the
16 survey for -- and there will be a transition for barrel
17 makers. But what I'm hearing from you is kind of the
18 same, but yet the transition wouldn't eventually sort
19 itself out.

20 Does that make sense?

21 A. I think -- I don't think it will. I think it's
22 got to do with total aggregate demand for commodity
23 cheddar, and you can't ignore one or the other. I mean, I
24 guess if you make barrels the last few years, you'd say,
25 yeah, we should price only off of barrels. Well, IDFA
26 doesn't think that's realistic. We think both surveys
27 make sense to provide some balance.

28 But moving from one to the other, I think with the



1 amount of unregulated barrels that are made, or blocks as
2 far as that goes, and the -- the existence of the CME
3 barrel cash exchange -- in my experience in the CME, they
4 are very customer-driven. As long as customers want that
5 market, it's going to stay there. And we all know what --
6 in dairy, if we did something one way in 1958, we are
7 probably doing something similar now if the index still
8 exists, that's just how it works.

9 Q. Very true.

10 So talking about -- kind of on that line, but what
11 is the -- you know, talking about what will happen to
12 barrel manufacturers versus blocks, you know, what's the
13 makeup of IDFA members that produce barrels? Do you know
14 that information?

15 A. I don't. But we have, I think three, we have four
16 -- four barrel makers out of the eight or nine big ones
17 that are noted, we have four of them.

18 Q. Okay. On the bottom of page 5 you talk about
19 Kroger's ability to manage their barrel inventory.

20 But Kroger -- does Kroger purchase barrels?

21 A. Oh, yes.

22 Q. And then manages that inventory?

23 A. We do. But others do it in a much bigger way than
24 we do. Kroger -- I'll give you a little story. How we
25 learned how 28-degree cheese works, what happens when you
26 have a six-month inventory of aged organic cheddar which
27 costs you a small fortune that hasn't moved as quick as
28 you thought it was going to? So we experimented with



1 that. That's more than five years ago, I think, now.

2 And we discovered what the barrel folks -- I found
3 out after we did that, we thought we were so smart, but
4 barrel people knew that a long time. Is it just kind of
5 preserves that cheese, it doesn't -- it slows that change
6 in texture and flavor. So that was our experience.

7 Because we are a cut-and-wrap, we generally for
8 our mature cheese, we have -- we have aged -- aged trim.
9 We have fresh trim. We have all kinds of trim that we
10 use. But I also know that when we -- if we have an issue
11 with profile, we could find -- we store them ourselves,
12 but we could find four- or six-month-old barrels to give
13 us -- if we thought we were a little short on flavor on
14 our processed cheese, you could buy those.

15 Q. Okay.

16 A. And there's people willing to do that. A lot of
17 that is broker-managed, but I believe a lot of the
18 manufacturers also do it as well.

19 Q. Okay. So in this paragraph, the takeaway is
20 barrels can be managed as a way to balance inventory or
21 surplus milk, and that's why they should remain in the
22 survey, because they are a balancing --

23 A. They are.

24 Q. -- product.

25 A. They are, in fact, blocks. The trouble with
26 blocks is that, is the thing that keeping that flavor
27 profile.

28 Barrels, you actually have a little more



1 flexibility because you are going to put them in a cooker
2 we always call them, but you are going to heat process it.
3 And one reason you don't have to do a coliform on a barrel
4 is because you are going to cook it again when you are
5 buying them.

6 But those barrels need to -- they are going to --
7 they are going to function. Again, you are going to use
8 all fresh, as I mentioned earlier. At Glanbia we had
9 customers that wanted barrels that were three days old,
10 two days old. The customer wanted barrels that were
11 40 days old, which is one of the reasons why the survey
12 doesn't cover all those cheeses.

13 So it's really a mix. It's down to getting the
14 blend that you want. And you discover that you can get
15 that medium cheddar flavor out of a barrel aged six months
16 at 28, 29 degrees.

17 Q. Okay. On page 7 you make the statement,
18 "Eliminating 500-pound barrels would reduce the efficacy
19 of the milk order pricing formulas."

20 I wonder if you could expand on that thought.

21 A. I think it -- you know, as we all know, one of the
22 primary roles of Federal Orders is to keep marketing, in
23 this crazy world we're in, as orderly as you can. We all
24 know there's no perfect solution. But because block
25 market doesn't always reflect the supply and demand
26 balance, it will -- it can overvalue cheese values to what
27 the true market is. So that's why having a combination of
28 the two, in our mind, makes sense, because it's a more



1 fair representation of what the total market demand is.
2 Particularly, once we get Make Allowances hopefully
3 adjusted, depending on what USDA decides to do, I think
4 that -- that becomes all the more important that you
5 can -- you include the entire market.

6 Q. In the chart on page 7 you listed a monthly --
7 excuse me -- the yearly spreads, average spreads.

8 A. That is correct.

9 Q. But the testimony we have heard from previous
10 witnesses seemed to focus more on the monthly spreads and
11 the volatility and impact from that, which obviously can't
12 be seen in the yearly averages.

13 So I was wondering if you could speak to that
14 problem that National Milk witnesses have discussed.

15 A. Well, anytime you look at monthly versus year,
16 certainly an average always takes out some of that. If
17 you put standard deviations in, I guess it would give you
18 some explanation. But if they do it month to month can
19 make a big difference either way. It's like the fall of
20 last year when barrels got so strong and a lot of block
21 guys got hung by their thumbs because of that difference
22 in price.

23 Well, there's been a lot of barrel guys hung by
24 their thumbs for several years now, particularly if
25 they're in a regulated market, and there's a lot of
26 Midwest barrel production. So it doesn't -- it doesn't
27 get away from that.

28 But pricing in general, if you include them in



1 both, is going, to some degree, soften that spread change
2 over time. But you got to expect the price is going to
3 change every month because -- well, take this year for
4 example, look where blocks were in June, look where they
5 are now. We got ourself right-sided, there was some
6 cheese exported at those lower prices, and we're back on
7 -- on purpose. Whether it's block or barrel, the market
8 needs to reflect that because it's a commodity and it
9 needs to reflect that short-term market for product, which
10 I would argue NDPSR, in my personal opinion, does a
11 reasonably good job of doing.

12 Q. So you don't find the monthly volatility an issue?

13 A. Well, I --

14 Q. For your members, I would say?

15 A. Not really, because that's how cheese is priced.
16 It can certainly make a difference. It isn't just cheese,
17 it's the same with butter or whey or whatever the product
18 may be, in different types of whey products. It is, but
19 you can manage to an average better than you can manage to
20 one extreme or the other over time, because it's going to
21 ameliorate that variation in a way that I think is a good
22 thing. Because I don't think you can just say one market
23 or the other is the commodity market for cheese, because I
24 strongly believe they both are. And you have to have that
25 considered in the product price formula.

26 Q. There's been discussion on this topic about what
27 percentage of the market is priced off of barrels or on
28 blocks, etcetera.



1 And if -- if USDA looked to keep barrels in the
2 survey, would you suggest, perhaps, a different weighting
3 that would be maybe more risk representative of all cheese
4 produced, not just the cheese that's surveyed?

5 A. Well, a couple things. First of all, the 91/9 is
6 not accurate because of -- I talked about earlier, there's
7 lots of cheese being priced different ways and more
8 flexible. Exports have become a big part of our market.
9 That cheese is priced very differently from commodity --
10 or not even commodity but domestic use cheese because you
11 have to be able to meet in that world market.

12 So you tell me what's a good -- I mean, we've had
13 a range of 75 to 90 among witnesses from -- from the
14 supporters of this proposal.

15 So -- and, again, I think what you are saying
16 there is because 90% is priced off of one, does that
17 really reflect the true supply and demand for that base
18 commodity, which is cheddar blocks and barrels? I would
19 argue it doesn't.

20 And I think the other thing -- and, again -- a lot
21 of you probably knew Paul Christ. He always used to say,
22 "Be careful what you ask for, you might get it." I think
23 that's what I've been thinking about with the block
24 market. I truly believe that there will be more incentive
25 to -- I think we risk a lot more -- as I mentioned earlier
26 to Marin -- a lot more volatility in that block market if
27 the barrel market goes away as part of that safety valve.
28 Personal opinion. But that's -- I personally believe that



1 will be the case.

2 We have a lot of unknowns here that we are all
3 speculating on. I don't think anyone can say with
4 certainty exactly what would happen. But we do know there
5 is risk that it could be different than we think it's
6 going to be.

7 Q. Okay. That led to my second question, which is,
8 if barrel prices were removed, what would you expect to be
9 the consequence of that? You know, other witnesses talked
10 about how eventually they would expect barrels to be
11 priced plus or minus off the block market. And I just
12 wanted to see if you had an opinion. But what I'm taking
13 from your last statement was, you would expect even more
14 volatility in the block price.

15 A. Absolutely. I think you would. If nothing else,
16 if you've got surplus barrels, instead of pricing off the
17 barrel market, you may say, I'll sell them to you at block
18 minus 15, because of that demand. Well, if meets your
19 spec or if USDA's spec indicates that, it's going to be
20 reported, and then it's 100% of the market. So it could
21 still have a very significant impact on the market.

22 And I think any -- any change, whether it makes
23 sense or -- well, they all can make sense, I guess, to
24 some degree -- but in this case we have two commodity
25 markets. Ignoring one I think has some significant
26 potential consequences --

27 Q. Can you say -- I can't hear you through the mic.

28 A. I'm sorry. My mouth is chalk.



1 I think -- I think going to one or the other would
2 have serious consequences, that having the blend makes
3 good sense. I know -- I know Proposal 22 gives you
4 flexibility, which you may decide to do or not do. But we
5 would -- we would concur that both are an important part
6 of that commodity cheddar market, and they both need to be
7 part of the price.

8 Oh, by the way, we have no opinion on 22.

9 Q. That's good to hear.

10 A. Yeah. One less testimony I have to give.

11 Q. So I had another question on information regarding
12 the percent of the cheese market that uses barrel prices
13 versus block prices, and you stated you didn't think the
14 75 or the 90% estimates spoken earlier in this hearing --
15 thank you, Mr. English -- was accurate.

16 But do you have any data on that?

17 A. I'm not -- I think 90 is inaccurate. I'm not
18 saying 75 is because I keep hearing it from brokers. I
19 hear it from manufacturers. So maybe that's -- maybe
20 that's closer to what the real number is. But we --
21 cheese pricing, particularly with risk management, has
22 gotten much more flexible, how people are willing to
23 market product.

24 Part of the mentality with risk management, it
25 isn't just basis off of the block market. It is the
26 price. If I want to be able to sell my deli Colby at
27 price X, and I need this much margin, I know what that
28 price is, whether it's based off of block or barrel or



1 whatever it may be, as long as that price is fixed.

2 And that's what we're really seeing, from my
3 experience, in risk management. And that's one of the
4 reasons I think the block market hasn't done as well as
5 people thought it might, the block cheddar CME market, is
6 because the combined market does work. And then the other
7 thing is you have a natural seller on the back end because
8 farmers, that's what determines their protein price and
9 their Class III price, so they, they're comfortable with
10 that as well.

11 And it also ties into, of course, the Class III,
12 which is important, too, just from the standpoint that --
13 one of the beauties we have with -- CME has structured
14 their markets around Federal Order rules -- or Federal
15 Order pricing regulations in a way that makes hedging at a
16 very, very level of uncertainty or basis risk possible. I
17 think when you start changing -- make big changes, you
18 have to keep that in the back of your mind, is that going
19 to affect that ability to do that.

20 And I recognize cheddar is different, but I think
21 you have to recognize there's two commodity cheddar
22 products, there isn't just one.

23 Q. And based on your expertise in the market, is
24 there ever a time where there's the -- for example, maybe
25 so much block production that blocks are priced off
26 barrels at a discount or something like that or --

27 A. They are generally at a big discount, or you will
28 see, particularly the 640s, because there's not a CME



1 market, you will see auctions. A buyer -- a manufacturer
2 may hold an auction to sell 640s, and that price will
3 bounce all over the place.

4 But in the case of Kroger, we tried to contract
5 all of our cheese. We had balancing agreements, plus or
6 minus X percent in those contracts. So we weren't -- we
7 were rarely on that -- on that market. But at times when
8 the markets get tight, you can be.

9 Q. Okay.

10 A. You know, as we all know, when cheese is long,
11 none of the regular buyers are buying, but that's why
12 cheese is long out there, demand has weakened a little bit
13 or exports have fallen off.

14 Q. If -- if -- if Proposal 3 is adopted, how do you
15 think that will impact barrel makers? I mean, right now,
16 their price reflects part of what the barrel market is,
17 and if Proposal 3 is adopted, it won't reflect their
18 barrel price at all. I mean, how will that impact them?

19 A. Well, the thing to remember, again, is you
20 probably have 30 million pounds of milk a day that
21 could -- excuse me -- 20 to 30 million pounds of milk a
22 day that could go into barrels that's not regulated. And
23 because of that, you can't assume that that barrel market
24 is going to just fall along with the blocks, because that
25 cheese is still going to get made if that's -- if the milk
26 is there, and that's what they have capacity for. And
27 that's why I think they will come along. As long as
28 there's a balancing role, particularly for exports, I



1 think with barrels, that will not -- that will not solve
2 itself. Because if you are an unregulated market, and
3 those markets generally have growth in production even
4 though they are not regulated. There's going to be larger
5 and lower cost producers. They can continue to flourish
6 just fine with that market.

7 You know, if you could get CME to testify and say,
8 we'll get rid of it, then I think you have a little bit
9 different question. But we don't see that and we don't
10 expect that would happen. I think everyone's talked to
11 them about it, and it's all about if there's a customer
12 need, they will keep that market. And at this point, I
13 have no reason to think that would change.

14 Q. So you would expect then just that milk going into
15 barrels -- well, a lot of it's currently not pooled, as
16 you talk about, going into the unregulated market. Maybe
17 more of that milk won't be pooled either if they won't be
18 able to pay the Class III price?

19 A. Well, that may well be the case -- yes, I think
20 that could very well be the case. And over time they can
21 make, you know, investments in their plant. But that's
22 true. We're talking about Class I price surface here in a
23 little bit, and it's really the same question. Changes
24 like that, necessary or not, they do reflect relative
25 competitive position. And today in cheese, unlike
26 20 years ago or, I guess now 23 with Federal Order Reform,
27 we have a lot more unregulated milk, so that has a bigger
28 impact on the market than it would have had in the past.



1 Q. Of your barrel makers that are members of IDFA, do
2 you know if they have -- they purchase pool milk?

3 A. One does. Let me think. One does pretty much all
4 the time; one does a good share of the time; the other two
5 are in unregulated markets.

6 MS. TAYLOR: Okay.

7 CROSS-EXAMINATION

8 BY MR. WILSON:

9 Q. Good morning, Mike.

10 A. Good morning.

11 Q. Mr. Brown.

12 A. I won't know who I am if you call me Mr. Brown.

13 Q. Todd Wilson, USDA.

14 So we heard some testimony earlier about going
15 back into time, so to speak. And I know it's difficult,
16 but I just wondered if you had a thought on -- we have
17 heard from some of the recent testimonies that in 2022,
18 maybe there was an estimate of 9% barrel manufactured in
19 the cheese category.

20 How -- obviously, cheese has grown exponentially
21 since 2000. Do you have an idea of what that percentage
22 was back then?

23 A. I don't.

24 Q. Okay.

25 A. I wish I had put a table somewhere, but I didn't.
26 I don't have it in front of me.

27 MR. WILSON: Thank you very much. That's all I
28 had.



1 MS. TAYLOR: That's it from AMS. Thank you.

2 THE COURT: Mr. Rosenbaum.

3 REDIRECT EXAMINATION

4 BY MR. ROSENBAUM:

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

7 My first question is one I neglected to ask last
8 time you were on the stand, which is to provide your
9 address for the record.

10 A. 1250 H Street, Washington DC.

11 Q. Thank you.

12 Okay. So right -- if I understood your testimony,
13 right now, there is a tremendous amount of barrel cheese
14 that is made outside -- in the United States, outside the
15 Federal Order system, correct?

16 A. That is correct.

17 Q. And do barrel manufacturers within the Federal
18 Order system have to be able to compete with those barrel
19 manufacturers --

20 A. Oh --

21 Q. -- outside the Federal Order system?

22 A. Yes, they do.

23 Q. Okay. And --

24 A. Regardless of the cheese they do.

25 Q. Okay. And right now, if you're in the Federal
26 Order system, the minimum -- start that question again.

27 If you are a barrel manufacturer within the
28 Federal Order system today, the minimum price of your milk



1 is set by starting with roughly a 50/50 blend between the
2 price of barrel cheese and the price of block cheese,
3 correct?

4 A. That is correct.

5 Q. Okay. And Proposal 3, which we're here
6 discussing, would eliminate the use of the barrel cheese
7 to set that, correct?

8 A. That is also correct.

9 Q. And if that were to be done in a time period when
10 the block price is materially higher than the barrel
11 price, that would raise the minimum price of the milk for
12 the barrel manufacturers within the Federal Order system,
13 correct?

14 A. If blocks are higher, it would raise the price --

15 Q. Okay. And what --

16 A. -- in the market.

17 Q. And what -- so what would that do to the
18 competitive relationship between block manufacturers
19 within the Federal Order system and those outside the
20 Federal Order system?

21 A. On blocks? It would -- it would --

22 Q. I'm sorry, did I say --

23 A. You meant barrels -- you meant blocks.

24 Q. No, I meant barrel. I'm sorry.

25 A. Yeah, barrels.

26 Q. Well, let me ask it again if I asked it wrong.

27 What -- what would removal of the barrels from the
28 price formula have on the competitive relationship between



1 barrel manufacturers within the Federal Order system
2 versus barrel manufacturers outside the Federal Order
3 system?

4 A. Barrel manufacturers outside of the system can
5 adjust their pricing to meet the value -- basically the
6 market value of the products that they make. They aren't
7 tied to a Federal Order price. So if you have a
8 widespread or barrel-block spread that's different or
9 their capacity within the system isn't, you know, the
10 roughly 50/50, they can and they do adjust for that. They
11 look at real value.

12 In a lot of cases, those prices are actually
13 published, but they have a -- they have a formula that's
14 also published so their producers know how their price is
15 calculated. But it will use the proportion of blocks and
16 barrels more in line with what the plants actually
17 manufacture rather than the Federal Order pricing.

18 Q. Okay. And what is the impact on the ability of a
19 barrel manufacturer within the Federal Order system to
20 compete against a barrel manufacturer outside the Federal
21 Order system, if the minimum price of milk is raised for
22 the barrel manufacturer in the Federal Order system?

23 A. It makes it much more difficult for them to
24 compete because they have a minimum price that doesn't
25 reflect the value of the products that they sell.

26 Q. The minimum price exceeds --

27 A. Yes.

28 Q. -- the value of the product that they sell; is



1 that right?

2 A. That is correct.

3 Q. Okay.

4 MR. ROSENBAUM: That's all I have, your Honor. I
5 would move the admission of Hearing Exhibit 127.

6 THE COURT: Objections?

7 Exhibit 127 is admitted into the record.

8 (Thereafter, Exhibit Number 127 was received
9 into evidence.)

10 THE COURT: Okay. You may step down, Mr. Brown.

11 MR. ROSENBAUM: Your Honor, if we could -- if this
12 would be a good time for a morning break. Mr. Brown is
13 actually also going to be the next witness on a different
14 proposal, and I think we --

15 THE WITNESS: I need water.

16 THE COURT: Yes. Make sure Mr. Brown is hydrated,
17 anyway. And, yes, let's have a break. Is ten minutes
18 enough?

19 THE WITNESS: Yes, that would be fine.

20 THE COURT: Okay. Let's come back at five of,
21 9:55.

22 (Whereupon, a break was taken.)

23 THE COURT: Let's come to order.

24 Yes, Mr. Rosenbaum. I guess we won't swear this
25 witness in again.

26 You are still under oath, Mr. Brown. Welcome
27 back.

28 THE WITNESS: Sure.



1 MR. ROSENBAUM: Steve Rosenbaum for the
2 International Dairy Foods Association. We're now going to
3 have testimony regarding IDFA Exhibit 33, which I would
4 ask be marked with the next Hearing Exhibit number, which
5 I believe is 128.

6 THE COURT: Yes. So marked.

7 (Thereafter, Exhibit Number 128 was marked
8 for identification.)

9 MR. ROSENBAUM: And I will give your Honor a copy.

10 THE COURT: I have it.

11 DIRECT EXAMINATION

12 BY MR. ROSENBAUM:

13 Q. So, Mr. Brown, is what's been marked as Hearing
14 Exhibit 128, your testimony regarding Proposal 6, the
15 proposal that would add mozzarella cheese to the product
16 surveys used to establish minimum Class III prices?

17 A. Yes.

18 Q. Okay. And it's a relatively short statement, so I
19 would ask that you read that into the record, please.

20 THE COURT: I just had a quick thought. I meant
21 to do this with the earlier witnesses. If we know of
22 corrections, it might be easier to find those if we
23 brought them out at first. I don't know that anyone does
24 in a particular time. I don't mind later. I was just
25 thinking, if I were writing the decision it would be
26 easier for me to find any corrections.

27 MR. ROSENBAUM: Your Honor, to be honest, the
28 correction that Mr. Brown found in his last testimony, I



1 believe that was found as he was reading his testimony,
2 so --

3 THE WITNESS: That is correct.

4 MR. ROSENBAUM: But I agree, if we are aware of an
5 error or mistake -- mistake in advance -- we will let
6 everyone know.

7 THE COURT: Thank you. We have all been there.
8 Mr. Brown.

9 THE WITNESS: Thank you.

10 This testimony is submitted on behalf of the
11 International Dairy Foods Association (IDFA) with respect
12 to Proposal 6. This Proposal would add mozzarella cheese
13 to the product surveys used to establish minimum Class III
14 prices.

15 USDA has consistently rejected including cheeses
16 other than cheddar, and specifically mozzarella, in the
17 price surveys used to establish the protein value that is
18 included in setting minimum Class III prices.

19 When USDA in 1999 used notice and comment
20 rulemaking to carry out Congress' mandate to consolidate
21 the existing Federal Orders and consider order reforms, it
22 noted that several "commenters argued that all varieties
23 of cheese should be included in the NASS price survey to
24 assure that all cheese value is captured." Milk in the
25 New England and Other Marketing Areas; Decision on
26 Proposed Amendments to Marketing Agreements and to Orders,
27 from April 1999.

28 (Court Reporter clarification.)



1 THE WITNESS: However, USDA concluded that it was
2 unworkable to have a system that tried to contour minimum
3 milk prices to reflect the unique compositions of each
4 Class III product. USDA instead adopted a system that
5 calculated a minimum price based on cheddar, which would
6 "enable handlers to adjust prices paid to producers to
7 account for the additional value above the minimum Federal
8 Order prices."

9 In so doing, USDA emphasized that the minimum milk
10 price being established for each commodity (cheese,
11 butter, and nonfat dry milk, and whey) needed to be the
12 market-clearing price for that commodity:

13 "This pricing plan [being adopted by USDA] will
14 allow the market-clearing price level of each of these
15 manufactured products to be achieved independent of the
16 other products. As a result, dairy farmers will be paid a
17 price which is more representative of the level at which
18 the market values their milk in its different uses. The
19 importance of using minimum prices that are
20 market-clearing for milk used to make cheese and
21 butter/nonfat dry milk cannot be overstated. The prices
22 for milk used in these products must reflect supply and
23 demand and must not exceed a level that would require
24 handlers to pay more for milk than needed to clear the
25 market and make a profit."

26 As USDA further explained when it later considered
27 additional milk order amendments in 2000, the problems
28 with included other types of cheeses in setting minimum



1 prices are that (a) the resulting product price would not
2 be representative of the value of any particular product,
3 and (b) the Make Allowance deducted from that product
4 price in order to establish minimum Class III milk prices
5 would not be reflective of the cost of processing that
6 cheese, because Make Allowance data relied upon to set
7 minimum milk prices relates solely to cheddar cheese.

8 As USDA explicated in rejecting such an approach:
9 "Several witnesses testified that types of cheeses other
10 than cheddar should be included in the NASS (sic) survey
11 as a more comprehensive basis for identifying a cheese
12 price, although such a proposal was not included in the
13 hearing notice. The cheddar cheese included in the NASS
14 survey meets certain standard criteria that makes prices
15 for the reported cheese sales comparable. If the survey
16 included other descriptions of cheddar and other types of
17 cheese, such as mozzarella, it would not be possible to
18 consider the reported price as representative of the value
19 of any particular product. Further, the manufacturing
20 costs surveyed are, to a great extent, limited to the
21 costs of processing cheddar cheese."

22 All these USDA conclusions remain valid today,
23 with respect to both the criteria for inclusion in the
24 price survey and the existence of costs of manufacture.

25 Criteria for inclusion:

26 USDA has established very specific criteria for
27 cheese to be included in the average price survey used to
28 set minimum milk prices. For Class III, the survey covers



1 (i) the National Dairy Products Sales Report, or NDPSR, of
2 prices paid for 40-pound block cheddar cheese; and (ii)
3 the NDPSR for prices paid for 500-pound barrel cheddar
4 cheese at 38% moisture.

5 To be included in these Sales Reports, cheddar
6 cheese must meet various criteria, including age (no less
7 than four days or more than 30 days on date of sale);
8 color (within a specified color range for 40-pound blocks;
9 white for 500-pound barrels); and moisture content (no
10 more than 37.7% moisture for 500-pound barrels).

11 No similar USDA report exists for mozzarella
12 cheese. Furthermore, the commercial mozzarella cheese
13 market contains very wide variability in the relevant
14 criteria.

15 For example, the FDA standard of identity
16 regulations provide for four different variants of
17 mozzarella cheese, with widely varying fat and moisture
18 parameters, as found in the Code of Regulations: One,
19 mozzarella, minimum 45% and 52 to 60% moisture;
20 low-moisture mozzarella, minimum 45% fat and 45 to 52%
21 moisture; part-skim mozzarella, 30 to 45% fat and 52 to
22 60% moisture; and low-moisture part-skim mozzarella, 30 to
23 45% fat and 45 to 52% moisture.

24 In short, it would likely be impossible to select
25 a suite of criteria for inclusion of mozzarella in a
26 pricing survey that would adequately represent the market
27 value of the mozzarella cheese as a whole.

28 Method and cost of manufacture:



1 Even if pricing information for mozzarella were
2 obtainable, no reported survey data includes the cost of
3 making mozzarella cheese. No party to this hearing has
4 purported to provide such survey data for the record.
5 Thus, even if one were somehow to develop a reportable
6 price of mozzarella cheese, one would still have to use as
7 the Make Allowance the cost of making cheddar cheese.

8 But given that the minimum prices for Class III
9 milk is the selling price of the finished product minus
10 the cost to make the product, basing the finished product
11 price on the price of both cheddar cheese and mozzarella,
12 while basing the Make Allowance solely on the cost of
13 making cheddar cheese, would be a complete mismatch.

14 This is especially true because the two cheeses
15 are quite different in content and method of production.
16 Cheddar must contain no less than 50% milk fat by weight
17 of the solids and a maximum 39% moisture with no minimum,
18 according to FDA Regulation 21 CFR.

19 By contrast, the minimum milk fat content of
20 mozzarella cheese is 45% by weight of solids, and the
21 moisture content is more than 52% but not more than 60% of
22 weight.

23 These differences in content necessarily make the
24 products heterogeneous and lacking the similarities
25 sufficient to include both in the same pricing formula.
26 These differences are the result in material differences
27 in the costs to manufacture, which foreclose as a
28 practical matter deriving a uniform cost of manufacture



1 that could be utilized in a product pricing formula.

2 That heterogeneity is exacerbated by the
3 divergence between the manufacturing steps used in cheddar
4 versus mozzarella production. Cheddar cheese is subject
5 to specific mandatory manufacturing steps:

6 " [Cow's milk or another specified dairy
7 ingredient] may be warmed, treated with hydrogen
8 peroxide/catalase, and is subjected to the action of a
9 lactic acid-producing bacterial culture. One or more of
10 [specified] clotting enzymes specified is added to the
11 dairy ingredients to a semisolid mass. The mass is so
12 cut, stirred, and heated with continued stirring, as to
13 promote and regulate the separation of whey and curd. The
14 whey is drained off, and the curd is matted into a
15 cohesive mass. This mass is cut into slabs, which are so
16 piled and handled as to promote the drainage of whey and
17 the development of acidity. The slabs are then cut into
18 pieces, which may be rinsed by sprinkling or pouring water
19 over them, with free and continuous drainage; but the
20 duration of such rinsing is so limited that only the whey
21 on the surface of such pieces is removed. The curd is
22 salted, stirred, further drained, and pressed into forms.
23 One or more of the other [specified] optional ingredients
24 may be added during the procedure."

25 Mozzarella cheese is subject to a different
26 specific required manufacturing steps:

27 "[Cow's milk or another specified dairy
28 ingredient] is warmed to approximately 88 degrees



1 Farenheit and subjected to the action of a lactic
2 acid-producing bacterial culture. One or more of the
3 [specified] clotting enzymes is added to set the dairy
4 ingredients to a semisolid mass. The mass is cut, and it
5 may be stirred to facilitate the separation of whey from
6 the curd. The whey is drained, and the curd may be washed
7 with cold water and the water drained off. The curd may
8 be collected in bundles for further drainage and for
9 ripening. The curd may be iced, it may be held under
10 refrigeration, and it may be permitted to warm to room
11 temperature and ripen further. The curd may be cut. It
12 is immersed in hot water or heated with steam and kneaded
13 and stretched until smooth and free of lumps. It is then
14 cut and molded. The molded curd is firmed by immersion in
15 cold water and drained. One or more [other specified]
16 optional ingredients may be added during the procedure."

17 These differences in content and processing (e.g.,
18 the washing, kneading, stretching, and molding for
19 mozzarella, but not cheddar) are necessarily reflected in
20 the use of different and additional equipment.

21 Accordingly, the cost of making cheddar is quite
22 different than the cost of making mozzarella. One could
23 not reliably use the former as a proxy for the cost of the
24 latter for purposes of setting minimum milk prices.

25 Yet the cost data for doing something else does
26 not currently exist within USDA or this hearing record,
27 and even if it did, calculating and applying different
28 Make Allowances within the same product category would



1 unduly complicate the effort to set minimum milk prices,
2 especially given the differences in the various categories
3 of mozzarella.

4 Mozzarella lacks market-clearing capacity:

5 Mozzarella is made further unsuitable because it
6 cannot establish an effective market-clearing price. As
7 noted, USDA has itself emphasized that "the importance of
8 using minimum prices that are market-clearing for milk
9 used to make cheese and butter/nonfat dry milk cannot be
10 overstated," and that "prices for milk used in these
11 products must reflect supply and demand, and must not
12 exceed a level that would require handlers to pay more for
13 milk than needed to clear the market and make a profit."

14 It is cheddar, not mozzarella, which can serve
15 this market-clearing function for cheese:

16 (1) Cheddar is the true commodity cheese product,
17 usable both in its own form and as a component of
18 processed cheeses. Mozzarella is not.

19 (2) Cheddar is routinely traded in bulk form
20 (40-pound blocks or 500-pound barrels) that meet the
21 National Dairy Products Sales Report requirements. Bulk
22 cheddar is routinely sold to other companies that either
23 shred or cut them or perform further processing to create
24 additional cheese products. Mozzarella, by contrast, is
25 often made and sold to the specific specifications of
26 specific customers. I am informed that a single
27 mozzarella company may have hundreds of different product
28 codes for its mozzarella products.



1 (3) Both cheddar variants (40-pound blocks or
2 500-pound barrels) are traded on the CME, and thus subject
3 to easy price-discovery and straightforward hedging.
4 Mozzarella is not so traded or directly hedgeable.

5 (4) Last, but certainly not least, cheddar is the
6 cheese more often produced to clear the market of surplus
7 milk, given that cheddar is readily storable for extended
8 periods, and the processor can make bulk cheddar products
9 using surplus milk with reasonable confidence that it will
10 be able to find a buyer while the cheese is still
11 saleable. That confidence is bolstered by the fact that
12 standard cheddar cheese can be sold to a variety of
13 companies that will use bulk cheese making in a variety of
14 food products. By contrast, most mozzarella is stored in
15 refrigerated form, and by comparison, has a limited shelf
16 life, and once produced encounters fewer potential
17 outlets.

18 Other issues:

19 Proponents have argued that a recent USDA food
20 procurement solicitation resulted in mozzarella being
21 delivered at an average price per pound of \$3.6445, as
22 compared to an AMS survey price of cheddar of less than
23 \$1.50 per pound. Proponent infer that they are missing
24 out when the minimum milk prices are based on cheddar
25 rather than mozzarella. This is not a proper conclusion
26 to reach.

27 Some of that price difference reflects the cost
28 differences based on differences in the equipment used and



1 the methods employed to make mozzarella versus cheddar, as
2 I have already discussed. Furthermore, the USDA
3 solicitation to which Proponents refer entailed the
4 purchase of one-ounce mozzarella string sticks, 360 to a
5 box, to more than a dozen cities throughout the United
6 States. (A copy of the solicitation appears as Hearing
7 Exhibit 95.)

8 Thus, as compared to the AMS reported price for
9 cheddar cheese, which is an FOB plant price for bulk
10 cheese in either 40-pound blocks or 500-pound barrels, the
11 USDA solicitation was for mozzarella cheese that: (a) had
12 been shaped into strings, which is itself an equipment
13 specific and laborious undertaking; (b) cut into one-ounce
14 pieces; (c) packaged and labeled individually; (d)
15 packaged 360 to a box; and (e) delivered by the seller in
16 hundreds of boxes to 36 different locations ranging from
17 Alabama to California, and from Minnesota to Texas. The
18 sales price information is not comparable.

19 For these reasons, mozzarella cheese should not be
20 included in the product price surveys used to establish
21 minimum Class III prices.

22 MR. ROSENBAUM: Your Honor, Mr. Brown is tendered
23 for cross-examination.

24 THE COURT: Cross, anyone but AMS?

25 CROSS-EXAMINATION

26 BY MR. MILTNER:

27 Q. Ryan Miltner representing Select Milk Producers.

28 Good morning, Mr. Brown.



1 A. Good morning.

2 Q. Could I ask you a few questions about a statement
3 or a couple of statements on page 2, please?

4 A. Okay.

5 Q. I'm looking at the first sentence in your
6 paragraph that begins "as USDA further explained."

7 Where you have the parenthetical (a), "the
8 resulting product price would not be representative of the
9 value of any particular product." Can you expand on that
10 a little bit more for us?

11 A. Yes. I think -- I think -- the price wouldn't
12 reflect what we think of as the base commodity product.
13 So -- and since there's so many -- again, depending how
14 you survey it, there's so many different prices for
15 mozzarella, that how do you pick what the reference price
16 is.

17 So specifically the mozzarella, probably more than
18 any other cheese, there's just so, so many different both
19 packaging forms as well as processing -- content and
20 processing. So it's just simply not a standard cheese per
21 se. We all think it is when we think of mozzarella, but
22 manufacturers will tell you how many different varieties
23 they make. A lot of that's due to food service, and
24 different companies have different demands for
25 performance.

26 Q. Would it be possible to construct a method to
27 survey some subset of mozzarella production so that you
28 would be able to achieve a representative product price?



1 A. I don't make it. I just know there's a lot of
2 them. My question would be, what would the value be, what
3 would the standard be that would give you adequate value
4 to be a surveyable product. I just simply don't know.

5 Q. And we really don't have that information today,
6 do we?

7 A. No, we don't.

8 Q. So what is -- what is the particular product that
9 USDA does utilize in establishing the protein price used
10 in Class III?

11 A. They use cheddar cheese, and butter indirectly.

12 Q. Okay. As to the cheddar cheese, though, there's
13 been a lot of testimony about whether 40-pound blocks and
14 500-pound barrels are the same product or the same
15 commodity.

16 And am I correct that earlier this morning your
17 testimony was that they are absolutely not the same
18 commodity?

19 A. That is correct. They perform different functions
20 even though they are both based ingredients.

21 Q. So if -- if I look at what you have at
22 parenthetical (a), it says that "the resulting product
23 price" -- if you use mozzarella -- "would not be
24 representative of the value of any particular product."

25 How do we reconcile that with the fact that we
26 have two absolutely distinct commodities in 40-pound
27 blocks and 500-pound barrels, and we're trying to achieve
28 a single price of a particular product?



1 A. Well, again, I come back -- so maybe it's not
2 clear -- is specifically with mozzarella, there's just so
3 many, many different products, how would you pick one, and
4 then you'd also, of course, have to have manufacturing
5 cost surveys. I don't agree -- and if it's worded in a
6 way that's not understood, that isn't clear -- I certainly
7 don't believe that there's one commodity cheddar, there's
8 two commodity cheddar products, and they do perform
9 different functions, although they are made --
10 manufactured the same way, basically.

11 Q. You say here, this is "as USDA further explained."
12 So is (a), is that your words or is that USDA's
13 words?

14 A. Their words are below. So I honestly -- does --
15 if they were USDA's words, there would be a reference. I
16 assume this is a summation of their -- of their later
17 comments.

18 Q. Isn't the alternative explanation that barrels
19 were included merely to be a synthetic price for 40-pound
20 blocks?

21 A. No. They are a different product, but they are
22 both commodity-based products used. I don't believe that
23 barrels are a synthetic price for anything. They are
24 their own market.

25 Q. Thank you.

26 On page 7 I had a few questions there. With your
27 first full bullet point, you write: "Mozzarella is not so
28 traded or directly hedgeable."



1 What do you mean by "directly hedgeable"?

2 A. You can't -- you can't -- there isn't a --
3 mozzarella is a different composition. I mean, it's
4 usually priced off of blocks. It can be priced off of
5 other products, other -- in other futures markets. But
6 because of its composition, it has more moisture, less fat
7 relative to protein in the cheese. It isn't -- if you
8 look at the ingredient cost of mozzarella, it is different
9 than it is for cheddar. People still do it. Again, the
10 key is you look at your plant margin.

11 When you make mozzarella, you really have two
12 choices: You either sell off cream or you bring in skim
13 solids, whether it's ultra-filtered, whether -- we can't
14 bring them in unfiltered if they are on site, but nonfat
15 dry milk or condensed milk, to use up that fat within your
16 cheese. Your decision to do that is going to depend on
17 the relative value of those solids versus solids that are
18 in the Class III milk. So there is definitely a
19 difference.

20 However, like with all cheeses, there's no
21 hedging -- again, get back to the point. Hedging isn't
22 only about basis versus a block or a barrel, it's about is
23 it a price that works for you in the market, is it a price
24 that a plant can pay to producers, transfer in a price for
25 milk that that producer gets paid accordingly, and as a
26 result, NDPSR cheese futures remains the cheese of choice
27 for most hedging, which is evident in the volume of
28 trades. Open interest is so much higher.



1 So you make -- you make it work. There is no
2 perfect. We get -- we get lazy in dairy because we have
3 these wonderful cash settle contracts based on announced
4 regulated prices. But the reality is those are minimum
5 prices, and different cheeses require -- maybe -- maybe it
6 is a fat balance, maybe it's moisture, whatever it may be,
7 so none of them perfectly align with the futures. But it
8 works well enough that you can -- you can hedge with it
9 and you make it work. Some adjust for fat, some don't,
10 from my experience on mozzarella. But most mozzarella is
11 priced basically off the cheese market.

12 Q. For the mozzarella manufacturer, on its input
13 side, they can effectively hedge purchasing derivatives
14 using the Class III price nonfat dry milk, other
15 ingredients, correct?

16 A. Yes, that's true. And butter. But, yes, that's
17 correct.

18 Q. And on the -- for the customer of a mozzarella
19 manufacturer, I believe there's been testimony that --
20 that a majority of -- not all, but a majority of
21 mozzarella is priced off of the block market.

22 A. I would expect that's true. I don't personally
23 know that, but I have no reason to doubt it.

24 Q. Okay. And if that were the case, the purchaser of
25 mozzarella would be able to effectively hedge using the
26 40-pound block price?

27 A. Yes. Or depending on his pricing formula off the
28 same combination, that would be -- as those trades get a



1 little more -- if they are more complicated than that, I
2 mean, you have got plenty of folks that are willing to
3 provide an over-the-counter product that meets that exact
4 spec that you want.

5 Q. So even in the absence of a direct mozzarella
6 contract, there are tools available so that both the
7 manufacturer and the customer can hedge their risk?

8 A. They can hedge their risk. But that doesn't --
9 that's, again, reflecting the supply and demand for the
10 cheddar market, because those prices are based off the
11 cheddar market.

12 Q. Just to clarify a couple more points on pages 6
13 and 7, if I could.

14 The first bullet point, you write: "Cheddar is
15 the true commodity cheese product, usable both in its own
16 form and as a component of processed cheeses."

17 I recall some testimony during the hearing that
18 processed cheeses do use mozzarella in instances, and I
19 don't --

20 A. That -- that would -- that would probably be true.
21 I don't personally -- personally not aware of it. But I
22 wouldn't argue if others have understanding of that that I
23 don't have.

24 Q. Understanding, of course, cheddar is the
25 predominant ingredient there, but mozzarella can be used
26 in processed cheese, right?

27 A. I would expect -- I don't personally know that,
28 but I have no reason to argue with someone who believes it



1 does, because I just don't know.

2 Q. Okay. And then the last bulleted point, back over
3 on page 7, it reads: "Last but certainly not least,
4 cheddar is the cheese more often produced to clear the
5 market of surplus milk."

6 May I infer from that that there are instances and
7 markets where mozzarella production can be used to clear
8 the market of surplus milk?

9 A. Any product can be used to clear the market as
10 long as you know you can hold it, you have a buyer
11 somewhere, whether it's export or otherwise. Cheddar is
12 the easiest because if you are making 40-pound blocks or
13 barrels, you always -- if it meets spec, you can always
14 sell on the CME. You can't do that with anything else.
15 So it is a -- there is an auction where you can sell that
16 cheese that's traded every day. And you don't have that
17 with mozzarella.

18 Q. But when we are going to clear the market of
19 surplus milk, depending on plant capacity, depending on
20 where the milk is located, depending where the plants are
21 located, it could be cheddar, it could be mozzarella, it
22 could be blocks or barrels, it could be powder, it could
23 be butter, it could be any of those products, correct?

24 A. That is true. And this should have said, "Cheddar
25 is the cheese more often produced." I mean, I would -- my
26 understanding, butter and powder are probably used more in
27 the balance markets than cheese is overall. The nature
28 of -- they store better.



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

2 THE COURT: Further cross by anyone but AMS?

3 AMS, back to you. I'm surprised too.

4 MS. TAYLOR: Maybe we're all just trying to be
5 efficient this week.

6 THE COURT: I think everyone's always tried.

7 THE WITNESS: They're recovering from that
8 marvelous three-day weekend.

9 CROSS-EXAMINATION

10 BY MS. TAYLOR:

11 Q. Good morning again.

12 A. Good morning.

13 Q. I actually think most of my questions have been
14 answered by some questions you got there.

15 I did -- on page 3 you cite the standard of
16 identity for mozzarella. I'm curious if you know when
17 we -- when people talk about mozzarella production, is
18 there a production that happens that people off the cuff
19 say is mozzarella but might not meet that standard of
20 identity?

21 A. Well, I can't speak for food service, but for
22 retail most mozzarella is low moisture, part skim.

23 Q. Okay.

24 A. Which I think is the fourth standard of identity,
25 yes.

26 Q. Okay.

27 A. Part of it, again, with mozzarella, when we talk
28 about it, is just the myriad of ways it can be packaged.



1 You buy the totes. You buy the six-pound loaves. You buy
2 it lots of different ways.

3 And I know from my experience for -- for a
4 cut-and-wrap at Kroger, we used totes, but that was us.
5 And I know we could have bought it six ways to Sunday, the
6 same cheese, different ways. It's depending how our plant
7 was set up to use it.

8 Q. Okay. So is totes what you would consider a bulk
9 commodity package size for mozzarella?

10 A. Probably as close as anything, but I'm not sure
11 how much of the market it takes up. Certainly in our
12 personal case it was, yes.

13 Q. Okay. And since I'm not deep in knowledge on the
14 mozzarella market, how much does -- how big is a tote?

15 A. You can ask the mozzarella people who testify
16 later. I honestly don't know because I -- the bids were
17 always priced per pound, so I don't know what the
18 delivered to it would be.

19 Q. Okay. But there will be some mozzarella witnesses
20 testifying later?

21 A. I expect so, yes.

22 Q. Okay. Thank you.

23 MS. TAYLOR: I think that's all AMS has. Thank
24 you.

25 THE COURT: Redirect?

26 MR. ROSENBAUM: Your Honor, I would move the
27 admission of Hearing Exhibit 128.

28 THE COURT: Any objections?



1 Exhibit 128 is entered into the record.

2 (Thereafter, Exhibit Number 128 was received
3 into evidence.)

4 THE COURT: Thank you, Mr. Brown.

5 THE WITNESS: Thank you.

6 THE COURT: You may step down, I think.

7 MS. TAYLOR: Yes, your Honor. I think Roger Cryan
8 is going to testify on behalf of American Farm Bureau
9 Federation next.

10 THE COURT: Raise your right hand.

11 ROGER CRYAN,

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

14 THE COURT: You may continue.

15 DR. CRYAN: I beg your pardon?

16 THE COURT: You may continue -- or start, I guess.

17 DR. CRYAN: Thank you, sir.

18 THE COURT: Yes.

19 DR. CRYAN: I have testified earlier in the
20 hearing.

21 THE COURT: I remember you.

22 DR. CRYAN: My name is Roger Cryan with the
23 American Farm Bureau Federation. R-O-G-E-R, C-R-Y-A-N.
24 My address is 600 Maryland Avenue Southwest, Suite 1000W,
25 that would be care of American Farm Bureau Federation,
26 Washington DC 20024.

27 And I will read my testimony submitted, and then
28 I'll have some additional remarks, based largely on



1 previous testimony in the hearing.

2 THE COURT: Yes. Can we rely on this witness's
3 previous testimony for his background credentials?

4 MR. HILL: Yes, your Honor.

5 THE COURT: Well, that's a consent in the room.
6 Thank you.

7 DR. CRYAN: Thank you.

8 THE COURT: You may proceed.

9 DR. CRYAN: Thank you.

10 The American Farm Bureau Federation has nearly
11 6 million members in all 50 states and Puerto Rico,
12 including many thousands of cooperative and independent
13 dairy farmers. All of these dairy farmers are indirectly
14 or (mostly) directly affected by the pricing provisions of
15 the Federal Milk Marketing Orders.

16 And I will skip the rest of this introductory
17 section, which is repeated in my -- will be repeated in my
18 testimony, my written testimony, for each -- each proposal
19 that we come up to support or represent -- or each
20 category, that is, each category.

21 I am -- in this case, I am -- I have a statement
22 that covers Category 2, the survey commodity products, and
23 it includes Farm Bureau's response to Proposal 3 made by
24 National Milk and our presentation of Proposals 4 and 5,
25 which we submitted -- which were submitted by Farm Bureau.

26 THE COURT: If you'll forgive me, we haven't
27 marked your statement.

28 DR. CRYAN: Oh, I'm sorry. My statement is --



1 THE COURT: AFBF-2 --

2 DR. CRYAN: AFBF-2.

3 THE COURT: -- will be marked as exhibit for
4 identification 129.

5 (Thereafter, Exhibit Number 129 was marked
6 for identification.)

7 DR. CRYAN: Thank you, your Honor.

8 THE COURT: Yes.

9 DR. CRYAN: My response to Proposal 3, which is
10 the National Milk Producers Federation's proposal to drop
11 barrel cheese from the Class III component and price
12 calculations.

13 The American Farm Bureau supports this proposal as
14 written.

15 As NMPF outlines in its proposal, barrel cheese
16 represents roughly 50% of the volume in the National Dairy
17 Product Sales Report but is used to set prices for only
18 about 10% of cheese in the U.S. market. Price divergence
19 between block and barrel prices now creates a "cheddar"
20 cheese price for use in the formulas that is not
21 representative of the value of 90% of cheese. We expect
22 that the elimination of the barrel price from the survey
23 will contribute to an even greater reliance on block
24 prices in the U.S. cheese market, further reinforcing the
25 block price as the appropriate foundation for the
26 Class III protein and skim milk price.

27 And for what it's worth, Farm Bureau also supports
28 the elimination of the barrel -- the barrel spot market in



1 the CME.

2 Barrels should be dropped from the survey whether
3 or not the 640-pound block -- whether or not 640-pound
4 blocks are added per Proposal 4.

5 And then the fine detail of Proposal 3, I think
6 National Milk will cover it in quite -- in detail in
7 volume.

8 So Proposal 4: The American Farm Bureau
9 Federation proposes that 640-pound blocks be added to the
10 National Dairy Products Sales Report, to the cheddar
11 cheese price calculation, and to the Class III protein
12 calculation.

13 This proposal is consistent with dropping barrels
14 from the survey, per Proposal 3 by the National Milk
15 Producers Federation, but does not depend upon that
16 measure.

17 As NMPF has indicated in that proposal, barrel
18 cheese represents roughly 50% of the volume in the
19 National Dairy Product Sales Report but is used to set
20 prices for only about 10% of cheese in the U.S. market.
21 Price divergence between block and barrel prices now
22 creates a "cheddar" cheese price for use in the formulas
23 that is not representative of the value of 90% of cheese.

24 Adding 640-pound blocks to the survey would expand
25 the volume and emphasize blocks generally; however, it
26 would also move the balance of blocks and barrels closer
27 (but not close) to the actual market mix in the event that
28 USDA decided not to remove barrels from the survey. No



1 price adjustment is necessary to integrate these larger
2 blocks into the survey, as every indication we have is
3 that the two sizes are roughly interchangeable in price,
4 use, and storage.

5 There has been a pronounced shift from 40-pound
6 blocks to 640-pound blocks in the marketplace. Adding
7 640-pound blocks would provide a deeper volume to the
8 survey immediately and would avoid the need for a hearing
9 in the future simply to address the further dwindling of
10 40-pound block volume.

11 As NMPF outlines in its proposal, barrel cheese
12 represents roughly 50% of the volume in the NDPSR but is
13 used to set prices for only about 10% of cheese in the
14 U.S. market.

15 Okay. I won't say that a third time.

16 Impact: We expect that the addition of 640-pound
17 blocks to the survey will strengthen price discovery,
18 avoid the potential for block manufacturers to switch
19 between sizes to avoid and re-enter the price survey, and
20 avoid a possible crisis of dwindling small blocks in the
21 future. That is, a large and reliable survey volume will
22 help avoid some sources of disorderly marketing. A deeper
23 survey will provide a stronger foundation for the
24 Class III protein and skim milk price.

25 And language is set out that would add the
26 640-pound block to the products included in the survey.

27 And we identify sources for anecdotal evidence
28 that there's a growth in 640-pound block production,



1 including an article from the Paynesville website,
2 Paynesville, Minnesota's website indicating AMPI's new
3 plant would expand production by 50,000 pounds of cheese a
4 day in barrels and 640-pound blocks.

5 That the Glanbia plant in Clovis, New Mexico,
6 opened in 2006 and 2009 and that blocks of cheddar
7 weighing up to 640 pounds are produced in that facility,
8 and lays out the idea that many customers have requested
9 640-pound blocks as they lower waste to make it easier to
10 create exact weight packages for supermarket customers.
11 That's from Food Processing Technology Magazine, an
12 article about Southwest cheese.

13 Another citation indicates that the Midwest
14 Whey -- I think that's the name, Midwest Whey Company --
15 found -- they opened a 375,000-foot -- square foot dairy
16 facility, receives 8 million pounds of raw milk a day, and
17 produces 850,000 pounds in 40- and 640-pound blocks. And
18 that was opened in 2020, from Pro Food World.

19 And then there's also an item on Hilmar Cheese and
20 their plant in Dalhart and -- their plants in Hilmar and
21 Dalhart that produce 40-pound blocks and 640-pound blocks
22 of a variety of products. And that was from Farm Progress
23 Magazine.

24 And finally, something from MCT Dairies, which is
25 an analyst outfit, laying out that -- well, this is an
26 opinion on their part: "Adding 640-pound blocks to the
27 NDPSR survey would be a good first step towards
28 recalibrating the weight given to barrels, and it would



1 better reflect commercial activity."

2 For Proposal Number 5: The American Farm Bureau
3 Federation proposes adding unsalted butter to the
4 butterfat and protein calculation.

5 The growing volume of unsalted butter production
6 and use in the U.S. market has meant that salted only
7 butter price collection in the National Dairy Products
8 Sales Report survey increasingly underrepresents the value
9 of U.S. butter. At the time that the butter price survey
10 was developed by the National Agricultural Statistics
11 Service in 1999, it was done in support of Federal Milk
12 Marketing Order reform, per the preamble to the
13 recommended decision for order reform, but there is no
14 rulemaking - by AMS or NASS - to establish the logic for
15 excluding unsalted butter. Later regulations in 2008 and
16 2012 did not address this decision either.

17 And I have citations on the -- in the written
18 testimony.

19 The NDPSR collects prices only for salted 80% fat
20 butter in 25-kilo and 68-pound boxes. This only captures
21 a small and declining share of U.S. butter production.
22 Based on a comparison of the NDPSR totals for a 52-week
23 year and NASS dairy products annual reporting, butter in
24 the NDPSR survey has fallen from 16% of total butter
25 production (in the original NASS survey) to 10.9% in 2013
26 and 9.4% in 2022, in the current AMS survey.

27 We have every reason to believe that this trend
28 will continue without the addition of unsalted butter.



1 The rest of the world produces and consumes primarily
2 unsalted butter, and growing volumes of commodity unsalted
3 butter are being used by American bakers and confectioners
4 and is being sold in the regional market.

5 Although unsalted butter was produced in small
6 quantities in the U.S. at the time of Federal Order
7 Reform, its share of U.S. production and sales has grown
8 very substantially since then and is projected to continue
9 growing. The result of this growth is that a substantial
10 volume of commodity butter is not included in an NDPSR
11 survey and is increasingly underrepresented.

12 While producing and distributing unsalted butter
13 was once more difficult and expensive for butter plants,
14 and butter was typically salted to allow for extended
15 storage, U.S. butter makers are increasingly offering
16 unsalted butter to domestic and overseas customers,
17 matching the European convention.

18 As a result, the definition of butter in the
19 current data collection is outdated. The continued
20 specification of salted butter in the CME Group butter
21 market specification is based on old technology; it may
22 still be a reasonable standard in order to assure a
23 uniform product for that market, but it is unnecessarily
24 restrictive for the purposes of the NDPSR survey, just as
25 the CME Group spot exchange specifications for cheddar
26 cheese calls for 40-pound blocks but is used to price
27 640-pound blocks as well.

28 USDA butter grading data should and will



1 demonstrate growth in demand and production of unsalted
2 butter. In addition, U.S. butter exports have grown from
3 about 2,000 metric tons in 2000 to over 65,000 metric tons
4 in 2022, almost entirely supplied with unsalted butter.

5 And I cite the USDA website cited.

6 Incorporating the unsalted butter price into the
7 FMMO butterfat formula will expand the base of the survey
8 and make the survey price more representative of the
9 evolving butter market. Collecting and publishing
10 separate prices for salted and unsalted butter will allow
11 for better market transparency and more orderly marketing
12 of butter and milk. Anecdotal evidence suggests that
13 unsalted butter is slightly more expensive than salted
14 butter, but we believe that this is a specialty premium
15 that is disappearing as unsalted butter becomes more
16 common.

17 And then I have language tweaking the butter
18 survey requirement in the orders to -- to allow for salted
19 and unsalted butter, and that would require conforming
20 changes in Section 1170 I believe.

21 And I have some additional comments.

22 Regarding dropping barrels, prior testimony has
23 indicated that one cannot turn block cheese into barrel
24 cheese or barrel cheese into block cheese, that there are
25 significant costs and production varies to using block
26 cheese for processed cheese production. And blocks and
27 barrels are not close-use substitute because they cannot
28 be substituted one for the other, at least not without



1 significant costs.

2 We've heard witnesses indicating that cheese plant
3 operators strive to run their plants full because they
4 have a substantial capital investment, and keeping
5 capacity slack is expensive. We also heard that in the
6 order -- at the time of order reform, cheese plants were
7 more likely to have slack capacity, which allowed more
8 easily for production substitution. That is, milk could
9 be shifted from block production to barrel production and
10 back because there was extra processing capacity for both.
11 Now there is none.

12 This makes cheese manufacture only a slightly --
13 only a marginally helpful balancing function. More
14 importantly, for this discussion, it means that the price
15 of barrels will not consistently converge with the price
16 of blocks in the short-term, and the surveys intended to
17 reflect spot prices, short-term prices.

18 And because barrel prices are used almost
19 exclusively to price the 10% of cheese that is made in
20 barrels, the barrel price is heavily overrepresented in
21 the survey with about 50% of the survey weight. I think I
22 have said that already.

23 Proposal 4, to add 640-pound blocks to the survey,
24 testimony has indicated that 40- and 640-pound blocks are
25 use substitutes. Two block marketers declined to say
26 whether they quote customers the same price for 40s and
27 640s, which strongly suggests that they do, since any
28 other answer is so open ended that they would really have



1 no reason to decline to answer.

2 Both are defined under the same standard of
3 identity. And that's 21 CFR 133.113. And both are graded
4 under the same standards, the standard that barrels are
5 not graded under.

6 And I would ask that official notice be taken of
7 the United States standards for grades of cheddar cheese,
8 published by AMS USDA. Although they reset and republish
9 it on a regular basis, it was effective May 1st, 1956.
10 And that is available on the USDA website -- on the AMS
11 website.

12 The only difference is one of package size. The
13 only difference between and 640- and 40-pound blocks are
14 the two very standard package sizes upon which the survey
15 can be based. This does not violate NMPF's aim to have a
16 single product define cheese. It is the same product in
17 two different package sizes. That is, it's the same
18 product under the same standard of identity and the same
19 grading standard, simply with two different package sizes.

20 And finally, we have heard testimony that there's
21 been a substantial growth in 640 production, and the
22 public sources identified in my written statement
23 reinforce that. Adding 640s to the survey now will avoid
24 problems in the future if the volume of 640s continues --
25 640s declines.

26 Third -- I'm sorry -- Proposal 5, adding unsalted
27 butter. Data USDA provided on Friday indicates that
28 unsalted butter has gone from 13% of graded butter to



1 about 30% of graded butter. Much of the 355 million
2 pounds of graded unsalted butter would add to the volume
3 in the survey and improve price discovery. I would
4 indicate that butter is uniquely represented by grading
5 data since retail butter in the U.S. is almost all graded
6 to allow for labeling with the grade AA seal.

7 It is also important to note that salted and
8 unsalted butter are graded under the same standard. And I
9 would ask that official notice be taken of the United
10 States standards for grades of butter, also published by
11 AMS at USDA. That standard was effective -- that set of
12 standards was effective August 31st, 1989, and is also
13 available on the AMS website.

14 THE COURT: Should we stop there for a second?

15 Does anyone object to official notice being taken
16 of those butter rating standards? If people want to think
17 about it.

18 Nope, nobody seems to want to think about it, no
19 one seems to object.

20 Okay. Official notice will be taken of those --

21 DR. CRYAN: Thank you.

22 THE COURT: -- butter grading standards, as you
23 described them.

24 Mr. English, you are not rising.

25 DR. CRYAN: And the cheese grading standards?

26 THE COURT: Yes.

27 DR. CRYAN: Thank you. Thank you, sir. Thank
28 you, your Honor.



1 So salted and unsalted butter are the same product
2 under the same standard, simply with the amount of salt
3 adjusted. So in principle, they do not violate National
4 Milk's aim either at having a single product defining the
5 commodity -- the components in the formulas.

6 The survey standard excluded unsalted butter
7 because the CME spot market excluded unsalted butter.
8 This doesn't mean that they shouldn't both enter into the
9 price for butterfat as the unsalted butter volume grows.
10 Salted and unsalted butter are production substitutes, and
11 often not demand substitutes like barrels and blocks.
12 Like barrels and blocks are not demand substitutes. The
13 key difference is that the same line can switch between
14 salted and unsalted butter without substantial
15 interruption. This leads to price convergence and the
16 appropriateness of unsalted butter -- of including
17 unsalted butter in the survey.

18 And I believe that's everything I have to say with
19 respect to direct testimony. I'm available for
20 cross-examination, your Honor.

21 THE COURT: Yes.

22 Cross, other than AMS?

23 MR. HILL: Brian Hill, for just one second. I'm
24 not sure, maybe I missed this, and I apologize if I did,
25 but was this marked for identification? I'm not sure,
26 129?

27 THE COURT: Yes, 129.

28 MR. HILL: Thank you.



1 THE COURT: I forgot at the beginning and then
2 came back to it. But, yes AFBF-2 is marked 129.

3 All right. Where was I? Yes.

4 Introduce yourself.

5 CROSS-EXAMINATION

6 BY DR. BOZIC:

7 Q. Marin Bozic for Edge Dairy Farm Cooperative.

8 Good morning, Roger.

9 A. Good morning, Marin.

10 Marin, how are you?

11 Q. Very good. How about yourself?

12 A. Swell.

13 Q. The only person I know that uses that word.

14 When we mix the barrels and blocks in the survey,
15 the \$0.03 is done to account for the difference in
16 packaging cost I understand; is that correct?

17 A. I -- I think I recall someone saying that earlier.
18 I -- I didn't look that up. I -- it was a -- as I -- as I
19 recall, it had to do with differences in packaging costs
20 and sort of the historical difference in price over a long
21 time.

22 Q. Is -- are there any differences in packaging costs
23 for 640s versus 40s that needs to be acted for?

24 A. I don't have that detail.

25 Q. Is that something that would be prudent to
26 investigate before this proposal is adopted?

27 A. I think it ultimately would be a wonderful thing
28 to include in a mandatory audited survey of processing



1 costs and yields.

2 Q. Would it make it, then, maybe reasonable to wait
3 for this proposal until we know those packaging costs, or
4 no?

5 A. The Department does not currently acknowledge that
6 it has -- the Department does not currently indicate that
7 it has the authority to -- to do that kind of a survey.
8 And the way I see that going, legislatively, is that it is
9 likely to be a mandate only for products already included
10 in the formulas. So to that -- for that purpose, it makes
11 more sense to go ahead with this now.

12 Q. Sure. Sure.

13 A. Especially, if -- if there was evidence, and I --
14 I would like to see more evidence, but every indication I
15 have had in my career is -- anytime I have looked into it
16 is that blocks and barrels, 640s and 40-pound blocks, are
17 sold at the same price.

18 Q. So you would not expect the -- any kind of price
19 differential or basis between 640s and 40s?

20 A. I'm not aware of one. That would be -- it would
21 be useful to hear testimony that would lay that out.

22 Q. Would it follow, then, that an equivalent result
23 to including 640s would be achieved by some other reform
24 that would equivalently reduce the weight of barrel
25 cheese?

26 A. I beg your pardon? Could you restate the
27 question?

28 Q. What would -- let me rephrase. I'll try to be an



1 attorney here. If we include the 640s per Farm Bureau's
2 proposal, what do you -- and if the barrels are not
3 dropped, what would you anticipate to be the combined
4 weight on the survey between 40s and 640s?

5 A. I -- I don't know. There's no volume of data
6 available on 640s, or anecdotally -- I mean, I have -- I
7 have heard it suggested that 640s are approaching the
8 volume of 40s, but I don't -- I don't know.

9 Q. So -- so --

10 A. So in that case it could be from a half to
11 two-thirds.

12 Q. So two-thirds would be a reasonable estimate,
13 right? Not knowing the details, of course?

14 A. Sure.

15 Q. So if two-thirds were to be resolved including
16 640s, and you don't expect any difference between 640s and
17 40s, would it not follow that the functional equivalent,
18 price equivalent solution would be by just reducing the
19 weight of barrels to one-third and not including 640s in
20 the survey?

21 I'm not saying that that's something that the
22 Department necessarily can do, but if they could do that,
23 if they could just wave their magic wand and say, "Blocks,
24 two-thirds; barrels, one-third," would that not produce
25 the same announced cheese price as including 640s under
26 the assumption that 640s would add one-third -- the blocks
27 would be one-third and the barrels would be one-third?

28 A. The -- the -- our primary objective in -- in



1 proposing 640-pound blocks is to improve price discovery.
2 So while it would have the -- I mean -- and obviously we
3 support National Milk's proposal to drop barrels
4 altogether. So the reweighting is -- you know, is a kind
5 of half measure that doesn't really provide a satisfactory
6 result. So it would -- it would -- it would certainly be
7 an improvement over the status quo, but it would -- it
8 would -- it wouldn't really fully address the extent to
9 which barrels are unrepresentative.

10 In fact, the fact that barrels don't really
11 represent the larger cheese market, it's just dirtying the
12 survey to have them included at all, even if it is 10%.
13 And the real purpose -- the larger purpose of the adding
14 the 640s is to make sure that the volume of cheddar cheese
15 in the survey, the volume of block cheddar cheese in the
16 survey, is made more robust and that there's less
17 potential for sort of switching around to kind of capture
18 things so any sort of -- any sort of -- so that it's more
19 a robust price.

20 Q. If -- if USDA were to adopt Proposal 3 and drop
21 barrels, would there still be a need for including 640s?

22 A. Yeah. As I said, our main purpose is to increase
23 the -- improve the price discovery and increase the
24 robustness of the survey.

25 Q. So -- so the answer is yes, you want --

26 A. Yes. We want 640s added whether barrels are
27 dropped or not.

28 Q. Why not add mozz as well if we are looking for



1 more robust price discovery?

2 A. You know, it's our policy to support including
3 more products in the surveys, to use more products to
4 price milk in the Federal Order system, and we would, I
5 think, support that principle. The challenge is the -- is
6 the practicality, the difficulties that Mr. Brown raised
7 earlier today about -- about how -- how much variety there
8 is of mozzarella. There's not a standard benchmark
9 mozzarella that trades on the market that can really be,
10 you know, used as a product with the substantial volume
11 and a substantial -- you know, there's no benchmark
12 mozzarella product.

13 So we would -- we would support it if there was a
14 practical way to do it, but we don't see the practical way
15 to do that.

16 Q. Thank you for that answer. And I just want to
17 revert to something that I think I heard you say before,
18 but I really don't mean to impute the words if that's not
19 the way you meant it, so I'm going to ask it again.

20 Did you say that any solution that reduces the
21 weights of barrel cheese is an improvement upon the
22 current situation?

23 A. On the status quo.

24 Q. What was that?

25 A. On the status quo? Yeah, it would be an
26 improvement on the status quo.

27 DR. BOZIC: Thank you very much. Those are all
28 the questions I have.



1 THE COURT: Further cross other than AMS?

2 CROSS-EXAMINATION

3 BY MR. ROSENBAUM:

4 Q. Steve Rosenbaum for the International Dairy Foods
5 Association. I would like to start with the proposal to
6 add 640-pound blocks.

7 Are you aware that that question was something
8 that USDA did consider back in 2000 and they explicitly
9 rejected the inclusion of 640-pound blocks?

10 A. I don't recall that specifically, but it would
11 have been a -- it might have been a reasonable conclusion
12 at that time to -- that the volume was not sufficient to
13 require that to be included.

14 Q. Well, one point they did make was that 640-pound
15 blocks were not traded on the CME. Just take my word for
16 it.

17 A. I know they are not.

18 Q. We'll have some testimony to that.

19 Is that still the case today?

20 A. It is.

21 Q. Okay.

22 A. I don't believe that the CME should make USDA
23 policy.

24 Q. Well, are you -- okay. Are you aware that USDA
25 pointed to the absence of the trading of 640-pound blocks
26 on the CME as one reason why they were not going to
27 include it in the pricing formula?

28 A. I -- I believe that was part of the thinking. And



1 if you say it's in the record, I would believe that as
2 well.

3 Q. Okay. Is it, in fact, the case that for every
4 single component that is being priced under the milk
5 orders, the commodity being looked to is traded on the
6 CME, that is to say 40-pound blocks, 600 -- 40-pound
7 blocks, 500-pound barrels, and then also dry whey, and, in
8 fact, nonfat dry milk, in all cases, it is the -- a
9 commodity traded on the CME that's being used?

10 A. I don't -- I don't recall -- I don't recall that
11 there was a spot market for whey, dry whey before in the
12 CME, before it was included, but -- but I'm not sure about
13 that.

14 Q. Is there one now?

15 A. There's a futures and options market that is based
16 on the USDA numbers. I don't know that there is -- I
17 don't know if there is a spot market for -- is there a
18 spot market for whey? I don't know if there was in 2000
19 or not.

20 Q. Is there today either a spot or a futures market
21 for each of the commodities that is used to set minimum
22 milk prices?

23 A. There is now a -- there was a spot market for
24 powder, barrels, blocks, 40-pound blocks, and butter
25 before -- before order reform, but there was not a spot
26 market for whey. Whey was adopted based on the
27 implementation of the -- of a USDA survey. And there are
28 many markets over the years that the NDPSR has supplanted.



1 CME spot markets is the price discovery mechanism for much
2 of the industry. So USDA no longer has to feel like it
3 has to respond to what CME is doing or what standard CME
4 follows.

5 Q. My question was simpler than that. Is -- is it,
6 in fact, true that as of today, every commodity that is
7 used by USDA to set minimum milk prices is a commodity
8 that is either traded on the spot market or as to which
9 there's a futures contract available?

10 A. As -- as of today, that's -- that's true.

11 Q. Okay.

12 A. Because -- because the whey market has been
13 developed in response to USDA's use of whey in the price
14 formulas.

15 Q. Okay. And -- and do you know whether a
16 significant portion of 640s are made on a custom basis to
17 customer specifications?

18 A. I do not.

19 Q. You made -- you did make reference to the
20 existence of a standard, I think, for 640-pound blocks; is
21 that right?

22 A. The cheddar cheese standard --

23 Q. Okay.

24 A. -- applies to 40-pound blocks and 640-pound
25 blocks. It's the same standard.

26 Q. And just to be clear, we're talking there about
27 the FDA standard as to what specifications the product has
28 to be met to call -- has to meet to call it cheddar cheese



1 in this instance?

2 A. We're talking about the FDA standard of identity
3 for cheddar cheese.

4 Q. Okay.

5 A. And we're talking about the AMS grading standard
6 for cheddar cheese.

7 Q. Okay. Is it -- as an example, we know that there
8 are a series of standards that apply for inclusion in the
9 price survey used to set minimum milk prices, correct?

10 A. Could you ask the question again?

11 Q. Yes. To be included in the -- in the survey that
12 USDA conducts of cheddar cheese, there are a variety of
13 standards. As an example, the cheese can't be less than
14 four days old or more than 30 days old, correct?

15 A. Right.

16 Q. And standards for moisture content and things of
17 that nature, correct?

18 A. Right.

19 Q. And these go beyond the FDA standards of identity,
20 correct?

21 A. Some go beyond the grading standard. I mean, the
22 age -- the standard -- the age is a specified in order to
23 make sure that it's a price for current production --
24 current price for current production.

25 Q. Okay. So there isn't a current set of standards
26 like that for 640-pound blocks, correct?

27 A. Well, by definition, because they're not included
28 in the survey, there's no such definition, although the



1 same definition could -- could be applied to 640-pound
2 blocks that is currently applied to 40-pound blocks,
3 because they are the same product in different packages.

4 Q. And your statement that 40-pound blocks and
5 640-pound blocks sell at the same price is based upon the
6 fact that some of the witnesses from National Milk
7 declined to answer the question as to the difference?

8 A. Not entirely. That's not -- that's not -- no,
9 it's not based on that entirely. It's --

10 Q. That's what you were referencing, though, when you
11 made reference to people not answering questions?

12 A. That was -- that was the reference.

13 Q. Okay.

14 A. Because it's my experience that they are -- that
15 they are priced at the same price, that the market is --
16 that there's no daylight between the two.

17 Q. Now, when it comes to -- let me switch over to
18 unsalted butter.

19 A. Sure.

20 Q. Okay. Once again, unsalted butter is not traded
21 on the CME; is that correct?

22 A. That is correct.

23 Q. And am I correct that unsalted butter does not
24 store as well as salted butter?

25 A. Under certain conditions, it does not, right.

26 Q. And is a lot of the salt -- let me start that
27 question again.

28 Is a lot of the unsalted butter made in the United



1 States exported through premium-assisted sales such as the
2 CWT program?

3 A. I don't know that. I don't know how much is sold
4 through those programs. I would -- I would -- I recognize
5 that the NDPSR standards exclude products that are -- that
6 are -- that are supported in that way, whether they are
7 government programs or private programs.

8 Q. And do you know whether -- well, do you know what
9 quantity of unsalted butter is excludable on that basis,
10 assuming unsalted butter were otherwise eligible for
11 inclusion in the survey?

12 A. I do not. I have not kept track of -- of CWT
13 volumes over the years. The government support is --
14 doesn't really exist anymore. I don't have data. I don't
15 have the CWT -- I do not have the CWT data. I would point
16 out that most of the graded product is for domestic use, I
17 believe.

18 Q. And is there any evidence in the record as to what
19 the cost of manufacture is of the two products, salted
20 versus unsalted?

21 A. I believe the primary difference is the cost of
22 salt versus the cost of everything else, which is probably
23 negligible. I do not have data.

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

25 MR. ENGLISH: Good morning, your Honor.

26 CROSS-EXAMINATION

27 BY MR. ENGLISH:

28 Q. Good morning, Dr. Cryan. My name is Chip English



1 with the Milk Innovation Group.

2 A. Good morning, Mr. English.

3 Q. So I want to explore a little bit more of that.

4 Would you agree that a significant element of
5 unsalted butter is primarily made for the export market?

6 A. A significant part of it.

7 Q. Yes.

8 A. Yes.

9 Q. And --

10 A. That's my understanding.

11 Q. So the U.S. standard --

12 A. Well, that comes and goes. I mean, our -- butter
13 export volume comes and goes. But we still have
14 substantial unsalted production.

15 Q. But regardless, the U.S. standard -- you mentioned
16 cost difference. You understand and agree that the U.S.
17 standard for grade AA is 80% fat, correct?

18 A. Right.

19 Q. And given that that's the standard, there is no
20 economic incentive for anybody to make basically U.S.
21 standard grade AA that would be higher than 80% butterfat,
22 correct?

23 A. For domestic production, for --

24 Q. For domestic use, correct.

25 A. For domestic use? I think it's a good point you
26 raise. You raise the point that the standard -- the grade
27 standard is for 80%, and I don't know that 82% meets that
28 standard. So most of our exports are 82% butterfat. So



1 that would suggest that the grading numbers do not include
2 those exports.

3 Q. Okay. So let's go back to -- you're a
4 manufacturer of domestic salted butter, which needs to be
5 graded to 80% butterfat, correct?

6 A. As I understand it.

7 Q. And given the fact that, you know, butterfat is
8 expensive, correct? It's not free, right?

9 A. It's not free.

10 Q. There is no incentive for somebody producing for
11 the U.S. salted butter market to produce higher than 80%
12 fat, correct?

13 There's a cost to them for doing so?

14 A. There's a market -- there's a market for so-called
15 European style butter, which is 82% butterfat. It is
16 growing. There are companies -- proprietary and
17 cooperative companies that are producing butter with 82%
18 butterfat, both salted and unsalted. It is a growing
19 market.

20 Q. But it is not the most significant market, is it?
21 The most signature market for a commodity product is the
22 U.S. standard 80%, correct?

23 A. Today, that's true.

24 Q. But you already stated that, you know, for the
25 significant element that is unsalted butter, that needs to
26 be greater than 82%, correct?

27 A. I beg your pardon?

28 Q. It has to be equal or greater than 82% butterfat



1 to be exported, correct? The world market is 82%,
2 correct?

3 A. If you say so.

4 Q. You don't know?

5 A. My understanding is that the market -- the -- I
6 don't know what the requirement is, but I do know that the
7 standard in the world market is 82% and that most exports
8 are -- are 82%, if they are butter. There's also
9 substantial exports of anhydrous milk fat and butter oil.

10 Q. So the product that is exported that has 82% is
11 going to be more expensive than 80%, correct?

12 A. 82%?

13 Q. Yes.

14 A. Yes. And presumably would not be part of the
15 survey.

16 Q. So you would only certify -- you would only survey
17 the product that is actually at 80%?

18 A. It's my -- and maybe I -- maybe I -- maybe I
19 overlooked something, but it's my understanding that the
20 grade standard is for -- is for 80% butter, that the 82%
21 butter isn't graded. But it's -- certainly the standard
22 in the survey could be established at -- within a range
23 that is around the standard, the U.S. convention of 80%.

24 Q. Are you aware that unsalted butter that is sold in
25 the export market will sometimes have added cost to
26 culture it?

27 A. Say that again?

28 Q. Are you aware that unsalted butter made for the



1 export market often has added costs to make -- to culture
2 the product?

3 A. I'm not aware of that.

4 Q. Are you aware that unsalted butter made for the
5 export market has additional testing requirements?

6 A. I'm not aware of that.

7 And it was not our intent to include products that
8 have additional costs, additional standards and higher
9 butterfat. The intent is to include butter that resembles
10 the same commodity butter that is included in the NDPSR
11 today except that it's unsalted. There has -- there has
12 always been unsalted butter on the U.S. market, but the
13 volume has grown to the point that it makes sense to
14 include it in the survey.

15 Q. Okay. So which unsalted butter would you include
16 in the survey?

17 A. The same type of butter that is in the survey
18 currently, except that it is salted, that is unsalted.

19 Q. So same type. How do you define --

20 A. That same specifications.

21 Q. Same specification.

22 And you do not have, as asked by Mr. Rosenbaum,
23 other than your theory that the salt is negligible, you
24 don't have costs?

25 A. I do not. It would be another -- another
26 excellent subject for a mandatory and audited survey of
27 processing costs and yields.

28 Q. Are you aware that in order to make unsalted



1 butter that meets the world standard, you have to run the
2 plant at a slower level in order to hit higher fat
3 targets?

4 A. That makes sense.

5 Q. And that would leave entities making such unsalted
6 butter with lower plant throughput, fewer pounds of
7 finished product to spread labor and overhead costs over,
8 correct?

9 A. That would make sense.

10 MR. ENGLISH: I have no further questions.

11 THE WITNESS: And our intent is not to include the
12 export oriented -- the export targeted butter with the
13 higher standards and additional practices. It's
14 specifically aimed at old-fashioned American unsalted
15 butter.

16 MR. ENGLISH: I have no further questions.

17 CROSS-EXAMINATION

18 BY MR. MILTNER:

19 Q. Ryan Miltner representing Select Milk.

20 Good morning, Dr. Cryan.

21 A. Good morning, Mr. Miltner.

22 Q. You know, I just read an article about whether
23 lawyers should be called doctors, since we have doctorate
24 degrees --

25 A. Oh. Good morning, Dr. Miltner.

26 Q. No. I -- I personally -- I personally don't like
27 it, but -- but there's a subset of lawyers that think they
28 ought to do so, so --



1 A. I think you are entitled. I think you have that
2 J -- that D in the JD. So if you want me to call you
3 doctor, I will, and if you want me to call you mister, I
4 will.

5 Q. Either way is fine, but I prefer mister.

6 On page 2, where you -- the paragraph that leads
7 with "impact."

8 A. Yes, sir.

9 Q. You reference avoiding the potential for block
10 manufacturers to switch between sizes to avoid and
11 re-enter the price survey.

12 Are you -- are you aware of -- of instances where
13 that's actually happening?

14 A. I would say that there has -- in the
15 administration of the NDPSR program, there's always a
16 desire to make sure that there's as little temptation
17 to -- to -- to manage the results is possible.

18 Q. Explain if you could, for the record, how that
19 would work and what the impacts would be if that were
20 occurring.

21 A. In principle, hypothetically, a manufacturer
22 could -- could -- could deliver loads of 40-pound blocks
23 at a higher or lower price depending on how they wanted to
24 affect the market, and deliver the loads of 640s at the
25 opposite, you know, and the reverse with the intention of
26 affecting the survey price. If they are required to
27 include all of those blocks in the survey, they have less
28 room to do that kind of thing. And I'm not saying that



1 anybody is doing that. I'm saying that's one of the --
2 one of the -- it's the kind of thing that when we develop
3 programs, we try to make sure that they limit the
4 opportunity for things like that. Limit the temptation.

5 Q. Thank you.

6 It begins -- beginning at the bottom of page 2,
7 and continuing over to page 3, you cite several articles.
8 May I correctly assume that the purpose of quoting those
9 articles is to illustrate the growth of the 640-pound
10 block market?

11 A. Yes.

12 Q. Is there anything else that you wanted USDA to
13 take away from those articles?

14 A. I guess the last one does indicate at least one
15 opinion that it's time to include 640s. We have seen -- I
16 have seen -- I don't know whether that's appropriate to
17 include or not, but I have seen a number of folks in the
18 industry saying, "Finally, we're talking about adding
19 640s, which is long overdue."

20 But the primary thing was this is the best
21 evidence I could find of the growth in the production of
22 640s. It would be really nice if there was a more formal
23 source for that, and if they were included in the survey,
24 there would be.

25 Q. Okay. I wanted to move to Proposal 5 if I could.

26 A. Certainly.

27 Q. The first paragraph under your Proposal 5 heading,
28 you suggest that not including unsalted butter



1 underrepresents the value of U.S. butter --

2 A. Yeah. I'm sorry.

3 Q. No, go ahead.

4 A. That sounds as if I'm saying the price is lower
5 than it would be otherwise. That's not really the intent.
6 I don't -- I don't have reason to believe that unsalted
7 butter price is lower or certainly not substantially lower
8 than salted butter price when we're talking about the same
9 kind of standard -- standard product that I would
10 anticipate being in the survey. I don't expect there to
11 be -- what did I just cite? Did I cite -- I don't expect
12 the salted price to be substantially higher, if it is
13 higher.

14 Q. Thank you. You expected my question correctly.

15 As you move over to the top of page 4, and you
16 describe the percentages of butter production in various
17 categories, I personally have not been able to find a good
18 number on the percent of butter manufactured that is sold
19 at retail. Do you have any information on how much of the
20 butter that's manufactured ends up at retail?

21 A. I -- I don't. I would probably point to the
22 grading numbers as some -- some indication of it. I don't
23 know how much -- how much butter is graded without going
24 to retail. The primary purpose for a lot of folks to
25 grade butter is for it to be available for retail sale
26 because retailers expect the grade AA seal on -- on retail
27 butter. And that's -- that's both a marketing -- has both
28 marketing value, and it has kind of quality control built



1 into it: If USDA has gone ahead and graded the butter AA,
2 then it is good butter.

3 And so I don't know how much butter is graded if
4 it's not intended for the retail market. And I don't have
5 access to scanner data and a lot of the other things.
6 There probably is a source somewhere, and I'll look for
7 that. Try to get it on the record before the end of
8 September.

9 Q. Great.

10 A. We don't -- we don't -- you know, as representing
11 farmers, we don't necessarily have the same access to
12 processor resources as -- as cooperatives and proprietary
13 handlers. So we have to find public information where we
14 can.

15 Q. I would say as counsel for a cooperative, that
16 sometimes that extends to cooperatives as well.

17 A. Yes. I'm sure it does. Yes.

18 MR. MILTNER: Thank you. I don't have anymore
19 questions.

20 THE WITNESS: Thank you, Dr. Miltner.

21 THE COURT: Yes, Mr. Rosenbaum.

22 MR. ROSENBAUM: Steve Rosenbaum for the
23 International Dairy Foods Association. I have some
24 follow-up questions on the -- on the unsalted butter
25 proposal, which is Proposal 5.

26 CROSS-EXAMINATION

27 BY MR. ROSENBAUM:

28 Q. Did I understand correctly that in response to



1 questions by Mr. English, you said that the only unsalted
2 butter that would be added under your proposal is that
3 which is 80% butterfat?

4 A. It would -- it is intended to include the butter
5 that is analogous to the butter that's currently in the
6 survey. And it is my understanding that a high -- a
7 higher test butter is not included. It's my
8 understanding -- and I probably should know this for sure,
9 and I don't -- that the so-called European style butter or
10 the -- whatever they call it, creamier style butter, is --
11 is not included because it's a premium product. It is not
12 the intent to -- to start throwing in premium products
13 into the -- into the survey in order to goose the price.
14 That's not the intent. The intent is to enhance price
15 discovery with a deeper volume.

16 Q. All right. So if it is the case, as indeed it is,
17 that the -- that the National Dairy Product Sales Report
18 standards require that butter be 80% butterfat to be
19 included in the survey, under your proposal, that standard
20 would continue to exist and would apply to unsalted
21 butter, correct?

22 A. I think that's -- the language we offer indicates
23 that.

24 Q. Okay. And so -- but, in fact, the butter that's
25 exported from the United States that is unsalted is today
26 82%, correct?

27 A. I believe a lot of export butter is -- is made to
28 different standards for the purposes of satisfying



1 overseas markets. I don't know whether there is also
2 some -- some volume that's being sold according to the
3 standard American -- traditional American standards or
4 not. But I do agree that most of our butter exports of
5 butter per se are to higher standards -- to higher
6 butterfat tests to meet the needs of the overseas market.

7 Q. All right. So if you look at page 4 of your
8 testimony, Exhibit 129, and when -- and I'm looking sort
9 of the middle of the page, where you say, and I'll quote:
10 "USDA butter grading data should demonstrate growth and
11 demand in production of unsalted butter. In addition,
12 U.S. butter exports have grown from about 2,000 metric
13 tons in 2000 to over 65,000 metric tons in 2022, almost
14 entirely supplied with unsalted butter," end quote.

15 In fact, your proposal would exclude most, if not
16 all, of that export growth because most, if not all of it,
17 is butter that's 82% butterfat; is that fair?

18 A. Yeah, probably. And I can see that it's a -- it
19 gives the impression -- I understand that the testimony as
20 written gives the impression that we're looking to include
21 those -- those export products, and that's not the intent.

22 Q. Okay. And -- and next question. We see here in
23 Section 1170.8 of the CFR that the specifications for
24 butter prices are specifically for 80% butterfat.

25 A. You say are or are not?

26 Q. They are.

27 A. Yes.

28 Q. It's 80%.



1 A. We have no problem with that.

2 Q. Okay. And so you're confirming my earlier
3 statement that in order to be included in the survey, the
4 butter has to be 80% butterfat?

5 A. Right.

6 Q. And you're fine with that requirement, correct?

7 A. Fine with that. And that's -- that's our -- that
8 was our intent.

9 Q. Okay. And -- and to be included in the survey,
10 another requirement is that the butter be packaged in
11 25-kilogram or 68-pound boxes as opposed to being packaged
12 in retail sizes.

13 Do you understand that?

14 A. Uh-huh.

15 Q. You need to say yes or no.

16 A. Yes. I understand that.

17 Q. And do you have any idea, to the extent that there
18 is 80% unsalted butter being made in the United States
19 today, how much of it is packaged in retail packages as
20 opposed to these larger sizes?

21 A. No, I do not.

22 Q. Okay.

23 A. But I also know that an awful lot of butter that
24 goes to retail is first made in one plant, sold in those
25 sizes to another operation that will micro fix it for the
26 retail market.

27 Q. And do you have any poundage you can --

28 A. I do not.



1 Q. -- associate with -- let me --

2 A. Sorry.

3 Q. Do you have any poundage you can associate as to
4 how much is packaged, if you will, from the get-go in
5 retail size packaging and, therefore, would not qualify
6 for inclusion in the survey?

7 A. No. I do not.

8 Q. Okay. I mean, do you have any -- strike that.
9 I mean, do you know what poundage of butter would
10 be added to the survey if your proposal were adopted?

11 A. I do not.

12 Q. That's all I have.

13 THE COURT: Anyone else before we get to AMS?

14 AMS.

15 CROSS-EXAMINATION

16 BY MS. TAYLOR:

17 Q. Good morning.

18 A. Good morning.

19 Q. Just a couple questions. I think most of it's
20 been answered through other questions.

21 You cite on the first page the 10% number we have
22 heard many times on barrel production. Barrel production
23 represents only about 10% of the cheese production in the
24 U.S. I was just wondering for the record if you could
25 expand if you had any information to support that number
26 or is that just a generalization that you kind of accepted
27 as you have heard other testimony.

28 A. We don't have specific data on that. But it's



1 consistent with my experience over the years, that there's
2 nothing else really priced on barrels except barrels.

3 Q. Okay. And then on the next page you talk about
4 adding 640s would move the balance of blocks and barrels
5 closer to the actual market mix.

6 Can you expand on what the actual market -- what
7 you mean by actual market mix and any information you have
8 to support that?

9 A. The mix of products that are priced on one or the
10 other, which is the same issue, the 10% versus the rest.
11 The conventional wisdom, at least, is that the barrels are
12 priced on barrels and everything else is priced on blocks.
13 And so if it's 90/10 is the actual mix of how products are
14 priced between barrels and blocks, or the other way
15 around, moving -- moving -- adding the 640s would increase
16 the volume of block pricing that is entering into the
17 overall price.

18 And I think it is worth indicating -- it is worth
19 noting that, you know, including barrels just kind of
20 makes the price a dirty price. It makes it not -- not --
21 you know, it's neither fish nor fowl. It is not a block
22 price; it is not a barrel price. If we conclude that the
23 block price is the appropriate benchmark for cheese -- for
24 most cheese, then we should -- it's better to have a price
25 that's based on the block -- on block prices, 40s and
26 640s, in order to make sure that we don't just have a sort
27 of wild card thrown in that skews everything -- that skews
28 a price for the other 90%.



1 Q. And do you have information on what 640s are used
2 for if we're talking about how 40s and 640s are
3 interchangeable, as you discuss in your testimony?

4 A. I don't have data. It is my understanding,
5 though, that 640s are more easily handled by larger
6 operators. I mean, larger scale users of blocks are
7 happier with 640s. I think we have heard -- I don't know
8 where I've -- if I heard testimony this week or if I
9 heard -- if I read it, you know, a 640-pound block has --
10 has less surface area per pound of cheese than six
11 40-pound blocks. So there's quality issues. There's --
12 you know, there's -- there's just some handling advantages
13 for somebody who is operating in a larger scale.

14 But to my understanding -- and, you know, 40-pound
15 block can go to a smaller operator. I have seen 40-pound
16 cheddar blocks at food service establishments. I don't
17 think they buy 640-pound block. But if you need 40-pound
18 blocks, you can cut the 640s. So I don't know that the --
19 I don't have -- reasonably there's a substantial
20 difference for the most part in the uses of 640s and 40s.

21 Q. Moving to your Proposal Number 5 on adding
22 unsalted butter. You have a sentence on there about -- on
23 page 4, the first paragraph, towards the bottom:

24 "Although unsalted butter was produced in small quantities
25 in the U.S. at the time of Federal Order Reform, its share
26 of U.S. production and sales have grown substantially
27 since then and is projected to continue growing."

28 I wonder if you could expand on that, in



1 particular how you project it will continue to grow.

2 A. I guess my only projection is I have gone -- I've
3 gone online, and there are market reports that -- that are
4 offered for sale, that I didn't buy, that where the
5 summaries say unsalted butter sales are projected to grow.
6 So it is not a very good -- it's not a very good source.
7 But -- but they -- but they have been growing, and I think
8 reasonable people are projecting that they will continue
9 to grow.

10 Q. And when it comes to -- you know, there's been
11 discussion, kind of in all these surveyed products,
12 proposals about how if we include it or didn't include a
13 certain product, then the manufacturing costs and yields
14 in the formula should also reflect whatever it is
15 ultimately the products that are used.

16 So do you know if there's a manufacturing cost
17 difference or yield differences in the production of
18 salted versus unsalted butter that should be considered?

19 A. You know, if it is the same butterfat test, in the
20 same packaging, the same lines, it's I -- I -- as I said
21 earlier, I -- my best guess would be it is negligible but
22 I don't have data. I would love to see a survey, a
23 mandatory and audited survey, in case you haven't heard
24 that phrase enough.

25 Q. Just a few times.

26 A. You will hear it again. I'm afraid.

27 MS. TAYLOR: That's it from AMS. Thank you.

28 THE WITNESS: Thank you.



1 THE COURT: Redirect?

2 Actually I have the witness here. Anything
3 further you would like to say in the nature of redirect,
4 since we don't have someone to present you and ask
5 questions. Anything that occurs to you that you would
6 like to add?

7 THE WITNESS: I -- I think I have had -- said
8 everything I wanted to say, and I appreciate the
9 questioners for their -- their provoking of additional
10 thoughts. So I'm good. I'm done.

11 THE COURT: Okay. With that, let's move to
12 introduce Exhibit 129 into the record.

13 Seeing no objection, Exhibit 129 is admitted into
14 the hearing record.

15 (Thereafter, Exhibit Number 129 was received
16 into evidence.)

17 THE COURT: Off the record.

18 (Off-the-record.)

19 THE COURT: Back on the record. Let's take a
20 ten-minute break. Come back at 11:47 a.m.

21 (Whereupon, a break was taken.)

22 THE COURT: Let's reconvene on the record.

23 Mr. Rosenbaum.

24 MR. ROSENBAUM: Your Honor, we recall Mr. Mike
25 Brown to the stand.

26 THE COURT: Very well.

27 MR. ROSENBAUM: Does your Honor have a copy of
28 IDFA-31?



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MIKE BROWN,

Having been previously sworn, was examined
and testified as follows:

DIRECT EXAMINATION

BY MR. ROSENBAUM:

Q. Steve Rosenbaum for the International Dairy Foods
Association.

Mr. Brown, I put before you a document that's been
marked as IDFA Exhibit 31.

MR. ROSENBAUM: Your Honor, I would ask that this
be marked with the next Hearing Exhibit number.

THE COURT: Yes. IDFA-31 is marked as
identification as Hearing Exhibit 130.

(Thereafter, Exhibit Number 130 was marked
for identification.)

THE COURT: We'll say you are still under oath.

THE WITNESS: Okay. Thank you.

Since you don't have to hear about IDFA and me for
the 45th time, I'm going to skip some sections, but I'll
refer you to where I'm going in the testimony.

Again, Exhibit 31, and we are actually going to
page 2, to the second paragraph.

Accordingly, step one in the formulas by which
USDA sets minimum price for milk used to make Class III
and IV products starts with a survey of the price paid for
specified manufactured dairy products. Proposal 4 would
change that step in the process by adding a new product,
640-pound blocks, to the products whose prices are



1 included in the price surveys.

2 For the reasons I will now explain, Proposal 4
3 should be rejected.

4 The next paragraph, again, is a repeat from our
5 other testimony. So if you go on to page 3, to the first
6 full paragraph, about seven lines down.

7 Proposal 4 would add 640-pound cheddar cheese
8 blocks to the protein price formula used to price milk
9 used to make cheese. Whether 640-pound blocks should be
10 included in the survey used to set minimum milk prices is
11 a question USDA has previously addressed and resolved.
12 When USDA in 2000 held hearings in response to a
13 Congressional mandate to reconsider the Class III and IV
14 pricing formulas included in the 1999 final rule for the
15 consolidation and reform of milk orders, a proposal was
16 advanced to include 640-pound blocks in the survey. USDA,
17 Milk in the Northeast and Other Marketing Areas; Tentative
18 Decision on Proposed Amendments and Opportunity To File
19 Written Exceptions --

20 (Court Reporter clarification.)

21 THE WITNESS: USDA agreed with the opponents'
22 position that "the vast majority of 640s are made on a
23 custom basis to customers' specifications, and therefore
24 are not sufficiently uniform to have a standard identity."
25 And, "[w]ithout a standard identity for the product,
26 standardized pricing cannot be developed." Furthermore,
27 the product was not traded on the exchange, end of quote.

28 As noted in my testimony regarding Proposal 3,



1 USDA's current pricing formulas rely on very substantial
2 sales volumes to determine the market price of cheddar
3 cheese. The price surveys encompassed well over
4 1.34 billion pounds of sales in 2022, divided almost
5 evenly between 40-pound blocks and 500-pound barrels.

6 This robust data set is more than sufficient to
7 determine prices in the market. 640-pound blocks are not
8 needed to fill any information gap. Indeed, 640-pound
9 blocks typically trade off the price of 40-pound blocks,
10 and therefore bring little, if any, additional information
11 to bear. Furthermore, only certain facilities are set up
12 to purchase and handle 640s, so the market for them is
13 much thinner.

14 Furthermore, 40-pound blocks and 500-pound barrels
15 are both traded on the Chicago Mercantile Exchange, while
16 640-pound blocks are not. The absence of a public market
17 makes 640-pound blocks unsuitable for determining actual
18 market prices.

19 In addition, as was the case in 2000, there is no
20 standard of identity for 640 blocks. They are more of a
21 made-to-order product. Just as in 2000, the absence of
22 uniformity makes it impossible as a practical matter to
23 determine a uniform price.

24 For these reasons, Proposal 4 should not be
25 adopted.

26 BY MR. ROSENBAUM:

27 Q. Mr. Brown, could you expand upon your statement
28 that 640-pound blocks are more of a made-to-order product?



1 How do you know that and what information do you have?

2 A. I have a lot of experience -- when I was at
3 Kroger, we had two processing plants that used 640s
4 whenever it was possible for most American style cheese.
5 They are generally made to order, and there's a couple of
6 good reasons for that.

7 First of all, we had that ability to get exactly
8 what we want, profile, to put in consumer packages as far
9 as aspects of the cheese. It meets standards of identity,
10 but there may be some other changes that are made.

11 Second, because we can use those, and there's
12 others, of course, that can use those as well. The market
13 is kind of limited. It's kind of -- call it set theory,
14 if you want. Certain people can use 640s. And they can
15 generally use 40s if they have to. It tends to be very
16 labor inefficient. But outside of those groups, people
17 simply aren't set up to use them.

18 There's been comments on cutting them into 40s.
19 Well, if you want mold and spoilage, cut up 640s, because
20 that's what's going to happen to you. You lose your
21 freshness if you try to do that, if you are not going to
22 use them basically all at the very same time.

23 The other challenge with 640s -- there's a couple
24 more, but one is exports. Generally, they are not
25 suitable for export. Most buyers around the world aren't
26 set up to handle -- to use 640s. So it is a very limited
27 market for exports, which means, again, if your domestic
28 buyer doesn't want them, you're probably not going to --



1 you probably don't want to make them.

2 And finally is the fact that there isn't a traded
3 market. I think that does -- there's a competitive
4 difference between 640s and 40s. It is going to be
5 smaller. Most 640s are contract, they're bought on an
6 annual contract basis based off of the CME market, and so
7 they're priced accordingly. There just isn't a lot of
8 spot. In fact, when you do have a spot market -- or you
9 do have the surplus of 640s, which happened this spring,
10 you often will hold an auction because you can't sell them
11 at the CME, so you basically hold an online auction to --
12 to sell the extra blocks.

13 As a result of that, I think you would find with
14 640s, you actually had more volatility in price on the
15 margin because you don't have that CME option. And so
16 while they are based on CME blocks, the price isn't
17 necessarily always the same as a 40-pound block. It can
18 be higher, or it can be lower. And it probably is a
19 little more volatile on the margin.

20 Q. Okay. And is this auction process less efficient
21 or accurate than a traded market like the CME?

22 A. Well, it's -- it's independent of the CME. So the
23 market information doesn't feed back into the system the
24 way that it would on a 40-pound block. So if it met spec,
25 I guess it could be reported, if it -- if it were to
26 happen. But, generally -- and they don't happen often,
27 but when cheese gets long, that's their only avenue to
28 sell the cheese, if they can't find a private buyer or by



1 contract or by an agreement, they have to hold their
2 own -- own auction, which isn't -- isn't the best way to
3 sell extra cheese from what I understand.

4 MR. ROSENBAUM: Your Honor, Mr. Brown's tendered
5 for cross-examination.

6 THE COURT: Any cross aside from AMS?

7 Mr Cryan.

8 By the way, just -- I was thinking. I have not --
9 I have been making a conscious effort not to say things
10 like "Mr. Cryan" or the name of counsel as they come up.
11 I don't want anyone to feel slighted, but I'm just
12 thinking it adds another couple lines to the hearing
13 transcript. It's going to be long enough. So I properly
14 should have said something earlier.

15 But, Mr. Cryan, you have this -- the witness is
16 yours.

17 DR. CRYAN: Thank you.

18 CROSS-EXAMINATION

19 BY DR. CRYAN:

20 Q. Roger Cryan, American Farm Bureau Federation.

21 Thanks for your testimony, Mike.

22 A. You're welcome.

23 Q. Are you -- are you suggesting that there aren't
24 any block makers that are just putting out a standard
25 640-pound block?

26 A. Oh, yeah, I'm sure some do, and I'm sure some of
27 the spec is for standard. You know, again, the standard
28 for USDA reporting is pretty tight, particularly days.



1 And so how much of that would be picked up, you know, I
2 honestly don't know.

3 And the other thing with -- with a 640 is the
4 contracts tend to be longer term just because
5 manufacturers don't want to have capacity of 640s that
6 they know isn't sold, so they tend to try to have it sold
7 ahead of time. So it is less of -- it may be a CME-based
8 cheese, but it is less of a spot market by sale. It tends
9 to be contract.

10 Q. And you talked about if somebody has extra, and
11 they can't sell it in the CME because the CME doesn't
12 trade 640-pound blocks, you said they could do an online
13 auction.

14 A. That's kind of last resort. If they have
15 inventory they can't dispose of in another way -- and,
16 again, like any -- any cheese, cheese changes with age.
17 And so they generally want to sell that product when it's
18 still has its original characteristics --

19 Q. Sure.

20 A. -- so they'll hold an auction. It tends to be a
21 little older in an auction, as you might imagine, because
22 it's inventory.

23 Q. Sure. But those auctions are done on any of a
24 variety of online exchanges that exist today; is that
25 right?

26 A. Yeah. It's basically an auction service per se,
27 yes.

28 Q. Okay. But aren't there other -- aren't there



1 exchanges like dairy.com that offer trading of a -- of a
2 variety of dairy products?

3 A. If you can find a buyer.

4 Q. Right.

5 A. You can't always find a buyer. I tried to sell
6 cream in April 2000.

7 Q. Right.

8 A. We were members of Kroger. We called it the Dump
9 Cream Club because there was no buyers for cream. And
10 unfortunately, we had a lot of members along with us.

11 So the auctions are really when you can't find a
12 suitable buyer and you think you're best off to do that.
13 It is the last resort. But it does result in some lower
14 prices. Would that cheese meet USDA specs and reporting?
15 You know, I can't speak to that because I don't know. But
16 the cheese is -- I have never bought cheese at an auction.
17 I just know they exist.

18 Q. Have you sold cheese on an auction?

19 A. No. Because we buy -- we don't sell cheese
20 generally, we buy cheese, so --

21 Q. Okay.

22 A. Or we did at Kroger when I was there.

23 Q. Isn't it true if you're selling surplus into the
24 CME, sometimes you are taking a lower price?

25 A. Depends on the demand, but you have an open supply
26 and demand market. That's the beauty of the CME. You can
27 love it or hate it, but it is the way we set prices in
28 dairy and have for a long, long time.



1 Q. Right.

2 A. And at this point we don't have that option with
3 640s.

4 Q. Right.

5 DR. CRYAN: Okay. That's all I've got. Thanks.

6 THE WITNESS: Thank you.

7 CROSS-EXAMINATION

8 BY MR. MILTNER:

9 Q. Ryan Miltner representing Select Milk Producers.
10 I think I have just one question for you, Mr. Brown.

11 You -- you answered some questions from
12 Mr. Rosenbaum about 640s being a made-to-order product.
13 And I think the one thing that I did not get from your
14 answer was what are the types of changes that would be
15 requested in making a custom 640?

16 A. The -- the changes -- well, first of all, if you
17 have a certain spec to meet your consumer need, you can
18 have those changes.

19 But the bigger thing, Ryan, is just simply that
20 you don't make them as a commodity. If you don't have a
21 buyer, you don't make them, because they are harder to
22 sell because you have a very limited market for them. So
23 they may often -- they will often be spec, sometimes they
24 are not. It depends on what your customer wants. And,
25 again, keep in mind, USDA's standard of identity, you've
26 got minimum specs. And then -- and then -- and then
27 things move from there.

28 So certainly, they are -- a lot of the cheese is



1 standard cheese. The way it's purchased is what is very
2 different. There really isn't a cash market per se. And
3 that's why, for example, when Kroger would buy 640s, we
4 would -- we would have contracts that would have some flex
5 in them so that we didn't end up with cheese we didn't
6 need, and we would notify our manufacturers ahead of time
7 that we had a change. Because in most cases they could
8 make blocks -- they could make 40s instead of 640s if
9 there wasn't demand. Most of their 640 plants can do
10 both, not all but most can.

11 Q. But would there be variations in butterfat
12 content?

13 A. Generally not.

14 Q. Moisture?

15 A. Generally not.

16 Q. Color?

17 A. Possibly.

18 Q. Salt?

19 A. You have to put in to keep it -- no, salt's
20 basically a standard level of salt.

21 Q. Okay. So what would you change?

22 A. What would you change?

23 Q. What specifications would change --

24 A. Color. Color may change. You may have a flavor
25 or a certain culture that you want. Certainly, if you are
26 a cheddar for aging, you have a different set of cultures
27 as well because -- and it tends to be a little higher fat
28 level, more moisture cheese than your -- what we call



1 short holder fresh cheddar.

2 Q. If it were going to be aged, it would be excluded
3 from the survey anyway, wouldn't it?

4 A. That is correct.

5 Q. So if I go to Kroger right now, the Kroger near
6 me, if I'm going to buy cheddar in an eight-ounce block or
7 a shredded bag, I think there's mild, medium, sharp, and
8 extra sharp maybe --

9 A. That is correct.

10 Q. Those would all come from a 640?

11 A. Yes, but different 640s.

12 Q. Right.

13 And of those, would only the mild one be subject
14 to the survey requirements, if it came from a 40-pound
15 block?

16 A. If -- if -- if the color spec was in alignment and
17 everything else, it could be, yes. The others are all --
18 medium cheddar for most people is cheddar for aging that
19 you don't think is going to quite make it to the full age,
20 so you sell it as medium. I don't want to make it sound
21 like it is a bad cheese. It's not. But as you grade
22 cheese, you move -- you go, oh, this one -- and it's
23 amazing, those guys, how good they are at it. But they
24 will decide, this cheese is going to be sold at a 60- or
25 90-day cheese rather than as a fully aged cheese.

26 Q. So if I'm -- if I'm able to summarize this
27 correctly, which I might or I might not, if it's going to
28 be aged, that wouldn't be in a survey if it was a 40-pound



1 block?

2 A. That is true.

3 Q. And so what's left would be, in Kroger at least,
4 sold as a mild cheddar, it wouldn't be aged, and the
5 specification change might be the coloration?

6 A. Probably the largest would be coloration. In some
7 cases you have specifics on moisture that you are looking
8 for, but generally it's color.

9 Q. Now, if Kroger were ever going to buy or another
10 entity were going to buy 40-pound blocks to cut for mild
11 cheddar, wouldn't they have the same difference in color
12 specifications? I mean, wouldn't there be a certain range
13 that's acceptable within the standards?

14 A. To some degree, yes. But you don't make -- 40s
15 are made, generally, more to general spec because they
16 have so many market opportunities, and if you have extra
17 ones that you need to sell, you can do that. Generally,
18 640s are very specific. Again, I'm not saying the color
19 is always different, by any manner of speaking. But they
20 tend to be a little more specific, and they tend to be
21 long-term, as I mentioned before, long-term contracts
22 based off the CME.

23 Q. Yeah, most of the 640-pound manufacturers, they
24 are contracting their volumes out for months, if not
25 years, correct?

26 A. Yeah. Generally, I think -- I would say the
27 majority is probably a year.

28 Q. Okay.



1 MR. MILTNER: Thank you.

2 THE COURT: Anyone else?

3 CROSS-EXAMINATION

4 BY DR. CRYAN:

5 Q. Roger Cryan with American Farm Bureau.

6 Mr. Brown, you talked about long-term contracts.

7 Are those fixed price contracts or do they -- or are they
8 formulas based off of a market?

9 A. A mix of both.

10 Q. Okay.

11 DR. CRYAN: Thank you.

12 THE COURT: Anyone else?

13 AMS.

14 CROSS-EXAMINATION

15 BY MS. TAYLOR:

16 Q. Good afternoon.

17 A. Oh, we have changed time of day.

18 Q. Just made it. This is Erin Taylor with USDA.

19 You had some discussion with Mr. Miltner on your
20 comment about how 640s are custom made, and you cite a
21 2000 decision, a line in there from USDA about the "vast
22 majority 640s are made on a custom basis."

23 And would you say the market has changed in the
24 past 23 years?

25 A. It's grown, because more plants want the
26 automation that goes with 640s. But I think most of them
27 are still custom. Now, custom doesn't necessarily mean it
28 is non-standard. It just means, I want X blocks this



1 month, at whatever the agreed upon price is. In other
2 words, you don't make 640s without knowing who is going to
3 buy them, generally --

4 Q. Okay.

5 A. -- because -- because of their -- you have less
6 options if someone doesn't want them.

7 Q. So if I'm just looking at just the product itself,
8 between 40s and 640s, the product itself is probably the
9 same except for packaging costs, generally?

10 A. Yeah. And possibly color, but that can be true
11 with 40s as well. But, yes, those are the main
12 differences with standard of identity cheese in the case
13 of cheddar.

14 Q. Okay. So I'm trying to square how -- there's
15 discussion in your other testimony on the block-barrel
16 issue. How, you know, there you are, more survey volume
17 is a good thing, and so we shouldn't drop barrels.

18 But here, you -- IDFA makes the case to not add
19 640s. And assuming the product is the same, right? They
20 both met the specs, so it's not aged or any other -- you
21 know, long -- no long -- excluding long-term contracts,
22 all of that stuff, exclusions apply. How would -- how
23 does the logic not -- that same logic not fall over to the
24 640 discussion where at least adding some additional
25 volume would be a good thing and help for price discovery
26 purposes?

27 A. I'm not -- the market is far more limited. You
28 have far few people that can buy and handle 640s, unlike



1 40s or barrels. I think that's -- that's the biggest
2 difference. You are correct, the cheese, the standard of
3 identity would be the same. If you -- if someone asked
4 for a different color or other differences, they can, of
5 course. But it is -- it is a much more limited market,
6 which can mean two things. It -- generally I think it
7 means that most products are going to be at a fairly
8 stable price.

9 It's when you get markets out of alignment, then
10 you have extra. Or if you have very short, but generally
11 it tends to be a little too much, is that's going to be
12 sold at a fairly significant discount. Is the price level
13 that different? You know, I look at buyers. I don't
14 think it really is. It's probably a little more volatile,
15 which, again, if that's acceptable, that's -- it's
16 acceptable. But that would be my same view.

17 The other -- other thing is having two products
18 that are tradable at the CME, one that isn't, is -- it's
19 kind of like the same thing with game in the barrels, it
20 is tradeable, it would be better if they had a 640
21 contract. I know it's been talked about before, and who
22 knows, maybe this will make them decide to do it. But
23 that would be the other thing that I see. All the other
24 four commodities, of course, five, two cheddar, have
25 trading markets.

26 Q. But I think you did state in previous testimony,
27 it's not your opinion that Federal Orders necessarily
28 should only include products that are traded on the CME.



1 But I guess, which one comes first, the chicken or the
2 egg, is kind of the question.

3 A. Well, whey came in 2018, so whey did come after --
4 after the -- and part of that was the circularity of the
5 NDPSR cause the whey price, the same thing with the powder
6 market, why that became -- how that developed.

7 So there's certainly -- there's certainly
8 precedence for that. Is this -- is this a -- is this a
9 product -- and, again, you will find out if you do a
10 survey how much is legally reportable -- is it a product
11 that would meet the spec often enough to be surveyed? I
12 would say it probably is.

13 Q. Probably is?

14 A. Yeah.

15 Q. Okay. So that gets to another question -- well,
16 you mentioned something before about how, you know, 640s,
17 because there's no CME market, they are often sold on
18 auction if you need to get rid of inventory, and it's
19 market-clearing prices you would see?

20 A. Yeah. I wouldn't say often. I would say it's
21 common.

22 Q. Sure. That's fair.

23 So I'm also trying to square how -- the argument
24 that while Federal Order prices should be minimum prices
25 and should reflect market-clearing prices, if I carry that
26 thinking over here, then wouldn't those 640s, if they are
27 market-clearing prices, be appropriate to survey for this
28 purpose?



1 A. Well, if you did, you -- we'd learn how volatile
2 they are, I guess is what I would say.

3 Q. Okay. Let me see. I think my last kind of set of
4 questions is on the final paragraph you have, and you say,
5 "There's no standard of identity for a 640-pound block."

6 What standard of identity are you talking about
7 there?

8 A. There is a standard of identity -- again, if you
9 have them custom made, they are not. But if a cheddar is
10 a cheddar, it's going to have the SOI, whether it's a 40,
11 640 or in a loaf, it's still going to have the same
12 general requirements.

13 Q. So the -- you are talking about the FDA standard
14 of identity --

15 A. Yes.

16 Q. -- there for cheddar, which --

17 A. Yes.

18 Q. -- to my knowledge does not include any reference
19 to packaging?

20 A. No. That's why I said it can be -- any of them
21 can be.

22 Q. Okay.

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

25 THE WITNESS: Thank you.

26 REDIRECT EXAMINATION

27 BY MR. ROSENBAUM:

28 Q. Steve Rosenbaum for the International Dairy Foods



1 Association.

2 When you testified about why 500-pound barrels
3 should remain in the pricing formula, you referenced that
4 those barrels actually serve a different ultimate product
5 than do 40-pound blocks; is that correct?

6 A. That is correct.

7 Q. Okay. Namely the 500-pound barrels are typically
8 used to make processed cheese whereas the 40-pound blocks
9 are used in a different manner, correct?

10 A. Yes. 40s are generally used as natural cheese.

11 Q. And one of the reasons why you thought you needed
12 to include the 500-pound barrels is because there are more
13 than -- whatever the number is, a billion -- more than a
14 billion pounds of barrel cheese sold a year, and it's an
15 important component of the market that needs to be
16 captured, correct?

17 A. Yes. It is a true base product.

18 Q. Okay. Now, did -- do -- so that's all a lead-up
19 in a way to the following question: Do 640-pound blocks
20 serve some different function?

21 A. Well, they certainly aren't a base product because
22 they tend to be made to order, and that's -- and that's --
23 and that's the big difference. Would it have a user
24 effect on price? I don't know. But you are not going to
25 see 40s -- 640s -- traded or produced without an expected
26 market because there's likely more volatility than what
27 they will bring in price. Again, that could be good or
28 bad depending where you are in the market, but they are



1 going to be more volatile.

2 Q. Is the end use of 640-pound blocks different?

3 A. Not really. It's just a limited number of plants
4 have the ability to use them. You have less customers.

5 Q. But what they are making with it is the same?

6 A. Basically, yes.

7 MR. ROSENBAUM: Your Honor, at this point I would
8 move Hearing Exhibit 130 into evidence.

9 THE COURT: Any objections?

10 Seeing none, Exhibit 130 is admitted into the
11 record.

12 (Thereafter, Exhibit Number 130 was received
13 into evidence.)

14 MR. ROSENBAUM: Your Honor, Mr. Brown has one more
15 topic to cover. This will be the last topic of his for
16 the day. And I will -- I am distributing copies, and I
17 will bring a copy to your Honor.

18 THE COURT: Thank you.

19 DIRECT EXAMINATION

20 BY MR. ROSENBAUM:

21 Q. Mr. Brown, I have handed you a document that's
22 marked as IDFA Exhibit 32.

23 MR. ROSENBAUM: And I would ask that it be marked
24 with the same -- the next Hearing Exhibit number, your
25 Honor.

26 THE COURT: Yes. It will be marked Exhibit 131.

27 (Thereafter, Exhibit Number 131 was marked
28 for identification.)



1 BY MR. ROSENBAUM:

2 Q. Mr. Brown, is Hearing Exhibit 131 your written
3 testimony regarding the proposal to add unsalted butter to
4 the price survey?

5 A. Yes, it is.

6 Q. All right. And -- and as with your last
7 testimony, I believe that the first page and -- the entire
8 first page as well as the top half of the second page --

9 A. Is redundant.

10 Q. -- is redundant of the testimony you have already
11 given with respect to other proposals. So if you could
12 turn to page 2, the paragraph that starts with the word
13 "accordingly," and read your testimony.

14 A. Yes.

15 Accordingly, step one in the formulas by which
16 USDA sets minimum price for milk used to make Class III
17 and IV products starts with a survey of the price paid for
18 specified manufactured dairy products. Proposal 5 would
19 change that step in the process, by adding unsalted butter
20 to the prices included in the price surveys.

21 For the reasons I shall now explain, Proposal 5
22 should be rejected.

23 In order to set the butterfat price component of
24 the price of milk used to make Class I, II, III, and IV
25 products, the orders since 2000 have in step one relied
26 upon the U.S. average price for AA butter. This price is
27 obtained through a survey of the National Dairy Products
28 Sales Report (NDPSR).



1 To be included in these Sales Reports, the butter
2 must meet certain criteria, including being 80% butterfat,
3 salted, fresh or storage; meeting USDA Grade AA standards;
4 and being packaged in 25-kilogram or 68-pound boxes.
5 Unsalted and Grade A butter are specifically excluded from
6 the Reports, as are several other categories of butter.

7 NDPSR surveyed sales of Grade AA butter are quite
8 substantial, over 194 million pounds in 2022.

9 Again, reference to that is USDA Datamart. The
10 URL is there.

11 Confirmed, thus, a very robust quantity of butter
12 sales is relied upon for purposes of determining the
13 market butter price.

14 Grade AA butter is traded on the Chicago
15 Mercantile Exchange. Thus, by basing the butterfat price
16 on the price of Grade AA salted butter, USDA is relying on
17 a heavy volume of trade data of a commodity that is
18 subject to uniform specifications, publicly traded, and
19 for which price surveys are already conducted.

20 None of the foregoing attributes apply to unsalted
21 butter. There is no uniform specification for unsalted
22 butter. Without a uniform specification, it is impossible
23 to derive a uniform price for purposes of a Federal Order
24 pricing formula.

25 And with that specification, I'm adding this
26 referring to the CME.

27 Indeed, because unsalted butter does not store as
28 well as compared to salted butter, unsalted butter is more



1 likely to be made to order, according to the requirements
2 of a specific buyer, and thus even less capable of
3 providing useful uniform price information. In addition,
4 unsalted butter tends to be priced off the CME Grade AA
5 salted butter price, and therefore does not bring to bear
6 any new pricing information.

7 Furthermore, substantial quantities of unsalted
8 butter are exported through premium-assisted sales such as
9 the CWT program. These sales are explicitly excluded from
10 the NDPSR Reports, for the very reason that they are not
11 reflective of actual competitive pricing for butter. This
12 treatment provides further proof that unsalted butter
13 should not be relied upon for determining the market price
14 of butter, for milk order pricing purposes.

15 For these reasons, Proposal 4 should not be
16 adopted.

17 Q. Once again, I think there's a typo, which I didn't
18 see until now. I believe the last sentence should be
19 referencing Proposal 5 rather than Proposal 4; is that
20 correct?

21 Is that a correct correction we should be making,
22 Mr. Brown?

23 A. Yes, that is correct.

24 Q. Okay.

25 MR. ROSENBAUM: We tender Mr. Brown for
26 cross-examination.

27 THE COURT: Cross other than AMS?

28 Seeing no one, Ms. Taylor.



1 MS. TAYLOR: Everybody's hungry for lunch, I
2 think.

3 CROSS-EXAMINATION

4 BY MS. TAYLOR:

5 Q. Just a couple quick questions. And I do
6 appreciate in page 3 you discuss specifically you are
7 talking about no uniform specification on the CME for
8 unsalted butter.

9 A. Yes.

10 Q. So -- but then you make the statement, without
11 that, "it's impossible to derive a uniform price usable
12 for purposes of a Federal Order pricing formula."

13 Can you explain what you mean there and why it's
14 impossible?

15 A. Well, maybe impossible is too strong a word. I
16 think the fact that CME doesn't recognize and have a
17 contract I think is the -- again, I do believe it's best
18 to have a cash market available for a product if you are
19 going to survey it. And that's one thing.

20 There's a couple other reasons that salt is a bit
21 of a challenge. One of those is that it tends -- kind of
22 like 640s, it tends to be made to order. Coming from a
23 grocery store chain that sold lots -- millions and
24 millions and millions of pounds of butter, one thing you
25 will find is that you actually have to make butter ahead
26 for fall season because no one told the cows that people
27 eat twice as much butterfat at Christmas.

28 So as a result of that you do what they call --



1 couple different terms for it, but micro fixing,
2 re-packaging, which uses frozen, 68- or 25-kilogram
3 packages of butter, that is almost without exception
4 salted, because the salted is easier to store, it stays in
5 a specific in quality, has less issues with mold or
6 spoilage because of that good old salt that's in it.

7 So if you're looking for a storable commodity,
8 salted butter is that storable commodity. So that's one
9 of the -- one of the reasons.

10 So it's kind of like 640s, it's still butter, but
11 of course, it's salted -- I mean unsalted. But it has --
12 it has different storage properties.

13 From my personal experience I have never bought
14 repackaged unsalted butter. I've bought many, many,
15 million pounds of repackaged salted butter because it
16 seems to work well.

17 Q. So when you are talking about likely made to
18 order, I won't call it just in time, but sort of, you
19 order it when you need it, and as a purchaser, you don't
20 plan to store that for very long?

21 A. No. Generally not. Generally, even in a store,
22 your sell-by date on unsalted butter is two months less
23 than it is on salted, from my experience.

24 Q. And so it's -- I'm trying to tie the loop. So
25 it's the storage properties of the butter that make it,
26 I'll say difficult instead of impossible to derive a
27 uniform price?

28 A. It is -- it just -- it just doesn't -- it doesn't



1 keep as well. I mean, you have more risk of spoilage with
2 unsalted than you do salted, which is why, if you are
3 looking at what's the true commodity in the United States,
4 it's unsalted.

5 Another -- another I think factor I think about
6 here, and maybe it doesn't matter, but most butter that's
7 imported into the United States is unsalted. And so that
8 trade balance can also affect that unsalted market more so
9 than salted just because most imported butter is unsalted.
10 Again, I'm not going to quantify what that is because I
11 don't know. I haven't bought bulk butter from -- I bought
12 packaged butter from overseas but not bulk butter, so I
13 can't speak to the extent that that's an issue.

14 MS. TAYLOR: That's it from AMS. Thank you.

15 THE WITNESS: Thank you.

16 CROSS-EXAMINATION

17 BY DR. CRYAN:

18 Q. Roger Cryan, American Farm Bureau Federation.

19 Mike, you talked about storage and needing to
20 store salted butter for the holiday bulge in demand, and
21 when butter is produced, most butter plants are capable of
22 producing either salted or unsalted butter; is that not
23 right?

24 A. Yeah. And it's a pretty easy switch.

25 Q. And so wouldn't the relatively -- the relative
26 ease of switching out one or the other allow for that kind
27 of storage of the unsalted -- production of salted butter,
28 you know, meeting the unsalted demand in the wintertime,



1 but still for the cost to kind of -- the prices to
2 converge because of the ease of switching over from one to
3 the other?

4 A. I -- they are just different products. And they
5 are handled different -- again, if we're looking at the
6 commodity, I think -- although unsalted butter is a
7 commodity across the world, in the U.S. -- and maybe
8 others will testify on this -- it's viewed differently
9 because you generally don't want to store it because of
10 risk of spoilage and because the specific markets.

11 And it's big, but I wouldn't say -- as far as
12 share of retail butter, I can speak -- one of the many
13 amazing things that happened during COVID is everybody
14 started baking at home. And so you saw -- from my
15 experience, you saw unsalted butter gain to where it was
16 almost 40% of the market, and then the next year it went
17 right back to where it was, which was 30 to 35. People I
18 guess decided they liked -- once the bakeries opened back
19 up again, they didn't buy it anymore. Butter sales went
20 up, but the share of unsalted went down.

21 So it seems to be fairly stable. I can't speak
22 for commercial use because I don't -- I haven't been in
23 that business. But on a retail level, the share is pretty
24 stable. All I do know is I don't get it packaged ahead
25 like you do salted butter.

26 Q. So in your experience, the unsalted butter share
27 of the retail market is 30 to 35%?

28 A. Roughly.



1 Q. Okay.

2 A. And that's going to vary by company. It's going
3 to be -- it's going to be probably smaller in your
4 discount stores. It's going to be larger in your gourmet
5 stores, which I would expect, for example --

6 Q. Sure.

7 A. -- there would be some difference there.
8 Although, again, I worked for a middle of the road one, so
9 we had everybody.

10 Q. And you said most of our imports of butter are
11 unsalted. But those are not -- those aren't commodity
12 American style unsalted butter, those are primarily --

13 A. Yeah. Pretend to be higher fat, you're correct.

14 Q. -- the premium products? Okay.

15 A. But if you are using it for industrial use, which
16 some of that, a lot of that is, you can usually substitute
17 with your, whatever you're making, whatever your recipe
18 is.

19 Q. Sure. But the fact that you can easily switch out
20 from salted to unsalted on the production side, they are
21 easy production substitutes, doesn't that tend to lead to
22 the prices to converge?

23 A. Well, I wouldn't argue that the prices aren't
24 close to the same, but I would argue that if we have a
25 broadly surveyed commodity product, which is salted
26 butter, do we need to add unsalted.

27 Q. Okay.

28 A. And what's real benefit from that. Because it



1 isn't a commodity as much. It's more made to order.

2 Q. Thank you.

3 DR. CRYAN: Thank you.

4 THE COURT: Anyone else before redirect?

5 Redirect.

6 REDIRECT EXAMINATION

7 BY MR. ROSENBAUM:

8 Q. Mr. Brown, just to clarify in case there's any
9 ambiguity, which is the product that can be stored longer?

10 A. Salted.

11 MR. ROSENBAUM: Your Honor, at this point I would
12 move Hearing Exhibit 131 into evidence.

13 THE COURT: Seeing no objection, Exhibit 131 is
14 admitted into the record.

15 (Thereafter, Exhibit Number 131 was received
16 into evidence.)

17 THE COURT: You may step down, or move on to the
18 next of your topics.

19 It's 12:29. It seems like an appropriate time for
20 lunch to me. Is that what you were going to say,
21 Mr. Rosenbaum?

22 MR. ROSENBAUM: Yes, your Honor.

23 THE COURT: Okay. So let's come back at 1:30.

24 (Whereupon, a luncheon break was taken.)

25 ---o0o---



1 TUESDAY, SEPTEMBER 5, 2023 - - AFTERNOON SESSION

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

3 Ms. Hancock.

4 MS. HANCOCK: Your Honor, we have Ms. Emma Downing
5 Reynolds here to testify.

6 THE COURT: Okay. Before we -- she may come up to
7 the stand, and I will swear her in in a minute.

8 I understand we have a preliminary item. I think
9 last week Mr. Crinion, Exhibit 124, we didn't have hard
10 copies of that. So I forget what we did. We may not even
11 have marked it.

12 We marked it, but we didn't -- yeah, we marked it,
13 but there was nothing to mark, I guess, right, which
14 explains some things on my table.

15 Do we want to take that up now as to whether it
16 should be admitted or not? Do people want some time to
17 look over it? We can take some time.

18 MR. HILL: This appears to be Edge-3?

19 THE COURT: Yes.

20 MR. HILL: Yes, sir. We do have a copy of this
21 for 124.

22 MS. TAYLOR: Last week, your Honor, Mr. Crinion
23 was one of the six dairy farmers that testified, and his
24 testimony was up on our website in advance, but we didn't
25 have paper copies. So we have printed a few just to make
26 sure we have paper copies in the record for any reference
27 later and to give you a paper copy. I don't recall if
28 that was entered into the record at the time. I do know



1 we marked it.

2 THE COURT: Okay. So I'll sua sponte move it into
3 the record. Any objection to Exhibit 124 being made a
4 part of this hearing record?

5 We can -- Mr. Rosenbaum, I know you stood up. I
6 mean, we can delay until the next break or whenever, too.

7 Okay. Let's just take this up at the next break
8 or some -- whenever someone reminds me probably.

9 Hi, welcome to the stand. Please raise your right
10 hand.

11 EMMA REYNOLDS,
12 Being first duly sworn, was examined and
13 testified as follows:

14 THE COURT: Your witness, Ms. Hancock.

15 MS. HANCOCK: Thank you.

16 DIRECT EXAMINATION

17 BY MS. HANCOCK:

18 Q. Good afternoon.

19 A. Good afternoon.

20 Q. Is it Downing or Reynolds or hyphenated?

21 A. Ms. Reynolds is fine.

22 Q. Okay. We're making the transition.

23 A. We're doing it.

24 Q. Okay. Well, good afternoon, Mrs. Reynolds.

25 A. Thank you.

26 Q. Congratulations.

27 Would you mind stating and spelling your name for
28 the record?



1 A. Emma, E-M-M-A, Reynolds, R-E-Y-N-O-L-D-S.

2 Q. And could you provide your business address?

3 A. 1405 North 98th Street, Kansas City, Kansas,
4 66111.

5 Q. And are you here to present testimony on behalf of
6 National Milk?

7 A. I am.

8 Q. And is that what's reflected in what's previously
9 been marked as Exhibit NMPF-11?

10 A. That is correct.

11 MS. HANCOCK: Your Honor, if we could have for
12 identification purposes this document marked for her
13 testimony.

14 THE COURT: Yes. Marked -- the exhibit so
15 described is Exhibit 132 for identification.

16 (Thereafter, Exhibit Number 132 was marked
17 for identification.)

18 MS. HANCOCK: Thank you.

19 BY MS. HANCOCK:

20 Q. Mrs. Reynolds, would you mind providing us with
21 your testimony.

22 A. Hello. My name is Emma Reynolds, and I work for
23 Dairy Farmers of America, Inc. (DFA), a leading global,
24 farmer-owned milk-marketing cooperative. I first started
25 as an intern with the Cooperative in 2016, working in
26 fluid milk marketing.

27 After receiving a Master of Science in
28 Agricultural and Applied Economics with a Public Policy



1 Analysis emphasis from the University of Missouri, I
2 transitioned into a new full-time position working on a
3 multitude of projects focused on policy, milk analytics,
4 and strategic initiatives.

5 Today, my role in dairy policy and industry
6 relations provides an opportunity to work directly with
7 our farmer-owners, staff across the Cooperative, and a
8 variety of others in the industry.

9 I am here today representing DFA and the National
10 Milk Producers Federation (NMPF), and I am testifying in
11 support of the USDA Proposal 3, submitted by National
12 Milk, to remove the USDA average survey price for
13 500-pound barrel cheddar cheese from the computation of
14 the protein price, which falls within the hearing subject
15 area of "2. Surveyed Commodity Products."

16 The inclusion of the barrel volume is no longer
17 necessary to achieve a representative 40-pound block
18 survey price. Since the price difference between blocks
19 and barrels has diverged, it is no longer practical to
20 convert a barrel price to a block price.

21 Over the last few years as the prices diverged,
22 the Federal Order process of computing the Cheese Price by
23 using 500-pound moisture-adjusted barrel prices have
24 reduced the Class III price, which was not the intent when
25 this survey convention was codified in 2000.

26 The National Milk proposal to delete 500-pound
27 moisture-adjusted barrel cheddar cheese will preserve the
28 intent of USDA to have the protein price based on the



1 40-pound block price.

2 As stated in National Milk's initial proposal, the
3 Class III milk price is derived from calculations of
4 component prices for protein, butterfat, and other solids.
5 The protein component price formula references two survey
6 price series for cheddar cheese submitted by manufacturers
7 through the Dairy Product Mandatory Reporting Program
8 (DPMRP) and reported in the weekly National Dairy Product
9 Sales Report (NDPSR). These are the 40-pound yellow
10 cheddar cheese (block) prices and the 500-pound
11 moisture-adjusted barrel cheddar cheese (barrel) prices
12 four to 30 days old.

13 The total cheese price used in the protein price
14 calculation ("Cheese Price") is the weighted average of
15 the block and the combination of moisture-adjusted barrel
16 price plus \$0.03 per pound. The weighting is derived from
17 the sales volumes reported in the survey.

18 In Section II: Discussion of Material Issues and
19 Proposed Amendments to the Orders from the 2000 Federal
20 Milk Marketing Order Reform document, USDA cited a concern
21 over a "thinness" of trading when originally structuring
22 the classified pricing formulas during Federal Milk
23 Marketing Order Reform.

24 The document continued by stating, "Many
25 commenters insisted that barrel cheddar cheese prices
26 should be included in a weighted average with block
27 cheddar prices since much more barrel cheese is produced
28 than block cheese."



1 Given these reservations, block and barrel prices
2 were included to encourage an adequate sample size for the
3 data collected. The decision document reinforces this
4 directive by stating, "Including both block and barrel
5 cheese in the price computation increases the sample size
6 by about 150%, giving a better representation of the
7 cheese market." Chart 1 displays USDA NDPSR block volumes
8 from 1999 and the survey's sales volume growth since.

9 Additionally, the document referenced above
10 states: "[S]ince the Make Allowance is for block cheese,
11 the barrel cheese price must be adjusted to account for
12 the difference in cost for making block versus barrel
13 cheese. The \$0.03 that is added to barrel cheese is
14 generally considered to be industry standard cost
15 difference between processing barrel cheese and processing
16 block cheese." The Cheese Price within the Class III
17 formula still applies this same price correction today,
18 over 20 years later.

19 As could be expected, cheese market dynamics have
20 heavily evolved over more than 20 years. Consumer demand
21 is transforming to prefer more natural cheese as opposed
22 processed cheese. Chart 1, displaying block sales volumes
23 as reported in the NDPSR, shows continued long-term growth
24 in volume with a compounded annual growth rate of 4.19%.

25 In 2022, the NDPSR reported a total block volume
26 of 652,831,270 pounds, more than two times the volume of
27 the 40-pound blocks in the 2000 survey. In 2000, the
28 combined NDPSR block and barrel sales volumes totaled only



1 769,707,920 pounds.

2 As shown in Table 1 and Chart 2, 2022 NDPSR block
3 sales volume was nearly 85% of the combined 2000 block and
4 barrel total. With projected new cheddar cheese capacity
5 coming online within the next five years, the continued
6 growth of NDPSR block sales volumes is expected.

7 Given the growing capacity of block sales volume
8 within the NDPSR, the original reasoning behind the
9 inclusion of barrels -- the "thinness" of the block
10 market -- is no longer valid.

11 In reference to the American Farm Bureau
12 Federation's (AFBF) proposal to incorporate 640-pound
13 blocks into the Cheese Price and NDPSR, the information
14 cited above supports the sufficiency of sole inclusion of
15 40-pound blocks. While AFBF's participation in this
16 process is appreciated and important, the current, and
17 anticipated future, 40-pound block volume provides an
18 adequate dataset.

19 There is currently no public spot market for
20 640-pound blocks, making the pricing correlation between
21 40-pound blocks and 640-pound blocks uncertain. Without
22 available market information confirming prices of
23 640-pound blocks and 40-pound blocks move together,
24 incorporating 640-pound blocks could promote the same
25 market disparity as currently displayed with 500-pound
26 barrels.

27 As stated in National Milk's initial proposal, the
28 CME 40-pound block cheddar price is used as the pricing



1 index for most cheese produced in the United States.
2 Cheddar 40-pound blocks, 640-pound blocks, mozzarella,
3 other American-type cheese, and other types of cheese,
4 including cream cheese, and Hispanic cheese, are all
5 typically based off the CME 40-pound block cheddar price.

6 It is estimated that more than 80% of the natural
7 cheese market utilizes block pricing. Given the
8 infrequent application of barrel pricing as a price index
9 for the majority of U.S. cheese, the continuance of
10 moisture-adjusted barrel pricing is used in the Protein
11 Price calculation, which factors into the Federal Milk
12 Marketing Order Class III price, is not representative of
13 market realities.

14 While the USDA decision referenced above states
15 that the inclusion of barrels was originally done in
16 effort to ensure adequate sales volumes for cheese, actual
17 cheese buyers and sellers do not require such a high
18 threshold. The daily CME Group cash block cheese market
19 is widely recognized by market participants as heavily
20 influencing the price of cheese across the industry.

21 However, as shown in Chart 3, annual CME block
22 cheese volumes are not as large compared to NDPSR block
23 volumes. This suggests that the marketplace acknowledges
24 the CME, even with a smaller sample size than the current
25 NDPSR block volumes, when determining the wholesale
26 pricing for most of the cheese manufactured and sold in
27 the United States.

28 By this comparison, the volume of 40-pound blocks



1 included in the NDPSR survey is more than adequate to
2 determine the cheese price for USDA to use in calculating
3 the USDA Federal Order Protein Price.

4 From 2017 to 2022, NDPSR weekly average prices for
5 block and moisture-adjusted barrels showed that blocks
6 were more than \$0.03 per pound greater than barrels, an
7 astounding 73% of the time.

8 Chart 4 displays the block and barrel spread
9 applied to monthly USDA AMS Announced Class Cheese Prices.
10 The two horizontal red lines outline the bounds for \$0.03
11 per pound and negative \$0.03 per pound. The chart shows
12 several large divergences, especially between 2017 and
13 2022, suggesting the claimed predictable \$0.03 per pound
14 price spread for blocks and barrels no longer applies.

15 Additionally, Chart 4 exhibits that block prices
16 are greater than barrel prices by more than \$0.03 per
17 pound for many months within the eight-year period
18 analyzed. Given the Cheese Price used for the Class III
19 price is an average of blocks and the combined
20 moisture-adjusted barrels plus \$0.03 per pound, the
21 inclusion of barrels at this time is misaligned with the
22 original intent and expectations of the decision document.

23 Because of how the current Cheese Price is
24 structured, when the barrel price consistently trails the
25 block price, it results in an unintended decrease in the
26 Cheese Price, which negatively affects the Class III
27 price.

28 To further highlight this problem, Chart 5



1 demonstrates how these variances widen when a simple
2 annual average is taken to the block and barrel spread
3 applied to monthly USDA AMS Announced Class Cheese Prices.

4 USDA's Federal Milk Marketing Order Reform
5 decision in 1999 went to great lengths to make the barrel
6 price "look" like a block price. It adjusted the barrel
7 price by converting the barrel moisture content to be like
8 blocks and it added in the \$0.03 per pound barrel discount
9 that was representative of lower packaging costs.

10 For reference, the 1999 USDA decision stated, in
11 explaining the reasoning for the \$0.03 per pound barrel
12 discount, that "[a] number of other commenters argued that
13 the proposed cheese Make Allowance would cover the cost of
14 making none of the cheese made in California."

15 With the expansion of 40-pound block production
16 and the growth of its reporting in the NDPSR survey, the
17 inclusion of barrel prices is no longer necessary or
18 helpful. Additionally, the adjustment used to convert a
19 barrel price to a block price equivalent is no longer
20 accurate nor required.

21 In fact, it is harming the proper valuation of the
22 Class III price by failing to account for frequent
23 dramatic block-barrel spreads that negatively impacts the
24 Cheese Price, creating a disorderly market condition that
25 is counter to USDA's stated intent in its 1999 decision.

26 In closing, the National Milk proposal to remove
27 the U.S. average survey price for 500-pound barrel cheddar
28 cheese from the computation of the protein price is more



1 representative of current marketing conditions and more
2 consistent with USDA's intent than the computation
3 currently used.

4 The fundamental purpose behind the barrel
5 inclusion is no longer applicable more than 20 years after
6 the original decision was made. The elimination of
7 barrels will result in the protein price factoring into
8 the Class III price more accurately representing how U.S.
9 cheese is priced within the current marketplace.

10 Thank you for allowing me to testify today.

11 Q. Thank you, Ms. Reynolds. Appreciate you reading
12 that into the record.

13 I just want to chat with you about a couple of
14 your -- of your charts. Let's look at -- let's look at
15 page 6 of your testimony under Chart 4.

16 A. Okay.

17 Q. And is this chart used to reflect the volatility
18 of the barrel price spread on a monthly basis for all the
19 months reflected there on that chart?

20 A. That is correct.

21 Q. So it ranges from January 1st, 2014, through
22 September 1st of 2022?

23 A. That is correct.

24 Q. Do you know what happens if you take it from
25 January -- or I'm sorry -- September 1st of 2022 to the
26 present?

27 A. I did not look at that specifically. I believe it
28 becomes more volatile.



1 Q. Okay. And you were flying this morning, so you
2 didn't, I'm sure, get a chance to hear. But Mr. Brown
3 testified, and he had reported some annual numbers --
4 annual average weighted numbers with respect to block --
5 or excuse me -- with respect to barrel pricing. And for
6 2022, it showed I think a difference of .01 on a weighted
7 average basis, and he had acknowledged that there had been
8 some volatility in 2022 before it netted out to be an
9 annual average of not very different.

10 I'm just wondering if -- if that has been your
11 experience as well for 2022 through year end.

12 A. Correct.

13 Q. Do you know or do you have an opinion as to what
14 is driving or causing that volatility?

15 A. I don't have an opinion on that.

16 Q. Okay. And then let me just -- one more question
17 here.

18 When we look at your Chart 5, this kind of goes to
19 where I was just at when I was reflecting on Mr. Brown's
20 testimony. When you look at 2022, it looks like your
21 average annual block-barrel spread for 2022 is quite
22 small. I'm wondering if you could talk about -- talk
23 about that.

24 A. So as you stated earlier, referencing Chart 4, you
25 look at the monthly view, it is -- the volatility is much
26 greater. But as you reference, you know, when you get to
27 those annual averages, it -- it looks smaller.

28 Q. Okay. Then so on a monthly basis, though, the



1 experience of those who would be relying on that market,
2 it would be much more extreme than what's reflected in the
3 annual average?

4 A. Correct. And, you know, when you are operating in
5 the market, you don't know that things are going to wash
6 out at the end.

7 Q. Okay.

8 MS. HANCOCK: Thank you, your Honor. We would
9 tender Ms. Reynolds for cross-examination.

10 THE COURT: Cross?

11 CROSS-EXAMINATION

12 BY MR. ROSENBAUM:

13 Q. I'm Steve Rosenbaum for the International Dairy
14 Foods Association.

15 Let me start with your chart on page 3 of your
16 testimony, Table 1, which tracks the volume of block sales
17 and barrel sales included in the USDA survey for setting
18 minimum milk prices, correct?

19 A. Correct.

20 Q. And you provide some discussion of that, but I
21 don't see any discussion where you simply compare the
22 change in volume of blocks versus the change in volume of
23 barrels. Is that correct? You don't discuss that?
24 Anywhere?

25 A. Change in blocks -- so within Chart 1, the change
26 in volume of blocks is highlighted.

27 Q. Your written discussion doesn't discuss that --
28 that issue, right, how much one has grown versus how much



1 the other has grown?

2 A. Within the prior paragraph, I do point out the
3 CAGR, so the compounded annual growth rate, of block
4 volume.

5 Q. Right. But you didn't do anything like that for
6 barrels, correct?

7 A. Within the content of my testimony, I only
8 presented the chart for barrels.

9 Q. Okay. So tell me how I'm wrong but -- and this is
10 eyeballing, I didn't have time to do the actual
11 calculation as I was preparing -- but it looks like barrel
12 production between 2000 and 2022 -- in terms of what's
13 included in the survey -- the barrel production is up
14 around 270 million pounds; is that correct?

15 A. I'm not going to attempt to do math on the stand.

16 Q. Well, is it 713 million minus 451 million? Is
17 that the calculation?

18 A. So you said 222, barrel volume is 713 million,
19 approximately. And you're referencing what year prior?

20 Q. 2000, the year you started with.

21 A. 2000. Is the 451 million, approximately, pounds,
22 correct.

23 Q. Right. So it's roughly an additional 270 million
24 pounds of barrel cheese?

25 A. If you say so.

26 Q. And block cheese goes from using the same years,
27 318 million to 652 million; is that correct?

28 A. That is what the table shows.



1 Q. And that's a roughly 330 million barrel -- excuse
2 me. Start that question again.

3 That's a roughly 330-million-pound increase in
4 blocks?

5 A. Yes. As my testimony states, block volume from
6 2000 compared to 2022 was more than double over those
7 22 years when it comes to volume reported within the
8 NDPSR.

9 Q. Right. But I asked a different question. I asked
10 you whether the increase was around 330 million barrels.
11 Is that -- strike that.

12 I asked you whether the increase was about
13 330 million pounds; is that right?

14 A. From 2000 to 2022, block volumes -- I'm not doing
15 math on the stand, but I would say that's -- that's fair.

16 Q. Okay. So is it -- is it fair to say that in broad
17 strokes, the growth in block pounds and the growth in
18 barrel pounds are pretty close, 270 million more barrels
19 and 330 million more blocks?

20 A. I would say that's fair for volume reported within
21 the NDPSR survey. But as cited previously, there is
22 volume outside the survey, and the majority of cheese
23 that's priced in this country is driven by blocks.

24 Q. All right. My question was very straightforward.
25 You don't need to, you know, editorialize.

26 Am I correct that, roughly speaking, the increase
27 in barrels and the increase in blocks in terms of poundage
28 are pretty similar between 2000 and 2022?



1 MS. HANCOCK: Your Honor, I would object to the
2 characterization of the question and him instructing the
3 witness as to how to answer. She's entitled to provide
4 her answer within the context of what she's talking about,
5 and I think that's all she did. She answered his question
6 directly.

7 MR. ROSENBAUM: No, she didn't, your Honor. And
8 this has gotten a little beyond appropriate behavior. I
9 think the answers are not -- I'm not getting answers to
10 the questions that I asked. I asked for a specific
11 comparison between those two numbers.

12 THE COURT: I think it's correct that you didn't
13 get a definitive yes or no answer to your question. I
14 think you're entitled to that. And then I think the
15 witness is entitled to explain what she has to explain
16 about what that yes or no answer means.

17 MR. ROSENBAUM: All right.

18 BY MR. ROSENBAUM:

19 Q. Am I correct that the increase is roughly the
20 same, in poundage, between the two?

21 A. Within the survey, that is correct.

22 Q. Okay. And by the way, do you have personal
23 knowledge as to how cheese is priced in terms of using
24 blocks versus barrels, versus using the Class III price,
25 versus using the NPDES (sic) price? Do you have
26 personal -- NDPSR price -- do you have personal knowledge
27 about those things?

28 A. Do you mind defining "personal knowledge"?



1 Q. Yeah. Personal knowledge. I mean you know about,
2 personally.

3 A. So my role does not on the daily have me pricing
4 cheese within those markets.

5 Q. Okay. So -- so you -- when you say, on page 4, it
6 is estimated that "more than 80% of the natural cheese
7 market utilizes block pricing," first of all, you have no
8 citation for that statement, correct?

9 A. That is correct.

10 Q. And you -- and you don't yourself engage
11 personally in activities that would let you know whether
12 that number is correct or not; is that fair?

13 A. That is fair. I will --

14 Q. Sorry.

15 THE COURT: Let's --

16 MR. ROSENBAUM: Didn't mean -- I thought she was
17 finished.

18 BY MR. ROSENBAUM:

19 Q. Please, go ahead.

20 A. That's okay. I'm trying to talk slow for the
21 court reporter.

22 That is correct. That estimate -- estimate is
23 based off the estimates from the national task force. So
24 I relied on the other members of the National Milk and the
25 expertise they personally have when providing the
26 estimate.

27 Q. Okay. And I want to just focus on a question just
28 so it's clear as to what it means to say they "utilized



1 block pricing" as you understand it when you say this.

2 That doesn't mean that the block price actually is
3 the price at which the other cheese is sold, correct?

4 A. That is my understanding.

5 Q. Okay.

6 A. From my understanding, it would be block price,
7 plus or minus X.

8 Q. Right. So I -- and that's -- that's an issue that
9 hasn't come out much yet, so let me focus on that. I
10 mean, if it is block price minus, okay, then in fact the
11 block price isn't representative of the price of the other
12 milk, the other -- other cheese -- excuse me -- the other
13 cheese is cheaper, correct?

14 A. It could be.

15 Q. And if it's block plus, obviously by definition,
16 the other cheese is more expensive, correct?

17 A. It could be. I will say, as you have referenced,
18 you know, my daily job is not pricing cheese.

19 Q. No. But I'm just talking in -- in just general
20 parlance, there's a difference between pricing off of
21 block and pricing at block, correct?

22 A. Yes, that is correct.

23 Q. So my point is, if -- let's say the block cheese
24 is \$2 a pound. Okay? Which may be an optimistic price
25 right now, but let's say it is \$2 a pound. All right?

26 A. Uh-huh.

27 Q. Okay. I mean, you can't say, oh, well, most
28 people price off block, so let's just use the block price



1 as representative of what the cheese price is. Right? I
2 mean, those other cheeses could be selling for \$0.20 a
3 pound less or \$0.50 a pound more, correct?

4 A. That is true. I am not aware of what those --
5 those plus or minuses are. I will say, you know, that
6 block price is utilized as an index as it moves up or
7 down, providing a baseline, to drive those market prices.

8 Q. Right. But how much up or down you get from the
9 block price, that's a matter of the negotiations that have
10 been entered into between the buyers and sellers of those
11 other cheeses, correct?

12 A. Cheese price is negotiable.

13 Q. Okay. So let's now talk a bit about the purpose
14 in which USDA was engaged in 2000 when they first decided
15 to include both barrels and blocks. I take it that we can
16 fairly conclude that you were not involved at that time,
17 correct?

18 A. I was three, so I wasn't paying particularly close
19 attention at the time.

20 Q. Okay. So -- all right. So you were not there in
21 1987 when I attended my first Federal Milk Marketing Order
22 hearing; is that correct?

23 A. No. I'm sorry I missed out.

24 Q. Okay. So the \$0.03 adjustment which you reference
25 is explicitly described in the -- well, strike that.

26 You refer -- you quote several times from the
27 USDA's decision in 1999, that was the one that put the
28 product pricing formulas in place, correct?



1 A. I did.

2 Q. Okay. And just for correction purposes, the date
3 is April 2nd, not April 12, 1999. But I'm not criticizing
4 you for a typo. I seem to have had some of those myself,
5 so -- but just so we are working off the same document.

6 A. Great. Thank you.

7 Q. You do -- and you would agree with me, just at a
8 very basic level, there's a difference between what it
9 costs to make cheese and the price at which cheese is
10 sold, correct?

11 A. Those are two differences, yes.

12 Q. Okay. Because on page 7, you reference that --
13 you say USDA made -- "went to great lengths to make the
14 barrel price 'look' like a block price."

15 Do you see that?

16 A. I do.

17 Q. But, in fact, what they did is they made a \$0.03
18 adjustment because they understood there was a \$0.03
19 difference in packaging cost, correct? I mean, you say
20 that yourself.

21 A. In -- yes. In reference to the quote from the
22 decision there, yes.

23 Q. Yeah. I mean, this was an effort to make the cost
24 of cheese equivalent between blocks and barrels, not an
25 effort to make the price the same.

26 Do you agree with that?

27 A. I don't think I necessarily agree. Dr. Vitaliano
28 last week, I think, did a wonderful job of explaining that



1 into detail. But going into -- that was the understanding
2 of creating, you know, a comparable block price due to the
3 concern of thinness in the market.

4 Q. All right. So do you have a copy of the
5 decision -- of the April 2nd, 1999, decision in front of
6 you?

7 A. Not in front of me.

8 Q. All right. I'm going to hand one to you.

9 A. Okay.

10 Thank you.

11 Q. And I have used this before, but I do have extra
12 copies.

13 MR. ROSENBAUM: Your Honor, would you like a copy?

14 THE COURT: Yeah, I would like a copy. I don't
15 want any favoritism towards me but --

16 BY MR. ROSENBAUM:

17 Q. And I should make clear that is an excerpt, and it
18 is the back -- the very back page, which I believe
19 contains the entirety of the relevant discussion.

20 So if you -- you see that USDA reports, quote,
21 "Many commenters insisted that barrel cheddar cheese
22 prices should be included in a weighted average with block
23 cheddar prices since much more barrel cheese is produced
24 than block cheese. National Milk Producers Federation
25 urged that the barrel price not be included because
26 barrels don't have uniform composition and because the use
27 of such prices would have the effect of unnecessarily
28 reducing prices to producers. Other commenters suggested



1 if barrel prices are included, they should be increased by
2 \$0.03 per pound to make up for the difference in packaging
3 cost. Still other commenters argued that all varieties of
4 cheese should be included in the NASS price survey to
5 assure that all cheese value is captured."

6 Do you see that?

7 A. Would you mind putting which paragraph?

8 Q. I'm sorry. It is the middle column. You should
9 have interrupted me sooner.

10 A. I should have worn my glasses.

11 Q. It's the middle column.

12 A. All right.

13 Q. It's the first full paragraph, "Many commenters,"
14 and I just read that first paragraph into the record.

15 A. Thank you.

16 THE COURT: Let's go ahead and give a local cite
17 for this.

18 MR. ROSENBAUM: Yes, I'm sorry. Yes, your Honor.
19 This is six -- Federal Register, Volume 64, page 16098,
20 and I have been reading from the middle column.

21 BY MR. ROSENBAUM:

22 Q. Okay. And do you see that?

23 And do you see when the next paragraph, the USDA
24 went on to say that they had been making -- the
25 Make Allowance was based upon the Make Allowance block
26 cheese and therefore, quote, "the barrel cheese price must
27 be adjusted to account for the difference in the cost of
28 making block versus barrel cheese. The \$0.03 that's added



1 to the barrel cheese price is generally considered to be
2 the industry standard cost difference between processing
3 barrel cheese and processing block cheese."

4 Do you see that?

5 A. I do.

6 Q. I don't see one word in this where USDA says it's
7 our expectation that the price of block cheese and the
8 price of barrel cheese will be the same. I see them
9 saying, we want to make sure the cost that we're deducting
10 from those prices is the same, and we'll add \$0.03 to the
11 block price in order to make them comparable given that
12 block cheese costs \$0.03 less to package. Isn't that a
13 fair characterization of what they said here?

14 MS. HANCOCK: Your Honor, I would object to the
15 extent that this is -- this document is going to speak for
16 itself. And she can talk about what she wrote in her
17 statement or what she based it on, but he's asking -- he's
18 essentially testifying, asking her to acknowledge that
19 what he said has been read correctly. I don't think
20 that's appropriate testimony for the witness.

21 MR. ROSENBAUM: Your Honor, most of her testimony
22 is devoted to her stating a view of what USDA's intents
23 were in 2000. I think this is legitimate
24 cross-examination.

25 MS. HANCOCK: Well, he's just quoted a statute.
26 It's not a cross-examination. He can argue that in his
27 brief.

28 THE COURT: Well, I think it's easier -- probably



1 more appropriate for the record for him to cite specific
2 language in the Federal Register than it is for him to
3 reconfigure that language in his own words and then ask
4 about that. This witness has -- you know, I'm just
5 getting the testimony, so I may not be as versed as some
6 people. I think she has relied on this order quite a bit,
7 and I do think Mr. Rosenbaum is making the distinction
8 between cost and price and is exploring what -- what the
9 agency actually said about this.

10 Do you disagree with -- I'm just going to ask flat
11 out: Is he misconstruing what this language says somehow
12 to your mind?

13 MS. HANCOCK: No. But he's not asking her what
14 her interpretation of this statute is. He's reading the
15 statute, making argument about it, and then saying, "Isn't
16 that right?"

17 THE COURT: Well, I --

18 MS. HANCOCK: That's totally appropriate for the
19 brief.

20 THE COURT: No, I think he's setting up the
21 background to say, "You testified this in your testimony,
22 and you have relied on this Federal Register issuance
23 quite a bit. How does that line up?" I mean it is cross,
24 and in cross he's going to say, "I don't see that this
25 lines up exactly. It just seems different to me. How
26 would you explain that?" That seems fair to the witness.

27 MS. HANCOCK: Well, your Honor, I would proffer I
28 don't believe that this is different than what



1 Mr. Rosenbaum objected to when Dr. Vitaliano was asking
2 questions, when he was putting forth what he believed was
3 the supporting proposition before he asked a witness if he
4 agreed or disagreed. And so this is the standard of
5 consistency that I had talked about last week.

6 THE COURT: No, I think I remember that. That was
7 just paragraphs of discussion, and then, do you agree or
8 disagree. This is a very -- seems to me this is a fine
9 specific point, and it's appropriate cross-examination.

10 So overruled.

11 THE WITNESS: Do you mind restating your question?

12 MR. ROSENBAUM: Absolutely.

13 Can I have the reporter read back the question so
14 we have the same exact question?

15 (The testimony was read back as requested.)

16 THE COURT: Do you understand the question?

17 THE WITNESS: I do. Thank you.

18 So it is true that within the roughly two
19 paragraphs that you read to me that there is no explicit
20 explanation of USDA stating that word for word. However,
21 as Dr. Vitaliano stated previously, it is our
22 understanding that was the intent. And as you mentioned
23 in your question, it's to make both of those prices
24 comparable. And as -- you know, as we have discussed
25 earlier, this is an over 20-year-old decision document,
26 and, you know, the compatibility of those two products is
27 no longer valid as I have referenced in my testimony.

28 ///



1 BY MR. ROSENBAUM:

2 Q. So you're interpreting that language to say USDA
3 was trying to make the prices comparable, not trying to
4 make the costs comparable; is that your position?

5 A. Within the final paragraph, it -- it talks about
6 cost. My understanding is the intent was to make block
7 and moisture-adjusted barrels equivalent.

8 Q. Okay. Have you -- have you performed any analysis
9 of the ability of barrel cheese manufacturers to continue
10 to operate if they are required to pay for their milk
11 based upon a formula that does not reflect block price --
12 excuse me. Start the question again.

13 Have you done any analysis of the effect on barrel
14 manufacturers if the minimum milk price they must pay is
15 not based upon the price at which they are able to sell
16 barrel cheese but rather the price at which block cheese
17 is being sold?

18 A. I have not researched that.

19 Q. And turning to page 6 of your testimony, you have
20 a sentence, quote, "The chart shows" -- this is on the
21 very first paragraph -- "The chart shows several large
22 divergencies, especially between 2017 to 2022, suggesting
23 the claimed predictable \$0.03 per pound price spread for
24 blocks and barrels no longer applies."

25 Do you see that?

26 A. I do.

27 Q. And do you agree with me that the \$0.03 per pound
28 number in the context of the April 2nd, 1999, decision, is



1 in all respects tied to the difference in manufacturing
2 costs?

3 A. I wouldn't say I agree with that statement. As
4 you can see, in the years prior, it was a more -- it was a
5 widely acknowledged understanding that blocks and barrels
6 moved together prior to 2017. That's been, you know,
7 largely discussed in previous testimony.

8 As you can see from that chart, once you get into
9 the 2017 and beyond, those block-barrel spread variances
10 and that volatility, you know, increases substantially.
11 And so the \$0.03 per pound reference is to that claim of
12 most of the time they move together, but once 2017
13 occurred, you know, those disparities really increased,
14 which was not the original intent of the USDA decision
15 over 20 years ago.

16 Q. Do you agree that in the April 2nd, 1999,
17 decision, insofar as there are explicit references to
18 \$0.03 per pound, that those references are all with
19 respect to costs of manufacturing, including cost of
20 packaging?

21 A. Within that final paragraph that you read to me, I
22 will agree that those few sentences have to do with cost.

23 Q. Okay. And actually, when you go back to the first
24 full paragraph in the middle column on page 16098, do you
25 see there also a reference to \$0.03 per pound as being the
26 difference in packaging costs?

27 A. I do see that reference. I would say my
28 understanding of that sentence is an attempt for USDA to



1 provide context into, okay, we are taking blocks, and we
2 are attempting to make a synthetic block, and we're trying
3 to make it comparable. So that is my interpretation of
4 that prior sentence.

5 Q. Have you ever seen USDA in any publication,
6 starting April 2nd, 1999, and moving forward to today,
7 where they have stated that their effort was to create a
8 synthetic block price?

9 A. I have not read every decision since 1999, so I
10 can't respond to that.

11 Q. Do you have any examples to which you can point --
12 point where synthetic block price or comparable words was
13 used by USDA?

14 A. I have nothing I have brought here today.

15 Q. Okay.

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

17 THE WITNESS: Thank you.

18 THE COURT: Further cross for this witness?

19 CROSS-EXAMINATION

20 BY DR. CRYAN:

21 Q. Hello, Mrs. Reynolds.

22 A. Hello, Dr. Cryan.

23 Q. How are you?

24 A. I'm good.

25 Q. You're -- you're an economist, and a good one, so
26 I'm going to ask you -- I'm going to ask you some -- don't
27 laugh at that.

28 A. I don't know if I would claim that, but I



1 appreciate the note.

2 Q. Let me ask you some questions, some economist
3 questions.

4 In theory, if -- if you've got two products that
5 have similar cost structures and -- and there's -- and
6 there's an opportunity over time to shift all the inputs
7 so that they have their -- a cost structure where one is
8 -- one costs \$0.03 a pound more to make than the other
9 one. Wouldn't the price -- wouldn't the price in the long
10 run be \$0.03 apart?

11 A. I would say yes given you have --

12 Q. All those conditions?

13 A. -- all those conditions and you are aware of those
14 market prices.

15 Q. Right. And before -- before 2000, there's been
16 discussion about how there was a lot more slack capacity
17 at cheese plants and milk could move to cheese -- to
18 barrel production or block production as needed in the
19 short run. And -- and if there was a cost difference of
20 about \$0.03, would that -- that would be something that
21 would support the Department's objective of maintaining a
22 price relationship, a consistent price relationship; is
23 that right?

24 A. Yes.

25 Q. But that wouldn't change the fact that their
26 fundamental purpose was to make sure that the prices were
27 comparable?

28 A. Correct.



1 Q. Very good.

2 Okay. You said in your testimony that we don't
3 have enough information about 640s to incorporate them
4 into the survey.

5 A. I did say that.

6 Q. How do we have -- how do we have price and volume
7 numbers about 40-pound blocks?

8 A. When you say "price and volume numbers," what --
9 are you referring to, the NDPSR?

10 Q. Right. Is that your answer?

11 A. That's my understanding of the question. Can you
12 repeat the question?

13 Q. How do we have the price and volume numbers on
14 pounds of -- pounds and value of 40-pound blocks that --
15 that are used in the current pricing?

16 A. We know the volumes of the NDPSR block -- 40-pound
17 block sales because it is reported within the NDPSR.

18 Q. Okay. And so should we never add any more
19 products to the NDPSR, so we only delete products?

20 A. I have no position on that.

21 Q. Okay.

22 DR. CRYAN: Thank you. Thank you very much.

23 THE WITNESS: Thank you.

24 THE COURT: Further cross other than AMS?

25 Sir.

26 CROSS-EXAMINATION

27 BY DR. BOZIC:

28 Q. Marin Bozic for Edge Dairy Farmer Cooperative.



1 A. Hello, Dr. Bozic.

2 Q. Your proposal would reduce the barrel weight from
3 roughly 50% to 0%. Is that a way to fairly describe your
4 proposal? Eliminating barrels is the same as having 0%
5 barrel weight?

6 A. So the National Milk proposal is to remove barrels
7 from the protein price. I don't believe it comments on
8 the inclusion of the survey or not.

9 Q. Okay. Correct. So your proposal, would it be
10 fair to mathematically restate that as barrels having 0%
11 weight in the protein formula? Would that be an
12 equivalent way to get there?

13 A. Correct.

14 Q. So what I don't understand is why is 0% more
15 representative than, for example, 5%?

16 A. So in your example, it would be 95% blocks and a
17 5% barrel weighting?

18 Q. I'm just trying to --

19 A. A statistical average?

20 Q. Yes. Like, so -- like, if we are looking for
21 something that's more representative of the entire
22 industry, what I'm struggling to understand is, like, why
23 is 0% more representative than 5%? And I'm just listing
24 that as an example, not saying that is the right number.

25 A. I see. So I believe the prior National Milk
26 witnesses hit on this a little earlier. And there was
27 discussion during the National Milk task force of, you
28 know, do we include 10% barrels, 90% blocks? And after



1 the discussion took place, what is that percent, like you
2 mentioned. Is it 10%? Is it 5%? And so due to
3 simplicity sake, and if it is 90% -- it's around 90%, why
4 not just have it 100% blocks factored into that cheese
5 price. That -- that was the decision from National Milk
6 in which I support.

7 Q. But -- but would you say that 100% block is more
8 representative than 95% block?

9 A. I can't say for sure on those percentages.

10 Q. Okay. And then pricing off blocks was the topic
11 of your cross with Mr. Rosenbaum.

12 Do we have any evidence that that basis over
13 block, \$0.05 over block, \$0.10 over block, let's call it a
14 basis, do we have any evidence that that basis is in
15 itself uncorrelated with the block-barrel spread?

16 A. As someone that doesn't operate in these markets
17 every day, I can't provide an answer to that. I don't
18 know.

19 Q. Have you -- are you familiar with the conjecture
20 that one of the factors driving the barrel-block spread is
21 the oscillations in the volume of cheese exported? I'm
22 not asking whether you agree. Are you familiar with that
23 conjecture?

24 A. I have heard that discussed within this hearing.

25 Q. Would it be fair to say that -- that going forward
26 it is likely that a higher percent of cheese produced in
27 the United States is going to be exported than it is
28 today?



1 A. I haven't done the analysis to say one way or the
2 other.

3 Q. Let me restate. Would it be -- are you familiar
4 with the trends in cheese exports over the previous ten
5 years?

6 A. Not closely.

7 Q. Good answer.

8 Let me -- I'm not sure if your counsel will allow
9 the next question, but let me try.

10 MS. HANCOCK: I say no already.

11 DR. BOZIC: Prophylactically object.

12 BY DR. BOZIC:

13 Q. If more -- if higher percent of cheese going
14 forward is indeed going to be exported -- and, again, I'm
15 not asking that you agree, just to work with the
16 conjecture -- if indeed the higher percent of cheese going
17 forward is going to be exported, would it not then follow
18 that it is likely that higher percent of cheese going
19 forward would be priced off barrels?

20 A. I would say I don't know enough about the topic to
21 provide an answer to you.

22 Q. Would you say that in general your organization
23 is -- does not have definite answers on these, you know,
24 counterfactuals or explorations?

25 A. No. I would -- I would say we haven't commented.

26 Q. Is there a reason to believe that if your Proposal
27 Number 3 is adopted that the barrels themselves, barrel
28 cheese themselves, would become more valuable, that their



1 price on their own would increase?

2 A. I wouldn't say necessarily. There's a lot of --
3 as you know, there's a lot of factors that come into play
4 when it comes to the barrel price of cheese. And so I
5 can't comment or speculate what barrel prices of cheese
6 are going to be.

7 Q. So -- okay. So there are no strong expectations
8 that that would indeed happen?

9 A. Not that, you know, we can provide on at anytime.
10 I think there's been acknowledgement in prior testimonies
11 that, you know, there will be a figuring out time period.
12 But, again, I'm not going to speculate on what -- what the
13 barrel price will do if -- if I knew that, I would be on a
14 beach somewhere, so --

15 Q. Yeah. Both of us.

16 Well, so, next question, and I think the last one
17 as well. If the -- if the assumption is that we should
18 remove barrels because the current methodology results in
19 a protein price that understates the true commodity value
20 of protein, then I'm wondering, why doesn't that get
21 compensated with over-order premiums to producers?

22 A. So I'm not sure I would agree with the
23 similarities you are nodding to there. There's a -- it's
24 a multitude of factors that occur in the impact of both
25 those scenarios. So I wouldn't say they're directly
26 related as you stated.

27 Q. But in other words, if -- if there -- if
28 manufacturers can earn more for their product than they're



1 obliged to pay to producers, wouldn't that necessarily --
2 wouldn't that lead in situations of short availability of
3 milk to over-order premiums?

4 A. Again, I'm not sure that that's a direct
5 correlation of this and then that happens given the
6 multitude of factors at play when making those decisions.

7 DR. BOZIC: That's all I have. Thank you very
8 much.

9 THE WITNESS: Thank you.

10 THE COURT: Further cross? Other than AMS?
11 I see two volunteers.

12 THE WITNESS: Everybody wants to talk to me.

13 DR. CRYAN: Yes. Of course.

14 CROSS-EXAMINATION

15 BY DR. CRYAN:

16 Q. Roger Cryan from American Farm Bureau Federation.

17 If you have ten people in a room, nine of them are
18 extra large and one of them is extra small, and you have
19 a -- and you have a bunch of large shirts, are those going
20 to be a good fit? Are those going to be representative of
21 the fit for the folks in the room?

22 A. Is this a fat joke?

23 Q. No, no, no. No, it's about what representative
24 means.

25 A. I'm sorry. Could you repeat the question?

26 DR. CRYAN: That's okay. Never mind.

27 THE COURT: The question is withdrawn.

28 CROSS-EXAMINATION



1 BY MR. MILTNER:

2 Q. Ryan Miltner representing Select Milk Producers.

3 So if you have got ten people in a room --

4 I want to ask some questions about page 3 of your
5 statement if I could. And Mr. Rosenbaum asked you some
6 questions about the numbers on the table. I'm going to
7 try and not have you do any math.

8 A. I appreciate that.

9 Q. But his questions focused on the absolute pounds
10 and the changes in the pounds on there. I want to ask
11 about the relationships of the numbers that are included
12 in Table 1.

13 First of all, am I correct that you wanted to
14 illustrate that on an absolute basis the volume of block
15 cheese has doubled since 2000?

16 A. That is correct.

17 Q. Okay. And that you also wanted to illustrate that
18 on a relative basis blocks now represent a greater
19 proportion of surveyed commodity cheddar than they did in
20 2000?

21 A. Can you repeat the question?

22 Q. Sure. So on a relative basis, the proportion of
23 blocks to the total has increased over the last 22 years?

24 A. I'm not sure that was my intent within this table.
25 My intent within this table was showing, if you look at
26 the year 2000, and you look at the total block and barrel
27 volume, it is roughly 769 million. Well, if you look at
28 the block volume in 2022 to today, it's a -- you know,



1 it's around roughly 85% of that total volume from 2000,
2 pointing to the growth, as you stated, in that block
3 volume over time and, you know, decreasing the previous
4 concern about the lack of volume within the survey.

5 Q. Okay. And that gets to the third thing, I think,
6 I thought you were driving at, which is the first two
7 things were numerical. We can establish whether that's
8 fact or not. But your opinion then is that the volume of
9 blocks is now sufficient for it to stand alone as the
10 surveyed product?

11 A. That is my opinion.

12 Q. In preparing your testimony, did you look at all
13 at the proposal from the 2000 hearing on III and IV
14 formulas to reduce the \$0.03 adjustment to \$0.01 that was
15 proposed by IDFA?

16 A. I did not investigate that in my research.

17 Q. Okay. So you did not see the testimony from
18 IDFA's economist at that hearing that said, during the
19 informal rulemaking process, it appears that the \$0.03
20 adjustment was entirely based on the historical difference
21 between the wholesale price of cheddar sold in 40-pound
22 blocks and the moisture-adjusted 39% moisture wholesale
23 price for cheddar cheese sold in barrels?

24 A. I -- I did not.

25 Q. Okay. Then I will not ask you any more about
26 that. Thank you.

27 A. I wish I did.

28 Q. We can talk later if you like.



1 THE COURT: Further cross? Other than AMS?
2 AMS, Ms. Taylor?

3 CROSS-EXAMINATION

4 BY MS. TAYLOR:

5 Q. Good afternoon.

6 A. Hello. Good afternoon.

7 Q. Welcome back.

8 A. Thank you.

9 Q. I told Mr. Wilson I need to go before Mr. Miltner
10 sometimes because he asks a lot of my questions and I have
11 to sort through my list. Let me see if I can skip around.

12 On page 1 at the end of the second paragraph, you
13 are talking about, "Over the last few years as the prices
14 diverged, the Federal Order process of computing the
15 cheese price by using 500-pound moisture-adjusted barrels
16 reduced the Class III price, which was not the intent when
17 this survey convention was codified."

18 Can you just expand on that -- I think you have
19 mentioned it before, but I like to make things really
20 clear when we have to go back and look at testimony -- on
21 what you mean about what was the intent back in 2000?

22 A. I will. So from my understanding, the intent was
23 to select two products that operated similar to one
24 another. As I stated in my testimony, there was concern
25 about the lack of volume stated in blocks alone. And so
26 due to that, you know, as referenced before, a synthetic
27 block was conjectured of, you know, the conversions. And
28 during that time over 20 years ago, they acted together



1 for the most part, and within the last five or six years,
2 that has not been the operation structure.

3 Q. On page 4 you talk about new cheddar capacity
4 coming online within the next five years. Could you
5 expand on that? Are you -- is it expected that most of
6 that capacity is in 40s? I know Mr. Cryan had on
7 testimony and put on some references to articles, but for
8 that it was in regards to 640s, so --

9 A. You know, I'm only aware that at least for the
10 overwhelming majority part of it is to be blocks. I can't
11 specify nor do I have the knowledge of whether that is
12 40-pound blocks or 640-pound blocks.

13 Q. Okay. So it could be either in that case?

14 A. I just don't know.

15 Q. Yeah. Okay.

16 On page 4 you also discuss how one of the reasons
17 USDA should not include 640s is because there's no other
18 market information available to confirm the prices of 640s
19 and 40s move together. That's kind of in that middle
20 paragraph.

21 So is it your position then that USDA shouldn't
22 use products in the survey that don't have other publicly
23 traded market for these same products?

24 A. I don't have a position in your question in
25 particular. My intent within this sentence was to
26 reference back to the 500-pound moisture-adjusted barrels.
27 So one of the challenges is, you know, unlike any other --
28 not butter or whey, you have two products within this



1 cheese price formula, and originally the intent was we --
2 from my understanding, we need more volume, they move
3 together, let's include them both, let's make them roughly
4 equivalent. And, you know, over the last 23 years,
5 market's change, and that is no longer the situation. And
6 so, you know, over time, we were coming together for this
7 hearing, and ones that don't happen very often. And so my
8 intent was to show, you know, there's -- there's a risk
9 because we don't know enough about 640s, and you know, is
10 this going to be the same situation 20 years from now,
11 especially when we see very large disparities over the
12 last five years within this.

13 Q. On page 5, I've read this page a couple times, and
14 I just need you to help -- I need you to help me kind of
15 explain the link between the first and the second
16 paragraph and what you are trying to show there with your
17 graph, Chart 3.

18 A. Happy to.

19 My intent within these two paragraphs was to
20 say -- and has been referenced earlier on in testimony,
21 you know, CME blocks is a key market driver and utilized
22 heavily as a baseline within block pricing.

23 And so my approach here was to say, okay, the
24 block volume within the CME, though it, you know, largely
25 differs over time, is much, much smaller than the NDPSR
26 reported block volume. So if we go back to the USDA
27 original decision over a concern over the thinness of
28 volume within that survey price, market participants are



1 already acknowledging that the CME block volumes are good
2 enough to be market drivers. As referenced prior, you
3 know, it is heavily utilized. And my point here was,
4 those that work in the market think that CME blocks are
5 good enough, and they are in fact much, much smaller than
6 the NDPSR block sales volumes.

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

8 And then on page 6, you talk about the unintended
9 decrease in the cheese price due to the low barrel prices.

10 And on page 8 you refer to the negative impact on
11 cheese prices as creating a disorderly marketing
12 condition.

13 So first, can you expand on what you think is the
14 disorderly marketing condition specifically?

15 A. Within page 8?

16 Q. Yeah. That reference is on page 8. But the 6 and
17 8 kind of tie together I think.

18 A. So I would -- in regards to disorderly marketing
19 condition, you know, when the inputs of -- you know, these
20 price are inputs into the cheese price, the protein price,
21 and it wasn't the original expectation the large disparity
22 between the two. You know, they were largely expected to
23 move together. And if you, from my brief understanding,
24 are -- operate within these markets, and the market
25 expectation is they move together, and you see really,
26 really large swings in spread from month to month, that's
27 going to create disorderly marketing and how you have
28 budgeted, how you have participated in risk management,



1 all those factors.

2 Q. Okay. So would you say the same -- and when we're
3 talking about, primarily, I think blocks are above barrels
4 but by a large degree -- would you say the same about when
5 block prices fall below barrel prices?

6 A. When you have two products factoring in to, you
7 know, one cheese price, and they are not moving together,
8 I would say when the spread is out of bounds, high or low,
9 it -- you know, it creates disruption.

10 Q. I'm not sure if you are the right person to ask
11 the question on behalf of DFA, but I'll try anyways.

12 Can you speak to the impact to barrel
13 manufacturers specifically if Proposal 3 is adopted and
14 their cheese price no longer reflected their barrel market
15 at all?

16 A. I -- I would not be the person. I apologize.

17 Q. A couple other follow-up questions that I forgot
18 about, and I did ask some of the other National Milk
19 witnesses. Could you just tell us a little bit about DFA
20 and its membership and herd size, etcetera?

21 A. Sure.

22 So I would repeat all that Mr. Gallagher stated
23 last week on Dairy Farmers of America. As I mentioned in
24 my prior testimony -- or previously in my testimony, DFA
25 is a farmer-owned milk marketing cooperative. I believe
26 we operate in the majority of the states across the United
27 States, and regulated areas and non-regulated areas.
28 We're owned by about 11,000 dairy farmer-owners across



1 6,000 farms.

2 And I'll reference the National Milk Exhibit 4A --
3 I forget what that is within the master number -- of a
4 little more information. But we have producers from coast
5 to coast, with an expansive governance process where, you
6 know, from the grassroots, divisional, local level farmer
7 leadership representation across up to our corporate board
8 of almost 50 dairy farmers. So it's -- they are a fun
9 group. But we have several dairy farmers coming this
10 week, and we'll be testifying later. So I'm sure they
11 would love to talk about the co-op as well.

12 Q. Thank you.

13 And I'm not sure if Exhibit 4A covers this, but
14 does DFA manufacture both blocks and barrels?

15 A. So we are a -- within our whole-fully owned plant
16 network of about 83, we are not a big player within this
17 market. I think at -- you know, very, very marginally we
18 may factor into a little bit of blocks sometimes given
19 market conditions. So, you know, for our dairy farmers, a
20 lot of them, you know, ship into Class III or on high
21 Class III dosation milk sheds, and so this is important to
22 them.

23 Q. Okay. So that's from the farmer protected. But
24 as a DFA co-op, you don't have a lot of blocks?

25 A. Not within our whole fully owned asset structure.

26 MS. TAYLOR: That's it from AMS. Thank you.

27 THE COURT: Any additional cross? Did anyone open
28 any doors that would justify additional cross?



1 Seeing none, redirect.

2 REDIRECT EXAMINATION

3 BY MS. HANCOCK:

4 Q. Good afternoon, Ms. Reynolds.

5 A. Good afternoon.

6 Q. I know that you didn't want to do math on the
7 stand. I just maybe want to call your attention on -- in
8 discussing Table 1, on the top of page -- of the -- of the
9 writing on page 4, you talk about, "As shown in Table 1
10 and Chart 2, the 2022 NDPSR block sales volume was nearly
11 85% of the combined 2000 block and barrel total." And I
12 think that this is what Mr. Miltner was asking about, but
13 I think you already did the math, so I just want to make
14 sure I'm understanding that correctly. Is that comparing
15 the 2022 blocks as compared to what the total volume was
16 back in 2000?

17 A. That is correct.

18 Q. Okay. And so I guess the kind of quick takeaway
19 there is just that in 2000 the total amount surveyed was
20 769 thousand -- 707,920?

21 A. 769 million.

22 Q. Oh, God. I forgot my commas in there. Sorry, let
23 me say that again.

24 In 2000, it was -- the total pounds were
25 769,707,920?

26 A. That is correct.

27 Q. And then in 2022, just the cheddar alone was
28 652,831,270?



1 A. Just the block volume alone, yes.

2 Q. Yeah. And so the point there is just that -- that
3 when you say that is sufficient volume to be surveyed,
4 that's what you are referring to?

5 A. That is correct.

6 Q. Thank you.

7 And then you got a whole bunch of questions on the
8 meaning of the statute. Do you still have that in front
9 of you, or the regulation, the proposed regulation,
10 proposed rules?

11 A. I do.

12 Q. I want to just start off with the beginning of
13 that section, which is the column prior. And it says,
14 "Nearly all comments on the cheese Make Allowance proposed
15 for use in computation of the protein price described the
16 proposed \$0.127 Make Allowance as too low resulting in too
17 high of a protein price."

18 Do you see that?

19 A. I do.

20 Q. And is that what you understood was the lead-in to
21 what the calculation to follow included?

22 A. That was my understanding.

23 Q. And so they were calculating a Make Allowance in
24 order to set the protein price; is that right?

25 A. Correct.

26 Q. And then we see the end of that on the next
27 column, which is after where Mr. Rosenbaum read to you,
28 where actually it culminates into summarizing that \$0.03,



1 and it says, "The \$0.03 that is added to barrel cheese
2 price is generally to be" -- "is generally considered to
3 be the industry standard cost difference between
4 processing barrel cheese and processing block cheese."

5 Is that right?

6 A. That is how it reads, yes.

7 Q. Okay. And so is that what you were referring to
8 about taking the cost into account in order to set the
9 protein price?

10 A. Yes.

11 Q. So contrary to where the questions led you into a
12 corner, it actually does talk about price and cost; is
13 that fair?

14 A. Yes.

15 Q. Okay.

16 MS. HANCOCK: That's all I have, your Honor.

17 THE COURT: Anyone else?

18 Okay. Let's move Exhibit 132 into the record.
19 Any objections?

20 Hearing none, Exhibit 132 is admitted into the
21 record.

22 MS. HANCOCK: Thank you, your Honor.

23 (Thereafter, Exhibit Number 132 was received
24 into evidence.)

25 THE COURT: You're welcome.

26 You may step down. Thank you.

27 MR. ROSENBAUM: Your Honor, we have been going for
28 an hour and a half. Would this be a convenient time for a



1 ten-minute break?

2 THE COURT: Yes, let's take ten minutes. Let's
3 come back at 3:10. Thank you.

4 (Whereupon, a break was taken.)

5 THE COURT: Let's get started. Let's go on the
6 record. Two witnesses. I need to swear in the witnesses.
7 Please, both of you raise your right hands.

8 SUE TAYLOR,

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

11 ALISON KREBS,

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

14 THE COURT: Your witnesses.

15 MR. NIELSEN: Erik Nielsen, counsel for the
16 Leprino Foods Company. Please don't call me doctor. I
17 can't -- I don't think I could save anybody's life today.

18 So I have just circulated what's marked as IDFA
19 Exhibit 34. Your Honor, I would like to have that marked
20 for identification purposes.

21 THE COURT: Yes.

22 MR. NIELSEN: And I believe we're at Exhibit 133.

23 THE COURT: We are. So marked.

24 (Thereafter, Exhibit Number 133 was marked
25 for identification.)

26 DIRECT EXAMINATION

27 BY MR. NIELSEN:

28 Q. All right. Can each of you please state and spell



1 your name for the record.

2 A. (Ms. Krebs) Yep. My name is Alison Krebs,
3 A-L-I-S-O-N, K-R-E-B-S.

4 A. (Ms. S. Taylor) And Sue Taylor, S-U-E,
5 T-A-Y-L-O-R.

6 Q. Okay. And just quickly, Ms. Krebs, what's your
7 professional address?

8 A. (Ms. Krebs) Yeah. Our business address for the
9 Leprino Foods Company is 1830 West 38th Avenue, Denver,
10 Colorado, 80211.

11 Q. Ms. Taylor, same professional address for you?

12 A. (Ms. S. Taylor) Yes, it is.

13 Q. Great.

14 Ms. Krebs, I'm going to focus on you and your
15 background for a little bit before we turn to Ms. Taylor's
16 background. Could you tell me where you are currently
17 employed?

18 A. (Ms. Krebs) Yes, I'm employed as the director of
19 dairy and trade policy for Leprino Foods Company.

20 Q. And what does your role as director of dairy and
21 trade policy for the Leprino Foods Company entail?

22 A. (Ms. Krebs) Well, I work on policy issues,
23 specifically this being an example of one of the areas of
24 focus that I have. I also do additional advocacy work on
25 behalf of the company. And then I do work in dairy
26 economics and some forecasting work as well.

27 Q. Great.

28 And can you tell us, generally, the nature of the



1 Leprino Foods Company's business?

2 A. (Ms. Krebs) Yes. Leprino Foods Company is a
3 dairy manufacturer founded in 1950 in Denver, Colorado,
4 and we manufacture mozzarella cheese and then dairy
5 nutrition products that complement the mozzarella cheese
6 manufacturing.

7 Leprino Foods has nine plants in the United
8 States. We have three in California, two in Colorado, one
9 in New Mexico, two in Michigan, and one that's on the
10 state line between New York and Pennsylvania, and are
11 currently building a tenth plant in Lubbock, Texas. We
12 also do have a bit of an international footprint where we
13 have some production operations in the UK, and the
14 Republic of Ireland, as well as Brazil. But the majority
15 of our manufacturing is done in the U.S.

16 Q. Great. Thank you.

17 Let's dive into your background a little bit,
18 Ms. Krebs. Before you joined Leprino Foods Company as the
19 director of dairy and trade policy, what was your career
20 leading up to your current role, both academically and
21 professionally?

22 A. (Ms. Krebs) Yes. Academically I have an
23 undergrad in agricultural economics from the University of
24 Wisconsin. Had the opportunity to work on a dairy farm,
25 had some experience while I was there. And then I also
26 have an MBA in finance from Purdue University. And then
27 more recently, I completed another Master's degree in
28 applied economics from the University of North Dakota.



1 Q. Can you tell me about some of your professional
2 affiliations and memberships in addition to your
3 professional role as director of dairy and trade policy at
4 Leprino?

5 A. (Ms. Krebs) Yeah. We're active as a company in
6 organizations across the industry. And so some of the
7 work that I currently do for the Dairy Institute of
8 California, for example, is I'm the chair of the economic
9 policy committee for the Dairy Institute. I also serve on
10 the board as well as the executive committee for the Dairy
11 Institute. And then I am actively engaged on the economic
12 policy committee for International Dairy Foods
13 Association, and then serve on the policy committee for
14 the Wisconsin Cheese Makers as well.

15 Q. Great. Thank you.

16 Ms. Taylor, I briefly want to touch on your
17 professional career and your academic and professional
18 background. Can you tell me where you are currently
19 employed?

20 A. (Ms. S. Taylor) Currently I'm an on-call employee
21 at Leprino Foods, after retirement from full-time service
22 at Leprino in the end of 2020. I grew up on a dairy farm
23 in western New York State and worked on three other dairy
24 farms to make my way through high school and college. My
25 undergrad and my Master's are both from Cornell
26 University, but they are in agricultural education with a
27 heavy emphasis in farm management and farm finance. I
28 taught high school agriculture for two years between my



1 degrees.

2 And then was a loan officer handling most of the
3 dairy accounts during the farm crisis of the mid '80s,
4 before shifting over to markets and policy work in 1989
5 working for another cheese company, which in addition to
6 the dairy economics work, I handled production accounting
7 and milk procurement.

8 From 1992 to my joining Leprino in 1995, I had a
9 consulting business, and our clients, we worked more as an
10 extension of their staff. And the product involvement
11 included a bottler, soft product manufacturer, a cheddar
12 maker and a butter powder maker, some cooperatively owned,
13 some proprietaries, as well as a pharmaceutical company.

14 I joined Leprino in 1995 as manager of dairy
15 policy and procurement handling milk procurement, dairy
16 economics, and policy work, and progressively increased my
17 engagement there to the point of being promoted to vice
18 president in that same area in 2001.

19 My industry leadership over my career, I chaired a
20 number of committees. The IDFA National Cheese Institute
21 economic policy committee, I chaired for over 20 years,
22 and the comparable committee for Dairy Institute for
23 California for over 20 years. I chaired U.S. Dairy Export
24 Council's trade policy committee for over 15 years. Sat
25 on the board of USDEC Dairy Institute of California and
26 IDFA.

27 Had two USDA appointments through my career. I
28 sat on the -- or I was appointed to the Dairy Industry



1 Advisory Committee that USDA had in 2010 and 2011, as well
2 as served two terms on the agricultural technical advisory
3 committee for trade for processed foods. Also, people
4 think of it as just the ATAC, the Ag Trade Advisory
5 Committee. But I retired from full-time employment again
6 in the end of 2020.

7 Q. Thank you for coming out of retirement for this.

8 Have you -- have you participated in hearings of
9 this nature before?

10 A. (Ms. S. Taylor) Yes. I participated in all of
11 the Federal Order hearings related to Class III pricing
12 issues from 1995 on. Also, the Class I definition
13 hearing, the California Federal Order hearing, the
14 promulgation hearing. Additionally, all the California
15 state order hearings that occurred from 1995 on, which I
16 counted as at least 16 of them. They like to have them a
17 little bit more frequently than the federal folks. But
18 numerous hearings.

19 Q. Great. Thank you.

20 Ms. Krebs, coming back to you, does the document
21 in front of you that's been marked for identification as
22 Exhibit 133 reflect the testimony that you intend to
23 present today?

24 A. (Ms. Krebs) Yes, it does.

25 Q. Okay. Starting with the page 2, can you present
26 that testimony for us?

27 A. (Ms. Krebs) I was going to weigh in with one more
28 piece before we did that. I think we talked my academic



1 background but didn't get to sort of the professional
2 experience piece.

3 Q. Yes.

4 A. (Ms. Krebs) I'll just add a bit on that. My
5 career has basically been in agri business and food
6 industry. I have had many roles. Elanco Animal Health,
7 so I actually lived here in Indianapolis for 18 years,
8 part of Eli Lilly & Company. So was involved in the
9 livestock industry from that perspective. Then I did some
10 consulting work, worked in market analysis and commodity
11 marketing consulting. Worked for CoBank in industry
12 research. And then had worked with National Cattle and
13 Beef Association in market intelligence before joining
14 Leprino Foods in 2020.

15 So, again, my experience is very broad across ag,
16 very focused on strategy, economics across my career prior
17 to joining Leprino.

18 Q. Great. Thank you for that.

19 And you also worked on a dairy farm as well while
20 you were pursuing your degree?

21 A. (Ms. Krebs) I did for, yes, part of my time at
22 University of Wisconsin.

23 Q. Great.

24 A. (Ms. Krebs) A little bit of dairy background.

25 Q. So turning to your testimony, please proceed with
26 presenting your testimony starting on page 2.

27 A. (Ms. Krebs) Yes. Thank you.

28 And what I'm going to do, just for brevity, is I'm



1 going to skip through a bit of these first couple of
2 pages, just highlight a couple of points that I would like
3 to bring out in terms of overarching testimony principles,
4 and then I'll get into reading specifics on specific
5 proposal positions that we have for Leprino Foods.

6 So, to start off with, in terms of general
7 overarching testimony principles, I'm going to talk about
8 some different areas, looking at orderly marketing,
9 importance of minimum pricing, role of balancing supply
10 and demand, addressing regulation and markets for milk,
11 and then finally, talking about global competitiveness.

12 So to start in on that, in terms of orderly
13 marketing of milk. If milk prices are regulated -- if
14 milk prices are regulated, the concept of those prices
15 being set at a minimum level is essential to the orderly
16 marketing of milk. The key driver of the minimum pricing
17 tenet is to ensure milk is priced at a market-clearing
18 level. If this principle is violated, the market can end
19 up with supplies that exceed the demand for milk. This
20 creates disorderly circumstances for the marketplace, such
21 as milk dumping, sustained below spot pricing, and co-op
22 reblends, other challenges for the marketplace.

23 As to balancing supply and demand in Federal
24 Orders specific to dairy, the existing federally regulated
25 pricing system is designed to balance supply and demand at
26 the farm level. It allows farms to benefit when times are
27 good. In a similar vein, farms feel financial strain
28 during difficult times. The system, therefore, signals



1 farmers to produce more or less milk depending on dairy
2 product demand. To moderate this farm level margin risk,
3 programs such as Dairy Margin Coverage Program, DMC, and
4 the Dairy Revenue Protection program are available to
5 support farmers through difficult times.

6 Switching to regulation and markets for milk.
7 Beyond setting a minimum price for milk, regulations
8 should facilitate farmers having markets for their milk.
9 For the industry to function efficiently, manufacturers
10 must receive relevant compensation for the value they
11 create in converting milk into dairy products. Fair
12 competition, not regulation, should determine players in
13 the dairy marketplace.

14 And then looking at global competitiveness, U.S.
15 dairy industry is now a full fledged player in global
16 dairy. Care must be taken in updating milk pricing
17 formulas to ensure U.S. dairy remains competitive and
18 changes must incentivize efficient investment.

19 So given those primary principles, I'm now going
20 to switch to specific positions on three different
21 proposals. First of all, I'd like to talk about our
22 opposition to Proposal 3, removal of 500-pound barrels
23 from the Class III formula.

24 So here I am starting to read from the bottom --
25 from the lower third of page 3.

26 Leprino Foods Company opposes Proposal 3 put forth
27 by the National Milk Producers Federation to remove
28 500-pound barrel cheddar from the Class III formula. This



1 proposal will both narrow the volume surveyed for price
2 discovery and remove one of the most important milk
3 balancing tools of the industry from a product
4 perspective.

5 USDA stated in the February 7th, 2013, final
6 decision, page 9275, "retaining the cheese barrel price in
7 the protein price formula is necessary to ensure that the
8 protein price is representative of the national cheese
9 market. Eliminating the barrel price from the protein
10 price formula would significantly and needlessly reduce
11 the volume of cheese used in the Class III product price
12 formula, which could lead to protein prices that are not
13 as representative of the national cheese market."

14 Barrel volume is now more important today to the
15 current milk price formula than it has been historically.
16 Figure 3 shows the share of barrels in the National Dairy
17 Product Sales Report (NDPSR) survey has moved from
18 representing less than half of the surveyed cheese volume
19 to now being the majority. Therefore, Proposal 3 seeks to
20 remove over 50% of the volume represented in the survey,
21 in direct conflict with the USDA's 2013 final decision.

22 Beyond its larger volume share, barrel cheddar
23 continues to be a critical market-clearing format within
24 the cheddar category as demonstrated by its price
25 volatility. Its prices can swing from a significant
26 discount to blocks to a premium over blocks, reflecting
27 greater shifts in supply and demand than blocks. Removing
28 barrels from the Class III cheese price formula removes



1 the price that most closely reflects the supply and demand
2 balance. Cheddar barrels are also storable and are
3 produced and used by several buyers and sellers.

4 For as long as a wider spread to block price
5 remains, barrel makers will be at a disadvantage in the
6 marketplace as their milk costs will be higher relative to
7 the price they receive for their product. Removal of
8 cheddar barrels from the formulas would both shrink the
9 survey volume and would likely result in greater
10 production of cheddar blocks as an outlet to clear the
11 market. This would likely add volatility to the block
12 market, adding unnecessary stress to the U.S. marketplace,
13 and making U.S. cheese a less attractive option for global
14 buyers.

15 Dropping barrels from the survey would also create
16 a presumption within the Class III formula that all
17 cheese, including barrels, would then be priced off
18 blocks. Again, in USDA's 2013 final decision, page 9274,
19 USDA noted that blocks and barrels have different supply
20 and demand functions. So the block and barrel markets are
21 not expected to move in tandem, and forcing barrels to be
22 priced off blocks could add dysfunction to the barrel
23 market.

24 This could decrease competitiveness for barrel
25 makers, as well as overprice the milk going into barrels,
26 leading to disorderly marketing. Finally, as the Chicago
27 Mercantile Exchange (CME) is a private entity that
28 operates beyond the scope of the Federal Order system,



1 continuation of the CME spot barrel market could even
2 further compound this confusion across the marketplace.

3 As a final note on the widening of the
4 block-barrel spread that merged beginning in 2017, it
5 appears the market may be working to narrow the gap. An
6 additional block plant came online in 2021, additional
7 capacity is currently being ramped up in Texas, and more
8 block capacity is being added in Kansas and South Dakota.

9 The supply and demand balance between these two
10 products will likely be facilitated by adequate updates to
11 Make Allowances as well. As a result of each of the
12 points I have stated above, the adoption of Proposal 3
13 will be fraught with unintended consequences that will be
14 distorting and risky to the industry, including a reduced
15 volume of cheese in the survey from which to properly
16 price milk. Accordingly, Leprino Foods respectfully
17 requests that USDA reject National Milk Producers
18 Federation's Proposal 3.

19 Opposition to Proposal 4: The addition of
20 640-pound blocks to the Class III formula.

21 Leprino Foods Company opposes Proposal 4, put
22 forth by the American Farm Bureau Federation, to add
23 640-pound block cheddar to the Class III formula.

24 Although we are generally supportive of ensuring survey
25 volume is robust, we are aware that others will be
26 providing additional compelling testimony relative to the
27 inappropriateness of adding 640-pound blocks to the
28 commodity reference price calculation in the Class III



1 formula.

2 Specifically, the 640-pound block market is
3 largely a make-to-order market. The lack of equipment
4 amongst buyers to handle 640s limits their sales to a
5 narrow group of buyers. The balancing that occurs within
6 the 640 market is through the cutting down of 640s into
7 40-pound blocks. Therefore, the balancing amongst 640
8 manufacturers is manifested in the 40-pound block cheddar
9 market that is already embedded in the formula.

10 Opposition to Proposal 6: The addition of
11 mozzarella cheese to the Class III formula.

12 Leprino Foods Company opposes Proposal 6 put forth
13 by California Dairy Campaign, which proposes to add
14 mozzarella to the Class III protein price formula along
15 with the broader suggestion to include virtually all dairy
16 products in the calculation of regulated minimum prices.

17 The proposal is flawed in numerous ways.
18 California Dairy Campaign's proposal and related testimony
19 on this subject lack critical details, so it is difficult
20 to interpret and evaluate. The proposal seeks creation of
21 a survey for mozzarella prices with collection of data for
22 moisture and fat composition. The proponent suggests that
23 the mozzarella price should be combined with the surveyed
24 cheddar prices based upon the national production of each
25 in the prior year. Numerous errors and omissions in logic
26 are embedded in the proposal.

27 Manufacturing Costs:

28 The proposal does not recognize that the



1 manufacturing cost of producing mozzarella is different
2 than the manufacturing cost of cheddar. The proponents of
3 Proposal 6 have not submitted any objective cost data.
4 USDA stated in its letter dated July 24th, 2023, to the
5 proponents of Proposal 6 that "USDA does not currently
6 have the legal authority to conduct a mandatory cost
7 survey."

8 Without cost data, the price data collected in
9 Proposal 6 is worthless. While both mozzarella and
10 cheddar can be produced in the same types of vats, the
11 similarities end there. The manufacturing process beyond
12 the vats differs significantly.

13 Pasta filata mozzarella requires curd washing,
14 heating, and mixing to achieve the product performance
15 (such as stretch and no burning) desired in most uses of
16 mozzarella. This requires additional equipment that is
17 not used in cheddar manufacturing. Similarly, the pressed
18 curd nature of cheddar production involves some equipment
19 not used in mozzarella production. In addition to these
20 differences, mozzarella yields differ from cheddar yields.

21 Product composition:

22 The proposal does not define the type of
23 mozzarella to be surveyed or how the USDA should address
24 the diversity of mozzarella cheese types. In contrast
25 with the dominance of a single Standard of Identity for
26 cheddar and the uniformity of its production, the
27 mozzarella category is a diverse category with four
28 distinct FDA Standards of Identity and a range of similar



1 pasta filata products that are designed for a variety of
2 food applications with wide ranging cook conditions and
3 performance requirements.

4 Performance in this range of conditions has been
5 fine-tuned through years of research and development and
6 the resulting cheese-make innovation. As a point of
7 reference, given the diversity of product specifications,
8 customizations, and other customer requirements, Leprino
9 Foods produces nearly 400 separate pasta filata product
10 codes.

11 In what appears to be an attempt to address the
12 lack of uniformity in the mozzarella category, the
13 proponent calls for collection of moisture and fat content
14 in the mozzarella price survey but does not clarify how
15 that data is to be used. Adjusting mozzarella prices
16 based upon these parameters is inconsistent with the
17 commercial marketplace. The primary variation within
18 cheddar barrels is the level of moisture in the cheddar.
19 The value of barrels in processed cheese production is the
20 solids content.

21 The commercial marketplace recognizes that value
22 equation by pricing barrel cheddar on a price-per-pound
23 solid basis. This commercial marketplace practice is
24 easily emulated by USDA by performing the same calculation
25 to adjust the barrel price to a common moisture level
26 (38%).

27 The performance and functionality of mozzarella
28 drives value within the mozzarella market. Mozzarella



1 prices in the commercial marketplace are not
2 mathematically adjusted based upon a price-per-pound solid
3 basis, so a moisture-based price adjustment similar to
4 that applied to cheddar barrels is not appropriate.

5 Product Form:

6 The proposal fails to identify the form of
7 mozzarella to be surveyed. Most mozzarella is sold in a
8 form that already includes further manufacturing beyond
9 the base bulk format. For example, mozzarella is often
10 shredded by the first manufacturer. Additionally,
11 mozzarella is often molded into smaller retail or food
12 service sizes by the first manufacturer, rather than being
13 sold in a bulk format and sold to a secondary manufacturer
14 for further transformation. None of these formats
15 represent bulk product appropriate for a minimum pricing
16 system.

17 To provide some price data, the proponent
18 references the delivered price from a USDA school lunch
19 bid for string cheese to infer that mozzarella prices far
20 exceed prices for bulk cheddar. Effectively, the string
21 cheese price reported by USDA is a retail level price that
22 embodies many costs beyond those of manufacturing.

23 Further, string cheese represents a value-added
24 form of mozzarella and requires additional equipment
25 finely tuned to maintain dimension control. The string
26 cheese specification associated with the quoted price is
27 for one-ounce pieces in single-serve packaging,
28 representing significantly more packaging than the minimal



1 packaging associated with 40-pound blocks or 500-pound
2 barrels.

3 The price associated with the school lunch program
4 is a delivered price to numerous locations for
5 less-than-truckload quantities of product. The second price
6 series included in the proponent's testimony is the
7 delivered price for five- to six-pound loaves of
8 mozzarella in mixed lots of 1,000 to 5,000 pounds, as
9 reported by Dairy Market News. Rather than FOB
10 manufacturer price, it is delivered and in
11 less-than-truckload quantities.

12 Further, only an unweighted price range is
13 provided. Also, this product is typically used by
14 independent pizzerias and does not represent bulk product
15 and therefore cannot be interpreted as such.

16 Further, this price series has been discredited as
17 being based upon an outdated survey that is updated by
18 change in the weekly CME cheddar block price. Underlying
19 assumptions incorporated into the base survey are not
20 available, and thus the price series should be disregarded
21 altogether.

22 Applying Overarching Principles to Classes III and
23 IV:

24 Class III and IV products include the
25 market-clearing commodity products that are critical to
26 maintaining orderly marketing conditions within Federal
27 Milk Marketing Orders. As such, the products that
28 represent the market value of the milk in Classes III and



1 IV must:

2 (1) Represent the market-clearing products within
3 the respective categories;

4 (2) Have clearly defined content specifications
5 that facilitate matching products with their associated
6 yields and costs of manufacturing;

7 (3) Be in bulk form without value-added
8 attributes or further processing;

9 (4) Represent the value received by original
10 manufacturers.

11 Therefore, product prices must represent
12 manufacturers' value rather than distributor or retail
13 values that incorporate additional costs in the supply
14 chain beyond manufacturing.

15 Mozzarella Is Not Appropriate as a Class III
16 Cheese Reference:

17 Mozzarella cheese is not suitable as a cheese
18 price reference for the purpose of regulated milk pricing.
19 Further work to fill the data gaps that make Proposal 6 a
20 non-starter in this proceeding is unwarranted.

21 First, most mozzarella is not a market-clearing
22 product. Most mozzarella is stored in refrigerated form
23 and has a limited shelf life, limiting its role as a
24 market balancer.

25 Second, most mozzarella is not sold in bulk form.
26 Significant volumes of mozzarella are manufactured into
27 value-added forms, whether as shred, string, or smaller
28 retail or foodservice loaves by the primary manufacturer.



1 The volume of mozzarella production that is sold
2 by the primary manufacturer in bulk format is
3 comparatively small. This contrasts with cheddar cheese
4 in which most shredding, cutting to retail or food service
5 sizes, or conversion to other forms is performed by
6 different companies than the original manufacturer.

7 Third, the category is characterized by a lack of
8 uniformity in compositional specifications and yields,
9 making it difficult to accurately match prices with yields
10 and manufacturing costs.

11 Cheddar Remains the Most Appropriate Class III
12 Cheese Reference:

13 Cheddar cheese remains the most appropriate
14 representative cheese within the Class III formula because
15 of several factors.

16 First, cheddar is the cheese most often produced
17 to clear the market of surplus milk, due to its
18 storability. Use of cheddar prices is consistent with the
19 need to set a market-clearing price within the regulated
20 minimum milk pricing system.

21 Second, large volumes of cheddar cheese are sold
22 in bulk form, either as 40-pound or larger blocks or
23 500-pound barrels, providing price transparency for
24 significant volumes of the base commodity.

25 Third, a single product specification and common
26 manufacturing processes facilitate associating prices with
27 yield and manufacturing cost factors related to the same
28 product account for virtually all cheddar production.



1 Cheddar Is Representative of Broader Commodity
2 Cheese Values:

3 Bulk cheddar cheese remains representative of
4 broader commodity cheese values. Margins for the most
5 generic bulk forms of other cheeses are forced to converge
6 with cheddar margins over time as companies seek profit
7 opportunities by adjusting their capacity to produce the
8 higher margin products.

9 Over the last several decades, many cheddar plants
10 have been converted to mozzarella production where the
11 profitability of mozzarella production exceeded that of
12 cheddar cheese for sustained periods.

13 Some companies maintain flexible plant capacity so
14 that they may produce cheddar or mozzarella, depending
15 upon comparative profit opportunities on a shorter-term
16 basis. The ultimate result is that margins for basic
17 mozzarella and cheddar converge over time.

18 For these reasons Leprino Foods opposes the
19 addition of mozzarella to the Class III formula.

20 Q. Thank you.

21 MR. NIELSEN: I yield the witnesses for
22 cross-examination.

23 THE COURT: Cross?

24 No one has any cross for these witnesses other
25 than AMS?

26 Seeing no volunteers -- oh, I'm sorry.

27 I'm told it's, in fact, good I name the person
28 coming to the lectern for the folks watching at home.



1 Mr. Miltner, welcome back.

2 MR. MILTNER: Thank you, your Honor.

3 CROSS-EXAMINATION

4 BY MR. MILTNER:

5 Q. I have a couple of questions on page 5 where you
6 start talking about the mozzarella cheese proposal. And
7 the line that caught my eye said, "Without cost data the
8 price data collected in Proposal 6 is worthless." And may
9 not have the worth that we want it to have, but maybe it's
10 not worthless.

11 I guess my bigger question is, though, does
12 Leprino have a position on some of the legislation that
13 may be included in the Farm Bill about surveying
14 additional commodities to collect the type of data that
15 we're currently lacking?

16 A. (Ms. Krebs) Leprino is in support of the proposal
17 that is expected to be placed within the Farm Bill that I
18 believe several organizations represented in this room
19 have had inputs into and are in support of, and that is to
20 allow -- or to provide authorization to the USDA to
21 collect the mandatory -- or make mandatory -- sorry -- to
22 authorize USDA to conduct mandatory cost and yield surveys
23 for those products that are included in the formula.

24 Q. Would you support legislation that expands that
25 authority to commodities that are not currently in the
26 formula but might be considered for inclusion?

27 A. (Ms. Krebs) I think as far as adding additional
28 dairy products to that mandatory authorization, I think



1 you could get into -- we would want to understand what the
2 purpose of that would be.

3 Q. What if the purpose were to figure out if
4 mozzarella would be an appropriate product to include if
5 we had the data that we're currently lacking to evaluate
6 Proposal 6?

7 A. (Ms. Krebs) I think what you start to get into at
8 that point is it's -- there's more to it than just the
9 fact that you don't have data right now. Mozzarella, as I
10 mentioned, is a very, very complex cheese collection --
11 really it's a collection of many different cheeses. There
12 are four major standards of identity. There is -- are --
13 is product that is outside of the formal standard of
14 identity areas.

15 And so just the complexity of mozzarella, the fact
16 that there is not much of the product is sold in that bulk
17 format, much of it has additional processing that's been
18 done. And so the expectation of the proponent in this
19 case of adding mozzarella because there's a lot of
20 mozzarella consumed in the country really doesn't
21 typically -- or completely align.

22 I think another piece to it is that mozzarella
23 really doesn't serve a role as being a market-clearing
24 product in the same way that the cheddar products do, on
25 both the barrel and block side of things.

26 So those are the pieces that I think would take
27 you away from just saying, hey, if we just had the cost
28 data or the yield data, it would be worth adding to the



1 formula.

2 Q. So really the data is unimportant, it's just you
3 don't believe mozzarella should be in the survey, period?

4 A. (Ms. Krebs) That is correct.

5 Q. I had a question about Figure 1 as well. I guess
6 really it is Figure 1 and 2, more than just Figure 1.

7 Figure 1 is just the Upper Midwest as you know it,
8 correct?

9 A. (Ms. Krebs) Yes.

10 Q. Your mailbox price in Figure 2, is that the Upper
11 Midwest mailbox price as well?

12 A. (Ms. Krebs) No, that is a nationwide weighted
13 average mailbox price that's been adjusted to 3.5% percent
14 butterfat.

15 Q. I think I know what you're conveying in Figure 2,
16 but can you help me out, just explain what's in there,
17 what you are trying to convey, what your basis is. You
18 have basis and an asterisk, which denotes the
19 standardization.

20 A. (Ms. Krebs) Correct.

21 Q. But what are you pegging that basis to?

22 A. (Ms. Krebs) Yeah. So really what we're looking
23 at is what's a national average mailbox price adjusted to
24 that 3.5% percent butterfat level. You subtract out the
25 national average blend price, and you can see that over
26 time that premiums have been generally decreasing.

27 Q. I want to ask also on page 2. You make reference
28 to both DMC and dairy Revenue Protection, and I'm trying



1 to tie those programs into the Federal Order prices and
2 what their particular relevance is.

3 Can you help me with that?

4 A. (Ms. Krebs) Really, in this particular case, what
5 we're trying to convey is that the Federal Order pricing
6 system is about setting minimum prices at market-clearing
7 levels. There's other programs that are available from
8 within USDA that can provide support when that is needed
9 by the farming community. But sometimes it appears that
10 there's some misunderstanding across the industry
11 suggesting that Federal Orders are supposed to provide a
12 support mechanism as opposed to being that market-clearing
13 minimum.

14 Q. And you are aware that at least for DMC that
15 coverage doesn't cover probably 80% of the milk in the
16 country, right?

17 A. (Ms. Krebs) There are some limits on it, but it
18 covers a significant number of particularly smaller
19 farmers that have signed up for the program.

20 Q. Is it your testimony that the existence of those
21 programs should somehow affect the decisions that USDA
22 makes about what the formula should say?

23 A. (Ms. Krebs) Not necessarily.

24 Q. Looking at Proposal 3 -- I'm sorry, Figure 3, and
25 your accompanying testimony basically was that the share
26 of barrels in the survey is growing, and you reflect 2009
27 to 2022.

28 Did you see the testimony from earlier today that



1 took this data back to 2000?

2 A. (Ms. Krebs) Yes.

3 Q. Okay. And you would agree that the barrels' share
4 of the survey from 2000 to now has actually declined,
5 correct?

6 A. (Ms. Krebs) I would have to look at that
7 particular chart again to confirm that that's the case.

8 Q. Is there a reason you started your analysis at
9 2009?

10 A. (Ms. Krebs) That's when the current -- the
11 outcome of the last hearing, this is when that
12 implementation would have taken place. So this takes us
13 back to the last decision that was made, the national
14 hearing.

15 Q. Thanks.

16 MR. MILTNER: I don't think I have anything else.

17 THE COURT: Cross other than AMS?

18 Ms. Hancock.

19 MS. HANCOCK: Thank you, your Honor.

20 CROSS-EXAMINATION

21 BY MS. HANCOCK:

22 Q. I'd just say I like having this panel of women up
23 here be the experts. They didn't qualify you, but I'd
24 think we'd all stipulate.

25 THE COURT: I would so rule. No one asked me to
26 but --

27 MS. HANCOCK: I think they have earned it.

28 BY MS. HANCOCK:



1 Q. I just -- so I don't actually have all the
2 historical knowledge that -- about your entity. I'm
3 hoping you can help me with some of that.

4 Is Leprino served by a cooperative?

5 A. (Ms. Krebs) Yes. Much of our milk comes from a
6 couple of cooperatives. We do have some independent milk
7 that is shipped to us.

8 Q. Okay. And so they do most, if not all, the
9 balancing of whatever milk needs you have to serve all of
10 your plants?

11 A. (Ms. S. Taylor) Leprino also does some balancing
12 on behalf of the co-op. Historically the contracts have
13 been structured to give the co-ops some discretion
14 relative to delivery timing and volumes.

15 Q. Okay. And is that where the independent suppliers
16 come in?

17 A. (Ms. S. Taylor) No. The independent suppliers
18 are associated with one plant in California that had
19 independents associated the time we acquired it, and we
20 just committed that we wouldn't force them to make a
21 change in marketing relationship.

22 Q. Okay. And then the rest of the -- of your plants
23 are all supplied by cooperative milk?

24 A. (Ms. S. Taylor) That's correct. And a good
25 portion of that same plant is also cooperative.

26 Q. Okay. More than half?

27 A. (Ms. S. Taylor) Yes.

28 Q. Okay. And are most of your plants cheese plants?



1 A. (Ms. S. Taylor) Yes. They are all cheese, and
2 most of them also process whey, not all.

3 And actually, I should clarify that the -- one
4 that does not process -- fully process some whey does
5 condense it, and we transport that to an additional -- one
6 of our other plants in the network.

7 Q. Okay. And the new plant that you are constructing
8 in Texas, I believe, would that be a cheese plant as well?

9 A. (Ms. Krebs) Yes.

10 Q. Primarily mozzarella?

11 A. (Ms. Krebs) Yes.

12 Q. And Italian as well or just mozzarella?

13 A. (Ms. Krebs) Mozzarella. All pasta filata.

14 Q. And then some of the materials I read online said
15 that Leprino is the largest cheese manufacturer in the
16 country; is that right?

17 A. (Ms. Krebs) Largest mozzarella cheese
18 manufacturer.

19 Q. Okay. In the -- throughout the country?

20 A. (Ms. Krebs) Yes.

21 Q. Okay. And so if, for example, including barrels,
22 in the protein price for the calculation of Class III milk
23 were to help bring down the overall price of Class III
24 milk, then Leprino would be the beneficiary of that
25 reduced price; is that right?

26 A. (Ms. S. Taylor) Yes. We pay based on Federal
27 Order pricing.

28 Q. Okay. I want to ask a question, Ms. Krebs, of



1 your testimony on page 4, and this is under the heading of
2 "Opposition to Proposal 3," for National Milk's removal of
3 barrels from the Class III price calculation.

4 And I'm in the first -- or the third full
5 paragraph on that page. Do you see that paragraph
6 beginning with "dropping barrels"?

7 A. (Ms. Krebs) Yes.

8 Q. And it says, "Dropping barrels from the survey
9 would create a presumption within Class III formula that
10 all cheese, including barrels, would then be priced off
11 blocks."

12 And I thought I understood your testimony when you
13 were talking about mozzarella saying that mozzarella was
14 priced off the block market; is that right?

15 A. (Ms. Krebs) We generally price our mozzarella off
16 the block market in most cases. When you get to exports,
17 again, there can be some differences in how we make
18 approaches with that.

19 Q. And that's just because that's a different market
20 and those market factors would apply; is that right?

21 A. (Ms. Krebs) There's a lot of different dynamics.

22 Q. So, for example, they are not subjected to the
23 same Federal Order pricing mechanisms, right?

24 A. (Ms. Krebs) Well, all of the milk that we process
25 is purchased -- all of our plants are in federally
26 regulated areas, so all the milk that we process would be
27 subject to the Federal Order pricing.

28 Q. I guess I wasn't clear on that. I meant to say



1 that the competition that you are selling with on the
2 international markets is not going to be governed by the
3 U.S. regulations?

4 A. (Ms. Krebs) If they are located outside of the
5 United States, that would be true. If they are located in
6 the U.S., within Federal Orders, yes. If they are in
7 unregulated areas, then, no.

8 Q. Okay. If mozzarella could be priced off the block
9 market, couldn't barrels be priced off the block market as
10 well?

11 A. (Ms. S. Taylor) Certainly you could price barrels
12 off of the block market, but the supply and demand factors
13 that drive barrel are different than those same factors
14 driving block.

15 And so I would expect a couple things that might
16 happen. You may end up, first of all, with some barrel
17 manufacturers going out of business because of the
18 increased elevation of the class price, or they could be
19 shifting in redeploying their milk over to the block
20 market, which would add to the volatility of the block
21 market as far as a market-clearing mechanism for the
22 industry, and depress the block prices.

23 Q. Is there excess capacity in the block market now?

24 A. (Ms. S. Taylor) With the new plants coming
25 online, there will be for a period. In fact, I would
26 expect that we will see a compression in the block-barrel
27 spread because of that new plant capacity.

28 Q. And how long will it take for that to shake out?



1 A. (Ms. S. Taylor) I don't have a good understanding
2 of the ramp schedule on those plants. But once they are
3 up and running and have marketable product, I would expect
4 that consolidation or that compression to happen.

5 One thing that you find typically with a plant
6 that is starting up is that initially some of that product
7 might actually depress the barrel market, because if it is
8 not making grade for the intended purpose, then it gets
9 diverted to the processed cheese market.

10 So some depends on the exact timing of the ramp,
11 and it also depends upon how easily or how well the plant
12 comes up to speed relative to quality.

13 Q. And then is there any way to predict if the
14 volatility between the spread between block and barrels
15 re-emerges at that point?

16 A. (Ms. S. Taylor) My expectation from a market
17 perspective is that you would end up with more historic
18 spreads over time, and that spread -- typically, I would
19 expect barrel prices to be above blocks in the spring,
20 while processed cheese demand is pulling at a greater
21 level, and that spread to increase each fall.

22 Q. And so that would, again, contribute to some of
23 the same volatility that we're seeing now and it moving
24 around?

25 A. (Ms. Krebs) I don't think that's necessarily the
26 case. There is many different market dynamics that are
27 going on. We're not seeing or hearing of any addition of
28 barrel capacity being added at this point. So I don't



1 think that assumption can be made.

2 Q. Okay. Because the conversion tends to be going
3 toward block manufacturing?

4 A. (Ms. Krebs) At this time that's what we're seeing
5 in the marketplace, certainly.

6 Q. And so it's going to be a greater disparity
7 between the volume of block that's on -- that's in the
8 Class III prices as compared to barrel if the -- if the
9 block market or production capacity continues to grow and
10 the barrel capacity continues to either stay stable or
11 shrink?

12 A. (Ms. Krebs) Well, I wouldn't say the disparity is
13 going to be greater because right now you have got more
14 barrel in the survey than you have block. So perhaps a
15 narrowing of that or a flipping from the 52% barrel, 48%
16 block to something more level with 50/50 or perhaps the
17 flip side of that.

18 Q. So barrel becomes less reflective of the overall
19 cheese prices than block?

20 A. (Ms. Krebs) Relative to where you are today, at
21 the 52/48%, but that's -- you know, you might be taking it
22 to a 50/50.

23 Q. In that same paragraph it goes on to say, "So the
24 block and barrel markets are not expected to move in
25 tandem, and forcing barrels to be priced off blocks could
26 add dysfunction to the market" -- "or to the barrel
27 market."

28 Does pricing mozzarella off the block market



1 create dysfunction in the mozzarella pricing?

2 A. (Ms. S. Taylor) I would say no.

3 Q. Thank you?

4 MS. HANCOCK: That's all I have.

5 THE COURT: Yes.

6 CROSS-EXAMINATION

7 BY DR. BOZIC:

8 Q. Good afternoon, Alison and Sue, Marin Bozic for
9 Edge Dairy Farmer Cooperative. And what a privilege to be
10 at the same event with you. As a young kid in dairy, I
11 used to read your testimony.

12 What -- the -- you're opposing to Proposal 3.
13 Your -- your -- in the -- in your testimony the barrel
14 share of survey cheddar volume is about 52%. National
15 Milk proposal will take it down to zero.

16 Would you agree or disagree with the statement
17 that the right way is somewhere in between those two
18 numbers?

19 A. (Ms. S. Taylor) Candidly, when I look at the
20 function, currently in the marketplace, I would say, if
21 anything, if you were to narrow the -- or want to narrow
22 the survey, you would eliminate blocks, not barrels,
23 because barrels are clearly the market-clearing cheese at
24 the moment.

25 We're not advocating that. We think there is
26 value in a more robust survey and including both blocks
27 and barrels.

28 And as I already noted, I expect more price



1 convergence as the market adjusts. We probably had a
2 delayed reaction over the last several years because of
3 difficulty finding funding to build plants, just the
4 capital constraint issues have gone along with not having
5 up-to-date Make Allowances.

6 Q. Can we pick up a little bit more on this proposal
7 that you are not proposing, the -- to -- to -- what would
8 be the consequence of removing blocks, for example, and
9 pricing -- and are you suggesting that that would be a
10 principal decision to do because barrels have recently
11 been cheaper than blocks or because of their balancing
12 function or what would be driving that statement?

13 A. (Ms. S. Taylor) Again, we're not advocating for
14 the removal of blocks.

15 Q. Yeah, but --

16 A. (Ms. S. Taylor) But I'm just saying from a
17 market-clearing principle perspective, that would be the
18 more legitimate proposal than removing barrels. It would
19 be more consistent with the minimum pricing provisions.
20 It would create disruption at many levels within the
21 industry. Again, we're not advocating for that removal.

22 But we also are opposed to removing barrels and
23 narrowing the survey by removing the probably most
24 market-clearing product that we have in the cheese
25 category at this point.

26 Q. Would you comment on the basis between mozzarella
27 and block cheese? How stable or volatile is it?

28 A. (Ms. S. Taylor) Well, it will shift over time.



1 It's generally plus or minus versus the CME block cheese.
2 Over time, the mozzarella market has become more and more
3 competitive as additional capacity has been added across
4 the industry.

5 Q. Does it -- does the basis vary with how
6 competitive U.S. is at that point in time in exports?

7 A. (Ms. S. Taylor) Certainly that's a factor on the
8 export pricing side. And we find the international prices
9 get impacted, not only by our international competitors,
10 whether it be New Zealand or some of the European sources,
11 but also from other American sources and, specifically,
12 barrel manufacturers who have dual capacity and can
13 reallocate milk between cheddar barrels and mozzarella.
14 So there's an element in the international market where
15 mozzarella prices are influenced by the alternative barrel
16 market opportunities in the U.S.

17 Q. So I'm a geek, so I'm going to ask a math question
18 next, not a counselor.

19 So one way to -- that I heard what you just said
20 is that the basis between mozz and block is correlated
21 with the block-barrel spread. In other words, when
22 barrels drop because, for example, our frozen mozz exports
23 are not competitive, that's also where your basis versus
24 block gets under pressure.

25 Is that a fair statement?

26 A. (Ms. S. Taylor) The answer would vary by customer
27 and customer type, both locationally. The U.S. pricing
28 would not be as influenced by the block-barrel spread.



1 Internationally it is one of a great many factors that
2 need to be considered as we assess competitive pricing.

3 Q. Would it be fair to say that more -- an ever
4 higher percent of cheese manufactured in U.S. going
5 forward is going to be destined for overseas locations?

6 A. (Ms. S. Taylor) Yes. That would be my
7 expectation.

8 Q. And then would it be fair to connect that that it
9 is possible that a higher share of milk in the future
10 might in some way -- might in some way be related to the
11 block-barrel spread or the barrel prices because of the
12 exports?

13 A. (Ms. S. Taylor) Yes.

14 Q. Thank you very much.

15 DR. BOZIC: That's all I have.

16 THE COURT: Anyone else other than AMS?

17 AMS. Ms. Taylor.

18 CROSS-EXAMINATION

19 BY MS. TAYLOR:

20 Q. Good afternoon.

21 A. (Ms. Krebs) Good afternoon.

22 A. (Ms. S. Taylor) Good afternoon.

23 Q. I'm going to try to keep this and make my way
24 through your testimony. I'll start on page 1.

25 In talking about -- well, I wanted to -- your
26 second full paragraph, which also references your Figure 2
27 at the back of your exhibit, the difference between the
28 mailbox price and the blend price. And I know you



1 adjusted these to be at standard 3.5% butterfat.

2 But you draw the conclusion that this is an
3 example of the erosion of milk premiums, and I was
4 wondering if you could expand on how you were able to draw
5 that conclusion.

6 A. (Ms. Krebs) Well, when you look at Figure 2, what
7 you see is that your mailbox price is decreasing relative
8 to that blend price. And so as a result, we look at that
9 as being an indicator of erosions of the premiums
10 available for the -- what the farmer would be receiving
11 relative to the Federal Order blend.

12 Q. Okay. But in the next sentence you talk about
13 some of that might be other factors. What possible other
14 factors could -- could --

15 A. (Ms. Krebs) One of the -- in talking with some
16 others across the industry, one of the things that was
17 suggested to me was early on, like as Dean Foods was
18 looking to compress margins, that there's some things that
19 were going on there that probably had some impact as well.
20 And there was some suggestion of other pieces, quite
21 frankly. I don't recall those offhand.

22 But the thinking as I have tested this with some
23 different people across the industry that are experienced,
24 knowledgeable, is that a significant contributor is that
25 erosion of the premiums that have been available at the
26 farm level.

27 Q. Okay. And then in the next sentence you say that
28 this deterioration is clearly associated with increasingly



1 outdated Make Allowances. I also wanted you to kind of
2 expand on how you made that conclusion.

3 A. (Ms. Krebs) Well, I think it's -- the expectation
4 is that we have a minimum pricing system to help ensure
5 for the orderly marketing of milk, and that if you are to
6 appoint where your negative -- your premiums are going
7 into negative territory, then are you actually priced at a
8 minimum price? And then when you combine that with the
9 Figure 1 that we have also at the back here and looking at
10 the example of the underpricing in the Upper Midwest, and
11 we know there's been a lot of milk dumping this year.

12 And so you -- it's really putting different pieces
13 together to say, ahh, this looks to -- to be a situation
14 where we have very outdated Make Allowances, you have a
15 lot of pressure on your manufacturing assets as a result,
16 and so you don't have a marketplace that is orderly, in
17 all cases, and you get -- you are getting away from that
18 minimum pricing system.

19 Q. Okay. So if I could kind of restate in your own
20 words what I think I heard.

21 A. (Ms. Krebs) Yes.

22 Q. How I'm interpreting what you said is that because
23 of what you contend are outdated manufacturing allowances,
24 perhaps that's eroded some of the premiums that were
25 available previously because the manufacturer needs that
26 money to cover some more of their manufacturing costs?

27 A. (Ms. Krebs) We really haven't had the opportunity
28 or the capital available to invest appropriately. And we



1 will testify later on on Make Allowances, and I'm happy to
2 talk about it today or we can talk about it when we get to
3 that topic. But, yeah, it's provided a lot of stress to
4 the industry and limited the amount of capital that's
5 available to help the industry grow and process milk.

6 Q. Okay. I'm sure we'll come back to this later
7 then.

8 But in the next paragraph, you state at the end,
9 "U.S. industry is now resource driven versus market
10 driven."

11 Could you expand on that a little bit?

12 A. (Ms. Krebs) Well, I think it is really consistent
13 with what I had just mentioned, is that because you
14 have -- because of those outdated Make Allowances and
15 because you haven't had adequate investment or capital
16 available to invest in additional dairy processing
17 capacity, that it's basically, well, what capacity do we
18 have available, and then we're going to adjust our milk
19 supply to that capacity, as opposed to saying, well, what
20 are the opportunities we have as a marketplace, whether it
21 be domestic or international, and then let the market
22 react to and drive that as opposed to limitations in
23 processing capacity.

24 Q. Okay. So if there was the money to invest in
25 plants available in recent history, you would say it would
26 become more market driven, there would be that capacity
27 invested to make the product that's being driven by the
28 market?



1 A. (Ms. Krebs) I would suggest that economic
2 principles would likely result in that -- in the outcome,
3 yes.

4 Q. Okay. And I think you did have testimony, or
5 maybe a previous witness, that some of that capacity is
6 coming online now?

7 A. (Ms. Krebs) We do have some capacity that's
8 coming online, but whether it's really sufficient or the
9 opportunity that could be provided to farmers and to the
10 U.S. dairy industry, I think that's still a very
11 significant question.

12 Q. Okay. And then when you talk about balancing
13 supply and demand, you have a statement in here about
14 "existing federal regulated pricing system is designed to
15 balance supply and demand at the farm level." And I think
16 there was some other pieces -- parts of your testimony
17 that kind of talks about -- or hints about what you
18 believe is kind of the policy objective of Federal Orders.

19 You know, I know there's been discussions, too,
20 about exports and the amount of milk going to exports and
21 somehow should Federal Orders, I don't know, acknowledge
22 that reality in some way. Those are my words, not any
23 used here previously.

24 But I wonder if you could kind of expand on what
25 you contend is the overall policy objective of the Federal
26 Order system that we should be striving to meet?

27 A. (Ms. Krebs) Yeah. Well, my understanding and --
28 is that there's two main premises. And maybe I should



1 have Sue be talking to this.

2 But one is to ensure the availability of fluid
3 milk. And, of course, as a manufacturer of cheese, that's
4 not the arena in which we play, so I haven't really
5 addressed that aspect or really can't speak much to that
6 aspect of it.

7 But the other piece being the orderly marketing of
8 milk. And so it's how do we make sure that we have got
9 the processing capacity available to --for the milk that's
10 produced at the farm level to satisfy the demand of the
11 marketplace, be it domestic or international.

12 Sue?

13 A. (Ms. S. Taylor) Yeah, I think of the Federal
14 Order system as balancing market power in its original
15 objectives, amongst the other things that Alison already
16 mentioned. And it's translating the revenue available in
17 the marketplace, again, at the market-clearing levels,
18 into the prices that dairymen will receive. And there are
19 a number of documents and statements from USDA AMS in the
20 past that clarified very, very clearly that Federal Orders
21 are not a support program. They are the mechanism to
22 transmit the market value from processors to producers.

23 Q. So kind of along that line, the next page on
24 page 3 when you talk about regulation of markets for milk,
25 you say, "Regulation should facilitate farmers having
26 markets for their milk. If sufficient processing capacity
27 is not available within a reasonable distance to farms,
28 transportation costs will make those farms uncompetitive."



1 Is that a -- is that a concern, that Federal
2 Orders specifically should be thinking about that --
3 whether or not there's sufficient capacity available
4 within a reasonable distance to the farms?

5 A. (Ms. S. Taylor) I believe that it is, that, A, if
6 there isn't sufficient capacity, it's likely reflective of
7 the fact that the regulated price has been set at too high
8 a level, that you are not properly -- or reflecting the
9 balance of supply and demand. The regulations should not
10 constrain capacity development and define essentially what
11 products are produced by those regulations distorting the
12 marketplace.

13 Q. And so that kind of ties into the next paragraph
14 when you talk about "regulation should not be used to run
15 into the ground manufacturers who have invested in
16 balancing assets that benefit the overall industry"?

17 That's sort of a question mark at the end, but not
18 a -- it is like a fuzzy one, I think.

19 A. (Ms. S. Taylor) Yes. Again, the Federal Order
20 regulations should not be set the prices should not be set
21 at above market-clearing levels.

22 Q. Okay. Now, moving on to your specific written
23 opposition to Proposal 3, you talk about -- Proposal 3
24 would "remove one of the most important milk balancing
25 tools of the industry from a product perspective."

26 Can you talk about how it will do that?

27 A. (Ms. S. Taylor) Barrels are clearly an important
28 balancing product at this point in time. And, you know,



1 on its face, it is eliminating barrels from consideration
2 in the milk pricing system and would likely, based on most
3 recent trends, put the barrel producers at a loss.

4 Q. I have asked that similar question to others.
5 Then, so what would the impact be to barrel manufacturers
6 and kind of how would they adjust if Proposal 3 was
7 adopted.

8 So, do you have an opinion on that?

9 A. (Ms. S. Taylor) I think it could be a combination
10 of some barrel makers going out of business and some
11 barrel makers redeploying assets over to block,
12 contributing to decreases in block prices and increased
13 volatility as block increasingly became more of a balancer
14 than it currently is.

15 Q. I'm trying to decide how to word questions in my
16 head, Ms. Taylor, so bear with me.

17 On page 4, you do mention volatility, how removing
18 barrels would add to volatility to the block market.

19 So it is your opinion that that volatility is a
20 bad thing?

21 A. (Ms. S. Taylor) Volatility, if it can't be
22 properly managed, I believe, diminishes demand. In the
23 marketplace you have, whether it is at the retail level or
24 food service level, where increased volatility will cause
25 customers to look at alternative ingredients that don't
26 have that level of volatility.

27 Now, the risk management tools that we have today
28 have provided us with an opportunity to address some of



1 that concern. But, candidly, going back to the early
2 period of risk management, once futures were just
3 launched -- but it was difficult to execute -- I had a
4 customer, who in a period of volatility told me that if we
5 cannot better manage our price volatility on dairy, we
6 will formulate it out of our menu. And this was a
7 regional, midsized food service outlet restaurant chain.

8 So, yes, I -- I believe that volatility hurts the
9 entire dairy industry by diminishing demand, so long as
10 it's not managed properly.

11 A. (Ms. Krebs) And I'm going to add just one
12 additional piece to that. That addresses the domestic
13 market, but certainly on the international side of
14 things -- and we do export quite a bit internationally --
15 we -- that is a challenge that we have to work with for
16 our international customers, and competing for those
17 international markets is the volatility that we see in the
18 CME relative to volatility in prices out of Europe or out
19 of New Zealand, and so that can become a competitive
20 disadvantage for the U.S. industry.

21 Q. Okay. Thank you.

22 You mentioned too on this page in referencing, if
23 we discontinue barrels, they will be continued on the CME
24 spot barrel market, which could further compound the
25 confusion across the marketplace.

26 Could you expand on that a little bit?

27 Kind of in the middle paragraph on page 4 if you
28 are looking for it.



1 A. (Ms. Krebs) Sorry. Could you repeat the
2 question, please?

3 Q. Sure. In the bottom of this paragraph you are
4 talking about how if we removed barrels from the NDPSR and
5 the protein price, there would still be a CME market --
6 spot barrel market, but that could "further compound
7 confusion across the marketplace."

8 I assume that's because you are saying there would
9 be -- there would be no NDPSR barrel price to kind of
10 compare it to, and I just was wondering if you could just
11 expand on how this would further compound confusion in the
12 marketplace.

13 A. (Ms. Krebs) I think the challenge that you would
14 have is that you do have some of the industry that does
15 some pricing off of NDPSR as well as off of the CME. And
16 so if you have one of those tools available, the other one
17 goes away, do you start to run into issues for different
18 players within the marketplace, and have that added
19 complexity. I think also the fact that you would be
20 removing it out of the milk pricing formula and looking at
21 it remaining within the CME could cause additional
22 confusion for players as well.

23 Q. Because there could be two different prices for
24 them to look at?

25 A. (Ms. Krebs) What do you do, a discount -- or a
26 premium to blocks or do you go off the CME price?

27 Q. Uh-huh. Okay.

28 On the discussion of 640s, in the top of the page,



1 I think I gather from that you were saying that 640s
2 balance themselves because they cut -- they can cut them
3 into 40-pound blocks and sell them as 40-pound blocks. So
4 intuitively that balancing price is already reflected in
5 the 40-pound block price.

6 Is that what I should gather from that paragraph?

7 A. (Ms. S. Taylor) That's when we -- what we have
8 been told. We are not traders specifically in the 640
9 market. There will be 640 producers who will be
10 testifying later, and we believe that they will be
11 testifying to that fact.

12 Q. Okay. Thank you.

13 And then I am going to ask a simple question
14 because I'm learning a lot about cheese production these
15 past few weeks.

16 Can you for the record just state what pasta
17 filata cheese is? That's a new term for me.

18 A. (Ms. Krebs) Pasta filata cheese. Mike Brown
19 talked a little bit to this earlier today, but it's
20 basically after you have the curd washed and cleaned, then
21 to create pasta filata cheese -- you know when you pull
22 string cheese and it kind of peels off in strings, or when
23 you have got melted mozzarella cheese, that stretchiness
24 you get with the cheese? That's the result of the pasta
25 filata process. It is a heating, a kneading, a stretching
26 process, that aligns the proteins that give it that
27 stringiness in the chilled product or that stretchiness
28 that you see in the cooked product.



1 Q. Okay. So it's a manufacturing process?

2 A. (Ms. Krebs) Yes.

3 Q. Got you.

4 And then in your discussion on mozz, and including
5 those, I think you basically contend -- well, a few
6 things, but one of them is there's not really a lot of
7 bulk sales of mozzarella, that it is already -- those
8 manufacturers who, like yourselves, Leprino, manufacture
9 mozzarella, you kind of do that retail packaging on your
10 own or --

11 A. (Ms. S. Taylor) There's -- within the bulk sale
12 category. Most of that's already value-added in some
13 format. And so there may be large volumes, but not of a
14 generic block format, that's not value-added, whether it
15 is an ingredient adjustment or process adjustment.

16 Q. Okay. Just one last question from myself, and I
17 think Mr. Wilson has a few questions.

18 On your Figure 2, your mailbox prices and your
19 blend price, you say "Source: USDA" but -- and then I
20 think I heard you say earlier that you took the average of
21 all the announced mailbox prices?

22 A. (Ms. Krebs) Yes, it's a weighted average.

23 Q. Okay. The mailbox prices?

24 A. (Ms. Krebs) Uh-huh. Across the regions, yep.

25 Q. Uniform prices?

26 A. (Ms. Krebs) Yes. Uh-huh.

27 CROSS-EXAMINATION

28 BY MR. WILSON:



1 Q. Todd Wilson, USDA.

2 To follow up with that real quick, you weighted
3 the mailbox prices that were -- that are announced. You
4 weighted it, how?

5 A. (Ms. Krebs) Well, by volume based on the region
6 that the -- the price comes from. So if it's by the
7 state mailbox prices, whatever, that's announced.

8 Q. Okay. So when USDA announces mailbox, it has
9 different regions or whatever, and so you group those
10 together based on --

11 A. (Ms. Krebs) The relative volume that comes --

12 Q. What's in NASS or something?

13 A. (Ms. Krebs) Uh-huh.

14 Q. And then you -- you adjusted those announced
15 prices to a 3.5 --

16 A. (Ms. Krebs) Yes.

17 Q. -- to a 3.5 standard --

18 A. (Ms. Krebs) Right.

19 Q. -- on a weighted basis?

20 A. (Ms. Krebs) That's correct.

21 Q. All right. Thank you.

22 Back up on page 2, just to get my head kind of
23 working in the right direction. Middle paragraph, you
24 talking about supply, capacity, things like that.

25 Your last point is kind of that the opportunities
26 for U.S. dairy are more abundant but are being lost
27 because the regulated price exceeds the market-clearing
28 price. But we have heard testimony that there is



1 increased capacity coming online, but yet, I don't think
2 that's the barrel -- from the testimony, that's not the
3 barrel manufacturing that's coming online.

4 But are you implying -- are you stating that the
5 market-clearing price is impacted by the barrel capacity?

6 A. (Ms. Krebs) Not directly. This is really
7 talking -- this particular portion of the testimony is
8 broader, bigger picture than just block-barrel. It is
9 basically saying, what -- do we have the capacity or what
10 could we be doing as an industry, from the farm level and
11 the resources and what processing manufacturing assets do
12 we have available? And there's several indicators that we
13 are constrained on the processing side at this point.

14 Q. Okay. So the capacity you are -- that you are
15 talking about in the paragraph, is it -- is it the dairy
16 industry capacity --

17 A. (Ms. Krebs) Yeah, overall for the industry, as
18 far as, yeah, the processing capacity and having that
19 capacity available to clear the market of milk, especially
20 during the peak seasons of the year, and to process
21 additional product.

22 MR. WILSON: That's all, your Honor. Thank you.

23 THE COURT: Mr. Miltner?

24 MS. KREBS: Ms. Taylor, I think there was one
25 other question you had earlier for Mike Brown that I'll
26 respond to. You had asked how big is a tote?

27 MS. TAYLOR: Oh, yeah.

28 MS. KREBS: Yeah. A thousand pounds is how big



1 our totes are.

2 MS. TAYLOR: Thank you.

3 MS. KREBS: Uh-huh.

4 MS. TAYLOR: I'm glad someone remembers my
5 questions.

6 RE CROSS-EXAMINATION

7 BY MR. MILTNER:

8 Q. Thank you. A couple of questions I came up with
9 were prompted by some other questions. So hopefully this
10 won't take so long.

11 Are you familiar with this concept that the last
12 load of milk sold sets the market?

13 A. (Ms. S. Taylor) I wouldn't say that the last load
14 of milk that is sold sets the market. I have heard it
15 applied to the cheese side.

16 Q. But you don't necessarily agree with it?

17 A. (Ms. S. Taylor) I would say that the CME spot
18 market is reflective of supply and demand, and that could
19 be the last load sold or the last load purchased in the
20 case of shortage situations.

21 Q. Are you thinking about cheese or are you thinking
22 about raw milk?

23 A. (Ms. S. Taylor) Cheese.

24 Q. Okay. On the raw milk side, have you heard a
25 similar concept, that the last load of milk that is sold
26 sets the market for raw milk?

27 A. (Ms. S. Taylor) No.

28 Q. Okay. You were -- in response to questions from



1 AMS, you suggested that -- if I could paraphrase it --
2 that the market -- the milk market is oversupplied
3 relative to available plant capacity.

4 Is that accurate?

5 A. (Ms. Krebs) I think we have seen some signs
6 recently that suggest that that is the case, that we have
7 some indications of disorderly marketing. Probably the
8 biggest signs that we have seen this year are the stories
9 of milk dumping in some of the Upper Midwest. And then at
10 Figure 1 that I have in my testimony, that shows how the
11 Class III price or the -- sorry -- the spot price had
12 fallen below the Class III price for an extended period of
13 time.

14 So I think we are seeing -- certainly seeing
15 symptoms of disorderly marketing and tight processing
16 capacity.

17 Q. In your Figure 1, it really doesn't look like
18 that's a recent phenomenon, as I look at that. Would you
19 agree that, actually, in most months, the spot milk price
20 is below your Class III price?

21 A. (Ms. Krebs) I think when you look at that
22 particular chart, you can see that -- yeah, I -- I mean,
23 the data is the data that we see. But I think the
24 severity of the discounts that we have seen this year and
25 the duration of that timing shows that we have certainly
26 had a very, very difficult year so far, really up until
27 August in the Upper Midwest, when you started to see
28 supplies tighten up and get into seasonal decreases in the



1 production and things like that. But it's been a very
2 difficult year in the Upper Midwest for anybody that sells
3 on spot.

4 Q. And Figure 1 also demonstrates, does it not, that
5 because of the ability of manufacturers to not pool, that
6 they have an advantage to acquire milk at substantial
7 discounts when there is an oversupply relative to
8 available capacity?

9 A. (Ms. Krebs) I think what we are looking at here
10 is the Federal Order system is supposed to be a minimum
11 pricing system, and it's supposed to be at market-clearing
12 levels. And to me, this -- this particular figure shows
13 that we have some challenges with, actually, are we
14 actually clearing market-clearing milk at that minimum
15 price, and is that minimum price properly set at this
16 time.

17 Q. Within every Federal Order, perhaps with the
18 exception of Florida, there's always a certain volume of
19 milk that is produced but not pooled, isn't there?

20 A. (Ms. S. Taylor) I don't have the data to confirm
21 that there's always. "Always" is a very expansive
22 descriptor.

23 Q. How about most of the time?

24 A. (Ms. S. Taylor) Could you reask your question?

25 Q. Sure. In -- in most situations, in most Federal
26 Orders, there is a volume of milk that is produced, but is
27 not producer milk, it is not pooled on the order, correct?

28 A. (Ms. S. Taylor) I don't have evidence of that.



1 If we go back further to periods where the minimum prices
2 were, in fact, set at minimum levels, there -- the level
3 of participation varies in large part by the
4 attractiveness of the pool and the pool draw.

5 Q. Doesn't Figure 1 suggest that whoever is clearing
6 the market, whether it's a barrel manufacturer, a block
7 manufacturer, or a Class IV manufacturer, they are often
8 clearing the market with milk that is opportunistically
9 purchased?

10 A. (Ms. S. Taylor) They may be clearing the market,
11 yes, with milk that is opportunistically purchased. It
12 may not be a very large portion of their milk. This is --
13 doesn't have volume indication, so it is not an indication
14 that the minimum price is not binding, intrusive, and
15 contributing to losses within that same manufacturing
16 plant.

17 Q. So has the last load of milk set the market?

18 A. (Ms. S. Taylor) No, if they are buying most of
19 their milk at regulated minimums. But opportunistically
20 taking the opportunity to buy few loads, I would say you
21 have multiple markets, you have a regulated market, which
22 they may be contractually obligated to, and then they --
23 you have the spot market that could be opportunistic.

24 Q. If the markets are being cleared today with
25 opportunistically purchased milk, how would the
26 elimination of barrels from the survey change that
27 reality?

28 A. (Ms. S. Taylor) The elimination of barrels would



1 likely increase the volume that was opportunistically
2 cleared and create greater disorder and disruption and
3 competitive issues across manufacturers.

4 Q. And one last thing I'd like to ask about, and
5 that's on page 3 of your statement. And it is at the
6 bottom.

7 It's where you quote from the 2013 final decision.
8 And although I don't like reading those out, I think I
9 will because I think it's important. "Eliminating the
10 barrel price from the protein price formula would
11 significantly and needlessly reduce the volume of cheese
12 used in the Class III product price formula, which could
13 lead to protein prices, that are not as representative of
14 the national cheese market."

15 And I have read that several times since you --
16 since I've had the statement in my hand, and I'm trying to
17 figure out how does that establish that the barrels are
18 not included in the survey merely to provide volume as
19 opposed to price?

20 A. (Ms. S. Taylor) Please ask your question again.

21 Q. The statement that you included there and that I
22 read, I don't understand how that definitively establishes
23 that barrels are surveyed to provide price data versus a
24 breadth of volume.

25 A. (Ms. Krebs) The way I read it is that you are
26 really putting the two together. It is the volume and the
27 price that are needed because it talks about the volume of
28 cheese used in the product price formula to properly price



1 the protein. So I -- I guess I -- that's the way I
2 interpret that.

3 Q. Do you have anything to add, Ms. Taylor?

4 A. (Ms. S. Taylor) No.

5 Q. Okay. Thank you.

6 MR. MILTNER: That will end my cross. Thanks.

7 THE COURT: Mr. Rosenbaum.

8 RE-CROSS-EXAMINATION

9 BY MR. ROSENBAUM:

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

12 I want to follow up on the very last set of
13 questions that were being asked of you, and call your
14 attention to -- still talking about the 2013 final
15 decision.

16 And on page 9274 of that decision, there's a
17 sentence that you quote elsewhere I believe in your
18 testimony, where USDA states, quote, "blocks and barrels
19 have different supply and demand functions," end quote.

20 Do you recall that?

21 A. (Ms. Krebs) Yes.

22 Q. And do you recall there making that statement in
23 the specific context of addressing what the implications
24 are in having both blocks and barrels in the formula?

25 A. (Ms. Krebs) Yes. That's correct.

26 Q. And does that suggest that it's not merely a
27 question of adding more volume by having barrels in, but
28 rather, you are buying -- including barrels, incorporating



1 into the formula, a different set of supply and demand
2 functions?

3 A. (Ms. Krebs) Yes.

4 Q. And then that the -- there's a sentence that
5 follows -- two sentences later, still on page 9274, where
6 the USDA decision follows, quote: "Since barrel cheese
7 prices exceed block cheese prices at certain times due to
8 different supply and demand curves, average prices will
9 not in and of themselves indicate cost differences."

10 Now, is that a further indication that from USDA's
11 perspective the inclusion of barrel cheese in the formula,
12 as currently exists, will, A, incorporate the different
13 supply and demand curves that apply to barrel versus
14 block?

15 A. (Ms. Krebs) Yes.

16 Q. And that barrel cheese prices and block cheese
17 prices are not always going to be the same, correct?

18 A. (Ms. Krebs) Yes. That's correct.

19 Q. And that's the very introductory phrase, quote,
20 "Since barrel cheese prices exceed block cheese prices,"
21 end quote. Isn't that a recognition of the difference
22 between the two products from a pricing perspective?

23 A. (Ms. Krebs) Yes.

24 Q. And just to be clear -- sure that we're orienting
25 ourselves, although this decision is dated 2013, it
26 actually is the final decision coming out of the 2008
27 hearings, correct?

28 A. (Ms. Krebs) That is correct.



1 Q. Took five years to get to a final decision?

2 A. (Ms. Krebs) 2006, 2007 hearing.

3 Q. Although to be fair, there was I believe a
4 tentative final decision that we were operating under for
5 many years, so it's not like USDA was necessarily being
6 dilatory. It just took a while to get to the final
7 document, correct?

8 Is that your recollection, Mrs. Taylor?

9 A. (Ms. S. Taylor) That's correct. It was a hearing
10 that was 2006 and 2007, with the decision, the preliminary
11 decision -- I may have the wrong terminology, whether it
12 was preliminary or tentative -- implemented I believe
13 October of 2008.

14 Q. Okay. And then that -- we can look at the record.
15 I believe this was a situation where they imposed a
16 tentative final decision that was effective immediately,
17 but they allowed for further comments. And we lived under
18 that new regime for five years, and then USDA announced a
19 final decision saying, basically, and by the way, we
20 haven't changed our mind --

21 A. (Ms. S. Taylor) Yes.

22 Q. -- we're going to keep with this.

23 Is that more or less how it worked?

24 A. (Ms. S. Taylor) Yes.

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

26 THE COURT: Further re-cross?

27 Mr. Nielsen, redirect?

28 MR. NIELSEN: No redirect, your Honor. Just at



1 this time I would move to admit Exhibit 133 into evidence.

2 THE COURT: Seeing no objections, Exhibit 133 is
3 entered into the record.

4 (Thereafter, Exhibit Number 133 was received
5 into evidence.)

6 MR. NIELSEN: Thank you.

7 THE COURT: Thank you. Thank you for coming.
8 Thank you for your time. You may step down from the
9 stand.

10 Okay. It's 4:54. I don't think we can do another
11 witness before 5:00.

12 Just so we all know what to do with our evening,
13 and there's no confusion, no criticism of anybody about
14 this, but I would ask, what is coming up next? What do we
15 think we have on deck for tomorrow?

16 MS. TAYLOR: According to my notes, your Honor, we
17 have Dr. Marin Bozic who does want to testify tomorrow.
18 His testimony is up on the website as Edge-4, Exhibit
19 Edge-4.

20 THE COURT: Okay.

21 MS. TAYLOR: I think that would be -- and he's got
22 printouts if anybody needs one.

23 I'm not sure if there's any other testimony on
24 this particular topic. Looks like it.

25 MS. HANCOCK: I'm going to the microphone so she
26 can hear me as well.

27 Your Honor, we have two -- three rebuttal
28 witnesses tomorrow. I think that they are all going to be



1 brief -- well, brief on my best guess, for whatever that
2 means. But -- and then it should close out -- I think it
3 will close out those topics, and then we would plan to
4 move to Make Allowances.

5 Oh, so it will be Rob Vandenheuvel, Dr. Peter
6 Vitaliano, and Christian Edmiston -- no, Darin Hanson. I
7 apologize. It is Wednesday. Tomorrow.

8 So it will be Darin Hanson, Rob Vandenheuvel, and
9 Dr. Peter Vitaliano would be our three rebuttal witnesses.

10 THE COURT: Okay.

11 Yes, Mr. Rosenbaum.

12 (Court Reporter clarification.)

13 MR. ROSENBAUM: I'm just trying to plan for
14 ourselves. I know you -- I think you have ten
15 witnesses -- or 11 witnesses actually for -- on
16 Make Allowance issues. I mean, are you only presenting
17 those three or --

18 MS. HANCOCK: None of those are Make Allowances.

19 MR. ROSENBAUM: Oh, those are your rebuttal
20 witnesses.

21 MS. HANCOCK: Those are the rebuttal witnesses,
22 and then I will tell you my Make Allowances next.

23 MR. ROSENBAUM: And the plan will be you all will
24 go next with your Make Allowances, right, I assume?

25 MS. HANCOCK: I think that's the plan.

26 MR. ROSENBAUM: I mean, we have three different
27 Make Allowance proposals, I guess, but National Milk has
28 the lowest number, so I'm assuming that they will go



1 first.

2 MS. TAYLOR: Yeah. That will be my --

3 MS. HANCOCK: And I think -- so our first -- our
4 first three witnesses for Make Allowance would be
5 Dr. Peter Vitaliano, and then Christian -- I knew he was
6 here for a reason -- and then Christian Edmiston, and then
7 Paul Bauer, other than the stuff he's done already.

8 Yeah. And then we do have dairy farmers that are
9 planning to testify tomorrow, and we'll have their
10 testimony submitted in the morning.

11 Tomorrow is 9/6. So we will have -- I think we
12 have Kristine Spadgenske, S-P-A-D-G-E-N-S-K-E; Carl, last
13 name W-E-D-E-M-E-Y-E-R, Wedemeyer; Brian Rexing; and then
14 one from MMPA; Paul Windemuller; Doug Chapman.

15 Yeah, if we get through all those.

16 THE COURT: That sounds like a reasonable
17 projection -- not that we'll get through them, but the --
18 looks like we have laid out a map forward that should last
19 us a couple of days, I would think, maybe take us into
20 9/7.

21 Anyone else have anything to say?

22 Okay. We're at 4:59. We're adjourned for the
23 day. Thank you.

24 (Whereupon, the proceedings concluded.)

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I, MYRA A. PISH, Certified Shorthand Reporter, do hereby certify that the foregoing pages comprise a full, true and correct transcript of my shorthand notes, and a full, true and correct statement of the proceedings held at the time and place heretofore stated.

DATED: September 24, 2023
FRESNO, CALIFORNIA

MYRA A. PISH, RPR CSR
Certificate No. 11613



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