

**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 6, 2023

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20 Lucas Sjostrom

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22
23 (Please note: Appearances for all parties are subject to
24 change daily, and may not be reported or listed on
25 subsequent days' transcripts.)

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1 WEDNESDAY, SEPTEMBER 6, 2023 - - MORNING SESSION

2 THE COURT: Good morning, everyone.

3 What's first up?

4 MR. SJOSTROM: Good morning, your Honor. Lucas
5 Sjostrom, Edge Dairy Farmer Cooperative, and we've got
6 Dr. Bozic with the outgrowth of proposals from earlier
7 this week and last week.

8 THE COURT: Very good.

9 Dr. Bozic, let's swear you in again. Raise your
10 right hand.

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

14 THE COURT: Your witness.

15 MR. SJOSTROM: Thank you, your Honor.

16 DIRECT EXAMINATION

17 BY MR. SJOSTROM:

18 Q. Dr. Bozic, welcome back to the stand. I
19 understand that we have got some testimony which has been
20 distributed related to Proposal 3 and 4 that's been an
21 outgrowth of those proposals, and you have prepared some
22 testimony.

23 Is that correct?

24 A. Good morning, Lucas. That is correct.

25 Q. All right. And would you introduce yourself,
26 briefly?

27 A. Marin Bozic, president of Bozic, LLC, advisor to
28 Edge Dairy -- advisor to Board of Directors of Edge Dairy



1 Farmer Cooperative. And I have already stated my
2 credentials two weeks ago. Nothing has changed since.

3 MR. SJOSTROM: So, your Honor, just for
4 housekeeping, we have provided USDA Edge-2, which we have
5 prelabeled as Exhibit 76. So we can admit that in the
6 record with your permission at the end.

7 And then we have also got here Edge-4, I don't
8 know the number that that one will be, but --

9 THE COURT: The next exhibit I have is -- is 134.
10 Let's mark Edge-4, Exhibit 134 for identification.

11 (Thereafter, Exhibit Number 134 was marked
12 for identification.)

13 MR. SJOSTROM: Thank you, your Honor. So we can
14 admit those at the end if that's the tradition we're
15 carrying on.

16 THE COURT: Yes.

17 MR. SJOSTROM: Wonderful.

18 BY MR. SJOSTROM:

19 Q. So, Dr. Bozic, would you please summarize the
20 written testimony that you provided?

21 A. Thank you, Lucas.

22 Good policy design must be fair to both farmers
23 and processors. On the processor side, both cooperatively
24 owned processors and privately held processors of dairy
25 products, and that includes fluid milk product makers.

26 We believe that risk management is critical for
27 our nation's dairy farmers, cheese and dairy -- dry dairy
28 product exporters and, yes, innovators in fluid milk



1 sectors as well.

2 These principles compel us to react to proposals
3 and testimonies offered last week and this week with a
4 commentary that we hope that all interested parties will
5 find to be based on sound economics and common sense.

6 Edge agrees with both National Milk Producers
7 Federation and American Farm Bureau Federation that
8 changes to the National Dairy Product Sales Report
9 methodology and mandatory price reporting are indeed
10 needed to improve orderly marketing of milk in the United
11 States.

12 But we also find that the IDFA testimony and the
13 position to these proposals was well reasoned. Prior to
14 this hearing, Edge did not originally plan to weigh in on
15 this topic, and that's why we did not submit our own
16 proposal, initially.

17 However, having read the testimonies of both the
18 proponents and the opponents to Proposals 3 and 4 and --
19 and having had a chance to cross-examine some of the
20 witnesses, we respectfully request the industry and AMS to
21 allow us to present an alternative protocol, which is a
22 natural outgrowth of this discussion so far, attempts to
23 bridge the differences between parties who have testified
24 so far without compromising on the quality of the
25 solution.

26 Rather than rejecting Proposals 3 and 4, we urge
27 AMS to consider an alternative protocol proposed in this
28 testimony, which we believe is a better way to address the



1 problem with surveys than either eliminating barrel
2 cheese, adding additional cheese, or preserving the status
3 quo.

4 We believe this is in scope. We are basically
5 midway between some of the proposals and status quo in
6 what we are proposing here.

7 So proposed by answering the questions --
8 providing answers to four questions: Why it happened,
9 block-barrel spread; what happens next over the next few
10 hears; what will not happen, no matter what we do; and
11 then what principles to use to decide on the principle
12 basis what the policies should be.

13 So let's start with why it happened.

14 We believe that volatility in the block-barrel
15 spread which started in 2017 was mostly due to the
16 increase in barrel manufacturing capacity in several
17 cheese plants, in Minnesota, Texas, and Wisconsin, which
18 were commissioned in a pretty short time span.

19 The contributing factors were volatility in cheese
20 export volumes and lack of robust growth in domestic
21 processed cheese sales. So that's what happened in our
22 opinion. A lot of it had to do with barrel manufacturing
23 capacity. We'll get back to that when we discuss, well,
24 what happens over the next few years.

25 As the old saying goes, the low prices are the
26 best cure for low prices, and in reaction to this
27 volatility, that before 2017 we just didn't know about, or
28 we had never experienced, several manufacturers of barrel



1 cheese have added flexibility to produce block cheese or
2 have otherwise diversified.

3 And to my knowledge, at least, there are no
4 currently -- there are currently no new barrel cheese
5 plant investments or expansions that were announced. And
6 in contrast, there are several large block cheese plant
7 projects currently under construction, expected to be
8 commissioned in 2024 and 2025.

9 My estimate is that the volume of new block cheese
10 that will be brought to market in 2025, so just as these
11 regulation goes into effect -- unless we delay them --
12 will substantially outpace the typical annual domestic
13 increase in cheese demand due to population growth and per
14 capita increases in consumption. As such, block-barrel
15 spread may very well invert in 2025 because of the growth
16 and supply of block cheese.

17 Let's also talk about what will not happen. Some
18 proponents of the elimination of barrel cheese from the
19 protein formula may believe that such regulatory change
20 would lead to barrel cheese being priced off block cheese.
21 I personally find that expectation not to be well
22 reasoned. Even if NDPSR stops reporting barrel cheese
23 prices in volumes, the CME Group spot barrel market will
24 continue.

25 Even if CME decides to discontinue the spot barrel
26 market under pressure from at least part of the industry,
27 which I hope very unlikely that they will do any change,
28 it will just be a matter of weeks before someone else



1 creates a spot market because there is a need for it.

2 One example -- and I'm not getting any commission
3 from them by saying their name here -- NUI Markets is a
4 fairly new entrant to the North American market, and I
5 understand over 40 companies already in our -- in our
6 nation already work with them. They are a digital trading
7 platform company, and it will be in their best interest to
8 create an alternative spot market for barrels if CME were
9 to eliminate one.

10 So we are always going to have spot market for
11 barrels. Barrels are not going to be priced off blocks
12 would be my forecast.

13 And then, in addition to that, on the innovations
14 in the processing capacity, once fixed costs in processing
15 flexibility are incurred and sales strategies have
16 adjusted, cheese manufacturers who can make either blocks
17 or barrels will react to profitable opportunities to
18 reduce the spread between blocks and barrels by altering
19 their production schedules. Therefore, I expect any
20 deviations in the block-barrel spread from long-term
21 average to be shorter lived in future years than was the
22 case in 2017 to 2021.

23 So with these assumptions, what principles should
24 we use to design a reasonable policy?

25 Edge believes it is fair that manufacturers could
26 make undifferentiated bulk dairy commodities in
27 state-of-the-art facilities, and are pooled and privately
28 held, should have normal returns to invested capital, no



1 more than that -- or at least not guaranteed by the
2 Federal Orders.

3 Those manufacturers who invest in differentiated
4 products should be able to enjoy returns that are on
5 their -- returns on their risk-taking entrepreneurial
6 activities, and what percent of those returns get passed
7 on to dairy farmers will depend on relative availability
8 of milk in their milk shed.

9 Following these principles, Edge holds that the
10 protein price should reflect mostly the block cheddar
11 cheese market value as most cheddar cheese is manufactured
12 as blocks. Various experts I consulted believe that 70 to
13 75% of all cheddar cheese is produced as either 40-pound
14 blocks or 640-pound blocks.

15 However, since the larger percent of block cheddar
16 cheese does not qualify for inclusion in the survey,
17 barrels have a weight that's disproportionate with their
18 true market share in the cheddar market.

19 Farm Bureau attempts to resolve this problem by
20 expanding the range of cheddar cheese formats to be
21 included in the survey, and that proposal does have
22 sufficient merit to be closely considered. However, Edge
23 believes there are -- there is a better way to address
24 this problem, a simpler way, and a solution does not
25 suffer the complications that were properly identified in
26 Mr. Brown's testimony.

27 So I will briefly summarize the new protocol here.
28 In a nutshell, what we would propose be done is to assign



1 the weight to barrels based on their weight of the cheddar
2 cheese market in the nation. And we have -- the data
3 exists to do all of that. There's no new taxpayer money
4 that needs to be expended, or not substantial, to do this.
5 We don't have to include --

6 So step one would be for the NDPSR survey to
7 capture production of all barrel cheese, even barrel
8 cheese that is -- that has to be excluded from the
9 determination of monthly prices, for example, reduced fat,
10 high-moisture, forward priced, etcetera.

11 There will be a new line, excluded sales, that
12 would -- that report the pounds of barrel cheese
13 manufactured in the prior week -- or was it week and a
14 half prior -- prior -- prior week, I believe, but not
15 included for the purpose of weighted average monthly
16 barrel cheese price.

17 We would do that every month, and then after
18 12 months of that, we would have a rolling average -- or a
19 rolling sum of 12 months, which is an annual barrel cheese
20 production. That in itself, by the way, would be
21 excellent for price discovery in the United States because
22 we would have a quick signal that there's something
23 turning in our cheese exports.

24 Step two, determine the relative weight that
25 barrel cheese, cheddar cheese has as a share of the total
26 U.S. cheddar cheese production. And we would -- and this
27 is actually not fine print, this is an essential part of
28 the design -- round that ratio to the closest 5%.



1 And then step number three, we would announce that
2 weight -- we would propose that AMS announces that weight
3 with sufficient advanced notice so that the open interest
4 in cheese contracts is not unduly affected for the next 12
5 or so months.

6 We provided an illustration. All these numbers
7 are, of course, just a thought experiment. They are not
8 real numbers. This is on July 30th, 2025. My forecasting
9 models are not that good. So this is an illustration how
10 NDPSR report for barrel cheese at the end of July 2025 may
11 look like.

12 You can see the new line on excluded sales.
13 Again, just my own assumptions on percent of sales that
14 are excluded, no particular claims made there on the --
15 you know, on the share of excluded, just an illustration.

16 And from the NASS dairy products report, we can
17 pick up the 12-month production of all U.S. cheddar
18 cheese. So, for example, August 2024 through July 2025,
19 let's say that that number is just over 4 billion pounds.

20 There is a formula on page 4 on how to determine
21 the sales weight for barrel cheese, and that sales weight
22 would be announced in this proposal by September 15th,
23 2025, for 2027. So on the same schedule as Edge would
24 prefer Make Allowances and milk composition be announced.

25 I want to briefly touch on why this rounding to
26 the closest 5% matters. This protocol would facilitate
27 risk management by barrel cheese makers. There is an
28 example in the -- in the testimony of how one would back



1 out what's the implied futures price for barrel cheddar
2 cheese once you know what the all-cheese futures are,
3 block cheese futures are, and once you know precisely what
4 the weights on the block and barrels are for determining
5 the all cheddar cheese.

6 And if you round it to the closest 5%, it becomes
7 much easier to reduce the basis risk versus what we have
8 in place today.

9 So, for example, if the barrel weight is announced
10 by AMS to be 20% a barrel, cheese makers can sell five
11 all-cheese futures and buy four block cheese futures to
12 protect against the drop in barrel cheese price. A buyer
13 of barrel cheese would do just the opposite, they would
14 buy five and sell four.

15 Having a spread-based strategy to protect against
16 the drop in barrel cheese price would also help dairy
17 producers who are not pooled on any milk marketing orders
18 and who get paid based on barrel cheese price through
19 cheese yield-based milk pricing formulas.

20 While proposals to include 640 blocks are well
21 meaning, Edge believes that such inclusions would produce
22 essentially the same result, in terms of reducing barrel
23 cheese weight as our suggestion, while unnecessarily
24 introducing barrel risk -- excuse me -- basis risk for
25 barrel cheese manufacturers as weights would not be known
26 in advance. And once you have three products rather than
27 two, you can forget about spread-based hedging, unless you
28 are willing to incur basis risk.



1 So in conclusion, rather than eliminating barrels
2 from the NDPSR survey or adding 640 blocks or preserving
3 the status quo, Edge proposes a reform that would
4 appropriately reduce the weight of barrel cheese -- the
5 weight the barrel cheese has on final announced cheese
6 price. It would improve risk management for both barrel
7 manufacturers and buyers and dairy farmers.

8 And with that, Edge thanks the Secretary and the
9 Department for the opportunity to testify at a hearing on
10 this topic.

11 Q. Thank you, Dr. Bozic. I have a couple of
12 questions for you before I turn you over for cross.

13 So you mentioned no new barrel cheese plant
14 investments or expansions announced. If one were to be
15 commissioned, how long do you think it would be before the
16 industry, the market, would know about it, and how long
17 would it take to build in your estimation?

18 A. If you look at time spans of historical
19 announcements and then the first time that they started
20 taking milk, it is two to three years. We would have
21 plenty of advanced notice. If we are looking at block
22 cheese capacity that may be online in 2025, and we know
23 about those expansions for at least six months, years --
24 in some cases over a year already, and it is 2023.

25 Q. Thank you.

26 And the last question is, when it comes to dairy
27 farms or dairy processors that qualify as small
28 businesses, do you see any benefits or difference if this



1 proposal you have just testified on were to be adopted,
2 positive or negative?

3 A. I know from personal interaction with producers in
4 Idaho that they would love to have a barrel-based protein
5 contract that they can hedge off. There is no way of
6 doing that under current constellation of contracts in
7 CME. If this change were to be promulgated, one could
8 derive, very precisely, the implied futures price for
9 barrel cheese. From there, you could derive the protein
10 price. From there, you can innovate further in dairy risk
11 management.

12 Q. Thank you, Dr. Bozic.

13 MR. SJOSTROM: Your Honor, the witness is
14 available for cross. Thank you.

15 THE WITNESS: Thank you, Lucas.

16 THE COURT: Cross? Other than AMS?

17 Mr. English.

18 CROSS-EXAMINATION

19 BY MR. ENGLISH:

20 Q. Good morning, Dr. Bozic. This is Chip English for
21 the Milk Innovation Group.

22 A. Good morning, Mr. English.

23 Q. And before I ask these questions, I want to
24 emphasize that I have not had a chance to consult with
25 anybody with our client team, so I do not have a position.
26 So I do want to ask, you know, a few questions and make
27 sure I understand it correctly so that I can at least talk
28 about it.



1 So this is -- I'm -- I'm not going to go talk
2 about your testimony itself. I want to talk about what
3 your proposal is --

4 A. Uh-huh.

5 Q. -- consistent with what I just said.

6 So as I understand it, in step one you're only
7 looking to change the volume of product that is included
8 for purposes of calculating the weight that is used in
9 step two; is that correct?

10 A. That is correct.

11 Q. So the actual reported prices and the actual
12 volume applicable to the reported prices would remain the
13 same once you do the weighting; is that correct?

14 A. That is correct. So in the example, in -- on --
15 in the table on page 4, only the volumes, only the pounds
16 in the line "sales" would be used for the weighted average
17 monthly price of the barrel cheese.

18 Q. So --

19 A. Just as is the case today.

20 Q. Yeah.

21 A. No changes there.

22 Q. Right.

23 And then in step two, in the weighting, would
24 NDPSR be reporting in any way what step two is? I don't
25 see step two --

26 A. Yes, sir. So the NDPSR is a weekly survey.

27 Q. Right.

28 A. Weights under this proposal would be announced



1 once per year. So that would be more appropriate for some
2 sort of a new report format or a new report where AMS
3 would -- just like they do annually, they report the dates
4 when the NDPSR is going to come out. That's like a
5 once-a-year report. So once a year they would announce,
6 here are the milk components for whenever that takes
7 effect, here are the weights for barrels and blocks, and
8 here are the Make Allowances once we have mandatory
9 surveys. So that would be like a once-a-year, or in the
10 case of Make Allowances, less frequently than that.

11 Q. And if it's announced once a year, it's applicable
12 the following year. So you are saying in September,
13 applicable in January, so there's 15 months; am I --

14 A. 15 and a half months, yes. That is aligned with
15 our previous argumentation that we should be very, very
16 careful not to disturb open interest. Even open interest
17 in the horizons that are currently underutilized, over
18 time that horizon will in my estimation will be more
19 utilized.

20 Q. And then if I heard correctly, you -- you were
21 interjecting, which I think is very useful in your
22 testimony, something that you said, and round to the ratio
23 of the closest 5%, and you said this is very important.

24 A. That is correct.

25 Q. So could you explain for me why it's very
26 important?

27 A. And I apologize for interrupting you.

28 Yes, the rounding to the closest 5% would allow



1 the spread-based strategies to use integers in hedging
2 barrel cheese. Today, block cheese futures, which are
3 introduced a few years ago, are very, very underutilized.
4 One of the reasons I believe is that there is unnecessary
5 basis risk. A barrel buyer cannot just take a spread
6 between the all-cheese and the -- and the block cheese.
7 They don't know whether the weight is going to be 52% or
8 48% or 60% or 40% a few months down the road.

9 Once we set the weight and we round the weight,
10 then we will give plenty of notice to everyone whether
11 it's a 4/3 spread or a 5/4 spread, five contracts and four
12 contracts, to determine the barrel cheese price.

13 So -- so in the example that -- the first example
14 in the testimony, if we knew that the all-cheese price was
15 three-quarters block and one-quarter barrels, multiply
16 both sides of the equation by four, and you arrive that
17 the barrel cheese is four times all-cheese minus three
18 times block cheese price. I'm missing an X there.

19 That's a much simpler spread to -- to manage. We
20 have -- we know from other sectors in agriculture that --
21 that having integers in the crush, hedging helps. Like,
22 for example, soybean crush, like, you know, I think it's
23 11, 10, 5, or 9, or something like that. I forget now the
24 numbers. But people rely on those stable weights to
25 implicitly -- or indirectly hedge the product of interest
26 to them.

27 Q. I think I barely got that. All right. I think I
28 understand.



1 So when you say rounded to the ratio of the
2 closest 5%, let's say -- so, like -- so the question is,
3 what if that ratio is -- just throwing out a number, this
4 is not, you know --

5 A. Sure.

6 Q. -- it's a thought experiment. Let's say if that
7 is 37.5%, would you recommend it be rounded up or rounded
8 down?

9 A. I'm going to punt on that, and I will put it in
10 Excel and whatever comes up. I don't -- I must admit, I
11 haven't thought that through. That is really --

12 Q. I just thought --

13 A. I would probably look at what's the next decimal
14 after that five. It's highly unlikely that when you
15 combine the NDPSR barrels and the NASS --

16 Q. That it will be exactly?

17 A. That it will be exactly.

18 Q. Okay.

19 A. I will defer to AMS to make the best decision.

20 Q. And I think, depending on your answer, I only have
21 one more question.

22 So on the bottom of page 4, you say, "Until such
23 time as a full year of data of excluded sales could be
24 calculated, AMS should use only reported weights under the
25 current methodology."

26 And I misspoke, I have two questions.

27 The first one is, you're basically, again, trying
28 to give the market time to adjust, so the hedges won't be



1 effected; is that correct? Is that the purpose of the
2 year?

3 A. That is correct. Like in -- in all Edge
4 proposals, you will find strong emphasis on risk
5 management. We don't believe that the government should
6 be choosing winners and losers. But if we are not
7 careful, we can all be losers and -- when it comes to risk
8 management.

9 Q. And then the substantive piece is, "AMS should use
10 only reported weights under the current methodology." I
11 take that to mean that you would stay with the current
12 rule -- we would be announcing the new rule, but the
13 application of the new rule would be postponed until we
14 have the 12 months of data.

15 A. It -- it can really go either way. I don't have a
16 strong opinion on that.

17 One way would be to just use the sales as
18 currently reported. And let's say that we are talking,
19 you know, September 2024 announcement for calendar year
20 2026. One way would be for AMS to say, you know, look,
21 guys, we have only reported sales for the August 2023
22 through July 2024. You are going to use what we have, and
23 the next year the weight is going to go down once we have
24 the -- once we have the excluded sales reported.

25 Q. Okay. And I apologize. I wasn't clear.

26 What I really meant was, what you are saying is
27 that until that time, whenever that time is, we'll use
28 what is currently in the regulation rather than say



1 excluding barrels or adding 640s, correct?

2 You wouldn't temporarily remove one and add
3 another?

4 A. Let me try to answer the question indirectly
5 without the desire to prevaricate.

6 Any change should have a proper advanced notice to
7 the industry. Any change will -- you know, once we know
8 what AMS wants to do, there should be a lag before it
9 kicks into effect, whatever that is.

10 So the first order -- the first priority would be
11 that we should not do anything for 2025. We should --
12 because it may affect, again, the risk management.
13 Rather, we should align the implementation of changes to
14 the survey to kick into effect at the same time as Edge
15 proposes Make Allowances and the milk composition change
16 will take place, which is January 1, 2026, according to
17 our other proposals.

18 Q. Thank you, Dr. Bozic.

19 MR. ENGLISH: I have no further questions.

20 THE WITNESS: Thank you, Mr. English.

21 THE COURT: Yes, Mr. Rosenbaum.

22 CROSS-EXAMINATION

23 BY MR. ROSENBAUM:

24 Q. Steve Rosenbaum for International Dairy Foods
25 Association. Let me preface my questions with similar
26 comments from Mr. English. We have had no discussions
27 with our members as to whether they would -- what their
28 views are on your proposal. So I'm asking questions



1 simply for informational purposes.

2 But I do note that you are intending to have
3 the -- give me one second to get the language -- that you
4 are intending to have the dairy products mandatory pricing
5 reporting expanded in the sense that the survey would now
6 capture the production of all barrel cheddar cheese,
7 correct?

8 A. Good morning, Mr. Rosenbaum. That's correct.

9 Q. And am I correct in understanding, though, that --
10 that you're not seeking to gather information as to the
11 price at which the barrel cheese is sold, unless that is
12 barrel cheese that meets the specifications for inclusion
13 in setting the minimum price, correct?

14 A. That is correct. I think you were spot on last
15 Friday in your cross of Mr. Edmiston. I don't believe
16 that it is authorized under the statute to collect
17 information that is not used. And therefore if you are
18 not using the prices of forward price, lowfat, or
19 whatever, we should not collecting just volumes.

20 Q. So continuing somewhat along the same line, would
21 it -- your -- would it potentially work to have the NDPSR
22 survey expanded to include production data for block
23 cheese to the extent that your proposal would, in fact, be
24 written in a way that the determination of total cheddar
25 cheese production was based upon that information?

26 A. That would be functionally equivalent to what I'm
27 proposing. Assuming that NASS has sufficient precision,
28 that would also be unnecessary. As a fiscal conservative,



1 I was trying to minimize the burden on taxpayers.

2 Q. But one difference is that the -- as the name
3 implies, the NDPSR survey is a mandatory survey and is
4 audited.

5 And would that potentially provide more reliable
6 information to calculate the total cheddar cheese
7 production upon which your proposal then relies to set the
8 minimum price, correct?

9 A. I have no problem considering that point. It
10 would, most assuredly, provide more precise weights. It's
11 a matter of cost benefit. And we didn't want to impose
12 the burden on the industry that did not have a clear
13 benefit.

14 Q. And, once again, it would not be necessary to
15 determine the price at which the block cheese was sold
16 except for that block cheese that actually meets the
17 specifications for inclusion in setting the minimum milk
18 price?

19 A. That is correct. Yes. Just volumes.

20 MR. ROSENBAUM: Okay. That's all I have at this
21 point.

22 THE COURT: Additional cross other than AMS?

23 Ms. Hancock.

24 MS. HANCOCK: Thank you, your Honor.

25 CROSS-EXAMINATION

26 BY MS. HANCOCK:

27 Q. Good morning, Dr. Bozic.

28 A. Good morning, Ms. Hancock.



1 Q. I just have a couple of questions. I want to make
2 sure I understand some of the aspects of your proposal.

3 On page 2 of your statement in Exhibit 134, you
4 talk about that the spot barrel market would continue even
5 if NDPSR stopped reporting the barrel cheese prices and
6 volumes. And I want to explore that a little bit.

7 Do you know why CME or other trading platforms
8 haven't created a spot market for mozzarella given its
9 share of the overall cheese market?

10 A. My understanding is that there is not sufficient
11 uniformity in mozzarella. Old commodity markets require
12 very specific grade or specs. In order to function
13 properly, they require very specific specs, and then they
14 are most successful, where most of the industry naturally
15 conforms to those specs. Number two yellow corn, for
16 example, for corn futures. And I'm sure you're aware that
17 even within the block cheese, there's vibrant discussion
18 whether the specs should be more tighter. Can you imagine
19 how much more difficult that discussion would be in the
20 context of mozzarella?

21 Q. Even though we know that it is at least indexed
22 off of the block cheddar market already?

23 A. It is priced off the block, but that basis is not
24 the time and variant constant. That basis as well is --
25 if I understood Ms. Taylor yesterday correctly, in her
26 testimony, that basis does vary over time with the changes
27 in both domestic competitive situation as well as the
28 export competitiveness at that point in time.



1 Q. So you think that even knowing how the mozzarella
2 market has evolved, that barrels would -- if they were not
3 reported on NDPSR, that they would somehow create a new
4 market for themselves just by natural market conditions?

5 A. I would not -- I guess maybe I don't understand
6 the question. I wasn't referring to the new market. The
7 market already exists for barrels.

8 Q. Oh, I -- I was referring to what you gave as the
9 example in your testimony, where you said even creating --
10 re-establishing the market, and then you said --

11 A. The NUI Markets.

12 Q. The NUI Markets, right.

13 A. Okay. Thank you for clarifying.

14 No, I was referring that there is a dire need for
15 such market, and if you were to abolish CME markets, it
16 would be emerging somewhere else. We have known from
17 history of this country that when there's a need for
18 something, when there's demand for something, people will
19 find a way. We called it speakeasy and bootlegging. We
20 put it in -- the Constitution couldn't prevent it. I'm
21 talking about the alcohol in the 1920s. If the
22 Constitution couldn't prevent alcohol, I don't think that
23 AMS can prevent the barrel market from -- from continuing.

24 Q. And how long would it take -- if it was no longer
25 reported on NDPSR, how long do you estimate that it would
26 take before it would find its alternative path?

27 A. The alternative path already exists. The CME
28 market is existent today. Every morning at 11:05, or



1 somewhere around that time, it is traded. There's nothing
2 that needs to be created. The price discovery is already
3 in place for barrels.

4 Q. So if barrels were to be eliminated from the
5 protein price calculation and -- you think that they could
6 still find an alternative market for themselves almost
7 immediately?

8 A. The -- the alternative market already exists, you
9 know, so the -- the only question is whether the barrel
10 manufacturers would receive a higher price for their
11 barrels if NDPSR no longer reports barrels. And I
12 apologize if I misunderstood some of your witnesses, but
13 that is how I understood some of the testimonies. I don't
14 believe that is going to be the effect, or at least not
15 substantially.

16 Q. That the market will right itself and will pay
17 whatever the actual market rate will be for the product?

18 A. The market will reflect the relative supply and
19 demand at that point in time, what's happening with the
20 processed cheese sales, what's happening with frozen mozz
21 exports, what's happening with barrel capacity relative to
22 block capacity, etcetera. Those are different, you know,
23 supply dynamics in the short-term, and in the long-term
24 those two markets must be joined at the hip because
25 they -- the processing -- excuse me -- manufacturing
26 method and the manufacturing costs are very, very similar.

27 Q. Okay. I want to clarify what your proposal will
28 do and the weighting that you are assigning. And



1 Mr. English covered this a little bit, and I just want to
2 make sure I'm understanding it.

3 Is it accurate to say that the weighting that you
4 have done is based on -- is based on the actual
5 production?

6 A. Are you referring to my illustration or the
7 principle itself?

8 Q. I'm -- well, I'm referring to just your overall
9 proposal, which I think goes into your illustration on
10 page 4.

11 A. The intent is to base everything on actual
12 production. And -- and with the risk of belaboring the
13 point, the illustration on page 4 is in 2025. Those are
14 just fake numbers to illustrate the cost.

15 Q. Okay. And I think that Mr. Brown testified, I
16 think it was yesterday, that it represented about a third.

17 Is that consistent with what your weighting is
18 that's assigned here?

19 A. In the -- in the example that I have illustrated
20 here, I use 20% in one page and then 20 and 25% on the
21 next page, just for illustrative purposes. I believe that
22 we would land somewhere between 20 and 35%. I would have
23 a hard time -- I would have a hard time assigning high
24 probability on a weight that's higher than 35 or less than
25 15 or 20%.

26 Q. And then your proposal would be that that would be
27 adjusted annually based on the actual reported or surveyed
28 volumes?



1 A. That is correct. So your witness yesterday
2 suggested that over time block production is going to --
3 if I understood her correctly -- that block production is
4 going to continue to increase. If that is the case, then
5 the barrel weight over time would continue to slide.

6 Q. Okay. And is there anywhere in your formula where
7 you would be weighting based on the actual pricing in the
8 market of those two products, barrels and block?

9 A. Could you please clarify? I think you mean
10 pricing of other cheese? Is it --

11 Q. For weighting of the difference in actual prices
12 of blocks and barrels.

13 A. The relative prices of milk blocks and barrels are
14 the final steps. You would calculate the monthly price
15 for barrels, monthly price for blocks in the same way, no
16 changes, versus how we do it today. And then the annual
17 weights would be applied to compress those two numbers
18 into a single number.

19 Q. Okay. And so that same volatility that is being
20 observed today looking back to 2017 still has the
21 potential to occur under that model as well; is that
22 right?

23 A. The various of the all-cheese price under the new
24 formula would more reflect the variance in the block
25 cheese price because the relative weight of barrels would
26 probably be halved relative to what it is today. So the
27 barrels would have much smaller influence on the
28 all-cheese price than they have today.



1 Q. Yeah. But the -- but the -- if the -- you have
2 two products that we have heard testimony being very
3 different products; you agree?

4 A. We do have two products. I agree with that.

5 Q. Under your proposal, that both of these products
6 would continue to be priced into the Class III?

7 A. That is correct, yes.

8 Q. And -- and under your model, there -- it wouldn't
9 weight or account for the difference in the spread of the
10 actual prices between those two products; is that right?
11 You create a blended price, essentially?

12 A. At the end of the procedure, we have a single
13 protein price, a single all-cheese price for the month.

14 Q. And so depending on if you were producing -- or if
15 you were producing barrels or if you were producing
16 blocks, you would have people who were engaging in -- in
17 that market that would have winners and losers based off
18 the blended price?

19 A. Perhaps I'm not understanding your question, but I
20 cannot easily agree with that. If you allow me a little
21 bit of latitude to set the stage for my answer.

22 Block cheese makers do have block cheese futures
23 to manage their risk. Block cheese buyers do have block
24 cheese futures to manage their purchase risk. Under this
25 proposal, barrel cheese makers and barrel cheese buyers
26 would also get a precise way to manage their risk. From
27 that perspective, we are not -- we are creating only
28 winners, not losers, because we are allowing barrel cheese



1 makers to more precisely manage risk, which would -- and
2 buyers, which they cannot do currently.

3 If you are referring to makers of mozz or Swiss or
4 some other cheeses that I presume you will stipulate are
5 priced off block, we have never established that their
6 basis over or under block is uncorrelated with the
7 block-barrel spread, and therefore it is not well
8 documented for the record that eliminating barrels would
9 support the orderly pricing of those products as well. We
10 would have to establish -- and we just don't have the
11 data, it has not been provided by the organization -- we
12 would have to establish that the other cheeses that are
13 priced off blocks, that basis is uncorrelated with the
14 block-barrel spread.

15 In fact, there are reasons to believe that it may
16 be more correlated in the future. My forecasts are that
17 40 to 60% of all additional skim solids produced in this
18 country going forward, if we don't change the dairy herd,
19 if we just allow cows to get more productive the way they
20 have been historically, that 40 to 60% of skim solids will
21 be exported, will need to be exported. That means
22 Class IV, but it also means Class III.

23 It is reasonable to forecast that a higher share
24 of cheese produced in this country will be exported in
25 five years than it is today. It is also reasonable to
26 assume that the price dynamic for exported cheese may be
27 more closer related to barrels than to blocks.

28 I'm not saying that -- that I have supreme



1 confidence in that statement. I'm just saying it's --
2 based on data and the dynamics we understand so far, it is
3 not reasonable to conclude, with any level of certainty,
4 that 90% is based on block, and that's the way it is going
5 to stay going forward.

6 We know that exports are going to grow. We know
7 that one of the contributing factors for the block-barrel
8 spread volatility have been the volatility of exports.
9 Exports are great. They allow us to grow our sector. But
10 they come at a certain cost, and that one of that costs is
11 that occasionally we are not competitive, and then we need
12 to find a home for that market domestically.

13 What is the best way to communicate the signal to
14 the U.S. cheese market, hey, guys, we are currently not
15 competitive? Currently that's partially done through
16 barrels. I'm not sure that eliminating barrels would --
17 would produce results that are -- that would improve
18 orderly marketing with respect to communicating the signal
19 from international markets to domestic.

20 I'm rambling. I'm going to stop.

21 Q. Okay. I just want to go back to the beginning of
22 what you were saying when I was trying to ask you about
23 how the two products that are priced in now would continue
24 under your proposal as well. And I think what I heard you
25 say is everybody can be a winner because you can use risk
26 management tools to offset any actual differences in
27 the -- or to essentially hedge against whatever kind of
28 actual future milk prices you receive for your milk?



1 A. That is one of the reasons why everybody can be a
2 winner, yes.

3 Q. Okay. But if somebody chose not to engage in any
4 kind of futures trading and just wanted to just sell their
5 milk under the current pricing formula, they would have --
6 or under your proposed pricing formula, there would be
7 winners and losers with just that singular transaction; is
8 that right?

9 A. Ms. Hancock, if somebody decides to smoke two
10 packs of cigarettes a day, they choose to get one cancer.
11 That's not something I can help with.

12 Q. I'm not sure I get that correlation, but I'm
13 just -- I'm just asking that if you didn't -- if you
14 didn't use the futures market to protect against your
15 risk, wouldn't it be true that if you were just using the
16 Federal Order pricing, under your proposal, that you would
17 continue to have a blended price where block cheddar could
18 be pulled down in price and barrels could be pushed up in
19 price because you have this calculated blended price
20 between the two?

21 A. I'm not sure that I understand what causal
22 mechanism you propose under which the barrel price would
23 be pushed up and the block price would be pushed down.

24 Q. Well, under the current calculated price that we
25 have seen with the net volatility and the spread that we
26 have seen over the last five, six years. That's what I'm
27 referring.

28 A. Maybe you meant that the all-cheese price would be



1 pulled down, not the block cheese price?

2 Q. Well, the all-cheese price, for sure, yeah.

3 A. The block cheese price could be lower if barrel
4 cheese price is lower than blocks. However, you know, we
5 should not have supreme confidence that going forward
6 barrel cheese price will indeed be lower than the block
7 cheese price. Again, basic economics, same cost of
8 production, we have seen increase in flexibility.

9 Your witness here last week, Mr. Bauer, did
10 fantastic things for his co-op by diversifying so that he,
11 himself, addresses the situation rather than waiting for
12 AMS to eliminate barrels. I think that one of the best
13 things probably to happen to Ellsworth is the crisis that
14 we had with the block-barrel spread because it propelled
15 them into the future with their product mix.

16 So I am not sure that we are creating losers by
17 including barrels in the survey at a lower weight. I
18 believe that the instruments exist -- I believe that the
19 orderly marketing would be more at jeopardy if we
20 eliminate barrels, knowing that the barrels are a
21 commodity market, with primary price discovery, and an
22 important part of clearing the market today.

23 Q. So the spread and the -- what you were talking
24 about for predicting where the prices would go in the
25 future, there's no way to know based on your proposal
26 whether it solves for that?

27 A. There is no way to know with 100% certainty.
28 However, we can identify the contributing factors, and



1 based on that, assign probabilities.

2 Here's what we do know. Block cheese capacity is
3 coming online; no new barrel cheese capacity is coming
4 online. Barrel cheese manufacturers in several plants
5 have added flexibility to switch between blocks and
6 barrels going forward. Those two factors would suggest
7 that the block-barrel spread going forward will be more
8 stable than in the past and may, in fact, invert in 2025,
9 which is also the year where, according to your proposal,
10 we would lower Class III price because of higher
11 Make Allowances. That would be a dangerous constellation
12 of changes in one year.

13 Q. Okay.

14 MS. HANCOCK: Thank you so much for your time.

15 THE WITNESS: Thank you.

16 THE COURT: Dr. Cryan.

17 CROSS-EXAMINATION

18 BY DR. CRYAN:

19 Q. Roger Cryan for American Farm Bureau Federation.

20 Good morning, Dr. Bozic.

21 A. Good morning, Dr. Cryan.

22 Q. So let me ask you this as an economist: Is it
23 better to have a price that is truly representative of
24 pricing for 90% of the cheese market setting the Class III
25 price or a hybrid price that isn't representative of any
26 of the cheese market?

27 A. Two economists walk into a hearing. That's the
28 beginning of a good joke or a long discussion.



1 Q. Yeah. Or a bad joke?

2 A. I have thought about this long and hard, partially
3 between 3:30 and 5:30 this morning.

4 I do believe at the end of the day that the weight
5 on barrel cheese should be representative of the
6 importance of barrel cheese in the cheddar cheese market,
7 not the overall cheese market. One of the reasons for
8 that is that we have no definitive data on the correlation
9 between the pricing of non-cheddar cheese and the block
10 cheese off of which it is priced, how does the basis
11 correlate or not correlate with the block-barrel spread.
12 That's one reason.

13 Second, we have risk management instruments --
14 would have under this proposal for blocks and barrels, so
15 we are not reducing the ability of mozz makers or anyone
16 else to hedge off blocks if they wish. We are not
17 reducing in any way the ability of co-ops to formulate
18 their contracts based on the blocks only. For example, if
19 DFA would like to sell milk to Leprino based on the blocks
20 only, there is nothing in this regulation that prevents
21 them from attempting to execute such negotiations.

22 And then finally, going forward, I do believe that
23 more cheese will be going to exports, and at least, based
24 on the last five years, that may mean that the importance
25 for -- of barrels for setting the market-clearing price in
26 the U.S. may actually increase, not decrease.

27 Bottom line, we are open to revisiting this issue,
28 but I would suggest that it would be too radical to -- to



1 eliminate barrels today, given everything we know about
2 trends over the next three to five years.

3 Q. So if I'm understanding you correctly, you're
4 feeling that a big part of the reason for doing this is to
5 maintain the foundation for risk management for barrel
6 makers?

7 A. There's nothing to maintain because it doesn't
8 exist, one, but to create the foundation for barrel makers
9 and barrel cheese buyers to effectively manage risk.

10 Q. And you have a concern that if barrels are dropped
11 completely, there's no -- there's no basis -- there's no
12 foundation for the USDA to collect any information on
13 barrels, and the underlying information that would allow
14 for risk management of barrels in the CME, for example,
15 is -- isn't there?

16 A. Well, we have to understand that CME has certain
17 costs in maintaining every single contract that they
18 introduce. That's one of the reasons why they are
19 reluctant to introduce new contracts unless there is a
20 specific sufficient demand for it and a very trustworthy
21 third-party information in which they can settle their
22 contracts.

23 And in the current setting we have a block cheese
24 and all-cheese futures. If we eliminate barrels, one of
25 those two contracts becomes redundant. So we go -- we
26 will eliminate the futures market rather than help it
27 develop further.

28 A reasonable opponent or a counterargument could



1 be said, well, yes, but block cheese futures never really
2 took off. It took us 20 years to grow the dairy market --
3 dairy futures market. You know, when we introduced
4 Class III and IV in 2000, they were tiny. Like, they are
5 much bigger today than they were initially. It takes time
6 to develop new hedging strategy, get new hedging protocols
7 approved by the accounting departments, for capital to get
8 the hedge accounting status, etcetera, etcetera. It
9 doesn't happen every night.

10 Q. Right. But you emphasize that without the barrels
11 being used in the price calculations, we can't collect --
12 USDA cannot collect barrel prices, and there would not be
13 a basis for a -- there would not be a basis for a -- for
14 example, a barrel contract or replace the block contract,
15 which would satisfy their --

16 A. To -- to --

17 Q. Is there another opportunity or is there some
18 other way to -- to -- for barrels to be hedged and for the
19 risk -- for that spread to be managed so that the other
20 90% isn't forced into using these tools just to manage the
21 difference between their prices and the hybrid price
22 that's used to --

23 A. I would reject your premise, respectfully. I'm
24 not saying that the primary or the only exclusive reason
25 for keeping the barrels in the survey is so that the
26 barrel makers or buyers can manage risk. That's one of
27 the factors. That's not the only factor.

28 The other two factors that I have offered this



1 morning is we have no good modeling or research on the
2 correlation between the block-barrel spread and the basis
3 between, let's say, mozz and 40% -- and 40-pound blocks
4 off of which they are priced.

5 I am not sure that we would do anyone a favor by
6 reducing the barrel -- by eliminating barrel spreads --
7 excuse me -- eliminating barrels from the survey. I think
8 that we might suffer from unintended consequences.

9 If you will allow me just to explain just for 120
10 seconds. Dairy policy is replete with examples of
11 unintended consequences. In the '70s, Upper Midwest
12 wanted to increase the support prices to keep farmers in
13 the business. The primary effect was that we built the
14 manufacturing capacity in California in 2018. Very good
15 faith negotiations between National Milk and IDFA resulted
16 in the \$0.74 problem in the mover that we have today
17 because we did not anticipate those historical spreads
18 between III and IV.

19 Whenever we make a radical change, we expose
20 ourselves to those Donald Rumsfeld unknown unknowns. I
21 have listed some known unknowns, but there could be other
22 unknown unknowns.

23 I believe it would be more prudent to reduce the
24 weight of barrels today and maybe in five years revisit
25 this issue and see whether eliminating them fully would
26 contribute or reduce orderly marketing in the United
27 States.

28 But we -- whatever -- we're not writing a Bible



1 here. We can always come back and say, well, does this
2 work; did it not work; can it be done better. Today, I
3 don't believe that dairy farmers would benefit from a
4 radical change that would be done by reducing -- by
5 eliminating barrels. Reducing weights, yes. Eliminating
6 is a step too far in my professional opinion.

7 Q. Continuing to use barrels is part of this, though.
8 Would you agree that that tends to, if not force,
9 strongly -- strongly incentivize folks that are pricing
10 off of blocks to use some of these risk management tools
11 in order just to manage the difference between their
12 pricing and the Federal Order pricing?

13 A. I looked into that. And evidence that would be
14 supportive of your conjecture would be that the open
15 interest in the block cheese futures, if it were higher
16 than the all-cheese futures. But just yesterday or two
17 days ago -- yesterday, I believe, I looked at October.
18 Futures contract block cheese had a volume of 3, and the
19 all-cheese had a volume of 113. So if people were really
20 so scared of barrels, they would be flocking to the
21 40-pound block futures, and we don't see that yet.

22 Q. Okay.

23 DR. CRYAN: Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: Cross other than AMS?

26 Mr. Miltner.

27 CROSS-EXAMINATION

28 BY MR. MILTNER:



1 Q. Good morning. Ryan Miltner with Select Milk.

2 A. Good morning, Dr. Miltner.

3 Q. Dr. Bozic, I have just a couple of questions.

4 On page 2 of your written statement, you make
5 reference to some block cheese plants under construction.

6 Are you aware if any of those plants will have the
7 capability to switch between blocks and barrels?

8 A. I would have to reference my sources to answer
9 that question. I don't have that information in front of
10 me right now.

11 Q. Okay. At the -- on page 3, in your first --
12 actually your second full paragraph, can you expand on
13 your last sentence there, the one that begins with those
14 manufacturers who invest?

15 A. Sure. So to be easier to follow the record later:
16 "Those manufacturers who invest in differentiated products
17 should be able to enjoy returns on their risk-taking
18 entrepreneurial activities, and what percent of those
19 returns are returned to dairy farmers will depend on
20 relative availability of milk in their milk shed."

21 If you have a wine-soaked aged cheese -- I'm not
22 even sure if you can age cheese if it's wine soaked --
23 but, for example, if you have some fancy differentiated
24 product, you're commanding a higher price, you have higher
25 costs, and you're -- you're -- you're precluding yourself
26 from clearing your inventory by -- by sending the new
27 production to CME. So you're taking more risk. You are
28 moving yourself away from the Federal Order pricing.



1 How much of that extra returns you earn on the
2 risk you are taking should you send to dairy farmers,
3 Federal Orders are silent on that. That depends
4 exclusively on the relationship you have with the dairy
5 farmers in that milk shed, whether they are the co-owners
6 of that plant, whether there's plenty of milk, milk is
7 selling under -- like the distressed milk is selling under
8 class or plants are fighting for milk because the --
9 there's not enough milk there.

10 Nobody's asking those entrepreneurial dairy
11 manufacturers under any of the regulations proposed here,
12 by Edge at least, to -- to transfer more of their returns
13 on their risk taken to dairy farmers.

14 Q. So really what you are driving at in that sentence
15 is -- is milk sold to cheese manufacturers other than
16 those that would be included in the surveys.

17 A. If you'll allow me to elaborate. If you are
18 selling milk to someone who is making fancy cheese, you
19 expect to get at least what you would have get paid if
20 they were making commodity cheese. And if they are making
21 more money, God bless, and if they are willing to share
22 more, or they have to share more because they'll otherwise
23 lose milk, that's -- that's how you get, as a dairy
24 farmer, participation in that topside. Regulation does
25 not provide it.

26 Q. Very good.

27 MR. MILTNER: All my other questions were asked by
28 others, so I have nothing else. Thanks.



1 THE WITNESS: Thank you very much.

2 THE COURT: Any cross by anyone other than AMS?
3 AMS, Ms. Taylor.

4 MR. HILL: I'm sorry, you are going to get
5 Mr. Hill first.

6 THE COURT: I'm not sorry at all. Welcome.

7 MR. HILL: I do want to make one statement.

8 So Dr. Bozic has mentioned that he's working under
9 the theory of logical outgrowth. He acknowledges that.

10 From the USDA perspective, we do want to mention
11 that the USDA, the Secretary, is the ultimate arbiter of
12 what constitutes logical outgrowth in this situation. As
13 part of that, the Secretary does have to determine what
14 constitutes fair notice to the rest of the industry to
15 hear -- to hear and participate meaningfully in this
16 hearing based upon this new information.

17 So I just want to point out that, if heard, the
18 Secretary is not going to bind himself to consider this in
19 his decision until some of those determinations are made.
20 And I just want to make that clear and put that on the
21 record. Thank you, your Honor.

22 THE COURT: So noted.

23 Anyone else have anything they want to say about
24 that?

25 DR. BOZIC: Your Honor, could we also note for the
26 record that there were no objections by any counsels this
27 morning, though presumably they can file them later?

28 THE COURT: All right. Sure, we can admit that.



1 We're back to -- I'm sorry, Ms. Hancock.

2 MS. HANCOCK: Your Honor, I would note that
3 National Milk would just reserve its right to raise any
4 objections based on flushing out the testimony today. I
5 appreciate your time when you're answering the questions,
6 but I think we did have to somewhat flush out what the
7 issues were and what was being presented today to be able
8 to evaluate that position. So we would reserve our right
9 to make that objection if we determine to do so.

10 THE COURT: Yes. I think Dr. Bozic seemed to give
11 you that in what he said, but I give you that now, if he
12 didn't.

13 Okay. Your witness, Ms. Taylor.

14 CROSS-EXAMINATION

15 BY MS. TAYLOR:

16 Q. Good morning.

17 A. Good morning.

18 Q. Now that we have noted all the important things.

19 I'm going to just probably focus mostly on the
20 "how" questions for you, the technical aspects, but I had
21 one question. On page 3, that same paragraph that Mr.
22 Miltner was asking you about that sentence, the sentence
23 before talks about manufacturers making undifferentiated,
24 you know, products should have normal returns to invested
25 capital.

26 What struck me in that sentence is you added, "and
27 are pooled." And yesterday, if you heard the -- there was
28 some discussion about the impact Federal Order pricing



1 would have amongst the competitive relationship between
2 plants in unregulated markets and plants regulated by
3 Federal Order.

4 So I'm just curious why you expand on why you
5 included "are pooled" in that sentence?

6 A. I was -- I was -- this is sort of like a teaser
7 trailer of what I hope will come when we start talking
8 about Make Allowances. We are asking under these
9 regulations, privately held handlers who choose to pool,
10 to pay the producers minimum prices.

11 And the question that arises from that is should
12 the regulation be designed in such way to guarantee extra
13 ordinary returns to invested capital to those that make
14 undifferentiated products and have built their plants
15 recently. That is a real danger that could lead -- and I
16 would maybe say probably maybe has led in the past -- to
17 commoditization of U.S. sector. If you compare the
18 portfolio or the product mix of the U.S. dairy sector
19 versus Europe, in Europe they are much more
20 differentiated.

21 And I wonder -- I'm not prepared to go into detail
22 today because that's the next topic -- but I wonder
23 whether setting the Make Allowances on average of surveys
24 rather than the state-of-the-art plants does have the
25 unintended consequences of guaranteeing extraordinary
26 profit to manufacturers of undifferentiated bulk dairy
27 commodities who own state-of-the-art plants.

28 So from that perspective, this is a -- you know, a



1 preview of what I hope will come in the week and a half.

2 Q. Okay. Thank you.

3 And I -- I have a clarification. You've used this
4 term a few times in your testimony, "undifferentiated."
5 Should we consider that kind of synonymous with
6 "commodity"?

7 A. Yes. Yes.

8 Q. Okay. Now for some technical questions by people
9 who would have to actually write this rule and administer
10 this proposal, if it was adopted.

11 Let's see. So as I gather, you -- we would still
12 collect sales volumes and price data on the current set
13 of --

14 A. No changes to that.

15 Q. No changes to that. But we would capture just
16 volume data on what we now consider excluded sales?

17 A. For barrel cheese, or if you go with the -- with
18 the alternative that was contemplated in Mr. Rosenbaum's
19 question, also 640s and 40 blocks. But in this testimony
20 here, only on barrel cheese.

21 Q. Okay. And would we report those volumes weekly
22 like we do the others, or they would just get reported at
23 the end of the year when we -- in your example, in
24 September, and we would report what the weight would be as
25 a result of that?

26 A. That's a good question, a deep one. One could
27 reasonably ask, why report them weekly if they are only
28 used annually, and I believe there are two reasons why we



1 should consider still reporting them weekly.

2 First, it helps the industry set progressively
3 more precise expectations regarding the weights that will
4 be used once they are announced.

5 And second, it's a -- it would be a really
6 wonderfully new piece of price discovery data. We have --
7 typically have to wait almost two months for the export
8 data to come from the Census. And to the extent that the
9 variation in those excluded sales reflect are good or bad
10 fortunes in exporting some products overseas, getting that
11 data weekly would provide perhaps a leading indicator of
12 what's to come once the export data -- I understand that's
13 not the primary purpose of NDPSR, but if we are collecting
14 the data anyway weekly, certainly I wouldn't recommend
15 that you collect it annually. That would be harder to
16 audit, harder to track, better to, you know, do it while
17 the information is fresh. If we are collecting it weekly
18 anyway, why not report it? What's the downside?

19 Q. And so your presumption there is that a lot of the
20 current exclusion in non-reported volumes of barrels is
21 because it's exported and then exceeds that 30-day
22 contract requirement?

23 A. To be more precise, I believe that a lot of -- I
24 believe that the sum of the -- one of the factors why
25 those excluded sales may ebb and flow could reveal -- and
26 this is just speculated, I'm not basing this on any
27 theory, I'm just speculating -- that it could reflect the
28 ebb and flow of our exports.



1 Whenever we get professionally done, with no
2 hidden agenda, audited data on a high frequency on a
3 market that is one of the pillars of pricing in the U.S.,
4 that would improve price discovery, it would be
5 appreciated by the industry.

6 Q. And so you do propose that these numbers would
7 also be audited just like all the other NDPSR numbers that
8 we collect?

9 A. Yes, I do.

10 Q. Okay. And you're not, just to make clear,
11 proposing that we would publish those excluded sales
12 number, kind of delineated by category, such as export of
13 why they are excluded, it would just be one number?

14 A. That is correct.

15 Q. Okay. So the statute that authorizes the Dairy
16 Product Mandatory Reporting Program puts the
17 1-million-pound production threshold. So just to be
18 clear, that's not a regulatory -- that is not up for
19 regulatory discretion. All the other exclusions are just
20 found in regulation and not statute.

21 So I just -- I guess I kind of want to state that,
22 but then clarify --

23 A. No, that's a good point.

24 Q. -- make sure that you are aware, and that's
25 acceptable, I guess, in that we don't have that type of
26 discretion on the 1-million-pound piece at least.

27 A. Ms. Taylor, at this point the industry probably is
28 not going to be willing to provide comments because one



1 side folks will reject everything; the other one hopes
2 that you will accept their proposals. But once they know
3 which way you are going to go, if this particular
4 constraint that you are now listing is seen as a big
5 hurdle, we have farm bills every five years or so, and
6 that can be fixed in the future.

7 Q. So I did want to go through some of the exclusions
8 just to make sure we're all on the same page. So I'm
9 going to -- well, I'm looking at 7 CFR 1170.8, which is
10 the price reporting specifications. And I don't have it
11 printed out for you. I'm hoping you will give me the
12 leeway to just read them to you.

13 A. Of course.

14 Q. Under cheddar cheese 500-pound barrels, there is
15 an exclusion for cheese with moisture content exceeding
16 37.7%.

17 So you would remove that exclusion for your volume
18 reporting numbers?

19 A. That is correct. And that's actually listed on
20 page 4. I have that particular condition listed there.
21 Just below the table -- paragraph below the table, last
22 sentence.

23 Q. Okay. And then on grade, 500-pound barrels are
24 products that meet Wisconsin State brand or USDA extra
25 grade or better standards.

26 So would you still want it to meet that standard
27 or just remove that?

28 A. Allow me to follow up on that in our post-hearing



1 brief.

2 Q. Okay.

3 A. That's a good question.

4 Q. Okay. And for color, 500-pound barrels have to be
5 white.

6 And so my questions of other USDA people, and I'm
7 not a barrel cheese expert, they indicate that there may
8 be barrels that are yellow. So would you include those as
9 well?

10 A. I don't see a particular reason not to include
11 them. The general principle here should be, is this
12 really a barrel, like, or are we calling it a barrel and
13 it's really not a barrel? Like if it's a barrel cheddar
14 cheese, then it should be included.

15 Q. Okay. And then the last paragraph here, which is
16 paragraph 8, which is just general exclusions that apply
17 to both 500-pound barrels and 40-pound blocks, that's
18 where we list intercompany sales, resales of purchased
19 cheese for pricing sales, 30 or more days before the
20 transaction was completed, cheese produced under
21 faith-based close supervision and marketed at a higher
22 price than the manufacturer's wholesale market price for
23 the basic commodity, for example, kosher, sales under the
24 Dairy Export Incentive Program or other premium-assisted
25 sales, and cheese certified as organic by a USDA
26 accredited certifying agent.

27 So you would remove all those exclusions when it
28 comes to volume sales?



1 A. So reading those exclusions, it's quite clear why
2 we cannot use them for price. None of those are
3 commodities that can be easily, you know, sent to the
4 market, if you will, for price discovery or, you know, if
5 one has a surplus. But for the purpose of establishing
6 volume and weight, off the top of my head, I don't see a
7 good reason why we would want to exclude any of those.

8 Q. Okay. And so for excluded sales, you would want
9 us to capture actual sales, not necessarily production
10 numbers?

11 A. It -- it --

12 Q. Because -- and if I add, I'm asking this
13 question -- I'll add a little more clarity.

14 A. Yeah.

15 Q. Currently what the NDPSR collects is sales
16 information, but what NASS makes -- numbers, they are
17 production numbers. So that's, you know, kind of two
18 different things.

19 A. I was thinking whether to go down the path of
20 commercial disappearance. In the end, you know, I don't
21 think that that's going to be a life-changing decision one
22 way or another. So there should be some elegance and
23 simplicity, so that we who present to dairy farmers from
24 time to time, you know, don't have to sweat on the stage.
25 So let's keep it simple and elegant. It is a step -- it
26 is a big step in the right direction.

27 Q. Okay. So carrying forward on NASS production
28 data, that data is voluntary and not audited, and I



1 believe some of it even contains estimates in it. And so
2 the NDPSR data is mandatory and audited.

3 Do you have an issue with the fact that we would
4 be using mandatory audited numbers in the same calculation
5 as kind of voluntary estimates on audited numbers?

6 A. I would trust the AMS to make the decision that
7 you believe is the best, all things considered there.
8 Certainly, if AMS would -- would prefer to pursue
9 something like this, but then use the weights based on the
10 excluded sales of 640s and 40s, that's not something that
11 Edge would object to.

12 Again, we -- we were thinking, well, how can we
13 get this done at a minimal additional spend, if you will,
14 and burden on your staff, Ms. Taylor. You know, so that's
15 what resulted in this testimony.

16 But I do agree that using the audited sales data
17 on all of cheddar to determine the barrel weights would
18 result in a more precise weight for barrels.

19 Q. Okay. So those entities reporting for NDPSR are
20 able to submit revisions up to five weeks. And I just
21 didn't know if -- if you could speak to whether you would
22 prefer revision data or as submitted -- originally
23 submitted data?

24 A. So the data that's -- that are used for the
25 monthly prices do contain typically a mix of revised and
26 as first submitted as of the cutoff --

27 Q. Right.

28 A. -- that's needed for that month.



1 For the annual weights, 49 out of 55 weeks will
2 already be revised. That little error on the margin, if
3 you will, I think is -- is not critical. It wouldn't move
4 the final numbers, especially if you do employ the
5 rounding procedure as we are proposing, rounding to the
6 closest 5%. So I don't think it's material there.

7 I think that it would be a higher priority to
8 align the announcement of such weights with other annual
9 announcements or periodic announcements that would be a
10 consequence of this hearing, such as milk composition.

11 Q. Okay. Are you assuming that we currently probably
12 capture all barrel plants -- and I guess if I reword
13 this -- perhaps, currently most barrel manufacturers
14 probably already report to NDPSR, and so we might not be
15 broadening our survey of plants but would be broadening
16 the information they needed to report to us? Have you
17 thought about that?

18 A. Again, if you allow me to follow up in my
19 post-hearing brief, I can do further investigation on
20 that. I don't believe I have sufficient expertise to
21 answer with --

22 Q. That's fine.

23 A. -- confidence today. That's a good question. A
24 good question.

25 Q. In your 15-month delay, I think when you testified
26 maybe the -- well, I don't know when this was, earlier in
27 this hearing, and we had the discussion on maybe this
28 doesn't -- you know, if adopted, September might not work.



1 Right? Just depending on the schedule for when things
2 come out.

3 But your priority is a 15-month delay, and it
4 would kind of -- on a quarter basis, just like that
5 discussion we had earlier at risk management?

6 A. That is correct, yes.

7 Q. Okay.

8 A. And if you'll allow me to just elaborate briefly
9 on that, maybe perhaps clar- -- not to revisit that full
10 discussion. I know that there are witnesses waiting here
11 to testify today.

12 For other insurance products that -- crops,
13 etcetera, it occasionally does happen that you have
14 regulatory change that influences indemnities. The reason
15 RMA never makes a big fuss about it is because it's
16 impossible to quantify them. You know, if -- if
17 California topped with 12, on which pork products can be
18 sold in the States, if that affects the swine market, and
19 elastic risk protection pays more, nobody can pin down and
20 say, yes, it's 7.58 is the payment duty to -- you know,
21 attributed to the regulatory change.

22 Because we have a relationship between Class III
23 and butter, cheese, dry whey, Class IV, and butter and
24 nonfat dry milk, with a little bit of math, we can
25 actually pin down, we can calculate what is the magnitude
26 of unanticipated regulatory change. That is unprecedented
27 situation.

28 I'm actually talking at your colleagues at RMA



1 later this afternoon to discuss that issue. That's not
2 something that RMA has faced before, and that may result
3 with dairy farmers paying for regulatory uncertainty in
4 premiums, but not reaping the benefits of indemnities that
5 can be quantified to be due to unanticipated regulatory
6 change.

7 Q. Thank you for that comment.

8 So there are other regulatory changes then where
9 producers are paying for these regulatory risks that's
10 inherent -- kind of inherent in how it works, and there's
11 just nothing kind of -- what I gather from that is you
12 can't quantify it, so that's just -- that's just part of
13 how they operate?

14 A. That's life.

15 Q. Dairy is different?

16 A. Not necessarily all changes in dairy. But
17 anything that disturbs the relationship between the class
18 prices and commodity prices can be quantified because we
19 know what the relationship has to be under the current
20 rules, what was expected based on futures, and what was
21 the final based on new rules at the time prices are
22 published. That is unprecedented situation.

23 Q. Okay.

24 MS. TAYLOR: That's it for AMS. Thank you.

25 THE WITNESS: Thank you very much.

26 THE COURT: Yes, sir. Mr. Sjostrom.

27 REDIRECT EXAMINATION

28 BY MR. SJOSTROM:



1 Q. I'm not done with you yet, sir.

2 A. Sorry.

3 Q. Lucas Sjostrom, Edge Dairy Farmer Cooperative.

4 MR. SJOSTROM: First, your Honor, one correction.

5 BY MR. SJOSTROM:

6 Q. We heard -- Dr. Bozic, you need a better editor
7 and proofreader -- page 5, second line of the equation,
8 under the second paragraph, there should be an X, I
9 believe.

10 Is that correct, Dr. Bozic?

11 A. Following number 3X --

12 Q. CX --

13 A. -- block cheese --

14 Q. -- block cheese price. Sorry about that. I
15 wanted to note that.

16 THE COURT: Can I hear that one again?

17 MR. SJOSTROM: Yep.

18 THE COURT: Sorry.

19 MR. SJOSTROM: Page 5, second line, under the
20 second paragraph, the end of the equation should be 3X
21 block cheese price, or three times the block cheese price
22 there.

23 Thank you, your Honor.

24 BY MR. SJOSTROM:

25 Q. Unanswered question from yesterday: Five losers
26 and five winners walk in with T-shirts -- okay, I'll
27 withdraw that question.

28 But I do want to ask Ms. Hancock's question about



1 not participating in hedging in just a different way. I
2 think we get a little confused when we talk about dairy
3 markets, or the general public does.

4 So just to illustrate for the record. Let's say
5 making on-farm cheese is illegal in the United States, and
6 then the government makes it legal. If I'm a dairy
7 farmer -- and this is a three-part question, so just wait
8 to the end -- if I'm a dairy farmer and choose to build an
9 artisan cheese plants and hedge my future economic returns
10 on that and do better than other dairy farmers in the
11 area, or if I build that cheese plant and lose everything
12 and do worse than other dairy farmers in the area -- the
13 third part of the question -- therefore, is by the
14 government in this case, making artisan cheese legal,
15 which was never legal before, which was illegal before,
16 would you say consistent with your previous answer to
17 Ms. Hancock, that government providing a better ability to
18 hedge, whether or not people -- in this case dairy
19 farmers, or dairy plants utilize it -- should that be
20 considered putting some at advantages or disadvantages, or
21 would you say that that should not be considered under
22 this hearing?

23 A. Well, there's a -- often a debate in other
24 governmental programs on equality of opportunity versus
25 equality of outcome, and the -- I'm a big proponent of
26 equality of opportunity.

27 Under the proposed -- outgrowth proposal listed in
28 this testimony, there will be near equality of



1 opportunity -- other than brokerage commissions and with
2 us, spreads -- equality of opportunity for everyone to
3 hedge their exposure to the fundamental cheddar prices,
4 whether it is blocks or barrels.

5 Q. Thank you.

6 Are there any other comments you would like to
7 add?

8 A. That's it for now. We have to follow up with a
9 post-hearing brief. There were some really good questions
10 from AMS.

11 Q. Yes.

12 MR. SJOSTROM: Your Honor, I would like to,
13 therefore, admit Edge-2, which we have pre-labeled as
14 Exhibit 76, and Edge-4, which I believe you said this
15 morning was Exhibit 134.

16 THE WITNESS: Lucas, if I can just intervene. I
17 believe that Mr. English will want to ask some more
18 questions on Edge-2, but I believe that he would want to
19 ask that when we come back in two weeks. I should not
20 speak on his behalf.

21 MR. ENGLISH: I don't want to divert us today from
22 what we're doing, and you're optimistic about two weeks.
23 But, okay, yes.

24 THE COURT: I'm not sure I understand.

25 Mr. English, would you like to reserve the
26 admission of Exhibit 76?

27 MR. ENGLISH: I do not need to reserve the
28 admission. I reserve the right to ask questions, but I



1 don't -- I mean, he's coming back on other issues. I
2 would rather ask the questions then than now. I think we
3 have got plenty going on today, and I don't want to
4 interrupt that flow.

5 THE COURT: So you don't mind admitting it?

6 MR. ENGLISH: I do not mind admitting it.

7 THE COURT: And, of course, anything that comes
8 up -- I'm sorry, Counsel -- if we admit something and then
9 something comes up later that undermines the proprietary
10 of a document as an exhibit, we can reopen whether it was
11 admitted.

12 MR. ENGLISH: Yes.

13 THE COURT: I mean, I think that would go for
14 anything.

15 So let's admit Exhibit seventy -- oh, you had
16 something more to say.

17 MR. SJOSTROM: Your Honor, the reason Dr. Bozic
18 brought that up, I believe, was because Mr. English
19 attempted to ask questions last time, and we said that
20 wasn't admitted yet, so we just didn't want to forget or
21 try to skirt that. So we were just trying to be
22 transparent about it. That's all.

23 THE COURT: I appreciate the transparency and the
24 explanation.

25 Okay. So 76 is -- Exhibit 76 is admitted into the
26 record.

27 (Thereafter, Exhibit Number 76 was received
28 into evidence.)



1 THE WITNESS: We also need Exhibit 134.

2 MR. SJOSTROM: And 134.

3 THE COURT: Yes, 134, we're reserving on that, I
4 think. I'm not sure what to do with this. We had certain
5 other proposals that USDA rejected. This one hasn't
6 been -- I assume -- I understand this was filed late.

7 Is that right, Mr. Hill? Is AMS taking a position
8 on this?

9 MR. HILL: Yes. We're not objecting to it because
10 it's -- I mean, he's proceeding under the theory of
11 logical outgrowth to hearing proposals that are in the
12 record. We're just reserving the right whether or not
13 we're going to -- that USDA is going to actually consider
14 them because we don't -- we don't have -- haven't made
15 that determination whether they are, in fact, a logical
16 outgrowth.

17 The other proposal that we're talking about
18 objecting to that we -- that we opposed objections to,
19 those were -- those were proposals that were outright
20 excluded from the Hearing Notice by the Secretary. So
21 those are different -- they are a different issue
22 altogether.

23 But we're not objecting to this at this point.
24 We're willing to listen to what's -- what he has to say,
25 and we'll make a determination whether or not it is, in
26 fact, a logical outgrowth to previous hearing proposals.

27 THE COURT: And that determination will be made in
28 the recommended decision?



1 MR. HILL: That is correct, your Honor.

2 THE COURT: Yeah. I think I'm -- I think I'm with
3 you on that. The problem with the NAJ and MIG proposals
4 were that the Secretary -- for me, is that the Secretary
5 has already addressed those. And who am I, yeah, a lowly
6 ALJ, to define that the Secretary's wrong or the Secretary
7 ought to reconsider something on that.

8 So -- but, frankly, as a presiding judge, there's
9 a certain pull to me that, well, bring it in and let
10 people talk about it and make a record on it, and then let
11 the Secretary reconsider it then. And we're sort of doing
12 something different here.

13 Everyone -- folks seem to have allowed the time --
14 because part of the argument was we're so pressed for
15 time, we can't be talking about things that aren't going
16 to be in the final decision, but we allowed this. So one
17 could say I should allow the other, too.

18 But I think it's pretty crucial that the
19 Secretary's already rejected those other proposals. So I
20 think that's where I'm going to come out on those. But
21 this does -- this is an example that's got -- that's got
22 aspects that overlap with the other things.

23 So -- so what do we do with -- do we allow
24 Exhibit 134 into the record subject to potential
25 objections? Is that what we would do?

26 I mean, we could treat it as -- I mean, even if we
27 rejected it now, we could treat it as an offer of proof.
28 Everyone's talked about it and all. But it seems like AMS



1 wants to consider it, thinks that it should be considered,
2 but the question is whether it is within the scope of the
3 Hearing Notice.

4 I'm sorry if I seem confused. I am confused.

5 MR. HILL: Like I said, we're not going to object
6 to the entrance of this as an exhibit.

7 THE WITNESS: Your Honor, could I ask you a
8 question? Would admitting this into the record in any way
9 reduce the rights that Mrs. Hancock would have down the
10 road?

11 THE COURT: Who do you think, Ms. Hancock?

12 No, I mean, I think you are reserving everything.
13 You are -- you reserved an argument that this should not
14 be considered here. You will have an argument that's a
15 logical outgrowth. That's the right -- logical outgrowth,
16 is that the right term?

17 Okay. Well, this discussion will be in the
18 transcript. I think everyone's reserved their rights
19 about the propriety of considering this at all, but I
20 think we can allow it into the record.

21 So with that, Exhibit 134 is made a part of this
22 hearing record.

23 (Thereafter, Exhibit Number 134 was received
24 into evidence.)

25 MR. SJOSTROM: Thank you, Dr. Bozic.

26 Thank you, your Honor.

27 THE WITNESS: Your Honor.

28 THE COURT: Thank you both, Dr. Bozic.



1 It's 9:30. Do we want to put up another witness
2 or take a break? Break? Okay.

3 MS. HANCOCK: And, your Honor, just so we can
4 clarify what's next. We have, I think, three or four
5 dairy farmers that we're prepared to put on next before we
6 do substantive -- the next round of substantive testimony
7 on the proposals.

8 THE COURT: Okay. Great. This will give us --
9 are they virtual.

10 MS. HANCOCK: No. They are here in person.

11 THE COURT: Okay. Then we don't need the time to
12 set up virtual.

13 All right. Let's -- it is 9:31. Let's come back
14 at 20 of 10:00, 9:40. Off the record.

15 (Whereupon, a break was taken.)

16 THE COURT: On the record.

17 Okay. Ms. Hancock, are you introducing the --
18 yes, Mr. English.

19 MR. ENGLISH: Thank you, your Honor. Chip English
20 for the Milk Innovation Group.

21 I had a brief conversation with counsel and USDA,
22 and I raise this only because we just had a conversation
23 about the -- what's in the record, what's out of the
24 record, and objections. And so I thought I would ask two
25 questions, and they are related.

26 One, what is the status of your ruling on the MIG
27 objection, by extension the NAJ objection, even though
28 it's not mine?



1 But second, I ask it partly because -- and I may
2 have misheard or I may have misinterpreted -- but I tended
3 to hear sort of an implied ruling from the conversation
4 you had with respect to the Edge, which suggested that you
5 didn't think you had authority.

6 And so I'm just wondering, you know, if that is
7 correct, do we have sort of an implied ruling that you are
8 going to turn us down?

9 THE COURT: Well, I don't want to make an implied
10 ruling at this status, as my attorney advisor got back
11 yesterday from maternity leave, and we're working on it.
12 We're working on it.

13 MR. ENGLISH: Okay.

14 THE COURT: But that is -- I mean, I don't even
15 want to make a tentative ruling unless it helps you. But
16 that's sort of where I'm leaning, frankly, Mr. English,
17 that it has already been ruled upon and I -- I -- my
18 latitude -- my discretion is limited here.

19 MR. ENGLISH: Thank you, your Honor.

20 THE COURT: You're welcome. Does that help you?
21 I want -- I'm trying to be helpful here. I realize that I
22 have had a lot -- I thought maybe I could get this -- more
23 of this done over this long weekend we had, but it turned
24 out I was kind of tired, and my wife had other --

25 MR. ENGLISH: I can't imagine, your Honor, why you
26 would be tired and why you would spend time with your
27 family.

28 I think that -- well, I'm not going to say helps



1 in the sense -- obviously, I wish the answer would be
2 differently, but I think it helps in the sense that
3 everybody needs to know what's going on. So thank you,
4 sir.

5 THE COURT: Yeah, sure. I think there is a -- I
6 am -- we can discuss this a little on the record.

7 Right now, I mean, I am a little concerned, I
8 mean, that I don't know how long it would take to put on
9 your witnesses and have cross and all that. We are
10 leaving something open here because we had the witness, we
11 got exhibits admitted, and all that.

12 So I don't want to create an incentive, although I
13 don't think I'm the creator here. I think it is the
14 procedure. I don't want to create any kind of
15 incentive -- and I haven't thought this through -- for a
16 party not to file early and get rejected whereas they can
17 wait until the hearing and file and say, oh, we're here,
18 let's -- are you also concerned about that, Mr. English?
19 It seems to me --

20 MR. ENGLISH: Well, I'm not going to prejudice my
21 position by answering that question. I think, you know,
22 one could look at things in slightly different ways, but
23 I'm not going to prejudice our position by commenting on
24 what just happened here. I did not raise an objection.

25 THE COURT: Yeah.

26 MR. ENGLISH: That doesn't mean I waived it. It
27 doesn't mean -- you know, when we were going, and we said
28 we had no opportunity to talk to our clients about what



1 Dr. Marin just discussed, so we all need to go back and
2 think about it, so --

3 THE COURT: I mean, I think that's fair, too.
4 Anyway, I hope that helped.

5 MR. ENGLISH: All right. Thank you.

6 THE COURT: I'll pin it down as soon as I can, but
7 I had some other things to do in the meantime. And I did
8 not understand that there was a huge urgency to ruling on
9 that.

10 MR. ENGLISH: Not urgency, but on the other hand,
11 some definitiveness would be helpful, your Honor.

12 THE COURT: I understand. Of course.

13 MR. ENGLISH: Thank you.

14 THE COURT: And I'm here to serve the agency and
15 the parties -- participants. I don't think we have
16 parties, do we?

17 Ms. Hancock.

18 Thank you, Mr. English, for raising that.

19 MS. HANCOCK: Your Honor, I'm not here to talk
20 about that.

21 THE COURT: I guess -- I was guessing you weren't.

22 MS. HANCOCK: Okay. I didn't know if you had more
23 to say on it.

24 THE COURT: I will. You have the floor, though.

25 MS. HANCOCK: Thank you, your Honor. We would --
26 would call -- we would call our first producer witness of
27 the day, Mr. Doug Chapin.

28 THE COURT: Welcome, Mr. Chapin. Please raise



1 your right hand.

2 DOUG CHAPIN,

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

5 THE COURT: Your witness.

6 DIRECT EXAMINATION

7 BY MS. HANCOCK:

8 Q. Good morning. Is it Mr. Chapin or Chapin?

9 A. Chapin.

10 Q. Chapin. Okay.

11 Would you mind stating and spelling your name for
12 the record?

13 A. Doug Chapin, D-O-U-G, C-H-A-P-I-N.

14 Q. Thank you, Mr. Chapin.

15 And what is your mailing address?

16 A. 5619 60th Avenue, Remus, Michigan, 49340.

17 Q. And did you prepare a written statement for your
18 testimony today?

19 A. Yes.

20 Q. Is that what we have marked as Exhibit NMPF-76?

21 A. Yes.

22 MS. HANCOCK: And, your Honor, if we could assign
23 an exhibit number.

24 THE COURT: Yes. Let's assign Exhibit 135 to
25 previously marked NMPF-76, 135 for purposes of
26 identification.

27 (Thereafter, Exhibit Number 135 was marked
28 for identification.)



1 MS. HANCOCK: Thank you, your Honor.

2 BY MS. HANCOCK:

3 Q. Mr. Chapin, go ahead with your prepared statement.

4 A. Okay. Thank you.

5 I'm Doug Chapin. I own and operate a dairy farm
6 in Central Michigan with my wife and son. Our dairy farm
7 is a Centennial Farm, and my son represents the fifth
8 generation. We milk 700 Holsteins with a great team of
9 employees.

10 I also serve as the Board Chairman of Michigan
11 Milk Producers Association. MMPA is a dairy farmer-owned
12 cooperative and also a dairy processor serving over 1,000
13 dairy farmers in the Great Lakes Region.

14 MMPA markets Milk in all four classes of milk and
15 also is a processor of all four classes. I've represented
16 MMPA on the NMPF Board of Directors and also served on the
17 NMPF Economic Policy Committee that vetted and made
18 recommendations to the full board on FMMO changes.

19 I support Proposal 13 that was submitted by the
20 National Milk Producers Federation. This proposal returns
21 us to the higher-of Class III or IV for our Class I skim
22 milk price mover. This proposal returns us to the program
23 which we operated under until 2018.

24 The current structure, which uses the average-of
25 III and IV plus \$0.74, has fallen short and financially
26 damaged dairy farms across the country. The average plus
27 \$0.74 puts a ceiling on the benefit of Class I pricing but
28 gives no floor and has left myself and fellow producers



1 vulnerable. The adoption of the current Class I mover has
2 cost dairy producers over \$1 billion since 2018.

3 In 2020, during the pandemic, we saw the spread
4 between Class III and IV exceed \$10, leaving producers
5 extremely undercompensated. This was right on the heels
6 of a couple of months of devastating milk prices as
7 producers and processors were sorting out the pandemic
8 challenges.

9 I know producers and processors had to adjust to a
10 drastically different market and working environment. I
11 know that the current average-of rules were put in place
12 to help processors hedge their milk costs. However, I
13 believe it makes it more difficult for producers to
14 protect their milk.

15 MMPA operates in Federal Order 33, or the Mideast
16 order. My market is basically 30% Class I, 45% Class III,
17 15% Class IV, and 10% Class II. I had milk contracted at
18 over \$24 a hundredweight in July of 2020.

19 I have always been fine with losing on a contract
20 because the payment would be in the milk check. However,
21 I not only lost on the contract, but there was a large
22 negative basis to the 30% of milk in Class I.

23 Our PPD exceeded negative \$8. I don't know of any
24 tools accessible to the average dairyman that can address
25 Class I pricing today. The best tool would be the
26 higher-of mover so that producers know that they won't
27 have to risk a negative basis in Class I pricing.

28 I know that the pandemic was seen as a black swan



1 event, that the volatility caused by the pandemic was
2 unique and not repeatable. However, the spread between
3 Class III and Class IV has exceeded \$1.48 three other
4 times.

5 In fact, the spread between classes has been over
6 \$1.48 for much of this year and has cost dairy farmers
7 over \$60 million in the first eight months of '23. It has
8 cost MMPA member producers over 4.1 million in the last
9 year. The change to the average plus \$0.74 has cost my
10 family over 22,000 in the same period. Today, with
11 margins at historic lows, producers need that value to
12 operate.

13 As Chairman for Michigan Milk Producers
14 Association, I received many concerns and questions from
15 our dairy producers on the Class I mover. The frustration
16 I heard in their voices was real and well founded by what
17 they were witnessing in the market and in their own
18 business.

19 The change to the average-of III and IV plus \$0.74
20 was so visibly damaging to producers that the government
21 responded with help by enacting the Pandemic Market
22 Volatility Assistance Program. I appreciated this
23 response. However, it didn't cover all the milk and fell
24 short of the full impact.

25 I think the need of this program highlights the
26 need to return to the higher-of Class I mover. The
27 sentiment and discontentment with the current Class I
28 mover by our MMPA members was echoed throughout NMPF's



1 membership.

2 In my role on NMPF's Economic Policy Committee, I
3 heard producers and co-op leaders from around the country
4 state the damage caused by the current program. The task
5 force developed a couple plans to present to the
6 committee.

7 One plan was a complicated rolling average that
8 over an extended period of time would make producers
9 whole. The committee wanted nothing to do with complex
10 plans that delayed the value of Class I milk getting into
11 producer's checks. It is in times like right now when we
12 have tight margins and are losing value on Class I because
13 the spread between III and IV is over \$1.48. Today is
14 when our farmers need that value, for their businesses and
15 families.

16 In closing, I'd like to put emphasis on the
17 \$1 billion that producers have lost since the current
18 mover was put in place in 2018. Our members voted
19 unanimously that the FMMO hearings had to resolve the
20 deficiencies of the legislated 2018 change.

21 I personally believe that this is the issue that
22 drove this hearing to occur. Producers have been clear to
23 me, they have been unfairly harmed by the current mover
24 and continue to be. I haven't had one producer request
25 any other action on the mover other than returning to the
26 higher-of.

27 We were told that the change to the current
28 program had the goal of holding producers harmless. It



1 missed its target. It provided a cap on the upside and no
2 protection on the downside. I'm representing 1,000
3 dairymen and a co-op that bottles Class I milk when I say
4 that I support Proposal 13 and returning to the higher-of
5 Class I mover.

6 Thank you.

7 Q. Thank you, Mr. Chapin.

8 MS. HANCOCK: Your Honor, we would submit him for
9 cross-examination.

10 THE COURT: Yes, Mr. Rosenbaum.

11 CROSS-EXAMINATION

12 BY MR. ROSENBAUM:

13 Q. Good morning, Mr. Chapin. Steve Rosenbaum for the
14 International Dairy Foods Association. Thank you for
15 coming.

16 A. Good morning.

17 Q. Mr. Chapin, you have talked about the legislative
18 change that was made, that in -- in May of 2018 replaced
19 the higher-of approach to setting the Class I mover with a
20 current mechanism that takes the average-of the Class III
21 and IV price and adds \$0.74, correct?

22 A. Correct.

23 Q. And were you on the board of Michigan Milk at the
24 time that legislation was enacted back in 2017 or '18?

25 A. Yes.

26 Q. And are you aware that that legislative change was
27 supported by both dairy farmers in the -- and that
28 National Milk Producers Federation testified, or at least



1 provided documentation to legi- -- to members of Congress
2 supporting that proposal, as did indeed members of the
3 entity that I represent, the International Dairy Foods
4 Association?

5 A. Yes, I am aware of that.

6 Q. Okay. And so at the time it's fair to say that --
7 well, a calculation was done that suggested that if we
8 took the average-of Class III and IV and added \$0.74, over
9 time, that would provide dairy farmers the same amount of
10 money that they were receiving under the higher-of
11 approach, correct?

12 A. I believe that was the calculation that was
13 obviously wrong.

14 Q. But at the time --

15 A. At the time, right.

16 Q. Just so we're clear, at the time both sides
17 thought it was correct --

18 A. Yes.

19 Q. -- correct?

20 And it was intended to be a neutral proposal from
21 a --

22 A. Right.

23 Q. -- dollars-in-the-pocket of the farmers
24 perspective, correct?

25 A. Correct.

26 Q. And indeed that's why National Milk supported it,
27 presumably?

28 A. I would -- I agree.



1 Q. Okay. So what -- and are you aware that the
2 principal justification for why -- why make the change, if
3 it was going to be neutral, the principal justification
4 advanced, which both sides also accepted, was that it
5 would facilitate the use of hedging in the Class I market,
6 correct?

7 A. Correct. Yeah.

8 Q. And do you engage in hedging yourself personally?

9 A. Yes. Well, since 2020, I have just participated
10 in the DRP. Prior to 2020, I did quite a bit of work on
11 the futures, but have pretty much -- I have switched
12 completely to the DRP program.

13 Q. Okay. And are you aware -- you obviously have
14 experience in hedging. Are you aware that the problem,
15 which the legislation was intended to address, was that
16 for -- from a Class I perspective, because the Class I
17 mover had been based on the higher-of Class III or
18 Class IV, you didn't ever know in any given month which
19 was going to be higher, so you really had very little
20 ability to make reliable predictions as to what kind of
21 hedging you should engage in? Was that basically --

22 A. Yes.

23 Q. -- the problem?

24 A. Yes.

25 Q. You didn't know whether you should be hedging off
26 of Class III or Class IV because you didn't know which one
27 was actually going to be the mover, correct?

28 A. Correct.



1 Q. All right. So -- and, now, you are -- are you
2 aware that the International Dairy Foods Association also
3 has a proposal that we've not yet presented our testimony
4 in support of it, but has a proposal that's accepted and
5 is going to be heard, for a replacement to the current
6 skim mover regulations, correct?

7 A. Yes.

8 Q. We have a proposal, obviously National Milk has
9 the proposal, and you are testifying in support of the
10 National Milk proposal, correct?

11 A. Correct.

12 Q. But have you had the opportunity to look at the
13 International Dairy Foods Association proposal?

14 A. I would say briefly I -- I have read it, yes.

15 Q. Okay. So -- and are you aware that it is at least
16 our claim, and we believe it to be accurate, we'll see
17 whether anyone disagrees with it, that under our proposal
18 dairy farmers will be paid not only as much as they would
19 get under the higher-of alternative that National Milk is
20 pursuing, but actually get paid a little more money?

21 A. I'm going to take claim -- claims with a pretty
22 big grain of salt today.

23 Q. Okay. Well, by that -- by "claims," I mean, we
24 literally in our proposal calculate how much farmers would
25 have been paid had they been under the higher-of approach,
26 and we over time -- and I recognize you have an issue with
27 over time, we'll talk about that in a minute -- but over
28 time we're either paying the farmers that amount, which is



1 to say what the higher-of plus \$0.74 would have been, or
2 we'll pay them an even higher amount than that if, in
3 fact, in a given month they would have been paid more
4 under our formula than the higher-of? Are you aware of
5 that aspect of our proposal?

6 A. I guess I can't say that I am --

7 Q. Okay.

8 A. -- is that how that will flow, no.

9 Q. Okay. And so is it fair to say that your proposal
10 to return to the higher-of would eliminate the advantage
11 of the current approach insofar as the current approach
12 facilitates hedging?

13 A. I believe that our approach would put the same
14 challenges on it that were there before.

15 Q. Okay. And to -- to the extent that the current --
16 let me say, we all recognize that we ended up with pricing
17 that was unexpected in 2020 and an impact that was
18 unexpected, and we're trying to address that too in our
19 proposal -- as a result of our proposal.

20 But it is fair to say that to the extent that the
21 2018 legislation did have the desirable impact of making
22 hedging more feasible, and we'll have some testimony about
23 that, that will be lost if the National Milk Producers
24 Federation proposal is adopted?

25 A. Okay. To the processors' side, I would agree.
26 Yes.

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

28 THE COURT: Further cross? Other than AMS I mean?



1 Dr. Cryan.

2 CROSS-EXAMINATION

3 BY DR. CRYAN:

4 Q. Good morning. I'm Roger Cryan with the American
5 Farm Bureau Federation. Hello, Mr. Chapin.

6 A. Hello.

7 Q. I'm sorry I didn't get a chance to talk to you
8 earlier. I appreciate you being here.

9 Are you a Farm Bureau member?

10 A. I am.

11 Q. That's fantastic. Thanks.

12 Could you talk a little bit about the impacts that
13 depooling and negative PPD have had on you or some of your
14 neighbors in terms of unevenness of prices and losses and
15 just kind of general market chaos?

16 A. I guess I'm -- I guess I'm not prepared to really
17 talk about depooling, I guess, I'll say. Obviously, it
18 plays -- plays in every market, and it does in our order
19 also.

20 Q. Yeah. I understand that.

21 Would -- would a -- would a Class I futures
22 contract solve the problem that the processors have with
23 trying to forward price their fluid milk?

24 A. It sounds like it would, yes.

25 Q. Yeah. You think it's a -- it's -- should USDA let
26 CME define policy?

27 A. That would not -- I guess it wouldn't bother me.
28 I don't -- if they did --



1 Q. Okay.

2 A. -- you know.

3 Q. Okay. Thank you very much.

4 A. Yeah.

5 Q. Have a good trip home.

6 A. Thank you.

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

8 THE COURT: Further cross?

9 Seeing none, AMS?

10 Ms. Taylor.

11 CROSS-EXAMINATION

12 BY MS. TAYLOR:

13 Q. Good morning.

14 A. Good morning.

15 Q. Thank you for coming to testify today.

16 I was wondering if you could just describe a
17 little bit about your farm. I know you said you had 700
18 Holsteins, and we're talking in this hearing, trying to
19 gather information from all parties on the impact to small
20 businesses.

21 For dairy farmers the Small Business
22 Administration defines that as a farm receiving
23 \$3.75 million or less of gross revenue per year on a whole
24 farm basis. Would your farm meet that?

25 A. We would probably be over that.

26 Q. Over that. Okay.

27 And then I wanted to ask a little bit about risk
28 management, and that kind of leads me also to my next



1 question on the third paragraph of your statement.

2 First I wanted to ask if you do use risk
3 management tools, and I take it from the description you
4 talk about in that third paragraph, because you do
5 contract your milk, so is that forward contracting?

6 A. So in 2020, that was forward contracting, yes.

7 Q. Okay. Do you use any other risk management tools?

8 A. Since 2020, I have switched to DRP, and that's the
9 only tool that we're using.

10 Q. Okay. And so I wondered if you could walk me
11 through, just so I understand when you talk about what you
12 experienced in July of 2020. So you had forward
13 contracted your milk at \$24 a hundred?

14 A. Right. Class III contract, I think, Class III
15 settled at about 28. And so, you know, when -- when I
16 settled out, there would have been, you know, on the
17 contract, that would have paid out four, but with a
18 negative PPD over \$8, you know, that actually took us down
19 below that. And my -- I settled on that milk at about \$12
20 is where I -- on milk that I had contracted. By the time
21 they brought it back and -- and, of course, the 30% that
22 is in Class I came off the -- was much lower price, so --
23 but I settled at 12 out of \$28 Class III price.

24 Q. Okay. So what you saw in your milk check was 12?

25 A. Yeah.

26 Q. Okay.

27 A. Which is why I went to DRP after that.

28 Q. You did talk about how the current rules of the



1 average was \$0.74, you believe makes it more difficult for
2 producers to protect their milk. I was wondering if you
3 could just elaborate on that.

4 A. So with the higher-of -- because when I say the
5 basis, I mean the basis of -- of your milk, the basis of
6 where the Class I will fall to the prices that you can --
7 that you can protect, Class III and IV.

8 And so if the bulk of the dairy industry is going
9 to work on the Class III market, if you are in the
10 futures, DRP does offer Class IV. And so what I meant
11 was, with the current system, the portion of your milk
12 check that is Class I, there's no -- there's no way of
13 knowing where it's going to fall. So that 30% of my milk
14 check, if I have a Class III contract and -- and -- and,
15 let's see, if Class III is the driver, and I have a
16 Class III contract, I cannot pick up the difference -- I
17 got to think a little bit here. But, yeah. You know,
18 that 30%, I can't address on my -- on my check.

19 Q. Okay. Okay. Under the current formula?

20 A. Under the current formula.

21 Q. But under the higher-of you would --

22 A. Under the higher-of, the basis will always be --
23 it doesn't matter where I am, I'm going to have a positive
24 basis. There's always a basis for Class I milk. Right?
25 In the normal marketplace, we assume a basis in our market
26 for Class I milk. And that basis is maintained with a
27 higher-of. It never disappears in the average. In the
28 average, our basis -- because your Class I formula, you



1 come up, it -- there should always be -- there should be a
2 positive basis. Well, that positive basis disappears in
3 the average. If you're always at higher-of, it's always a
4 positive basis.

5 Q. Okay. Thank you.

6 I did have a question, since you are on the board
7 of MMPA, right?

8 A. Yes.

9 Q. Does MMPA has Class I plants?

10 A. Yes.

11 Q. And so does the co-op use risk management tools?
12 I mean, you talked with Mr. Rosenbaum about how when that
13 change was made in 2018, the Farm Bill primary driver for
14 that was to allow Class I processors to hedge their milk.
15 Does your co-op do that?

16 A. So we do not. Our milk is always priced every
17 month, and our customers pay that. We have never had a
18 customer request any actions, forward pricing
19 opportunities. And so our milk, we just set the price,
20 and then we -- then we're selling our milk --

21 Q. Okay.

22 A. -- off the market every month.

23 Q. Okay.

24 A. Basically there's about a month delay. We're
25 always a month behind. And so we might lose on the market
26 if it's going up, but we'll gain when it is going down.

27 Q. Okay. Thank you.

28 Then on your next page you talk about how NMPF had



1 considered numerous options before deciding on
2 recommending the higher-of. One was a "complicated
3 rolling average that extended the period of time that
4 would make producers whole."

5 Can you define what you mean about "making
6 producers whole"?

7 A. To get back to the full value of where we would be
8 on the higher-of. And so the plan they had, it would
9 over -- it would take about two years for you to pick up
10 losses on the one that they presented. And honestly, on
11 the committee, we didn't have -- I don't think there was
12 any -- I'm trying to think. I don't think not one
13 producer stood up and said they liked that idea.

14 So I think the producer community is -- is -- I --
15 we're an IDFA member, I'll say that, but I think we feel
16 pretty burnt right now, because that -- that money was
17 pretty painful to give up. And I'm not -- I do not want
18 to stand in front of producers and tell them again that,
19 we've got a deal, hey, it's good. And we understand the
20 higher-of. We know where the -- we understand the value
21 of an average. And we're -- I'm going to say our patience
22 is worn on the talk of complicated programs.

23 Q. Thank you very much.

24 MS. TAYLOR: That's it from AMS.

25 THE COURT: Redirect?

26 MS. HANCOCK: Thank you for your time, Mr. Chapin.
27 Your Honor, we would move to admit Exhibit 135.

28 THE COURT: Any objections?



1 Exhibit 135 is entered into the record of this
2 hearing.

3 (Thereafter, Exhibit Number 135 was received
4 into evidence.)

5 MS. HANCOCK: Thank you.

6 THE COURT: Thank you, Mr. Chapin. Appreciate
7 your coming here to testify. You can stand down from the
8 stand.

9 MS. HANCOCK: Your Honor, at this time we would
10 call producer Karl Wedemeyer.

11 THE COURT: Welcome, Mr. Wedemeyer. Please raise
12 your right hand.

13 KARL WEDEMEYER,
14 Being first duly sworn, was examined and
15 testified as follows:

16 THE COURT: Your witness.

17 DIRECT EXAMINATION

18 BY MS. HANCOCK:

19 Q. Good morning, Mr. Wedemeyer. Am I saying that
20 right --

21 A. You are.

22 Q. -- the second time?

23 Would you mind stating and spelling your name for
24 the record?

25 A. Karl Wedemeyer, K-A-R-L, W-E-D-E-M-E-Y-E-R.

26 Q. Thank you.

27 And could you provide your business address?

28 A. 1405 North 98th Street, Kansas City, Kansas.



1 Q. Thank you.

2 And did you prepare your written statement
3 identified as Exhibit NMPF-81?

4 A. I did.

5 MS. HANCOCK: Your Honor, if we could mark that as
6 our next exhibit number.

7 THE COURT: Yes. That exhibit will be marked
8 Exhibit 136 for identification.

9 (Thereafter, Exhibit Number 136 was marked
10 for identification.)

11 MS. HANCOCK: Thank you.

12 BY MS. HANCOCK:

13 Q. Mr. Wedemeyer, would you mind providing us with
14 your testimony?

15 A. My name is Karl Wedemeyer. I am a dairy farmer
16 from LaRue, Ohio, where I farm 85 acres and milk 200 cows
17 in a partnership with my brother, Derek, and my parents,
18 Lee and Colleen. I have been a dairy farmer for 14 years,
19 but really, I feel like I have been a dairy farmer my
20 whole life.

21 I received an associate degree in Dairy Science
22 and a bachelor's degree in Animal Science from The Ohio
23 State University. I also recently completed a master's
24 degree in Business Administration from Ohio University. I
25 am a farmer-owner of Dairy Farmers of America.

26 I have had the good fortune to be able to hold
27 various leadership positions throughout the agriculture
28 and dairy industries. I have served on Mideast Area



1 Council for DFA and currently serve as an area resolutions
2 member and corporate resolutions member. I also currently
3 serve on the board of the Ohio Dairy Producers
4 Association.

5 I have been managing our dairy since I completed
6 my undergraduate degree in 2009. Part of my management
7 responsibilities for the farm have been developing and
8 implementing the farm's risk management strategy. This
9 includes not only forward contracting our feed inputs such
10 as corn, soybean meal, and soy hulls, but also our milk
11 price.

12 I have utilized forward contracting through DFA's
13 Risk Management Program to help protect our milk price. I
14 have utilized different financial products such as
15 Class III, Class IV, Producer Price Differential (PPD),
16 and Target Blend contracts. By using various strategies
17 to hedge our price risks, I have become familiar with the
18 Federal Milk Marketing Order system and how it functions.
19 This understanding has helped me to keep my farm viable by
20 ensuring we do not receive the market lows for our milk.

21 I appear today in support of the five proposals
22 offered by National Milk Producers Federation:

23 (1) Limit the Make Allowance increase to NMPF's
24 proposed levels;

25 (2) Return to "the higher-of" in the calculation
26 of the Class I mover;

27 (3) Eliminate 500-pound barrel cheese pricing
28 from the calculation of the Class III protein price;



1 (4) Increase and regularly update the skim
2 component tests used to determine the Federal Milk
3 Marketing Order skim milk price;

4 (5) Adopt National Milk Producers Federation's
5 Class I price differential proposal.

6 This has been a challenging year on our dairy
7 farm. Since December 2022, our pay price, as reflected in
8 the milk check, has decreased by \$7 per hundredweight.
9 Our costs of production have not gone down to the same
10 degree, and our dairy's profitability has been impacted
11 substantially.

12 We have faced significant input cost inflation
13 since 2020. For instance, feed costs have almost doubled
14 over the last three years. We have also seen our cost of
15 hauling milk increase by more than 100%. Specifically,
16 our hauling costs have risen from \$0.85 per hundred to \$2
17 per hundredweight due to an increase in fuel costs,
18 increase in the cost of labor for truck drivers, and
19 increases in the cost of equipment needed to haul milk.

20 In 2019, the dairy industry agreed to revise the
21 process for calculating the Class I mover. The agreement
22 was to use the average-of the Advanced Class III and
23 Class IV skim milk prices plus a fixed differential of
24 \$0.74 per hundredweight. This change replaced the use of
25 the higher-of the Advanced Class III and Class IV skim
26 milk prices that had been in place since 2000. We were
27 told this change was important to the Class I processing
28 industry to allow them to use risk management strategies



1 to hedge their Class I milk costs. We were told this
2 change would be revenue neutral to producer milk prices.

3 However, in the short time since implementation,
4 we have seen Federal Milk Marketing Order blend prices
5 move lower because of the Class I mover change. For only
6 a very narrow price range will the "average-of" Class I
7 mover outperform or even be equal to the "higher-of"
8 Class I mover.

9 Since its implementation, National Milk Producers
10 Federation estimates that dairy farmers' milk prices have
11 been reduced by \$950 million, and my experience supports
12 this estimate. This is not just a COVID-19 era anomaly.
13 National Milk Producers Federation staff has determined
14 that since implementation, for 29 of 52 months, the
15 "average-of" Class I mover has returned Class I prices
16 that are, on average, 1.30 per hundredweight less than
17 what could have been achieved by use of "higher-of."

18 By comparison, for the remaining 23 months of the
19 52 months since the change was made, the "average-of" has
20 returned a higher Class I price than the "higher-of," for
21 an average improvement of just \$0.42 per hundredweight.
22 This demonstrates the goal of revenue neutrality has not
23 been achieved and has been to the detriment of dairy
24 producers.

25 This experiment in Class I price formula changes
26 has been a failure, and it is time to fix the problem.
27 Based on proposals by National Milk Producers Federation,
28 the International Dairy Foods Association, and a group of



1 milk handlers called the Milk Innovation Group, it seems
2 there is near universal support to do something to fix the
3 Class I mover.

4 Also, there is near universal support by the
5 industry for the Class I mover to revert to the
6 "higher-of," or, if using the same average-of prices, find
7 a mechanism to be equal to the "higher-of" over a period
8 of time, say 24 months. Because the dairy industry
9 supports a change that is the equivalent of reverting to
10 the "higher-of," I urge the Secretary of Agriculture to
11 readopt the "higher-of" mover to set the Class I price.

12 My dairy needs the Class I revenue in my blend
13 price immediately; I cannot afford to wait for months or
14 even years for the added revenue. This change affects
15 100% of pooled producer milk, while I suspect that all
16 pool processors are not covering 100% of their products
17 with risk management tools impacted by this change.

18 I understand that the proposal to change the skim
19 milk component factors is based on proven and documented
20 tests of farm milk that show inarguable increases in milk
21 components.

22 In 2022, my milk averaged 5.04% butterfat, and
23 3.8% protein, and 5.67% other solids. These have
24 increased by 2.5% since 2018. A goal for our farm is to
25 increase the component tests of our milk every year. We
26 strive to increase the production capability of our cows
27 through better management.

28 Using different feeding strategies and feed



1 additives, we have seen a consistent increase year over
2 year in the components of our herd. Our farm is located
3 in Federal Milk Marketing Order 33, which uses multiple
4 component pricing.

5 This pricing structure encourages us to produce
6 the highest component milk possible, which translates into
7 a higher price per hundredweight for our milk. With
8 financial incentives being clear for our farm, we intend
9 to continue to increase the component levels of our milk.

10 As I had mentioned previously, I have been
11 managing our farm's risk management strategy for the last
12 14 years. Part of this strategy is to have forward
13 contracts for milk at various price points and for various
14 lengths of time out into the future to hedge price risk.

15 There will be times when I have milk forward
16 contracted for up to a year in advance. This strategy
17 could be greatly impacted by the timing of a USDA decision
18 to implement new skim milk component factors. I could
19 have milk contracted based on the old formulas and skim
20 milk component factors if there is not a 12-month
21 implementation period. This would result in a loss of
22 income for our farm because I would be locking in a lower
23 milk price that would keep me from receiving the benefits
24 of the increased skim milk component factors. We should
25 not be penalized for being proactive with our use of
26 forward contracting.

27 It is important to the success of my risk
28 management strategy that the Federal Milk Marketing Order



1 milk pricing formulas are not changed without a lengthy
2 notification period. Ideally, there would be a 12-month
3 delay in implementation after the revised skim milk
4 component factors in the class pricing formulas have been
5 adopted.

6 That said, I recognize the broader needs of the
7 dairy industry and support an earlier implementation for
8 some of the other changes found in National Milk Producers
9 Federation's proposals, i.e., increasing Make Allowances,
10 reinstating the "higher-of" in the Class I mover
11 formula, and eliminating 500-pound barrel cheese pricing
12 from the Class III protein price formula.

13 I close by reiterating my support for National
14 Milk Producers Federation's five proposals:

15 (1) Limit the Make Allowance increase to their
16 proposed levels;

17 (2) Return to "the higher-of" in the calculation
18 of the Class I mover;

19 (3) Eliminate the barrel cheese price from the
20 calculation of the Class III protein price;

21 (4) Increase and regularly update the skim
22 component tests used to determine the Federal Order skim
23 milk price;

24 (5) Adopt National Milk Producers Federation's
25 Class I price differential proposal.

26 Others representing Dairy Farmers of America will
27 be speaking more directly on these issues. Thank you for
28 allowing me to testify today on these issues that are



1 especially important to my family and the future success
2 of our dairy business.

3 Q. Thank you, Mr. Wedemeyer.

4 MS. HANCOCK: Your Honor, he's available for
5 cross-examination.

6 THE COURT: Does anyone have any cross for this
7 witness?

8 Dr. Cryan.

9 CROSS-EXAMINATION

10 BY DR. CRYAN:

11 Q. I'm Roger Cryan for the American Farm Bureau
12 Federation.

13 Hi, Karl, it's nice to see you.

14 A. Yeah. Good to see you, Roger.

15 Q. Surprise question: Are you a Farm Bureau member?

16 A. I am, and have been heavily involved with Ohio
17 Farm Bureau throughout the last 14 years as well.

18 Q. And I appreciate that. I really -- we really do
19 appreciate your participation and your involvement. Farm
20 Bureau is built on volunteers and members.

21 And you attended our forum in Kansas City last
22 October?

23 A. I did.

24 Q. Took an active role?

25 A. Yep.

26 Q. I appreciate that too.

27 And you signed on to the final statement, the
28 joint statement with National Milk on behalf of Ohio Dairy



1 Producers Association.

2 A. I did that as well, yes.

3 Q. That was -- that was I think an important step in
4 this whole process.

5 And some of the things that came out of that
6 included demonstration of farmer consensus support, as you
7 said, for higher-of.

8 A. Yeah.

9 Q. And the one other thing that I'd like to kind of
10 highlight from some of National Milk's testimony and that
11 also came out of that was that even though there's a --
12 the proposal from National Milk is to have a modest
13 increase in the Make Allowances, that ultimately the
14 objective -- the ideal ultimately is to have
15 Make Allowances adjusted on the basis of audited mandatory
16 surveys; is that correct?

17 A. That's my understanding.

18 Q. And was that a consensus result from that forum?

19 A. I would say that, yes, it was.

20 Q. Very good. I appreciate -- again, I appreciate
21 your participation in the forum and in this proceeding as
22 well. Thanks very much.

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

24 THE COURT: Further cross?

25 Mr. Miltner.

26 CROSS-EXAMINATION

27 BY MR. MILTNER:

28 Q. Good morning, Mr. Wedemeyer.



1 A. Good morning.

2 Q. My name is Ryan Miltner. I represent Select Milk
3 Producers. And I live in New Knoxville, Ohio, which is
4 only slightly larger than your part of the state.

5 I had a couple of questions about -- I wanted to
6 start on page 3 of your statement if I could.

7 A. Okay.

8 Q. And right before your closing, you talked about
9 risk management strategies.

10 My first question is, how is your risk management
11 strategy potentially impacted by the changes to the
12 pricing formulas?

13 A. So as I kind of mentioned, I believe, because I am
14 contracting milk at various time lengths, if there's not a
15 delay in the implementation, if I lock in milk prior to a
16 change, I'm effectively excluding myself from the benefits
17 of the change in the skim milk pricing components.

18 Q. And so as a producer and as my clients as
19 producers look at these potential changes, I think one of
20 the questions we're all trying to grapple with is what
21 part of these proposals or which proposals should perhaps
22 be delayed in implementation, and which ones should not
23 or -- or, you know, be delayed at a different timeframe.

24 What -- you say that some proposals should be
25 delayed and others should be implemented immediately. I
26 wonder, when you are looking at your risk management,
27 what -- what are the factors that are important to you
28 when you are deciding what you would like to see delayed



1 versus what should be implemented now?

2 A. I think the most important factors to me,
3 personally, for my dairy would be that I have the ability
4 to clearly understand the price risk based on any changes
5 that would be made to the Federal Milk Marketing Order
6 system. So as long as I am able to understand and clearly
7 define what those are and how they will affect me, that is
8 what I would be looking for as far as either a delay or
9 non-delay of implementation.

10 Q. Okay.

11 MR. MILTNER: Thanks very much. That's all I
12 have.

13 THE COURT: Further cross?

14 Seeing none, AMS?

15 Ms. Taylor.

16 CROSS-EXAMINATION

17 BY MS. TAYLOR:

18 Q. Good morning.

19 A. Good morning.

20 Q. Thank you for coming to testify today.

21 A. Absolutely.

22 Q. You answered a lot of my questions in your very
23 well written statement, so I don't have too much.

24 I did have a question, I don't know if you heard
25 me ask the previous witness about whether your farm would
26 meet the small business definition of under \$3.7 million.

27 A. My farm would.

28 Q. Yeah. Okay. Thank you.



1 And the previous witness talked about how the
2 Class I mover makes it harder for them as a producer to
3 manage risk, the current average plus \$0.74.

4 Would you -- do you find that same issue for you
5 since you do utilize a lot of risk management tools?

6 A. I would say that, no, I would not have the same
7 experience.

8 Q. Okay. So you are able to manage relatively well
9 because you know -- speaking to your previous point,
10 because you know the rules well and you understand them?

11 A. I would agree, yes.

12 Q. Okay. And then you talk -- my one last question
13 about on the delayed implementation and how that would
14 impact your farm, and your farm would lose money. I just
15 want to make sure I'm clear.

16 So your farm would get whatever the price is that
17 you locked in?

18 A. Right.

19 Q. But you wouldn't get any of the upside benefit
20 from increased components, per se?

21 A. Yes. Correct.

22 Q. Another question. I know National Milk has
23 proposed the 12-month delay, in which you support. But if
24 the Department was looking for -- well, the Department is
25 looking to figure out what a proper delay would be. So
26 let's say it was less than 12 months, it was nine months,
27 it was six months. I don't know what the magic number
28 might be. Maybe it is 12.



1 But if it was less than that, how would you adjust
2 your risk management strategies if that was, in fact, the
3 case?

4 A. I would probably look to adjust the length of time
5 that I was looking to forward contract milk or I would be
6 contracting milk with different price targets in mind,
7 post implementation. If, say, I was wanting to do
8 something beyond the implementation, but before it had
9 occurred, my price targets would probably be different
10 because I would have to take into account the change that
11 would occur to my milk price.

12 Q. And would you find yourself maybe not going as far
13 out just because you are not sure when the change would
14 happen?

15 A. Yeah. I would probably shorten the length of time
16 I would be willing to go out. That would be a major
17 factor in my decision-making.

18 Q. Okay.

19 MS. TAYLOR: I think that's it from AMS. Thank
20 you so much.

21 THE COURT: Redirect?

22 MS. HANCOCK: Thank you, Mr. Wedemeyer.

23 Your Honor, we would move to admit Exhibit 136.

24 THE COURT: Objections?

25 Seeing none, Exhibit 136 is admitted into the
26 record.

27 (Thereafter, Exhibit Number 136 was received
28 into evidence.)



1 MS. HANCOCK: I appreciate your time today.

2 THE WITNESS: Thank you.

3 THE COURT: Yes, thank you. I appreciate you
4 coming in.

5 MS. HANCOCK: Your Honor, our next dairy producer
6 witness is Kristine Spadgenske.

7 KRISTINE SPADGENSKE,

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

10 THE COURT: Your witness.

11 DIRECT EXAMINATION

12 BY MS. HANCOCK:

13 Q. Good morning. Would you mind stating and spelling
14 your name for the record?

15 A. Sure. Kristine, K-R-I-S-T-I-N-E, Spadgenske,
16 S-P-A-D-G-E-N-S-K-E.

17 Q. And what is your mailing address?

18 A. Mailing address is 1405 North 98th Street, Kansas
19 City, Kansas, 66111.

20 Q. And did you prepare a written statement identified
21 as NMPF Exhibit 73?

22 A. I did.

23 Q. Thank you.

24 Would you mind providing us with that statement?

25 A. Absolutely. Thank you.

26 THE COURT: Do we want to mark it?

27 MS. HANCOCK: I apologize. Your Honor, I believe
28 the next exhibit number is 137.



1 THE COURT: It is.

2 MS. HANCOCK: Thank you. If we could mark NMPF-73
3 as Exhibit 137.

4 THE COURT: That's done.

5 (Thereafter, Exhibit Number 137 was marked
6 for identification.)

7 MS. HANCOCK: Thank you.

8 BY MS. HANCOCK:

9 Q. Go ahead.

10 A. Good morning, and thank you very much for the
11 opportunity to be here.

12 My name is Kristine Spadgenske, and I am a dairy
13 farmer from Menahga, Minnesota. On our family farm we
14 milk around 350 cows and farm 1,000 acres of corn and hay
15 that we feed to our animals.

16 Growing up on a dairy farm, and with my husband
17 and I starting our own dairy in April of 1994, I have come
18 in second to cows my whole life. Since growing up on the
19 farm and now working on my own dairy, I have seen
20 significant changes in the industry including consumer
21 preference of dairy, expenses on the dairy and in plants
22 and also in the components of milk.

23 While my farm and family keep me plenty busy, I
24 have a passion for being involved in the industry and
25 promoting the goodness of dairy. My husband, Mark, and I
26 have been farmer-owners of our milk marketing cooperative,
27 Dairy Farmers of America since starting the dairy in the
28 mid-1990's.



1 I currently serve on DFA's Central Area Council
2 and Corporate Board of Directors. Additionally, I am very
3 involved in the promotional arm of the dairy industry
4 where I chair the Minnesota Division of Midwest Dairy and
5 reside on Midwest Dairy's Corporate Board. Outside of
6 dairy, I have been the clerk of Runeberg Township since
7 2005, I and serve on the Todd-Wadena Electric Cooperative
8 Board.

9 My husband and I have four children and a
10 daughter-in-law. We are thankful for the opportunity to
11 raise our children on the farm where they have learned the
12 meaning of hard work, perseverance, and sacrifice. Each
13 of our children have embraced farm life and have an active
14 interest in working on the farm and/or the agricultural
15 community. My family is actively involved in our church,
16 community, and school. Including 4-H and FFA.

17 In addition to our community involvement, our farm
18 is always open to public tours. We host around 90
19 first-graders on the dairy each spring where they can
20 learn about how we care for our cows and the nutritious
21 milk that they produce.

22 From serving on industry boards to hosting farm
23 tours, it remains a top priority to me to highlight the
24 importance of dairy and work to ensure a future for
25 dairying for the next generation, like my children.

26 I appear today in support of the proposals
27 submitted by National Milk Producers Association. While a
28 compromise, the comprehensive NMPF proposed package aims



1 to create balance, considering the needs of both dairy
2 farmers and processors, to ensure a healthy and stable
3 dairy industry for years to come.

4 This has been a challenging year on our dairy
5 farm. Since December of 2002 (sic), the All Milk Price
6 has declined by more than \$5 per hundredweight, which is
7 in line with the decline in my milk check so far this
8 year.

9 For our farm, along with many other dairy farms,
10 costs of production have not declined to the same degree
11 as the milk price. Dairy farmers operate on a slim margin
12 already, so when facing low milk prices and high costs,
13 it's nearly impossible to be profitable right now.

14 We have faced significant inflation in our input
15 costs since 2020. For instance, feed, fertilizer, seed,
16 fuel, and equipment costs, and repairs have doubled or
17 even tripled in the last three years.

18 Because of increased input costs on our dairy, we
19 need a pay price of at least \$20 per hundredweight just to
20 break even. For comparison, I ask each of you to consider
21 cutting your income in half, but retain the same expenses,
22 and you tell me how you are going to pay the mortgage, the
23 utilities, and the groceries.

24 Our dairy employs four full-time employees, and in
25 order to retain responsible employees, we must compete
26 with the increasing labor costs, as well. The cows on our
27 dairy provide an income for six families, and the
28 imbalance between milk price and costs makes our financial



1 situation unsustainable for my family and the families
2 that we employ going forward. In all honesty, our farm
3 cannot survive much more added financial pressure.

4 All things equal, even a small increase in
5 Make Allowances can detrimentally decline farmer milk
6 prices. I understand that Make Allowances are an
7 important aspect in determining Federal Order Class
8 Prices, and from time to time there is a regulatory need
9 to adjust them.

10 I ask that in doing so that the USDA consider the
11 impact on dairy farm operations' milk prices, and more
12 importantly, the impact on dairy farm profitability. The
13 more modest changes proposed by NMPF, which they have
14 indicated will lower farm milk prices by about \$0.50 per
15 hundredweight is a troublesome but acceptable change.

16 The significant changes proposed by the
17 International Dairy Foods Association and the Wisconsin
18 Cheese Manufacturers Association would be much more
19 detrimental to my milk price and should be rejected.

20 Cheese manufacturers can pass on the higher costs
21 when they sell their cheese. I don't have the ability to
22 do that. Milk buyers at manufacturing plants also have
23 other means to cover their operating costs, including
24 lowering over-order premiums and using revenue from
25 Federal Order depooling.

26 I strongly object to allowing manufacturers to
27 double dip by continuing to have other means to cover
28 their production costs and to take additional money out of



1 my milk check. For this reason, a more modest
2 Make Allowance adjustment approach is appropriate.

3 I understand that the proposal to change the skim
4 milk component factors is based on dairy farm component
5 test increases. In 2022, my milk tests averaged butterfat
6 of 3.94, protein of 3.9, and other solids of 5.71. Our
7 components have steadily increased since 2013. Factors
8 such as genetics, good soil health, and high-quality feed
9 have led to an increase in these levels, and I only expect
10 them to go higher as we utilize more advanced research.

11 We do currently utilize risk management tools on
12 our dairy. You see, we used to be able to ride the highs
13 and lows of the milk price, but increased costs and
14 shrinking profit margin has made that increasingly more
15 difficult to do. Because of this, we do forward contract
16 feed, fuel, and milk.

17 Our current milk forwarding contract ended in May.
18 We are looking at options to extend coverage through 2024
19 while also utilizing the Dairy Revenue Protection Program.
20 Generally, we begin covering our milk price during the
21 third quarter of the year prior to producing and
22 delivering that milk.

23 It is important to the success of my risk
24 management programs that the Federal Orders do not change
25 the formulas for transactions I enter into well before the
26 knowledge of the change and the timing of its
27 implementation.

28 Ideally, I would like an 18-month delay, but that



1 said, I recognize the broader needs of the dairy industry
2 and support an earlier implementation, this time, of
3 course, for the changes of the Make Allowance, Class I
4 Mover, and the protein price formula.

5 However, the component change and any future
6 changes in the skim milk component factors should be
7 delayed 12 months or more. Additionally, any future
8 changes to the Make Allowances should be delayed 12 months
9 or more.

10 I close by repeating my support for the NMPF
11 proposals to change the Class I mover, eliminate barrel
12 prices from the Class III protein price formula, and
13 updating of Class I differential and producer price
14 surface. Others from DFA will be speaking more directly
15 to these three issues.

16 Spadgenske Dairy is not just a business, it is our
17 livelihood. It is where we live and raise our children.
18 It's who we are. Thank you for allowing me to testify
19 today on these issues that are very important to my family
20 and the future success of our dairy business.

21 Q. Thank you, Ms. Spadgenske.

22 MS. HANCOCK: Your Honor, we would open her up for
23 cross-examination at this time.

24 THE COURT: Yes. Cross?

25 Mr. Rosenbaum.

26 CROSS-EXAMINATION

27 BY MR. ROSENBAUM:

28 Q. Steve Rosenbaum for the International Dairy Foods



1 Association. Nice to meet you.

2 A. Thank you.

3 Q. On page 2, you make a statement which I'd like to
4 ask you a few questions about. This is the first sentence
5 of the last paragraph, where you say, and I quote:

6 "Cheese manufacturers can pass on their higher costs when
7 they sell their cheese."

8 So let me just explore that a bit. Let's assume
9 that you're a manufacturer of cheddar cheese, which is the
10 product used to set minimum milk prices. You are aware of
11 that?

12 A. Uh-huh.

13 Q. Sorry. You need to say yes or no for the
14 reporter.

15 A. Yes.

16 Q. The uh-huhs, it's hard for her to type those out.

17 Okay. So that was a "yes," correct?

18 A. Yes.

19 Q. All right. So -- and are you aware that the --
20 I'm going to oversimplify slightly -- but the way the
21 Federal Milk Order system sets minimum milk prices, is
22 they take the selling price of cheese, cheddar cheese
23 specifically, they deduct a Make Allowance, which is
24 supposed to reflect the cost of manufacture, and then the
25 remaining money is the minimum milk price.

26 Are you familiar with that general --

27 A. Yes.

28 Q. -- methodology?



1 A. Yes.

2 Q. And are you aware that the Make Allowance is a
3 fixed amount in the formula?

4 A. Yes.

5 Q. It's not subject to any automatic revisions based
6 upon, you know, inflation indices or anything like that,
7 correct?

8 A. Yes.

9 Q. It takes a hearing like the one we're engaged in
10 now to change that Male Allowance, correct?

11 A. Yes.

12 Q. And indeed that's something that all parties --
13 well, not all parties -- several parties on both sides, so
14 to speak, are proposing to do, correct?

15 A. Yes.

16 Q. So under that circumstance, I mean, let's assume
17 that the price of cheese is -- I'm just going to make it
18 simplified -- is \$2, which is perhaps somewhat optimistic
19 right now, but let's assume cheddar cheese is selling for
20 \$2 a pound. Okay?

21 A. Yes.

22 Q. Are you with me?

23 And let's assume the Make Allowance is \$0.20,
24 which is, in fact, what it is currently, although we're
25 proposing to increase that, as is National Milk. But
26 under the current system, the regulated minimum milk price
27 is \$1.80.

28 Do you see what I'm saying?



1 A. Yes.

2 Q. Do you agree with that?

3 A. Yes.

4 Q. And obviously it gets converted into hundredweight
5 of milk. I'm talking in terms of dollars for cheese. But
6 you understand the basics of what I am doing, correct?

7 A. Yes.

8 Q. So if my -- let's say my costs have gone up from
9 \$0.20 to \$0.25. Okay? And so let's say that I,
10 therefore, increase my price to \$2.05. Okay?

11 But, in fact, hasn't my obligation to pay farmers
12 gone up to \$1.85 because it's \$2.05, my cheese price has
13 gone up by a nickel, but I'm only allowed to hang on to
14 \$0.20 of that in the form of a Make Allowance, and so my
15 obligation to the farmers has gone up from \$1.80 to \$1.85.

16 Do you see my math?

17 A. Yes, I do.

18 Q. And as a result, in fact, although you might say I
19 have been able to increase my cheese price because of
20 higher costs, in fact, I have had to -- I have not been
21 able to hang on to a penny of those higher prices because
22 my minimum milk obligation has gone up by that exact same
23 amount.

24 Do you see that?

25 A. Yes.

26 Q. Okay. And is that -- do you agree that's how the
27 system works?

28 A. Yes.



1 Q. Okay.

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

3 THE COURT: Further cross?

4 Dr. Cryan.

5 CROSS-EXAMINATION

6 BY DR. CRYAN:

7 Q. Roger Cryan for American Farm Bureau Federation.

8 Thank you.

9 And thank you, Ms. Spadgenske, for coming out and
10 participating in this hearing. And I'm impressed with the
11 extent of your engagement with the dairy industry and
12 agriculture generally. So thank you for all of that.

13 A. You're welcome.

14 Q. Could you talk a little bit about the impacts on
15 you and your neighbors of depooling and negative PPDs,
16 the -- I mean, I think you've touched on some of that, but
17 can you talk more specifically about how negative
18 depooling -- negative PPDs -- depooling and negative PPDs
19 affect you and your neighbors?

20 A. Yeah. We -- in our area, we are in Federal
21 Order 30, and we have seen very consistent negative PPDs.
22 The one thing a dairy farmer never wants to see in their
23 milk check is a negative, and it's very, very difficult to
24 even explain PPDs to a dairy farmer why there has to be a
25 negative. So my support is, obviously, to make sure that
26 we can get the most dollars back into the farmers' milk
27 check.

28 Q. And when -- and when those PPDs not only are



1 negative but vary quite a bit, that has an impact too; is
2 that right?

3 A. Yes, it does.

4 Q. Very good.

5 DR. CRYAN: Thank you. Thanks very much.

6 THE WITNESS: Yes.

7 THE COURT: Mr. Miltner.

8 CROSS-EXAMINATION

9 BY MR. MILTNER:

10 Q. Good morning.

11 A. Good morning.

12 Q. Ryan Miltner representing Select Milk Producers.

13 Mr. Rosenbaum asked you some questions about the
14 first sentence of the last paragraph on page 2. I wanted
15 to ask you about another sentence in there where you write
16 about "milk buyers at manufacturing plants also have other
17 means to cover their operating costs, including lowering
18 over-order premiums and using revenue from Federal Order
19 depooling."

20 I have to admit, I'm not familiar with the
21 over-order premiums in Order 30. Are you -- are there
22 currently Class III over-order premiums in that order?

23 A. Yes.

24 Q. There are. Okay.

25 So even despite the increases in manufacturing
26 costs, those manufacturers are still able to pay
27 over-order premiums on Class III?

28 A. Yes.



1 Q. Okay. Tell me about your experience or the
2 experience of other farmers in your community about the
3 impacts of depooling by cheese manufacturers.

4 A. So the benefit of being the member of -- a farmer
5 member-owner of a cooperative is that when there is
6 depooling, DFA does pass that revenue back on to the dairy
7 farmer.

8 Q. Okay. And so the follow-up on Mr. Rosenbaum's
9 questioning where he was describing a cheese plant that
10 was paying the Class III price for milk but was pooled, so
11 they had to, when a cheese plant depools, even if they are
12 still paying the Class III price, they are able to retain
13 some benefit from that, correct?

14 A. Yes.

15 Q. And that's what you mean by double dipping?

16 A. Correct.

17 Q. Okay. Other than that particular context, what --
18 was there anything else that you meant as far as double
19 dipping, things that you saw that might be unfair to the
20 producer?

21 A. No.

22 Q. Okay. I asked the previous producer who was
23 testifying about risk management, and you have a similar
24 statement in your testimony about -- about when we should
25 implement changes.

26 And do you have thoughts on where we draw that
27 line between what we should delay and what we might want
28 to implement right away?



1 A. No, I do not. But what I can tell you is that if
2 I'm looking at forward contracting my milk, and there's a
3 change in the formula, let's just say \$0.50, that could
4 mean \$4,000 on average for our dairy, \$4,000 less in my
5 milk check for that month. I can do a lot with \$4,000.

6 Q. Does it make a difference whether that \$0.50
7 change is a change that shows up in the Class I price or
8 the Class III price?

9 A. My milk is a Class III market.

10 Q. Okay. I have one more question back on page 2.

11 You talk about National Milk's Make Allowance
12 proposal and how it's relatively modest compared to others
13 but still has a \$0.50 impact. Part of National Milk's
14 rationale is that we may want to go get better data on
15 plant costs, which -- which might mean that that \$0.50
16 hits again in two, three years, or maybe not. We won't
17 know until and if we get the data.

18 But what -- what would the impacts to your farm be
19 if, let's say, we have a \$0.50 change due to
20 Make Allowances now and then another \$0.50 or so three
21 years down the road?

22 A. I cannot actually answer that question right now.

23 Q. Okay.

24 MR. MILTNER: Thank you very much.

25 THE WITNESS: You're welcome.

26 THE COURT: Further cross?

27 Seeing none, AMS?

28 ///



CROSS-EXAMINATION

1
2 BY MS. TAYLOR:

3 Q. Good morning.

4 A. Good morning.

5 Q. Thank you for coming to testify today.

6 A. Thank you.

7 Q. Mr. Miltner is continuing to take my questions,
8 so -- but he does it more eloquently than me, so that's
9 not a problem. That only leaves me with a couple of
10 questions for you.

11 I'm sure you heard me ask other witnesses we had
12 this morning about whether they meet -- their farm meets
13 the small business definition. Would your farm meet that
14 definition?

15 A. Yes, it does.

16 Q. Okay. And on the topic of risk management, I read
17 from your statement you do forward contracting, and you
18 are also utilizing Dairy Revenue Protection program; is
19 that right?

20 A. That is correct. We have mostly done forward
21 contracting. Dairy Revenue Protection is something that's
22 fairly new for us. But we do also use DMC, Dairy Market
23 Coverage.

24 Q. Okay. We at USDA are glad to hear that piece.

25 You said -- let's see. You generally begin
26 covering your milk price risk during the third quarter of
27 the year, so in the fall sometime.

28 And is that for the entire next year? How far out



1 do you contract?

2 A. Yeah. It totally depends what contracts might be
3 offered and what we're thinking. Again, I will be honest
4 and say that, you know, forward contracting is pretty new
5 for us. As I said, on our dairy, we were always able to
6 ride the highs and lows, and we're not able to do that
7 anymore. So now we need to look at more tools in the
8 toolbox. But it just totally depends, you know, what
9 we're looking at for contracts and where we're sitting.

10 Q. Okay. And so you talk about your preference would
11 be an 18-month delay, although you support the 12-month.

12 Is the 18-month just because it gives you the most
13 options for how far out you could go?

14 A. On our dairy we -- and the other dairies, yes. We
15 need the most options possible in order to be able to grab
16 the best -- most amount of revenue that we can.

17 Q. Okay.

18 MS. TAYLOR: That's it from AMS. Thank you so
19 much.

20 THE WITNESS: Thank you.

21 MS. HANCOCK: Thank you for your time today.

22 Your Honor, we would move to admit Exhibit 137.

23 THE COURT: Objections?

24 Seeing none, Exhibit 137 is made a part of this
25 record.

26 (Thereafter, Exhibit Number 137 was received
27 into evidence.)

28 MS. HANCOCK: And, your Honor, we have one more



1 witness, producer Brian Rexing.

2 THE COURT: Yes. Ms. Spadgenske, thank you for
3 coming in. We appreciate having you here.

4 THE WITNESS: Thank you very much.

5 THE COURT: You may leave the stand.
6 Raise your right hand.

7 BRIAN REXING,
8 Being first duly sworn, was examined and
9 testified as follows:

10 THE COURT: Your witness.

11 DIRECT EXAMINATION

12 BY MS. HANCOCK:

13 Q. Good morning, Mr. Rexing.

14 Would you state and spell your name for the
15 record, please?

16 A. Yes. My name is Brian Rexing, B-R-I-A-N, last
17 name Rexing, R-E-X-I-N-G.

18 Q. And what is your mailing address?

19 A. Mailing address 1405 North 98th Street, Kansas
20 City, Kansas.

21 Q. Did you about prepare a written statement
22 identified as Exhibit NMPF-80?

23 A. Yes, ma'am.

24 MS. HANCOCK: And, your Honor, I believe the next
25 exhibit number is 138, if we could assign that to this
26 document.

27 THE COURT: So marked.

28 (Thereafter, Exhibit Number 138 was marked



1 for identification.)

2 MS. HANCOCK: Thank you.

3 BY MS. HANCOCK:

4 Q. Mr. Rexing, would you mind providing us with your
5 statement, please?

6 A. Sure can.

7 First of all, welcome to my home state of Indiana.
8 I have the pleasure of residing and farming here, so
9 welcome all to our beautiful state.

10 My name is Brian Rexing. I am a dairy farmer from
11 Fort Branch, Indiana, where my family and I farm 3500
12 acres, with a large portion of the crops being used to
13 feed our 1200 milk cows. I have grown up dairying with my
14 family and have owned my current operation with my wife
15 for 15 years. This has allowed me opportunities to engage
16 in the industry I love, including representing dairy
17 farmers. I am a farmer-owner of Dairy Farmers of America
18 and currently serve as the Chairman of DFA's Southeast
19 Area. I also serve as the 2nd Vice Chair of DFA's
20 Corporate Board.

21 I appear today in support of the five proposals
22 offered by National Milk Producers Federation, in which I
23 am also a board member of:

24 First, Limit the Make Allowance increase to NMPF's
25 proposed levels; return to "the higher-of" calculation of
26 the Class I mover; eliminate the 500-pound barrel cheese
27 pricing from the calculation of the Class III protein
28 price; increase and regularly update the skim component



1 tests used to determine the Federal Order skim milk price;
2 and adopt National Milk Producers Federation's Class I
3 price differential proposal.

4 This has been a challenging year on our farm.
5 Since December of 2022, my pay price, as reflected in my
6 milk check, has decreased by almost \$6 per hundredweight.
7 Unfortunately, our costs of production have not gone down
8 to the same degree, and our dairy's profitability has been
9 reduced substantially.

10 Additionally, we have faced significant input cost
11 inflation since 2020. For instance, labor costs have
12 increased 35 to 40% in the last 18 months; the cost of
13 feed has nearly doubled; supply costs, including
14 medicines, cleaning chemicals, and sanitizing solutions,
15 have doubled over the past couple years; the cost of fuel
16 has increased by 50%; milk hauling costs have gone up by
17 40%; and the cost of putting a crop into the ground has
18 increased by 60 to 75%.

19 The cost increases I have mentioned must be taken
20 out of the profitability of our dairy and farming
21 operation; we have no other way to pass along these cost
22 increases.

23 In 2019, the dairy industry agreed to revise the
24 process for determining the Class I mover. The agreement
25 was to use the average-of the Advanced Class III and
26 Class IV skim milk price plus a fixed differential of plus
27 74 per hundredweight. This change replaced the use of the
28 higher-of Advanced Class III and Class IV skim milk price



1 ("higher-of") that had been in place since 2000.

2 We were told this change was important to the
3 Class I processing industry to allow them to use risk
4 management strategies to hedge their Class I milk costs.
5 We were told this change was to be revenue neutral to the
6 producer milk price.

7 However, in the short time since implementation,
8 we have seen Federal Order blend prices move lower because
9 of the Class I mover change. For only a very narrow price
10 range will the "average-of" Class I mover outperform or
11 even be equal to the "higher-of" Class I mover.

12 Since implementation, NMPF estimates that dairy
13 farmers' milk prices have been reduced by \$950 million,
14 and my experience supports this data. This is just not a
15 COVID-19 era anomaly.

16 NMPF staff have determined that since
17 implementation, for 29 of 52 months, the "average-of"
18 Class I mover has returned Class I prices that are, on the
19 average, \$1.30 per hundredweight less than what could have
20 been achieved by the use of the "higher-of."

21 By comparison, for the remaining 23 months of the
22 52 months since the change was made, the "average-of" has
23 returned a higher Class I price than the "higher-of," for
24 an improvement of just \$0.42 per hundredweight. This
25 demonstrates the goal of revenue neutrality has not been
26 achieved and has been to the detriment of dairy producers.

27 Based on the proposals by NMPF, the International
28 Dairy Foods Association, and a group of milk handlers



1 called the Milk Innovation Group, it seems there is near
2 universal support to do something to fix the Class I
3 mover.

4 Also, there is near universal support by the
5 industry for the Class I mover to revert to the
6 "higher-of," or, if using the average-of price to define a
7 mechanism to be equal to the "higher-of" over a period,
8 say 24 months.

9 Because the dairy industry supports a change that
10 is the equivalent of reverting to the "higher-of," I urge
11 the Secretary of Agriculture to readopt the "higher-of"
12 mover to set the Class I price. My dairy needs the
13 Class I revenue in my blend price immediately; I cannot
14 afford to wait 30 or more months for the added revenue.

15 I understand that the proposal to change the skim
16 milk component factors is based on proven and documented
17 tests of farm milk that show inarguable increases in milk
18 components. In 2022, my milk averaged 4.17% butterfat,
19 3.11% protein, and 5.82% other solids.

20 Our components have steadily risen as we react to
21 market signals. For example, the significant increases in
22 butterfat content of my milk, which allows us to capture
23 additional revenue in my milk check. We plan to continue
24 to utilize new ideas and make improvements on our dairy to
25 increase the milk components of our milk. Being
26 associated with Federal Order #5, one of the four
27 skim-butterfat pricing orders, makes the adoption of the
28 NMPF proposal even more important.



1 We participate in risk management strategies to
2 lock in costs, pay prices, or both. It is important to
3 the success of my risk management strategy that the
4 Federal Order milk pricing formulas are not changed
5 without a lengthy notification period.

6 Ideally, there would be a 12-month delay in
7 implementation after the revised skim milk component
8 factors in the class pricing formulas have been adopted.

9 That said, I recognize the broader needs of the
10 dairy industry and support an earlier implementation for
11 some of the other changes found in NMPF's proposals, i.e.,
12 increasing Make Allowances, reinstating the "higher-of"
13 in the Class I mover formula, and eliminating 500-pound
14 barrel cheese pricing from the Class III protein price
15 formula.

16 I close by reiterating my support for NMPF's five
17 proposals:

18 (1) Limit the Make Allowance increase to their
19 proposed levels;

20 (2) Return to "the higher-of" calculation of the
21 Class I mover;

22 (3) Eliminate the barrel cheese price from the
23 calculation of Class III protein price;

24 (4) Increase and regularly update skim component
25 tests used to determine Federal Order skim milk price;

26 (5) Adopt National Milk Producers Federation's
27 Class I price differential proposal.

28 Others representing DFA will be speaking more



1 directly on these issues.

2 I want to thank you for allowing me to testify
3 today on these issues that are very important to my family
4 and the success of my dairy. And also, it's very
5 important to the members that I represent in my position
6 with DFA, so I really appreciate the opportunity for
7 allowing us this time today.

8 Q. Thank you for your testimony, Mr. Rexing.

9 MS. HANCOCK: Your Honor, we would submit him for
10 cross-examination.

11 THE COURT: Cross?

12 Dr. Cryan.

13 CROSS-EXAMINATION

14 BY DR. CRYAN:

15 Q. Good morning, Mr. Rexing. I'm Roger Cryan for
16 American Farm Bureau Federation.

17 You are a Farm Bureau member; is that right?

18 A. Yes, sir.

19 Q. And very impressively engaged on behalf of your
20 fellow dairy farmers across the co-op, and that's a pretty
21 important thing. And we're -- we support the co-op
22 principle. I would like to put that on the record.

23 Could you talk a little bit about the impacts of
24 depooling and negative PPD on you and your neighbors?

25 A. Well, I think, you know, whatever -- whatever
26 works best to benefit the members' check is definitely
27 what we want to see happen with milk pricing.

28 Q. Okay.



1 A. And, you know, negative PPDs sometimes can feel
2 like a gender reveal party. You never know what it is
3 going to be until you open up your milk check up and see.
4 And, you know, if we can stabilize that, it would sure be
5 better.

6 Q. And it has different impacts on different farmers
7 at times; is that right?

8 A. Absolutely.

9 Q. You attended our forum in Kansas City last year,
10 last October?

11 A. Yes, I did. And I do want to thank Farm Bureau
12 for hosting that. That was a very -- it was a great
13 gathering of knowledge, ideas, and I do want to appreciate
14 the opportunity to represent DFA at that and my fellow
15 members that I represent. And I do appreciate Farm Bureau
16 coordinating that and taking the time to have that. I
17 felt like that was a very good event.

18 Q. And we really appreciate your participation, and
19 we appreciate the active engagement of DFA sending
20 members. And we appreciate the participation of National
21 Milk who sent peers, among others. It was -- and I think
22 Jim was there as well, Jim Sleeper. So it was -- it was a
23 constructive process that, as I said earlier, resulted in
24 a -- in a statement, a joint statement, from National Milk
25 that was signed on by a number of other groups.

26 And I guess -- I'll hit on a couple of the
27 consensus items that came out of that consensus, of your
28 consensus. One of them was to support for higher -- the



1 higher-of, which you are advocating for. That was pretty
2 clear that that was supported by producers.

3 Is that -- that was your experience as well?

4 A. Yes. Absolutely. I think, in that forum, we got
5 the opportunity to learn that, you know, we as farmers
6 aren't that far apart. The more we talk, the more we
7 listen, the more we learn about each other, and the more
8 we're aligned.

9 Q. And at that forum we had representatives from
10 processors and co-ops and a lot of groups to make sure
11 that the conversation took those things into account?

12 And another consensus item that came out from the
13 farmers' side was that ultimately we would love to see
14 mandatory audited surveys of processors' costs and yields
15 as a basis for Make Allowances going forward. I know that
16 in -- in the absence of that direction to the USDA to do
17 that from Congress, which we're working on, National Milk
18 is advocating for moderate increases.

19 But that ultimately, I believe National Milk in
20 the forum, and I think you agreed, that ultimately the
21 idea is to have that sort of an audited mandatory survey
22 to base Make Allowance changes on; is that correct?

23 A. Yes. I think the statement, if you can't measure,
24 you can't manage applies. So, yes, I am for the audits.

25 Q. That's a good phrase. I appreciate that. If you
26 can't measure, you can't manage.

27 Did you get that? Thank you.

28 A. That's been ingrained in my head since I was about



1 that tall (indicating), so --

2 Q. That's beautiful. I appreciate that.

3 DR. CRYAN: And -- and I really thank you for your
4 time. I thank you for your engagement with the industry
5 and your participation here. And thanks again.

6 THE WITNESS: You're welcome. Thank you.

7 DR. CRYAN: Thank you, all. I'm done.

8 THE COURT: Mr. Miltner.

9 CROSS-EXAMINATION

10 BY MR. MILTNER:

11 Q. Good morning, Mr. Rexing.

12 A. Good morning.

13 Q. Same questions for you that I had for the previous
14 producers about what proposals we should delay and what
15 proposals we should implement right away. You have a
16 statement -- a sentence in your statement that's very
17 similar to the other two producers.

18 And so my question is, for you, where do you think
19 we should draw that line?

20 A. Well, I think, as in my testimony, is what I'll
21 stand behind, and you know, whatever -- the more notice we
22 can give, the more prepared we can be in our forward
23 contracting, risk management opportunities. And as I
24 mention in here, that's some of the only opportunities we
25 have is to watch our costs. So, you know, I'm in support
26 of what I stated in my testimony.

27 Q. Okay. And you said you're a producer on Order 5,
28 correct?



1 A. Yes, sir.

2 Q. Okay. So -- so the proposals to update the
3 Class I base prices, that will also impact your Class III
4 and IV prices in Order 5, right?

5 A. Correct.

6 Q. Okay. So -- so if -- I think there was previous
7 testimony that said the impact on III and IV -- Class III
8 was around \$0.80 and Class IV was around \$0.40. So if we
9 accept that, that's enough of a change in those prices
10 that you would want to delay implementation so that you
11 can better manage your risk, correct?

12 A. Yeah. Well, I think -- and as I stated in here, I
13 think it takes time and preparation when we do our risk
14 management strategies that we're thinking out that far,
15 so -- but, you know, when we come up -- you know, I want
16 to see this implemented in a proper way but just with
17 plenty of notice.

18 Q. Right.

19 And so I'm trying to figure out -- I think
20 Mrs. Spadgenske said that the Make Allowance piece from
21 National Milk would have a \$0.50 increase on Class III.

22 And so you're suggesting -- am I correct that you
23 are suggesting that the Make Allowance piece we should
24 implement right away, that should not be delayed?

25 A. It just is what I represented in my testimony.

26 Q. Okay. Is there a -- I guess, is there a
27 difference between at \$0.50 impact and an \$0.80 impact?
28 Like, USDA is going to have to figure out where to draw



1 the line, and is it based on dollars or is it based on
2 what class changes, or is it just something we've got to
3 kind of muddle through and figure out?

4 A. I'm going to go with the muddle through and figure
5 out.

6 Q. Okay. That's a fair answer.

7 MR. MILTNER: Thank you very much.

8 THE COURT: Further cross?

9 Seeing none, AMS?

10 CROSS-EXAMINATION

11 BY MS. TAYLOR:

12 Q. Good morning.

13 A. Good morning.

14 Q. Thank you for coming to testify today.

15 A. Thank you.

16 Q. We at USDA appreciate the "muddle through"
17 comment. That's all the time sometimes.

18 I first wanted to ask you about your farm
19 specifically and whether it would meet the small business
20 definition that I have asked other producers this morning
21 about.

22 A. No, ma'am. We would not meet that criteria.

23 Q. Thank you.

24 On the second page of your statement you talked
25 about the impact to the Class I mover change, and then
26 later on, you talk about how your -- well, you're on the
27 Southeast Council for DFA and your milk is pooled on
28 Order 5.



1 So was the change in the mover particularly acute
2 for you, your farm, and your Southeast dairy farm members
3 as it's a higher Class I utilization market down there?

4 A. Let me -- can you repeat the question so I
5 understand it correctly?

6 Q. Sure. So, I mean, we have had other witnesses,
7 both producers and technical witnesses, talk about the
8 impact to producers because of the change in the Class I
9 mover --

10 A. Uh-huh.

11 Q. -- moving from the average -- moving from the
12 higher-of to the average.

13 A. Uh-huh.

14 Q. I'm wondering if you could discuss if that change
15 was -- was particularly harder on producers in the
16 Southeast because you have more Class I milk down there or
17 not.

18 A. Well, I think it was, and I think it -- it didn't
19 allow the Federal Order system to work as it should. You
20 know, the Federal Order system is designed to make sure
21 that there's quality, fresh milk in areas for the
22 consumer, and I think it went against that.

23 Q. And can you just elaborate on why you think it
24 went against that?

25 A. Because of the \$950 million that was lost.

26 Q. Okay. Thank you.

27 And I think I gather from your statement, when you
28 are talking about, you know, generally, everyone in the



1 industry agrees we need to make a change to the Class I
2 mover. That's your testimony, right?

3 And whether it's a 24-month rolling average or a
4 36-month rolling average, in the end, it is all just
5 somehow get everyone back to the higher-of, in a way, just
6 it might be a longer term view. And I think it is your
7 testimony, or is it your testimony that instead of doing
8 any of those kind of versions of that, just go ahead and
9 go back to the higher-of, it's simpler?

10 A. Yeah, I think -- yes, I think it is simpler, and I
11 think it's -- you know, it's provided us a better price.
12 You know, dairy farming is not a race, it is a marathon.
13 And I think it's something that gives us more stability in
14 pricing our milk.

15 Q. Okay. Thank you.

16 And on the last page you talk about, on the milk
17 component issue, you have -- your farm has made decisions
18 to increase the butterfat content of your milk,
19 specifically.

20 Is that because you're in a skim/fat order, so you
21 are paid on fat?

22 A. Increasing butterfats is something that happens by
23 better cow comfort, better feed, just simply how we handle
24 our cows. So it is a cause and effect thing of being a
25 dairy -- better dairy producer, a better dairy farmer.
26 And when you do all the things right, good things happen,
27 and it happens to result in butterfat a lot of times.

28 Q. Okay. And you answered some questions from



1 Mr. Cryan about negative PPDs.

2 But I just wanted to clarify, for you in the
3 Southeast, are you -- are you paid a PPD -- I mean, does
4 DFA pay out a PPD to its Southeast farmers, or you are
5 still paid on skim/fat basis?

6 A. Skim/fat.

7 Q. Okay. And then questions on your risk management
8 strategies. You say you participate in those. Could you
9 elaborate on what you do use for risk management
10 strategies?

11 A. Yes. I -- it's kind of like Karl mentioned
12 earlier. Risk management strategies aren't for us to hit
13 the home run to try to get the highest price. We're
14 trying to take out the lowest of the lows. You know, it
15 is all about cash flow management. We have bills to pay,
16 and at the end of the month, we have to have enough
17 revenue to cover those bills.

18 So when I can make an -- when I can see where I
19 can make a profit is where I lock in prices. I don't wait
20 for the home run. But if I know I can make a profit,
21 that's where I lock in, because as I was once told, you
22 will never go broke making a profit.

23 So when we have opportunities, whether we're
24 locking in some feeds and locking in milk at the same
25 time, usually if I'm doing one, I'm doing a little bit of
26 the other. So we try to marry the two decisions and make
27 it the best we can for our farm.

28 Q. Okay. Do you use forward contracting or DRP or --



1 A. I have used forward con- -- I have used DRP. I
2 have done forward contracting. I have done -- I have done
3 a little bit of everything in the past. And I try to --
4 what I do is I try to do a certain percentage of my milk
5 all the time and stay consistent.

6 Q. Okay. And how far out do you try to go,
7 generally?

8 A. Whenever I know I can lock in a profit. But
9 usually, you know, I'm looking at a year out.

10 Q. About a year out. Okay.

11 And we had a producer earlier testify that the
12 current Class I mover impacts their ability to hedge.

13 Do you find that? Do you have that same issue, or
14 not so much on your farm?

15 A. Ask that again, please.

16 Q. Yeah. We had an earlier producer testify that the
17 current Class I mover does impact their ability to hedge,
18 and I think that's -- was in relation to the amount of
19 milk -- of their milk that goes to the Class I market.

20 So I'm curious if you find that same difficulty,
21 that somehow the current Class I mover formula impacts
22 your ability as a producer to hedge your risk?

23 A. Yes. I think it does impact me. And I can't
24 speak on his behalf. I don't know how, you know, his farm
25 operates. But it does impact me a little bit on my
26 decision-making.

27 Q. Okay.

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



1 much.

2 THE WITNESS: Thank you.

3 THE COURT: Mr. Rosenbaum.

4 CROSS-EXAMINATION

5 BY MR. ROSENBAUM:

6 Q. Steve Rosenbaum for the International Dairy Foods
7 Association. A few questions that are related to what you
8 were just asked by the Department of Agriculture.

9 Start by saying good morning.

10 A. Good morning.

11 Q. So were you -- let me start this again, take a
12 step back.

13 You are aware that the system of determining the
14 Class I mover for -- skim mover was changed based upon
15 legislation enacted at the recommendation of both the
16 International Dairy Foods Association and the National
17 Milk Producers Federation?

18 A. Yes.

19 Q. Were you on the -- were you the chairman of DFA
20 Southeast area back at that time in 2017 and '18?

21 A. No, sir.

22 Q. Okay. Were you involved at all in the
23 consideration of whether that legislation was a good idea
24 or not?

25 A. I was on -- I think I was on National Milk around
26 that time, if I -- I don't remember the exact date. But I
27 was close into that time. If I was, I was new.

28 Q. Okay. So are you aware that -- I'm sure you are



1 aware, but let me just ask it -- that the new formula, the
2 one that takes the average-of the Class III and Class IV
3 advance price plus \$0.74, was intended to end up with a
4 price that on average was going to be the same as the
5 higher-of Class III or IV, that that was the intention?

6 A. I am aware of the intention, yes.

7 Q. And have I accurately stated the intention?

8 A. Yes.

9 Q. Okay. And obviously we know that at least 2020,
10 and to some extent forward, that has not proven out,
11 correct?

12 A. Correct.

13 Q. Now -- but are you aware that one of the reasons,
14 in fact -- well, one of the reasons why both International
15 Dairy Foods Association and National Milk Producers
16 Federation supported the proposal, even though it was
17 intended to have a price neutral impact, was that it would
18 enhance the ability to engage in hedging?

19 A. On behalf of the processor?

20 Q. Well, actually, both, and that's naturally why I'm
21 asking the question, because you were asked some questions
22 about -- by USDA on that very subject.

23 And I'll just -- let me just -- this is -- was
24 submitted as an attachment to our proposal, IDFA's
25 proposal. I'm looking at a document that's called -- and
26 this is a document that is from late 2017. It's a joint
27 document called NMPF and IDFA Dairy Price Risk Management
28 Recommendations from the Upcoming Farm Bill. Okay? And



1 it is addressing this very issue of replacing the
2 higher-of with the average plus \$0.74.

3 And the statement is made, this is a joint
4 document, quote: "Changing the Class I mover to the
5 above-referenced price format" -- meaning the average plus
6 \$0.74 -- "would" -- and there are a bunch of bullet
7 points.

8 And one of them is, and I'll quote, "allow dairy
9 producers to effectively hedge the Class I portion of
10 their producer milk payments as they currently can for the
11 other portion of their payments," end quote. Okay?

12 So -- so I would ask you whether, in fact, you now
13 know in advance that the mover is not going to be the
14 higher-of Class III or IV but is going to be the
15 average-of Class III and IV plus a fixed amount, correct?

16 A. Correct.

17 Q. Now I'm -- I understand you are not happy with
18 the, if you will, dollars that results from that, and of
19 course, as you know, we have a proposal to address that
20 too. But in terms of the ability to hedge, doesn't --
21 isn't it -- isn't -- in fact, it's true, as National Milk
22 and IDFA said at the time, that having a mover that was
23 not based upon an unpredictable choice between Class III
24 or IV makes it easier to hedge, the Class I portion of the
25 producer milk payment? I'm quoting the language, as you
26 probably can tell.

27 A. As my experience, it's not made it easier for
28 myself.



1 Q. Okay. Doesn't it allow you to use Class III or
2 Class IV hedging tools because you know those are going to
3 be, for sure, the inputs into the Class I mover?

4 A. I am aware that, yes, it does use those as the
5 tools.

6 Q. Okay. Whereas before you just -- the problem was
7 it was going to be either Class III or Class IV as the
8 mover, but you never knew which one in advance, and you
9 were just going to have to guess or just not hedge?

10 A. I think all risk management strategies are
11 somewhat of a guess, but they are hopefully an educated
12 guess.

13 Q. But -- okay. But in this particular aspect of
14 hedging the -- a benefit of the current mover is you don't
15 have to guess, you know it's going to be the average-of
16 Class III and Class IV plus \$0.74, correct?

17 A. You -- you do know that.

18 Q. Okay.

19 A. But as I stated, risk management is still a -- is
20 a best educated guess with the information you are
21 provided.

22 Q. Okay. Let me turn to a different topic, which
23 actually hasn't come up yet at the hearing. But if -- but
24 I'd like your reaction, and I would also like -- because
25 Mr. Cryan talked about some meetings, I'm very curious
26 whether this issue was discussed at any of those meetings.

27 If -- if National Milk's proposal was adopted,
28 with respect to the Class I mover, and let's say it goes



1 into effect January 1, 2025, which is sort of a target, I
2 think, then, as of that date, going forward, the Class I
3 mover is going to be the higher-of Class III or Class IV,
4 correct?

5 A. Yes.

6 Q. Just like it was before the change was made in
7 2018, correct?

8 A. Yes.

9 Q. Whatever consequences have resulted from the
10 current formula up through December 31, 2024, will just be
11 water under the bridge, correct?

12 A. I think that ship had sailed and we got to ride it
13 until its finished.

14 Q. Okay. So -- well, let me -- let me ask whether
15 you have thought about the following, which is have you
16 looked at -- I think you have looked at the International
17 Dairy Foods Association proposal, or at least you have had
18 it mentioned to you. I think that's what you are
19 referencing when you talk about, you know, the alternative
20 of, you know, doing something over 24 months, I assume you
21 were referencing the IDFA proposal --

22 A. No, I'm not familiar with your proposal.

23 Q. All right. So -- okay. So you don't know whether
24 that -- how that so-called lookback proposal in IDFA would
25 work, as of January 1, 2025, in setting the Class I mover,
26 Class I skim milk mover?

27 A. No.

28 Q. Okay.



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

2 THE COURT: Further questions in the nature of
3 cross or re-cross for this witness?

4 Seeing none, Ms. Hancock.

5 MS. HANCOCK: Thank you, your Honor. We would
6 move to admit Exhibit 138.

7 THE COURT: Seeing no objections, Exhibit 138 is
8 admitted into the record of this proceeding.

9 (Thereafter, Exhibit Number 138 was received
10 into evidence.)

11 MS. HANCOCK: Thank you for your time, Mr. Rexing.
12 Appreciate that.

13 THE WITNESS: Thank you for the opportunity.

14 THE COURT: Yes, thank you, Mr. Rexing.

15 MS. HANCOCK: Your Honor, that concludes the
16 producers that we have to testify today.

17 THE COURT: Okay. We have been going for two
18 hours. I guess let's take -- I'm seeing heads,
19 whispers --

20 MS. HANCOCK: Some excitement.

21 THE COURT: -- expressing a desire for a break, I
22 think. And I think our reporter could use one.

23 I guess my question -- I mean, should we take an
24 early lunch? Probably not. All right. Let's say, ten
25 minutes. Let's come back at 11:40.

26 MS. HANCOCK: Thank you, your Honor.

27 THE COURT: Thank you, Ms. Hancock.

28 (Whereupon, a break was taken.)



1 THE COURT: On the record.

2 In an off-the-record discussion it was suggested
3 that we put Exhibit 124 into the record, and there was no
4 objection. So Exhibit 124, which was Edge-3, was admitted
5 to the record in this hearing. Thank you.

6 (Thereafter, Exhibit Number 124 was received
7 into evidence.)

8 THE COURT: Ms. Hancock, your witness.

9 MS. HANCOCK: Thank you, your Honor. We would
10 call Mr. Rob Vandenheuvel to the stand, which he's already
11 taken.

12 Would you mind stating and spelling --

13 THE COURT: Let me swear him in.

14 Raise your right hand.

15 ROB VANDENHEUVEL,

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

18 THE COURT: Your witness.

19 DIRECT EXAMINATION

20 BY MS. HANCOCK:

21 Q. Good morning, Mr. Vandenheuvel.

22 Would you mind stating and spelling your name for
23 the record?

24 A. Yes. It's Rob Vandenheuvel, R-O-B,
25 V-A-N-D-E-N-H-E-U-V-E-L.

26 Q. And could you provide your mailing address for the
27 record?

28 A. Business address is 2000 North Plaza Drive,



1 Visalia, California, 93291.

2 Q. Thank you.

3 Where are you employed?

4 A. California Dairies, Inc.

5 Q. And what is your role there?

6 A. I'm senior vice president of member and industry
7 relations.

8 Q. Thank you, Mr. Vandenheuvel.

9 Did you prepare a written statement to respond to
10 the proposals that have been submitted here?

11 A. I did.

12 Q. And is that identified as Exhibit NMPF-100?

13 A. Yes.

14 MS. HANCOCK: Your Honor, for identification
15 purposes, I believe we're up to Exhibit 140.

16 THE COURT: Yes. Is it 139? Let's mark this one,
17 NMPF-100, as previously identified top right-hand corner,
18 will be marked as Exhibit 139 for identification.

19 (Thereafter, Exhibit Number 139 was marked
20 for identification.)

21 BY MS. HANCOCK:

22 Q. Mr. Vandenheuvel, would you mind providing your
23 statement for the record?

24 A. Yes. This testimony is presented on behalf of
25 California Dairies, Inc., hereafter CDI, and is submitted
26 in opposition of Proposal Number 5.

27 As mentioned earlier, my name is Rob Vandenheuvel,
28 senior vice president of member and industry relations for



1 CDI. We are a Capper-Volstead cooperative association
2 qualified to market milk on Federal Milk Marketing Orders,
3 hereafter FMMOs. We are a member of National Milk
4 Producers Federation and oppose Proposal Number 5. I also
5 serve on National Milk's Executive Committee, Economic
6 Policy Committee, and Federal Order Task Force.

7 CDI is co-owned by 258 member-owners, operating
8 297 member farms.

9 And to preempt a question coming up later, 29 of
10 those farms based on 2022 revenue from CDI would be a
11 small business. But that does fail to capture any non-CDI
12 revenue that I don't have visibility on.

13 All of our member farms are within the state of
14 California. Our farms produced 17.1 billion pounds of
15 milk in 2022, or 41% of California's total production. Of
16 that total, 10.3 billion pounds, or 60.6%, was received
17 and processed at one of six CDI-owned manufacturing
18 facilities, while the other 6.7 billion pounds, or 39.4%,
19 was sold as bulk raw milk to dairy product processors
20 throughout the State.

21 Among the products produced by CDI-owned
22 manufacturing facilities, butter and milk powder are a
23 vast majority, as four of our six facilities produce
24 butter and all six facilities produce milk powders. CDI
25 also produces a range of processed fluids that are
26 marketed in bulk to customers primarily in the Western
27 United States.

28 FMMO Price Discovery:



1 In setting monthly minimum milk prices, the issue
2 of how to conduct price discovery is important, as
3 evidenced by the multiple proposals in this hearing to
4 address that very issue. Specific to butter, the price
5 discovery mechanism is currently the butter price as
6 reported by the National Dairy Products Sales Report, or
7 NDPSR, under USDA's Dairy Product Mandatory Reporting
8 regulation. This includes the reporting of sales prices
9 and volumes for salted butter with 80% butterfat in
10 25-kilogram and 68-pound packaging.

11 These specifications under the NDPSR match the
12 requirements for butter eligible to be sold at the Chicago
13 Mercantile Exchange, or CME, spot market. While access to
14 an available spot market at the CME is not a legal
15 requirement, it is worth noting that such access is
16 available across all the other current products that are
17 used to set minimum milk prices under the FMMO.

18 Inappropriate to Include Unsalted Butter:

19 Proposal Number 5, submitted by American Farm
20 Bureau Federation, or AFBF, aims to fix something that is
21 not actually broken. The reported price, whether from the
22 CME or the NDPSR, of salted butter with 80% butterfat has
23 been and continues to be an industry-wide price index used
24 in sales and marketing of a vast majority of butter sold
25 in the U.S. That includes different cuts -- such as
26 retail or food service -- and different varieties -- such
27 as salted, unsalted, or cultured.

28 The reported price of salted bulk butter is also



1 the basis of a majority of the cream sales in the U.S., as
2 a majority of cream is sold on the basis of a multiple
3 applied against either a recent CME or NDPSR butter price.

4 AFBF's contention that salted bulk butter is no
5 longer an adequate surrogate butter price on its own is
6 based on data showing that NDPSR butter sales volumes
7 represent a smaller portion of the total reported
8 production of all butter in the U.S. than what was seen at
9 the time of Federal Order Reform in 2000, or what was seen
10 ten years ago.

11 I submit that such a comparison is too simplistic
12 to justify a change. The selection and refinement of a
13 price discovery methodology should take multiple factors
14 into consideration, including but not limited to:

15 (1) Is the product viewed by the marketplace and
16 used in the marketplace as an index in pricing other
17 products?

18 (2) Does the product have a widely available
19 market outlet?

20 (3) Can price discovery be achieved by tracking a
21 single product, thereby avoiding potential volatility in
22 the relationship between multiple products?

23 Salted bulk with 80% butterfat meets all three of
24 these considerations. Conversely, the addition of
25 unsalted bulk butter does not enhance any of these
26 considerations.

27 I have already addressed why salted bulk butter
28 meets the first consideration above.



1 With respect to the second consideration -- the
2 need for a widely available market outlet allowing for the
3 product to clear the market -- there is no comparison
4 between salted and unsalted bulk butter. CDI manufactures
5 both varieties of bulk butter. We produce unsalted bulk
6 butter exclusively for order, while we produce salted bulk
7 butter with any cream we are unable to produce and sell as
8 a retail, food service, or unsalted bulk item.

9 The reason for that is simple: When we need to
10 turn that product into cash and sell it into the
11 marketplace, there is an active market for salted bulk
12 butter, either on or off the Chicago Mercantile Exchange,
13 as it is still the predominant industrial-use butter in
14 the United States.

15 The third consideration above is one that has come
16 to light in a very significant way the past few years.
17 The industry has experienced the marketplace volatility
18 that can occur when multiple different products are used
19 to generate a singular commodity reference price for
20 purposes of calculating a minimum monthly price for milk.
21 Specifically, I am referencing the volatility in the
22 relationship between block and barrel cheddar cheese, both
23 of which are currently used in calculating the protein
24 value in the Class III formula.

25 The spread between these two products, which has
26 ranged from a \$0.61 pound premium for blocks to a \$0.20
27 per pound premium for barrels in the past five years, has
28 demonstrated the significant market risk associated with



1 using multiple products in the calculation of a single
2 commodity reference price. This, of course, is an issue
3 that National Milk Producers Federation is seeking to
4 address in Proposal Number 3, which CDI strongly supports.

5 In conclusion, with respect to price discovery for
6 butter in the Federal Milk Marketing Order price formulas,
7 USDA should deny Proposal Number 5 and maintain the
8 current FMMO methodology that utilizes bulk salted butter
9 with 80% butterfat.

10 Q. Thank you, Mr. Vandenheuvel.

11 MS. HANCOCK: We would submit him for
12 cross-examination at this time.

13 THE COURT: Mr. English.

14 CROSS-EXAMINATION

15 BY MR. ENGLISH:

16 Q. Good morning, Mr. Vandenheuvel. This is Chip
17 English with the Milk Innovation Group. Nice to see you
18 again.

19 A. You as well.

20 Q. And when we talk about unsalted butter, I want you
21 to know ahead of time that our client group agrees with
22 you, for what it's worth?

23 So let me -- were you here yesterday for the
24 testimony of the American Farm Bureau in favor of adding
25 unsalted butter?

26 A. I was.

27 Q. Okay. So some of these questions will go to some
28 of that.



1 You -- on the first page you talk about the
2 inclusion of salted butter with 80% butterfat.

3 And I want to clarify, that means it has to be at
4 80%, correct?

5 A. Yes.

6 Q. Okay. And there was some just lack of
7 information, I think, some information about exports.

8 Do you understand what is required for the export
9 market for unsalted butter?

10 A. My understanding of the export standards is they
11 are based on Codex standards, and which while they -- I
12 believe they technically say a minimum of 80% butterfat,
13 the more important consideration is they can't have more
14 than 16% moisture. And so you can't get to 16% maximum
15 moisture without having more than 80% butterfat, so 82%
16 ends up being the standard butterfat composition in that
17 export butter.

18 Q. Okay. Thank you.

19 So do you understand that in addition to that some
20 export butter is cultured?

21 A. We sell a variety at CDI of unsalted or cultured.
22 I'm not familiar with if cultured is a predominant export
23 product or if we see that more domestically.

24 Q. Is the -- and no one is proposing adding cultured
25 product to the survey, correct?

26 A. Correct.

27 Q. Okay. So I do not want confidential information,
28 but do you have an estimate based upon your experience of



1 how much -- what percentage of unsalted butter is
2 exported?

3 A. The vast majority of our bulk unsalted brother
4 would be an export product. We do sell retail varieties
5 of unsalted butter, just, you know, 80% unsalted, as you
6 would see right next to the 80% salted on the shelf. But
7 since we're only talking about bulk products, I could just
8 say a vast majority of unsalted is an export product.

9 Q. And so if export product is effectively, because
10 of 16% moisture, more than 82% butterfat, and a vast
11 majority of that is exported, are we really talking about
12 a large amount of product that would be added to the
13 survey should USDA determine to do so?

14 A. My estimate would be it would be very limited
15 volumes because of that limitation.

16 MR. ENGLISH: I have no further questions.

17 THE COURT: Further cross?

18 Dr. Cryan.

19 CROSS-EXAMINATION

20 BY DR. CRYAN:

21 Q. Roger Cryan for the American Farm Bureau
22 Federation.

23 Hello, Rob.

24 A. Hi, Roger.

25 Q. It is nice to see you even though you are against
26 us on this particular thing.

27 A. Against the policy, not the person.

28 Q. I understand. No, I understand. Absolutely.



1 Yeah, we're all -- we're all doing a job here. But I do
2 appreciate your long engagement with the dairy industry
3 and your long-term commitment to -- and, you know, I
4 should have asked you this before. Are you a Farm Bureau
5 member?

6 A. I'm not a farmer.

7 Q. Well, but you are -- okay. Growing up, Farm
8 Bureau family?

9 A. I -- you know, I don't know. I believe so but --

10 Q. All right.

11 A. You'd have to ask my father. I didn't manage the
12 subscriptions.

13 Q. And CDI owns Challenge Butter; is that right?

14 A. Correct. They're a wholly owned subsidiary
15 branded butter business.

16 Q. And CDI and Challenge have done a really nice job
17 meeting the market -- the export market, you know, one of
18 the companies leading the way in moving products overseas,
19 one of the companies leading the way on innovating and
20 selling higher fat, you know, European style butter in the
21 market.

22 Do you -- do you have butter for the export market
23 graded?

24 A. I don't know the answer to that question. That's
25 not a part of my function at CDI, the grading process.

26 Q. So you don't know whether 82% butter gets graded?

27 A. I believe the standard for grading is it just has
28 to be a minimum of 80%, but I am not an expert in that



1 area.

2 Q. Okay. Is the volume of unsalted butter in the
3 market growing?

4 A. Volume of -- I -- you know, because we market it
5 as both a retail and industrial product, I couldn't tell
6 you if either one of those is a growing category. We
7 sell -- we have sold those varieties for a long time.
8 Whether year-over-year growth has been there, I'm not
9 sure.

10 Q. And salted and unsalted butter are graded under
11 the same standard; is that right?

12 A. I believe so.

13 Q. And do you sell unsalted butter in the same -- in
14 the 25-kilo and 68 -- or 68-pound box sizes?

15 A. Yes.

16 Q. And is there any significant difference in the
17 cost of production for salted and unsalted butter?

18 A. I don't believe so because the only difference is
19 the -- is the presence of salt, and so it would be an
20 ingredient cost that would be fairly minimal.

21 Q. And is it relatively easy to switch production
22 from salted to unsalted butter?

23 A. Functionally, I -- my understanding is it is
24 relatively easy. Our primary argument as to why it
25 shouldn't be included is what happens before we make that
26 switch, and that is we find a customer first.

27 Q. Sure.

28 A. But -- but, yeah, just the function of switching,



1 I don't believe is a significant burden.

2 Q. Okay. And you have substantial volume of sales of
3 salted butter, but you have found a customer ahead of
4 time; is that right?

5 A. We sell both committed, we call it, committed salt
6 volume, which has a customer applied at the time of
7 manufacture, or uncommitted, which would be our home first
8 surplus grade.

9 Q. And do you have any -- are you aware of customers
10 who -- who substitute one for the other in any of their
11 uses?

12 A. I -- I don't believe we have customers that would
13 accept unsalted in lieu of salted for industrial purposes.

14 Q. And do you quote customers the same price for
15 salted and unsalted butter that are otherwise the same?

16 A. I -- I'm not sure. And even if I was, that would
17 probably be proprietary.

18 Q. Proprietary. Okay.

19 DR. CRYAN: Very good. Thanks, Rob. I'm done.
20 Thank you.

21 THE COURT: Further cross?

22 Mr. Miltner.

23 CROSS-EXAMINATION

24 BY MR. MILTNER:

25 Q. Ryan Miltner representing Select Milk Producers.
26 Good afternoon, Rob.

27 A. Good afternoon. Is it afternoon?

28 Q. It is. Just barely. I was pretty sure we crossed



1 the top of the hour.

2 A couple of things -- concepts, I guess, that I
3 don't think we have really talked about in the hearing
4 thus far that I wanted to ask you about.

5 On page 2 you reference, although you didn't use
6 the exact words, the cream multiple. Can you explain how
7 that -- how the cream multiple affects I guess the pricing
8 of unsalted for you?

9 A. Well, the -- we make our butter almost exclusively
10 from our own member milk, and so the cream multiple
11 doesn't really impact our cost structure for any of the
12 butter we make because we're buying that milk at a
13 federally regulated price through the Federal Order
14 system.

15 Where the cream multiple comes in and where it is
16 important to our business is on cream that we sell into
17 the marketplace. Many, if not most, of our customers want
18 to know the cost of their cream before it gets delivered
19 to them and whether it's Class II, III, or IV utilization.
20 The Federal Order price for fat wouldn't come until the
21 end of the month.

22 So we utilize a cream multiple, which is typically
23 using a previous week's average CME butter price
24 multiplied by that multiple. Let's say the multiple was
25 just 1.0. Then you would just take the even CME butter
26 price and multiply that by the pounds of butterfat as
27 measured in that tanker of cream, and that would be the
28 price, regardless of what the ultimate Federal Order price



1 was that month for cream.

2 Q. Does CDI make any decisions to churn or not churn
3 based on the cream multiple?

4 A. If we have an opportunity to market cream at a --
5 at better financial implications than churning that cream
6 into additional butter that doesn't have a customer
7 attached to it, we will sell that cream. So in that
8 example, yes, the multiple definitely matters.

9 Q. When you are making that comparison, whether to
10 sell cream or churn butter, are you making a comparison
11 between a cream sale and manufacturing bulk salted or bulk
12 unsalted butter?

13 A. Bulk salted.

14 Q. In CDI's experience, is unsalted butter a higher
15 value product than salted butter?

16 A. It is, on average, a higher value product because
17 our -- part of the reason is we only make it if we have a
18 sale, and we only want to engage with a sale if it is a
19 profitable sale, whereas bulk 80% salted butter we will
20 make as surplus knowing that we may very well lose money
21 on that product, but we're clearing the market of cream
22 that we don't have another home for. So in that regard
23 it's, on average, a higher value product. In terms of
24 individual contracts, I really shouldn't get into how we
25 price salted versus unsalted.

26 Q. And so unsalted would not be a market-clearing
27 product for CDI or in your area?

28 A. Absolutely not. We -- we want to clear excess



1 cream into products that we know we can market and turn
2 into cash in order to be able to pay our farmers, which we
3 need to do shortly thereafter buying the milk.

4 Q. One other question, and it's partly for my
5 curiosity. On the first page, second paragraph, last
6 sentence: "CDI also produces a range of processed fluids
7 that are marketed in bulk to customers."

8 What -- what are the processed fluids that CDI
9 manufactures?

10 A. Well, cream would be one, condensed skim milk
11 would be another primary product. But beyond that, we
12 make a variety of others. We make ultra-filtered milk
13 used as a protein source for a number of cheese facilities
14 in the state. We make ice cream mixes, which are
15 essentially a mix of cream and condensed skim, so a lower
16 butterfat composition. We make other custom mixes. We
17 make some condensed whole milk. So a variety of -- of
18 fluids in those spaces.

19 Q. Now, given that -- given the volumes, I can infer
20 from your answer that those are generally not Class I
21 processed fluid products, they are just fluid -- they are
22 fluid milk products but not Class I fluid milk products?

23 A. We have -- primarily, no, they are not Class I.
24 But California does maintain a higher fluid milk standard,
25 and so we have bottling customers that purchase condensed
26 skim milk for purposes of fortifying their solids in
27 the -- in the milk to meet those state standards.

28 Q. And they would be priced at fortification levels



1 then?

2 A. Correct.

3 Q. Okay.

4 MR. MILTNER: Thank you. That's all.

5 THE COURT: Further cross.

6 Mr. Rosenbaum.

7 CROSS-EXAMINATION

8 BY MR. ROSENBAUM:

9 Q. Steve Rosenbaum for the International Dairy Foods
10 Association.

11 Does your cooperative make barrel cheese?

12 A. No.

13 Q. Okay. So I take it you don't confront the issue
14 of making barrel cheese with a minimum milk price set on a
15 higher priced cheese?

16 A. Correct.

17 Q. Okay.

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

19 THE COURT: Anyone else, cross other than AMS?

20 AMS, Ms. Taylor.

21 CROSS-EXAMINATION

22 BY MS. TAYLOR:

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. Thanks for coming today.

26 Just a couple questions. You were talking, I
27 don't know who you were talking with now, about how a vast
28 majority of unsalted butter is exported, and so you would



1 think there would be very limited new volume that we would
2 get under the survey that meet the requirements.

3 Can you, I guess, add to the record why a lot of
4 that unsalted butter is probably not captured in the
5 survey? Is it because it's greater than 80% butterfat or
6 it just doesn't meet the 30-day requirement, or both?

7 A. Well, the 82%, the fact that it's not meeting that
8 80% is the primary reason. Whether the -- whether the
9 30-day would also kick in is certainly a consideration on
10 other products we export. And we have been interested in
11 taking a look at that on the milk powder side because of
12 the longer transaction timeframes. But the primary
13 limitation when you are looking at butter is you are
14 exporting a different product into the international
15 market. It is not that 80% butterfat product that is
16 included in the NDPSR.

17 Q. Okay. Thank you.

18 I do appreciate that you outlined very simply what
19 you believe should be considered when including -- when
20 considering different products to add to the survey. So I
21 do appreciate how that's laid out pretty simply.

22 And below that, you said, "The addition of
23 unsalted bulk butter does not enhance any of these
24 considerations."

25 And it struck me as does "does not enhance" mean
26 the same thing as "not meet," or different?

27 A. It means something different. I'd have to think
28 through it if it means "doesn't meet." But what I



1 intended to -- to express there was that the current
2 system is not broken, which is what I started that -- that
3 section with. Salted butter is used in the marketplace as
4 an index, including as an index to price unsalted butter,
5 frankly. Whether there is a positive or negative
6 adjustment to that salted butter price, the salted butter
7 tends to be the starting point of that discussion.

8 A widely available market outlet is also already
9 available.

10 And the third point, which is really geared
11 towards avoiding something we have seen in the
12 block-barrel spread, it is just more about, you know,
13 let's not -- let's be careful about adding an additional
14 product to a survey.

15 In terms of unsalted bulk butter not meeting it?
16 Unsalted bulk butter is definitely not an index used in
17 pricing other products, even including other unsalted
18 butter. There is no unsalted butter reference price. So
19 it's all pointing back to salted butter.

20 Does have it a widely available market outlet? I
21 would argue unsalted butter is widely marketed. There's
22 no immediately available, everyday spot market that you
23 can fall back to, if needed, so it has more limitations
24 than bulk. But I certainly won't deny it is a widely used
25 product in the industrial space.

26 And then, of course, point three, just by having a
27 second product, violates the -- at least a desire to try
28 to avoid having multiple products in the survey. So



1 hopefully that kind of addresses it.

2 Q. It does. And it leads me to my next question.

3 Since this is the first time that you have testified at
4 the hearing, we have had other witnesses kind of talk
5 about -- and you have a sentence toward the bottom --
6 about with the barrel -- well, with the cheese price
7 specifically, how it's -- two products in the survey have
8 "demonstrated the significant market risk associated with
9 using multiple products in the calculation of a single
10 commodity reference price."

11 And we have had other witnesses kind of expand on
12 their thoughts on how it demonstrates -- how there is
13 significant market risk. But I was wondering if you could
14 add your kind of expansive thoughts on that as well.

15 A. Well, not unlike the other testimony you have
16 received earlier in this hearing, it's -- it's creating an
17 instability in your cost structure. When you are a
18 manufacturer and you are looking at what it's going to
19 cost you to make certain products, in a -- in a product
20 category with only one driver, butter, nonfat dry milk,
21 dry whey, you have got some stability knowing that your
22 cost, your input costs for milk are going to be driven by
23 those specific commodities, whereas in the case of cheese,
24 you have got dual products that are driving that cost
25 structure.

26 Not being in the cheese space I can't comment as
27 to whether that risk is able to be mitigated significantly
28 through risk management activities, but it seems to be



1 an -- an unnecessary complication to go add to another
2 class, which is why we -- or another product category,
3 which is why I include it in this testimony, even though
4 my focus was on unsalted butter in Proposal Number 5,
5 seemed to be a -- a meaningful thing to try to avoid in
6 bringing that into another product category.

7 Q. Okay.

8 MS. TAYLOR: Thank you so much.

9 THE COURT: Further examination in the nature of
10 re-cross, I guess.

11 Seeing none, redirect.

12 MS. HANCOCK: Thank you, Mr. Vandenheuvel. I have
13 nothing further.

14 Your Honor, we would move to admit Exhibit 139.

15 THE COURT: Exhibit 139 is admitted into the
16 evidentiary record.

17 (Thereafter, Exhibit Number 139 was received
18 into evidence.)

19 THE COURT: Thank you.

20 MS. HANCOCK: Your Honor, we would call Mr. Darin
21 Hanson to the stand.

22 THE COURT: Please raise your right hand.

23 DARIN HANSON,
24 Being first duly sworn, was examined and
25 testified as follows:

26 THE COURT: Your witness.

27 MS. HANCOCK: Thank you, your Honor.

28 DIRECT EXAMINATION



1 BY MS. HANCOCK:

2 Q. Good afternoon, Mr. Hanson. I know that you are
3 returning to the stand this time for the second time that
4 you have testified, so I'll skip some of the introductory
5 items that are already in the record.

6 Have you prepared a written statement to testify
7 in response to the mozzarella proposal?

8 A. Yes, I have.

9 Q. And is that identified as Exhibit NMPF-16?

10 A. I have 95 on mine.

11 Q. My fault. I apologize.

12 Is the testimony that you have prepared Exhibit
13 NMPF-95?

14 A. Yes.

15 MS. HANCOCK: And, your Honor, I think at this
16 time we are actually on Exhibit 140.

17 THE COURT: Yes, we are.

18 MS. HANCOCK: Okay. If we can mark this one as
19 Exhibit 140 for identification purposes.

20 THE COURT: So marked.

21 (Thereafter, Exhibit Number 140 was marked
22 for identification.)

23 MS. HANCOCK: Okay.

24 BY MS. HANCOCK:

25 Q. And, Mr. Hanson, would you mind preparing your
26 prepared statement -- or reading your prepared statement?

27 A. Yes.

28 THE WITNESS: And since I read my bio and company



1 profile into testimony, I'll just plan on skipping that,
2 if that's appropriate, your Honor?

3 THE COURT: Yes.

4 THE WITNESS: Well, good afternoon. My name is
5 Darin Hanson, and this testimony is presented to refute
6 Proposal 6, which is adding mozzarella cheese to the
7 Class III Protein Price calculation as proposed by
8 California Dairy Campaign. This testimony is presented on
9 behalf of Foremost Farms where I am senior vice president
10 of supply chain and risk management.

11 Now I'll move to page 2.

12 National Milk Producers Federation opposes the
13 inclusion of mozzarella cheese into the Class III protein
14 calculation and urges the USDA only to utilize one
15 commodity price series to represent each of the four dairy
16 prices (cheese, butter, nonfat, and whey) used in Federal
17 Order pricing to ensure an orderly transfer of product
18 value from finished product back to the milk price.

19 The Class III protein calculation is designed to
20 convert cheese and butter prices to a value of protein for
21 40-pound yellow cheddar blocks. Further, the
22 Make Allowance and the Van Slyke yield formula is designed
23 to represent cheddar cheese production. In the current
24 calculation of protein, 500-pound barrels are converted to
25 38% moisture and \$0.03 added to create a 40-pound block
26 equivalent.

27 There are numerous obstacles related to mozzarella
28 versus cheddar cheese production that prohibit



1 mozzarella's effective inclusion into the Class III
2 protein calculation. First, mozzarella cheese has
3 numerous official composition requirements, according to
4 the USDA Agricultural Marketing Service, creating a
5 complex industry portfolio of mozzarella products to be
6 included in the federal survey.

7 Mozzarella can be regular fat, low moisture, part
8 skim, low moisture and part skim, and lite. There are
9 also a wide range of specific customer formulations in
10 between that can include, low salt, low browning,
11 etcetera. A standardized process to convert all these
12 forms of mozzarella to a 40-pound block equivalent would
13 be complex and cumbersome.

14 Second, there's a wide range of packaging sizes
15 and forms for mozzarella. These can range from 20-pound
16 block, 6-pound block, long styles, IQF, cheese sticks,
17 cubes, unpackaged blocks in totes, and numerous other
18 forms. All of these have different packaging cost
19 profiles that are not easily converted back to a cheddar
20 block equivalent.

21 Third, manufacturing processes differ between
22 mozzarella and cheddar cheese production, impacting
23 operating costs necessary to produce mozzarella versus
24 cheddar.

25 Typical Mozzarella production processes use a
26 cooking step where curd is heated to around 140 degrees to
27 melt and stretch the cheese to achieve the iconic
28 mozzarella texture. The cheese is then formed and sent to



1 a brine process to be cooled and salted. These processes
2 are not part of the cheddar cheese manufacturing process,
3 rendering Class III cheddar cheese Make Allowance
4 inappropriate to represent mozzarella manufacturing.

5 Fourth, many mozzarella manufacturers use
6 semi-processed dairy raw materials in the production
7 process to reduce the butterfat content to achieve the
8 desired product composition. These raw materials include
9 evaporated skim milk, RO skim milk, UF skim milk, and
10 nonfat dry milk. These have an impact on the cost of the
11 finished product and can impact the price of the product
12 sold to the customer. Inclusion of a mozzarella price
13 series in the Class III protein calculation would distort
14 the protein value because these cost factors would likely
15 be included in the price calculation.

16 Fifth, a spot market for mozzarella does not exist
17 in the US. In my experience, the mozzarella industry is
18 priced based on the CME block market index. Including
19 mozzarella pricing into the protein price calculation will
20 not enhance price discovery since mozzarella prices will
21 move with the block cheddar market.

22 Sixth, CDC has not addressed how lower butterfat
23 levels in mozzarella cheese types will be resolved in the
24 Class III protein price calculation that incorporates the
25 Van Slyke model for cheddar cheese. For cheddar cheese,
26 the protein value is inversely related to the value of
27 butterfat. High butter markets reduce the value of
28 protein.



1 In the Class III price calculation for full fat
2 cheddar, adding the butterfat price back at the 3.5%
3 almost entirely offsets the negative impact of butterfat
4 prices on the cost of protein. This makes butter price
5 impacts minimal to Class III prices for cheddar cheese.

6 For mozzarella, the lower butterfat content will
7 result in a situation where high butter markets will lower
8 the value of the product because the lower protein price
9 will not be offset with a significant enough volume of
10 butterfat. It will lead to a situation where high butter
11 markets will significantly reduce Class III prices and low
12 butter prices will positively impact the Class III price
13 calculation. A complete redesign of the protein
14 calculation would need to be done to accommodate reduced
15 levels of butterfat in mozzarella cheese.

16 National Milk strongly recommends not including
17 mozzarella products in the calculation of Class III
18 protein. Mozzarella is dissimilar to cheddar in multiple
19 fundamental ways and introducing these variables into the
20 protein calculation would be complex, time-consuming to
21 develop the model, and difficult to administer.
22 Mozzarella has significant variations in composition and
23 packaging forms and sizes.

24 The mozzarella manufacturing footprint is
25 significantly different than block cheddar, both from a
26 manufacturing process perspective and dairy ingredients
27 used in the formulation, rendering the cheese
28 Make Allowance irrelevant.



1 MS. TAYLOR: I don't have any questions. That's
2 it.

3 THE WITNESS: Okay. Thank you.

4 MS. HANCOCK: Your Honor, we would move to admit
5 Exhibit 140 into evidence.

6 THE COURT: Seeing no objections, Exhibit 140 is
7 made a part of the record of this hearing.

8 (Thereafter, Exhibit Number 140 was received
9 into evidence.)

10 THE COURT: You may be excused. Thank you,
11 Mr. Hanson.

12 Good time for lunch, everyone?

13 Okay. Let's come back at 1:30.

14 (Whereupon, a luncheon break was taken.)

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1 WEDNESDAY, SEPTEMBER 6, 2023 - - AFTERNOON SESSION

2 THE COURT: Let's go on the record.

3 Raise your right hand.

4 PETER VITALIANO,

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

7 THE COURT: Your witness.

8 MS. HANCOCK: Thank you, your Honor.

9 DIRECT EXAMINATION

10 BY MS. HANCOCK:

11 Q. Good afternoon, Dr. Vitaliano.

12 A. Good afternoon.

13 Q. Welcome back to the stand. I won't requalify you
14 as an expert. I'm assuming --

15 MS. HANCOCK: Maybe I should verify that that is
16 continuing on throughout the duration of the hearing, your
17 Honor?

18 THE COURT: Yes.

19 MS. HANCOCK: Thank you.

20 BY MS. HANCOCK:

21 Q. And, Dr. Vitaliano, when you were last here to
22 talk about barrel testimony, you put on some -- in your
23 written statement, you put on some testimony in which you
24 estimated a 10% total cheese priced by barrels, total --
25 of the market. And there was some questions about that
26 calculation.

27 Do you recall that?

28 A. Yes.



1 Q. And did you -- do you have with you today an
2 ability to walk us through your methodology for how you
3 reached that number?

4 A. I do -- yes, I can.

5 MS. HANCOCK: Okay. Your Honor, what we have
6 identified as Exhibit NMPF-6A, if we could mark as our
7 next exhibit number, which I believe is 141.

8 THE COURT: This is NMPF-6A?

9 MS. HANCOCK: Yes.

10 THE COURT: Yes. I have it. And, yes, this
11 exhibit is marked 141 for identification.

12 (Thereafter, Exhibit Number 141 was marked
13 for identification.)

14 BY MS. HANCOCK:

15 Q. Dr. Vitaliano, would you mind sharing with us your
16 methodology for that calculation?

17 A. Certainly.

18 Yes, that 10% estimate played such a -- kind of a
19 pivotal role in -- in our testimony on Proposal 3 that I
20 thought it would be worth going into a little bit more
21 detail. So my testimony on this issue, on 6A, is confined
22 entirely to a single chart that is now up on the screen
23 and should be -- a paper copy should be handed out.

24 Let me start out by clarifying something.
25 Mr. Brown yesterday in his testimony said National Milk is
26 inconsistent in its estimate of how much natural cheese is
27 priced by barrels, goes from 75% to 90%. That's
28 incorrect.



1 Mr. Brown did not apparently read our testimony as
2 thoroughly. In particular, Mr. Hanson testified that that
3 number is at least 75%, and Mr. Hanson based that on the
4 cheeses with which he was familiar that were priced
5 definitely by blocks, and the total of those was 75. And
6 he was -- there were some others that he was not familiar
7 with, a total of roughly 15%, but he did not want to
8 speculate on those, and so he said it's at least 75%.

9 But with the others that I have included because I
10 had the -- I had the able assistance of many experts
11 amongst our National Milk members -- our task force that
12 prepared, you know, our positions for this hearing. And
13 this chart has a lot of expertise in it that's not
14 necessarily credited in the sources because it would
15 probably be almost a paragraph to source all the
16 individual people. But basically let me walk through
17 this.

18 The starting point on this diagram is the --
19 getting the most disaggregated data on production of
20 natural cheeses by variety. The source for that is the
21 USDA National Agricultural Statistics Service, NASS.

22 Going down the left-hand margin where you see a
23 bunch of unindented cheese varieties listed, this is
24 straight from the NASS database for calendar year 2022.
25 The descriptions are exactly as NASS lists them, including
26 the -- listing them in all capital letters.

27 And with a few exceptions, NASS reports total
28 cheese as just cheese. I have modified it a little bit



1 here as natural cheese because that's what this NASS data
2 is dealing with. So you see total natural cheese
3 production, basically 13.8 billion pounds; American,
4 cheddar; and then a whole bunch of other varieties down
5 the left-hand side.

6 In the first column, to the left, of numbers,
7 those are -- for the unindented varieties, those are the
8 numbers straight out of the NASS database.

9 The next column is the percentage of the total
10 that each of those other -- that each of the rows
11 represents.

12 The under -- American, cheddar, I have done
13 some -- two types of disaggregation from other sources of
14 information. The first of the -- you know, the more
15 modestly indented breaks out American cheddar into
16 40-pound and 640-pound cheddar blocks and 500-pound
17 cheddar barrels.

18 I'm using the estimate for cheddar barrel
19 production that was provided in his testimony yesterday by
20 Mr. -- Mr. Hanson -- or last week, actually, he presented
21 this, by Mr. Hanson, of 1.2 billion pounds in his
22 testimony, Exhibit 117.

23 And the 40-pound block and 640-pound cheddar
24 blocks are basically the residual between the -- what's
25 leftover when you subtract the 1.2 billion from the total
26 American cheddar.

27 The second level of indentation -- and I will
28 mention that that -- that results in a percentage of about



1 9% of total natural cheese is -- consists of barrels,
2 that's barrel production capacity, and 20% of blocks. And
3 that is roughly consistent with what I recall Mr. Brown
4 testifying to yesterday of basically one-third cheddar --
5 cheddar production breaks down to roughly one-third
6 barrels, two-thirds blocks.

7 The second level of indentation disaggregates this
8 based on the National Dairy Product Sales Report. It
9 lists the volume of -- total volume of 40-pound blocks
10 reported NDPSR in 2022, 643, and the same thing with
11 barrels of 701. That's the 48% blocks, 52% barrels. And
12 those are the same numbers that Mr. Brown has in his
13 testimony, Exhibit 127.

14 And then, again, a remaindering, I have listed
15 then non-NDPSR reported cheddar is basically 2.6-some
16 billion pounds.

17 And that section begins where I basically parse
18 out, portion out volumes that are priced by what I call
19 priced by blocks versus priced by barrels. And "priced
20 by" is also -- is sort of a shorthand for price using an
21 index of blocks -- 40-pound blocks versus 500-pound
22 barrels.

23 And what I mean by priced using an index or with
24 reference to, I do not mean -- as I recall, there was some
25 confusion previously -- does not mean that the price of
26 the block cheese becomes the price of those individual
27 varieties.

28 Typically this is -- we're talking about index



1 pricing, which is very common throughout all of
2 agriculture where you have a wide variety of products
3 of -- agricultural products, and a relatively small number
4 of spot markets that -- that actually do the price
5 discovery. And other products that are -- do not have
6 spot markets are often marketed with respect to that base
7 price, maybe a weekly or a daily price on that exchange,
8 plus a or minus a premium or a discount that can change
9 but is a little bit more constant, you know.

10 And, again, we'll have many experts following me
11 if you want more detail, ask more detailed questions about
12 index pricing and how it works in the cheese industry.

13 So we start out with 40-pound blocks, obviously a
14 price by blocks. 500-pound barrels that are reported
15 NDPSR are obviously in the barrel category.

16 The non-NDPSR cheddar, basically reported
17 500 million pounds of barrels are in that category
18 because, again, taking the estimate of 1.2 billion pounds
19 of barrel -- 500-pound barrel cheddar, subtracting the
20 700 pounds -- million pounds reported in NDPSR in 2022. I
21 was assured that basically everything else was -- was
22 blocks, including 640-pound blocks that I thought might --
23 some of them, which particularly go into processing, might
24 be priced off of barrels as they go to processing.

25 But basically, again, the -- our experts that I
26 conferred with implied that there's really very little, if
27 anything, that is not -- other than barrels that is not
28 reported NDPSR that is also not priced by barrels.



1 And then just going down the list, basically all
2 of these other varieties, conferring with different
3 members of our task force, are for all practical purposes
4 all considered to be priced by barrels -- by blocks.

5 We get down to Swiss, 3% of the cheese. Swiss,
6 apparently, is priced on a formula based on the Class III
7 price, which means it is not really priced on either
8 barrels or blocks. And so this line could have been just
9 removed from the -- from the analysis.

10 I was trying to find as much volume that I could
11 add to the barrel capacity -- to the barrel column to see
12 if I could get the largest justifiable number for barrels,
13 to kind of test that -- you know, that 10% number, which
14 is what's reported on the bottom right-hand corner.

15 So I considered since Class III prices, just like
16 the NDPSR series itself, which goes into computing the
17 protein in the Class III price formula, is -- consists of,
18 in 2022, a report based on 48% 40-pound blocks, 52%
19 500-pound barrels. So I kind of parsed out the volume of
20 Swiss by that same proportion, 48% of the volume in the
21 block cheese price by column, 52%.

22 And by this, I mean not that that's literally how
23 things are marketed, but in terms of the economics that
24 we're discussing in connection with Proposal 3, is that if
25 you have, for example, a situation where one week you have
26 a certain block price and a certain barrel price, and the
27 next week the block price is the same, the barrel price
28 has gone up \$0.10, what you will see is that the cheeses



1 that are priced off of blocks will -- index priced off of
2 blocks, will not change from one week to the next. The
3 cheeses that are priced off of barrels will go up by
4 \$0.10.

5 By this formula, Swiss cheese price will go up by
6 5.2 cents. To that extent, economically, you know, 52% of
7 Swiss cheese, in a sense, is priced by -- priced by
8 barrels. So -- but in terms of the sensitivity, if the
9 Swiss -- that Swiss line is dropped from this analysis,
10 that 10% number would drop down to 9%.

11 I sort of stress tested a few of these things. Am
12 I missing some volumes that are listed under the price by
13 blocks column that should be in the price by barrels or
14 split? Like, are there some of these other varieties,
15 like say Swiss or Gruyere processed, which would be in the
16 other -- that are processed cheeses that are made
17 presumably directly in barrels by -- you know, by the
18 first manufacturer and might be sold price based upon the
19 barrel price.

20 I'm not an expert in cheese pricing, so I was just
21 doing a thought experiment. Are there some volumes that
22 maybe belong in the -- of outside of cheddar, or maybe
23 even of 640-pound blocks themselves, are there some
24 volumes in this table that really belong in the barrel
25 column versus the block column? I could not really find
26 data for that.

27 Mr. Brown referenced in his testimony that a
28 number of small cheese producers are starting to price



1 directly off the NDPSR. If we had data on that --
2 presumably, they are small volumes -- but if we had data
3 on that, probably the appropriate thing to do would be to
4 take those volumes for whatever variety they are and move
5 52% of those volumes over from barrel -- from blocks to
6 barrels, kind of like Swiss, you know, attributed, because
7 the NDPSR in 2022 was 52% barrels and 48% blocks.

8 Finally, the issue of exports came up. Where do
9 exported volumes come into this picture?

10 About in -- in 2022, about 7.1% of all U.S.
11 produced cheese was exported. 22% of that 7.1% went to
12 Mexico. I consulted experts in international trading.
13 They told me that basically for a lot of -- most U.S.
14 exports, Mexico is kind of -- unlike most of our other
15 export destinations, Mexico is kind of an extension of the
16 domestic market.

17 So that the -- that volume of our 7.1% cheese
18 exports that goes to Mexico is going to be priced almost
19 as if those exports went to Texas rather than to Mexico,
20 namely the blocks that are shipped to Mexico are going to
21 be priced by blocks. The barrels that we ship to
22 Mexico -- and we do ship blocks to Mexico because they do
23 have some processors that can handle barrels -- are going
24 to be priced by barrels. So the Mexican exports, at
25 least, are not going to be affected.

26 So you are left with 5.5% of the -- of U.S. cheese
27 production that is exported to other than -- other
28 destinations in Mexico.



1 Well, there are a couple of things you could do,
2 but it's -- since most of those exports are hedged with
3 the Class III price or the cheese price, you could make --
4 maybe make a case for -- you know, they are kind of priced
5 off Class III, and you could treat them, what I call the
6 Swiss cheese method.

7 But probably, more carefully, it would be best to
8 just take them out -- to remove that 5.5% export volumes
9 to other than Mexico, just remove this from this analysis,
10 take those -- take that volume out of the total, take that
11 volume out of the price by blocks total, leave the price
12 by barrels intact. Because those exports -- as I say,
13 those exports are probably not priced by either one.
14 Let's make that assumption.

15 When you do that, if you take -- if you remove
16 that 5.5% from the calculation for exports to non-Mexico,
17 you will increase that 10% to 11%.

18 So this kind of stress testing, second guessing,
19 what-ifs that I could think of doing, didn't really change
20 the numbers from the roughly approximately 10% that many
21 of us testified in our testimony to Proposal 3.

22 So that completes my testimony on Exhibit NMPF-6A.

23 Q. Thank you, Dr. Vitaliano.

24 MS. HANCOCK: We would submit Mr. -- or
25 Dr. Vitaliano for cross-examination.

26 CROSS-EXAMINATION

27 BY MR. ROSENBAUM:

28 Q. Steve Rosenbaum for the International Dairy Foods



1 Association.

2 I want to start by focusing on your listing the
3 source at the bottom so that there's not any ambiguity
4 about that.

5 You list "USDA/NASS, AMS/NDPSR" as your source,
6 correct?

7 A. Those are the two government sources that I --
8 that are in this chart, whose data is in this chart.

9 Q. Okay. But the -- with respect to the columns
10 "Priced by Blocks" and "Priced by Barrels," you are not
11 relying upon USDA --

12 A. No.

13 Q. I'm not done yet.

14 -- you are not relying upon USDA information
15 whatsoever, correct?

16 A. That's correct. That was -- that was information
17 from our team of experts that had much knowledge of the
18 U.S. dairy industry.

19 Q. Now, the 500-pound cheddar cheese volume of
20 1,200,000,000 pounds, that also does not come from USDA;
21 is that correct?

22 A. Yes. That came from the sworn testimony of
23 Mr. Darin Hanson.

24 Q. Okay. And we would have to look to the
25 explanation he gave as to his source --

26 A. Yes.

27 Q. -- of information to determine whether that
28 appears reliable or not?



1 A. Yes. And -- yes. And as I -- as I recall,
2 Mr. Brown indicated sort of in -- in cross-examination
3 that the volumes are roughly one-third barrels, two-thirds
4 blocks.

5 Q. Now, I'm correct that you yourself personally do
6 not engage in the sale of cheese, correct?

7 A. That is correct.

8 Q. So that with respect to the columns "priced by
9 blocks" and "priced by barrels," you are not relying upon
10 any personal experience you have ever had --

11 A. No.

12 Q. -- in selling those products; is that correct?

13 A. That is correct. But this -- as I explained in my
14 overall testimony, National Milk has worked for, getting
15 on to two years now, with a very closely coordinated team
16 of people with tremendous amounts of expertise. And we
17 are not shy about putting together collective products
18 that pool the wisdom of all of us --

19 Q. Right.

20 A. -- as opposed to kind of trying to keep individual
21 pride of authorship.

22 Q. But other than what's written on this piece of
23 paper, we have no written documentation to support any of
24 these numbers; is that fair?

25 A. No. But I think -- I believe I have just entered
26 into the hearing record the attribution to all of those
27 folks.

28 Q. Right. But I'm -- my question remains the same,



1 we do not have any written documentation other than this
2 one piece of paper that we could look to to determine
3 whether or not these pricing statements are accurate or
4 not?

5 A. Yeah. I have -- I have listed only the government
6 sources for which I have data on this chart, and basically
7 have not put this together as a document solely authored
8 by me but -- but put together as a collective enterprise
9 on behalf of National Milk and is limited -- listed as
10 Exhibit NMPF.

11 Q. You don't have a piece of paper for any of these
12 particular entries that would demonstrate the basis upon
13 which the conclusion was reached; is that fair?

14 A. That's true.

15 Q. For example, if I were to suggest to you that your
16 entry -- well, let me start the question again.

17 One of the larger entries is cream and -- I should
18 know how to pronounce that word, but I don't.

19 A. Neufchatel.

20 Q. Say it one more time, please?

21 A. Neufchatel. French, Neufchatel.

22 Q. Now I know why I don't know how to pronounce it.

23 If I were to -- if I were to suggest that -- well,
24 strike that.

25 Your entry for cream and Neufchatel -- not a word
26 we used in Texas growing up -- which is 8% of your total
27 volume, correct?

28 A. That's correct.



1 Q. Which is actually after cheddar and mozzarella,
2 the lar- -- let me start that question again.

3 After cheddar, other American, and mozzarella, the
4 largest next category is cream and Neufchatel, correct?

5 A. That's correct.

6 Q. And if I were to suggest to you that, in fact,
7 virtually no cheese of that nature is produced -- is
8 priced using the blocks, cheddar blocks, would you
9 actually be in a position to contradict that?

10 A. I would ask you what -- if they are not priced by
11 blocks, upon what -- what -- how are they priced?

12 Q. Class III. Class III and fat.

13 A. Well, then they would be eligible for the Swiss
14 cheese treatment, as I call it.

15 Q. All right.

16 A. And as you recall, I initiated my own questioning
17 about, do I have it right? Are there volumes in this
18 analysis that are attributed to one or the other that
19 should be -- should be redone, somehow. And I would -- I
20 suggested that there could be further changes.

21 But what the critical thing is the comparison as
22 we made in our testimony between the 52% of all cheese
23 prices and the Class III price are driven by barrel
24 cheese, and that is five times as great as our initial
25 estimate. And if our initial estimate goes up to 15%,
26 20%, that is not going to substantially change our
27 argument.

28 Q. But you yourself have testified, of course, you



1 are not suggesting that 90% or any other percent along
2 those lines actually reflects the price being charged by
3 the cheese, rather we're looking, at most, at what
4 percentage is priced off of --

5 A. Right.

6 Q. -- block cheese, correct?

7 A. As a -- as an index.

8 Q. Okay. And so if we -- just so we sort of add up
9 the numbers, if you start at 10% being block, but then you
10 indicated that it would be fair to treat Swiss as half
11 block, half barrel, if it's priced off of Class III since
12 Class III itself is half block and half barrel, so that
13 would take us up to 11.5%, correct?

14 A. Just the Swiss or --

15 Q. Just the Swiss. I'm just splitting 3% in half and
16 adding half of that to your 10%.

17 A. No, the -- the split for Swiss is already in this
18 chart.

19 Q. I stand corrected.

20 A. That's why I said, if you took Swiss out, it would
21 go down.

22 Q. I stand corrected.

23 A. Again, as I told you before, I was looking, what
24 are the ways -- what have I missed in this?

25 Q. So --

26 A. What -- what really belongs -- how can I bulk up
27 the barrel column?

28 Q. All right. And if -- so if we do put cream and



1 Neufchatel in the Class III 50/50 category, that would
2 take us from 10% to 14%, correct?

3 A. Can't do the math, but that sounds from what my
4 working with the numbers, it would be -- I would not
5 dispute that.

6 Q. Okay. And then -- and do you know whether some
7 Muenster is priced off the NDPRM?

8 A. Well, all of these varieties, basically, I got --
9 I put this chart together, as I explained, with the help
10 of experts amongst our organization. I'm not claiming
11 that it's absolutely infallible. That's why I myself was
12 looking, despite the expert input into this, have I --
13 what have I missed.

14 Q. So you don't know whether some Muenster is priced
15 off of NPDRM?

16 A. In my opinion, some of -- almost many of these
17 categories could be priced off of -- you know, off of
18 Class III or even barrels. One of the largest ones is
19 mozzarella and Italian in general. I think we had
20 pretty -- pretty firm -- sort of firm assurances that
21 Italian cheeses are pretty much priced by blocks, the main
22 ones.

23 Q. Okay. But I'm referring -- referencing
24 specifically, for example, Muenster.

25 A. Yep. 1%, Muenster. There could be some priced
26 by -- by -- by barrels there for all I know.

27 Q. Blue and Gorgonzola?

28 A. Could be.



1 Q. Brick as well?

2 A. Could be.

3 Q. Okay.

4 A. You are up to 2%.

5 Q. Have you seen any published estimates by cheese
6 brokers as to what percentage of cheese is -- is priced
7 off of --

8 A. No, my impression is --

9 Q. -- blocks?

10 A. I have not seen that. My impression is that's not
11 the kind of information that brokers are going to publish.

12 Q. Did you look for that information?

13 A. Did I what.

14 Q. Look for that information?

15 A. I asked -- I asked basically our collective team
16 of experts if they had any -- whatever information they
17 have, and they did not give me any such references.

18 Q. And with respect to cheese that is exported, I
19 know you mentioned Mexico, which you thought was priced
20 basically the same as the United States?

21 A. That's what experts in exporting told me.

22 Q. And what about the remainder of the exports? We
23 certainly heard and testimony suggesting it was priced off
24 of barrels.

25 A. We don't export any barrels to any -- anybody
26 else. I can't imagine why we would price cheese off --
27 exports off of barrels.

28 Q. To meet -- just to meet competitive -- to be



1 competitive with New Zealand pricing, I assume.

2 A. My understanding is that basically the -- meeting
3 competition is a key thing. I work -- I have worked
4 for -- for over 20 years, the entire history of the
5 Cooperatives Working Together program, and I follow very
6 closely -- I'm the one who makes the pricing
7 recommendations in that program, and so I do follow
8 international pricing relationships. But my understanding
9 is we have never had an offer of barrel cheese.

10 Q. Okay. Have you entered into sales that were
11 not -- international sales that were not priced off of
12 blocks?

13 A. Not -- sales that were not priced off of blocks?

14 Q. Yes.

15 A. Not to my knowledge.

16 Q. All of your sales have been priced off of blocks,
17 sold international -- cheese sold internationally?

18 A. Well, as I explained, by taking out the exports
19 other than the Mexico, that means we did not -- I did not
20 attribute those sales to either blocks or barrels.

21 Q. Well --

22 A. For all I know sales to Canada for their import
23 for reexport program, they will be priced off of blocks.
24 But most of our cheese -- almost all of our cheese exports
25 outside of Mexico are blocks. So the idea of pricing them
26 off barrels as opposed to basically, you know, the
27 Class III price, which is what exporters have to pay if
28 they are pooled in Federal Orders, with some kind of a



1 discount, which they -- if they are a cooperative,
2 basically, work out amongst -- pool amongst their own
3 members. We have cooperative members who are more
4 dedicated to entering the export market and do so to some
5 extent at their expense and the expense of their members.

6 Q. But are -- is export cheese included in your
7 \$13,816,000,000 (sic) number?

8 A. That's the total and the --

9 Q. So aren't you by default attributing all export
10 cheese to the barrel column?

11 A. I don't -- I don't see it that way.

12 Q. Well, aren't -- well, you are purporting to show
13 how 100% of the 13,816,000,000 pounds are priced, correct?

14 A. Right. And it is mostly --

15 Q. Just -- I mean, that is to say --

16 MS. HANCOCK: Your Honor, if he could finish his
17 answer. He's cutting off almost every one of his answers.

18 MR. ROSENBAUM: I think he answered my question.

19 THE WITNESS: I will -- please ask your question.

20 BY MR. ROSENBAUM:

21 Q. Yeah. Well, you --

22 THE COURT: Thank you, Ms. Hancock. We'll figure
23 it out?

24 BY MR. ROSENBAUM:

25 Q. You're showing total sales volume of
26 13,816,000,000 pounds, correct?

27 A. That is U.S. production volumes.

28 Q. Right. And -- and correct me if I'm wrong, but I



1 believe that you are attributing that 13,816,000,000
2 pounds either to the block column or to the barrel column,
3 correct?

4 A. In the case of Swiss, I have attributed both in
5 this -- the Swiss cheese method I call it.

6 Q. Let -- you are being more exact in your answer
7 than I was in my question.

8 You are allocating 100% of the 13,816,000,000
9 pounds of production either to the blocks column or to the
10 barrel column --

11 A. In this analysis, yes.

12 Q. -- or in the case of Swiss cheese, you split it,
13 correct?

14 A. Right. And as I explained right after I -- you
15 know, as I explained the diagram, I said I looked for
16 volumes that are priced off Class III or off the NDPSR, in
17 which case they would be eligible to be treated like Swiss
18 cheese.

19 Q. All right.

20 A. Attributed, you know, in this -- in this way.
21 Because I was looking to find additional volumes of
22 barrels that I have missed in here, and talking with our
23 experts, I did not get -- I did not get very many of those
24 volumes.

25 Q. So with respect to exported cheese, you didn't
26 allocate any of that to the barrel column; am I right
27 about that?

28 A. Our barrel cheese exports to Mexico are in that



1 because they are in the cheddar barrel column. As I
2 explained, the Mexican exports -- exports don't really
3 need to be broken out. They're like, again, Texas.

4 The volumes of cheese exports to other than
5 Mexico, I just took out of the analysis. I subtracted
6 those volumes, that 5.5% of the 13.8%, subtracted that
7 from the 13.816 million pounds total. Subtracted that
8 same amount entirely from the block column, on the
9 assumption that none of those exports could be properly
10 attributed to barrels, again, for the purpose of
11 maximizing the percentage I could come up with in the
12 barrel column. So subtracted, again, that same 5.5% of
13 the 13.8% -- the 13.8 billion, from the total block
14 column, the 12 million -- or 12,433,000,000, and left the
15 1.383 total for barrels, which increased the percentage,
16 the 10% to 11%.

17 Q. But when you reference the 5.5%, tell us again
18 exactly what you are talking about? Is that exports
19 excluding Mexico?

20 A. Yes.

21 Q. Okay. But -- see, 12,433, which is what you say
22 is priced by blocks, plus 1,383, which is what you say is
23 priced by barrels, those -- you add those two together,
24 you come to 13,816, correct?

25 A. That's correct.

26 Q. So how have you excluded that 5.5%? You have to
27 put it in one column or the other, and you haven't put it
28 in barrels.



1 A. I just explained that I -- that if you exclude the
2 5.5% exports from this analysis, you take that 5.5% of
3 13,816, remove that number from the total column, remove
4 that same number from the price by blocks column. And the
5 resulting, since you are subtracting the same amount from
6 both sides of the equation, i.e., the equation is 13,816
7 equals 12,433 plus 1,383, if you subtract that 5.5% from
8 both sides of the equation, it will still be an equation.

9 If you want, I can do the math for you.

10 Q. Where do you get the 90%? Is the 90% 12,433
11 divided by 13,816?

12 A. Correct. That's the purpose of -- how much --
13 what percentage of -- by this analysis, which admittedly
14 may understate some volumes -- what percentage is the
15 total volume of cheese priced by blocks to the total
16 natural cheese? That's 90 -- by these numbers, 90% of
17 100%. What percentage by barrels? It's the remaining
18 10%.

19 Q. All right. Let's get at it this way. What is
20 5.5% of --

21 A. 5.5% is the volume of cheese produced exported to
22 countries other than Mexico in calendar year 2022, and of
23 natural cheese.

24 Q. And is some of that or all of that or most of that
25 priced off of Class III as opposed to block price?

26 A. I don't know what it's priced off of, but it's --
27 let's say it is probably hedged by Class III for the
28 cheese futures contract.



1 Q. And none of those pounds are showing up in the
2 column priced by barrels, correct, none of the 5.5%?

3 A. None of the 5.5 -- right, because we don't -- we
4 don't really export barrels to anywhere but Mexico.

5 Q. Okay. Well, this is -- we don't -- I'm trying
6 to -- this is priced by barrels. You are not saying --
7 you are not saying that any of that 5.5% is priced by
8 barrels, correct?

9 A. Right.

10 Q. And you are also not allocating -- let me start
11 that again.

12 If they were priced off of Class III, as an
13 example, then using the approach you have taken for Swiss,
14 you ought to be allocating that 5.5%, half to blocks and
15 half to barrels, correct?

16 A. That's correct.

17 Q. But you have not done that, correct?

18 A. Right. I was particularly -- if there's a bias in
19 this, I wanted to pump up as much volume under barrels as
20 I could to make sure I was not underestimating their
21 impact on pricing.

22 Q. Right.

23 A. And I'm fairly confident that there's not much
24 exports outside of Mexico that use barrels cheese as a
25 pricing index.

26 Q. But you -- you said it could be they use
27 Class III, which is an amalgamation --

28 A. Yeah.



1 Q. -- of the two, blocks and barrels?

2 A. They hedge by Class III. Whether or not they
3 actually use that as a price index -- because, as you
4 yourself pointed out, exporting most dairy products other
5 than, you know, the dry skim ingredient products, dry
6 whey, WPC, lactose, skim milk powder, for which the U.S.
7 is price competitive, and for all practical purposes the
8 domestic price is the world price, because we are big in
9 that market, and we kind of set that price. We
10 generally -- the world price of cheese, which is, you
11 know, the export price, are not as closely related to
12 domestic prices. Sometimes we're very price competitive;
13 sometimes we are not.

14 So attributing a -- you know, either barrels or
15 blocks as the pricing index for our exports, I didn't know
16 how to do that. So I felt, let's just remove those from
17 the analysis.

18 Q. So on my calculation, 5.5% of 13,816,000,000 is
19 about 700 million pounds?

20 A. That's correct.

21 Q. And because your chart allocates 100% of the
22 13,816,000 -- start that again.

23 Because your chart allocates 100% of the
24 13,816,000,000 pounds of production, either to blocks or
25 to barrels, in the last two columns, then that 650 million
26 pounds needs to be -- by definition, has been included in
27 one of those two columns; isn't that right?

28 A. In the numbers as stated. You are talking about



1 the non-Mexican exports.

2 Q. Yes.

3 A. Right. They are in there in this -- in this
4 analysis. If they are taken out, I would say that they
5 should be taken out of the block column because that means
6 that there are volumes of those products listed in the
7 price by blocks column, as well as the total column, that
8 are attributed to being priced by blocks in the domestic
9 market as if they are -- there were no exports sales.

10 By removing those from -- in terms of the chart,
11 it doesn't matter what varieties you take them from, but
12 if you had the perfect data, and those exports that I
13 attributed in this unexported adjustment analysis to
14 blocks would have been improperly attributed to blocks and
15 should be -- have basically their volumes removed from the
16 total and from the block column and basically not diminish
17 the price by barrels column.

18 Q. Well, if you were to split it under the assumption
19 that they're being priced off of Class III, then 2.75%
20 would go in the block column and 2.75 in the barrel
21 column, correct?

22 A. Yeah. And that would be a significant reduction
23 of the barrel volume.

24 Q. It would be in addition to the barrel volume.

25 A. No. If you're --

26 Q. You haven't allocated anything to the barrel
27 column from exports; isn't that right?

28 A. Right. And I've -- and my -- by my discussion of



1 how I would suggest treating exports, you don't take
2 anything -- nothing is in the barrel column for exports,
3 so there's nothing to take out. The take-out would be
4 entirely from the block column.

5 Q. Well, or alternatively, you could treat it like
6 Swiss cheese and treat it half barrel and half block,
7 which would be reasonable if you assume it's priced off
8 of --

9 A. I don't have information upon which to attribute
10 any exports outside of Mexico to doing -- you know,
11 treating it like Swiss cheese.

12 I do have information on Swiss cheese, and you
13 suggested that that information would apply to cream and
14 Neufchatel. Point well taken. So I will check with my
15 sources on that.

16 Q. All right. If we were -- just so we have numbers
17 in front of us, and I'm not saying you agree with what I'm
18 suggesting -- but if we did split the 5.5% export,
19 non-Mexican export, 50/50, because we are going to treat
20 it as being priced off of Class III, and that would
21 increase the barrel percentage to 17.5%, right?

22 A. I don't have the math on that. But it would be a
23 significant adjustment. But I would not agree with you
24 that that would be an appropriate way to -- to attribute
25 exports.

26 Q. And by the way, let me correct myself. That's --
27 I believe that correct number is 16.75%. You were up to
28 14% before. We're talking about an additional 2.75, so --



1 A. And a long way to go to 52%.

2 Q. Well, once again, we are talking about minimum
3 pricing, correct?

4 A. Correct.

5 Q. And we're talking about blocks being used not to
6 set the price, but being a reference?

7 A. As an index.

8 MR. ROSENBAUM: That's all I have for the moment.
9 Thank you.

10 THE COURT: Further cross?

11 Seeing none, AMS?

12 AMS has no questions for this witness.

13 Redirect?

14 REDIRECT EXAMINATION

15 BY MS. HANCOCK:

16 Q. Dr. Vitaliano, I think you started off by talking
17 about Mr. Hanson's testimony, in which he said that at
18 least at least 75% of the natural cheese market is
19 represented by blocks; is that right?

20 A. Yes.

21 Q. And -- and you just went through some calculations
22 that were challenging the integrity of the numbers here.

23 I just -- maybe to put a fine point on it, let's
24 say your number at 90% is 75%, as Mr. Hanson testified.
25 If you were to recalculate, which is well in excess of a
26 shift beyond any of the numbers you were just talking
27 about with Mr. Rosenbaum. Would you agree?

28 A. Yes.



1 Q. And if it was at 75%, would that change National
2 Milk's proposal with respect to its request to eliminate
3 barrels from the protein price calculation for Class III?

4 A. Yeah. Again, the fundamental part of our proposal
5 is that barrels are significantly overweighted in the
6 protein component calculation. And our initial
7 proposal -- or basically our analysis to use the 10%
8 figure would suggest that, in a sense, that would be more
9 -- a far more appropriate weighting. And if it was 10%,
10 there would be benefit from going all the way to 0% to get
11 back to what had been testified to by several of our
12 witnesses. The advantages and the almost necessity of
13 going to a single product to price -- price cheese in the
14 protein component calculation to make it conform with the
15 other three component calculations that have always used a
16 single price, we looked carefully at adding other things.
17 We looked at 640s, we considered mozzarella, we looked at
18 -- at unsalted butter, and concluded that having a single
19 price in those formulas was very important, and that the
20 cheese price calculation would probably, on balance,
21 benefit from that same sort of single price treatment.

22 Q. And as you sit here today, have you heard any
23 evidence that's been put into the record throughout the
24 duration of this hearing that would suggest that your
25 estimates that you have included on Exhibit 141 are
26 inaccurate?

27 A. Could you repeat that question again?

28 Q. Sure. I'm just wondering if any of the evidence



1 that's been actually put into the record to date
2 undermines the integrity of any of the numbers that you
3 put in in Exhibit 141?

4 A. Well, the -- as I say, I suggested that these
5 numbers might change. But I have attributed my analysis
6 to consultations with a number of experts amongst our
7 members. I have heard people suggest something, but I
8 have not heard anybody question the integrity of the
9 analysis based upon their conversations with experts in
10 cheese pricing.

11 Q. Thank you, Dr. Vitaliano.

12 MS. HANCOCK: I move to admit Exhibit 141.

13 THE COURT: Seeing no objections, Exhibit 141 is
14 admitted into the record.

15 (Thereafter, Exhibit Number 141 was received
16 into evidence.)

17 MS. HANCOCK: Your Honor, we are now going to move
18 to Make Allowances officially, so we'll keep Dr. Vitaliano
19 on the stand, if that's okay.

20 THE COURT: Yes.

21 DIRECT EXAMINATION

22 BY MS. HANCOCK:

23 Q. All right. Dr. Vitaliano, welcome back onto the
24 stand. We're now moving topics to talk about Make
25 Allowance.

26 Did you prepare a statement to introduce the topic
27 of Make Allowance in National Milk's proposal?

28 A. I did.



1 Q. And is that what's reflected in Exhibit NMPF-12?

2 A. It is.

3 Q. Thank you.

4 MS. HANCOCK: Your Honor, if we could identify
5 this as Exhibit 142 for identification purposes.

6 THE COURT: Yes. So identified.

7 (Thereafter, Exhibit Number 142 was received
8 into evidence.)

9 MS. HANCOCK: Thank you.

10 BY MS. HANCOCK:

11 Q. Dr. Vitaliano, would you provide us with your
12 statement on Make Allowances, please?

13 A. Yes.

14 As I mentioned in my proposal -- in my testimony
15 to proposal -- on Proposal 3, my testimony on Proposal 7,
16 Exhibit now 142, has -- shares some formatting features in
17 common with my other testimony that I have entered into
18 the record and is in the written statement. I will not
19 repeat and read into the record those sections on
20 background, National Milk, myself, the task force process,
21 the fact that our proposals to this here -- before this
22 hearing are -- constitute an integrated whole. And also
23 has some comments later on on sort of economic and other
24 impacts.

25 I will read into the testimony -- into the record
26 only the portions of my -- my testimony that pertain to
27 Proposal 7.

28 NMPF requests that the Secretary amend 7 CFR



1 1000.50(l), (m), (n), (o), and (q), applicable to all
2 Federal Milk Marketing Orders, as specified at the
3 conclusion of this testimony, which would increase the
4 current Make Allowances in the Federal Order component
5 price formulas for butterfat, nonfat solids, protein, and
6 other solids.

7 The Make Allowance in the component price formulas
8 and current costs of manufacturing the products in those
9 formulas.

10 NMPF proposes increasing the current
11 Make Allowances in butterfat, nonfat solids, protein, and
12 other solids component formulas as follows:

13 Butterfat: From \$0.1715 to \$0.21 per pound of
14 butter;

15 Nonfat Solids: From \$0.1678 to \$0.21 per pound of
16 nonfat dry milk;

17 Protein: From \$0.2003 to \$0.24 per pound of
18 cheddar cheese;

19 And other Solids: From \$0.1991 to \$0.23 per pound
20 of dry whey.

21 These requested changes are equivalent to an
22 increase of \$0.0385 per pound in the butter Make
23 Allowance, an increase of \$0.0422 per pound in the nonfat
24 dry milk Make Allowance, an increase of \$0.0397 per pound
25 in the cheddar cheese Make Allowance, and an increase of
26 \$0.0309 per pound in the dry whey Make Allowance.

27 NMPF does not contend that these increases fully
28 correct for the increases in butter, nonfat dry milk,



1 cheddar cheese, and dry whey manufacturing costs
2 experienced by manufacturers since 2008, when the current
3 Make Allowances were adopted.

4 Instead, these Make Allowance increases represent
5 a fair balance between the producer impact of higher
6 Make Allowances and the processor impact of
7 Make Allowances that more closely reflect the current cost
8 of manufacturing commodity style butter, nonfat dry milk,
9 cheddar cheese, and dry whey.

10 Raising Make Allowances to levels above those
11 proposed will reduce producer prices to levels that would
12 narrow margins and negatively impact the availability of
13 adequate supplies of milk, and thereby create disorderly
14 marketing. At the same time, the proposed increases in
15 Make Allowances will likely not ensure that all
16 manufacturing plants will operate profitably since plants
17 vary by location, size, age, depreciation, yield,
18 operating costs, and other factors.

19 Indeed, the Department recognizes that component
20 formula Make Allowances "will not provide enough of an
21 allowance to assure that every processor, no matter how
22 inefficient or high-cost, will earn a profit." This is
23 because assuring all manufacturers a profit would
24 effectively eliminate the "incentive to make a sufficient
25 quantity of milk available for fluid use, a basic goal of
26 the Federal Milk Order program." That's a quote from
27 USDA.

28 Disorder caused by the current inadequate



1 Make Allowances:

2 Under Federal Order Reform, Product Price Formulas
3 (PPF) replaced the previous direct survey of prices paid
4 for manufacturing milk. PPFs moved the process of
5 establishing the basis for Federal Order pricing up the
6 marketing chain one step to survey buying and selling of
7 wholesale, spot, commodity style, dairy products. Those
8 dairy product prices became the foundation, working
9 backwards via economic formulas, to determine the minimum
10 price of milk used to make those commodity dairy products.

11 Adjusting their prices by subtracting the non-milk
12 costs of manufacturing these products and applying
13 appropriate yield factors determines an implied value for
14 the components of milk used to produce them. Having
15 accurate and updated plant processing costs to establish
16 appropriate Make Allowances and appropriate product yield
17 factors are critical for this indirect method of
18 determining milk prices, which is a principal function of
19 the Federal Order Program.

20 Yet a regular and systematic method of ensuring
21 that these critical PPFs remain accurate and current has
22 heretofore not been established. The current
23 Make Allowances, which are fixed numerically in the
24 Federal Order regulations, were established by USDA in
25 2008, based on surveys of manufacturing costs in 2006 and
26 2007, conducted by Cornell University and by the
27 California Department of Food and Agriculture.

28 Costs of manufacturing butter, nonfat dry milk,



1 cheddar cheese, and dry whey have increased since the time
2 the data was collected. NMPF members that operate
3 manufacturing plants have indicated that their costs have
4 risen substantially since 2008. It is virtually certain
5 that the current costs of manufacturing are above the
6 current Make Allowance values. The most recent voluntary
7 survey-based study of dairy product processing costs --
8 that is basically the Mark Stephenson study published in
9 June 2023 -- reported the following weighted-average
10 processing costs for 2022, compared with the current
11 Make Allowances.

12 I have a table of those comparisons. Basically
13 the butter currently, again, \$0.1715 purchase pound. In
14 the recent study, the average-of all plants \$0.3176 per
15 pound, an increase of \$0.1461 per pound.

16 Nonfat dry milk, \$0.1678 per pound currently; the
17 new study, \$0.275 per pound, an increase of \$0.1072 per
18 pound.

19 Cheddar cheese, currently, \$0.2003 per pound; in
20 the study, \$2643 per pound, an increase of \$0.064 per
21 pound.

22 Dry whey, \$0.1991 per pound currently; in the
23 study, \$0.2361 per pound, an increase of \$0.137.

24 From discussions with members -- National Milk
25 Producers Federation members -- it is clear that dairy
26 product processing costs have increased, and therefore,
27 average manufacturing costs for butter, nonfat dry milk,
28 cheddar cheese, and dry whey are higher than the current



1 Federal Order Make Allowances.

2 But several challenges are encountered when using
3 existing, voluntary survey plant cost data or analyses to
4 establish updated Make Allowances with the specificity
5 needed.

6 While NMPF recognizes the cost of manufacturing
7 dairy products has increased since the Make Allowances
8 were last updated, there is clearly a need to establish a
9 more regular and systematic method for updating the Make
10 Allowances as well as the yield factors in the Federal
11 Order component price formulas. This will require
12 providing the Department with the authority to conduct
13 periodic manufacturing cost surveys that can supply the
14 necessary information.

15 NMPF is engaged with members of Congress and other
16 organizations present at this hearing that can supply this
17 necessary information -- NMPF is engaged with members of
18 Congress to establish this. Under such authority,
19 manufacturers of the commodity dairy products referenced
20 in these formulas would be mandated to provide auditable
21 cost and product yield data.

22 Manufacturers are already mandated to provide
23 sales price data for such products, pursuant to the Data
24 Product Mandatory Reporting Program. Larger, more
25 representative sample sizes than those achievable by
26 previous, voluntary studies are needed to establish proper
27 values for the critically important Make Allowances and
28 yield factors. NMPF is seeking the enactment of such



1 authority in the upcoming Farm Bill.

2 There are consequences to setting Make Allowances
3 too low relative to the actual cost of manufacturing under
4 a system of PPFs. Inadequate Make Allowances challenge
5 manufacturing operations' abilities to pay minimum
6 announced milk prices and still operate their facilities
7 at reasonable rates of return. This discourages the plant
8 investment needed to provide market demand on a daily,
9 seasonal, and annual basis.

10 As the Department itself noted in its Final
11 Decision on Federal Order Reform in 1999: "The importance
12 of using minimum prices that are market-clearing for milk
13 used to make cheese and butter/nonfat dry milk cannot be
14 overstated. The prices for milk used in those products
15 must reflect supply and demand and must not exceed a level
16 that would require handlers to pay more for milk than
17 needed to clear the market and make a profit."

18 And in its Final Decision, Proposed Rules for the
19 current Make Allowances, the Department also pointed out
20 when manufacturing costs of commodity products exceed the
21 established Make Allowances, the calculated classified
22 prices will essentially overvalue raw milk as an input.

23 The Department also noted the importance of
24 accurate and up-to-date Make Allowances in determining
25 minimum classified values of milk: "Accordingly, the
26 accuracy of deriving the minimum value of raw milk is
27 dependent on the accuracy of the commodity sale prices
28 reported and, in large part, the accuracy of the



1 manufacturing cost factors, or Make Allowance factors,
2 that are used in the pricing formulas."

3 In short, the current, outdated Make Allowances
4 need to be revised to account for increases in
5 manufacturing costs of the four main dairy product
6 commodities: Butter, nonfat dry milk, cheddar cheese, and
7 dry whey. USDA must consider the best plant processing
8 cost data available when updating Make Allowances.

9 However, given the length of time during which the
10 current Make Allowances have remained unchanged, making a
11 one-time change to levels that reflect likely current
12 costs would itself be disruptive to dairy producers and
13 impose undue financial hardships on them, with potentially
14 negative impacts on providing adequate supplies of milk to
15 some manufacturing operations.

16 Negative impacts from outdated Make Allowances are
17 unfairly borne by cooperative member dairy farmers.
18 Cooperatives operate dairy manufacturing plants in nearly
19 all Federal Order marketing areas. These manufacturing
20 plants balance milk supplies in the market when Class I,
21 II, and III customers need more or less milk to service
22 their accounts. In this way, cooperative manufacturing
23 plants balance the market by providing an outlet for milk
24 not needed by their customers on a seasonal, monthly,
25 weekly, or even daily basis.

26 Cooperative manufacturing plants represent
27 financial investments by their members. Cooperative
28 members have paid to build and maintain their



1 cooperatives' manufacturing plants and are responsible for
2 the costs to operate them.

3 When Federal Order Make Allowances are established
4 at levels below the costs of producing commodity dairy
5 products, farmers whose cooperatives own and operate
6 balancing plants end up absorbing costs that other market
7 participants do not experience but benefit by the orderly
8 marketing system enabled by the cooperatives operating
9 milk balancing plants.

10 As cooperatives pass the marketwide
11 service-related balancing losses to their members via
12 reduced pay prices, producers shipping to cooperatives and
13 other handlers that do not operate balancing plants do not
14 experience those lower pay prices. This unfairly
15 penalizes dairy cooperative members who invest in plant
16 and marketing systems to support orderly marketing.

17 The dairy products referenced in the Class III and
18 Class IV milk pricing formulas are primarily commodity
19 products, not retail or branded products. Many of NMPF's
20 member cooperatives own and operate plants that
21 manufacture commodity dairy products.

22 To maximize plant throughput, plant managers
23 typically set processing schedules to include a high
24 percentage of commodity products even though these
25 products typically have smaller margins than branded
26 products. This approach of maximizing a plant's
27 processing capacity is especially important in clearing
28 the milk supply available to local markets, as discussed



1 previously.

2 Our proposed solution is, although the current
3 Federal Order Make Allowances are overdue for updates, the
4 data available to do so are not sufficiently
5 comprehensive, verifiable, and unambiguous to establish
6 revised Make Allowances confidently. Accuracy and
7 specificity are required to make such changes because,
8 quote, "the Make Allowances...should cover the costs of most
9 of the processing plants that receive milk pooled under
10 the orders."

11 Also, because Make Allowances have not been
12 altered for so many years, bringing them up to date in a
13 single step would create disorderly marketing conditions
14 due to the impact on regulated milk prices.

15 Accordingly, NMPF recommends that the
16 Make Allowances be updated as follows:

17 (1) Provide an interim increase to alleviate the
18 acute problems and disorderly market conditions created by
19 the current, clearly insufficient Make Allowances;

20 (2) Enact the authority for the Department to
21 conduct mandatory, auditable plant processing cost
22 studies, conduct such a study under that authority, and
23 present the resulting data to the industry, which will
24 enable interested parties to make requests for further
25 Make Allowance adjustments on the basis of proper and
26 adequate data;

27 (3) Continue to conduct and report plant
28 processing cost studies regularly and systematically under



1 the same legislative authority and mandate to avoid
2 getting into the same situation we are in now.

3 NMPF's proposal strikes a balance between several
4 objectives. It is directionally correct to increase
5 Make Allowances from their current inadequate levels, but
6 in the absence of definitive data, not increasing them so
7 high as to be dependent on projections or on plant
8 processing cost survey results that have been disputed.

9 After much debate and after an extensive analysis
10 using many different methods, NMPF adopted the recommended
11 Make Allowance increases that we believe are adequate,
12 acceptable, and reasonable.

13 Relative to being adequate, again, NMPF proposes a
14 two-step approach, which we believe provides both
15 necessary and sufficient increases for the near-term, but
16 more importantly, once USDA has been given the authority
17 to conduct a mandatory cost study, then the industry will
18 have the definitive data necessary to make longer-term
19 Make Allowance modifications.

20 In terms of being acceptable and reasonable, NMPF
21 believes a balance must be struck between the various
22 industry stakeholders and its recommended Make Allowance
23 increases do so in an orderly, acceptable, and reasonable
24 manner for the entire dairy industry.

25 I'll conclude my spoken -- my written read
26 testimony by commenting on proposals submitted by Select
27 Milk Producers, Incorporated, or Select.

28 USDA accepted three proposals submitted by Select



1 as within the scope of this hearing. These are:
2 Proposal 10, to increase the butterfat recovery factor in
3 the Class III price formula; Proposal 11, to update the
4 specified yield factors to reflect actual farm-to-plant
5 shrink; and Proposal 12, to update the nonfat solids
6 factor.

7 NMPF appreciates that Select's proposals were
8 submitted in the same vein as those of NMPF, with the
9 intent to update and modernize aspects of the minimum
10 price formulas that have not been comprehensively updated
11 since Federal Order Reform.

12 Indeed, NMPF recognizes the need to consider
13 updating the price formula yield factors as well as the
14 Make Allowances, but it submitted no proposals for this
15 purpose due to the lack of any comprehensive data to do
16 so.

17 Although Select has indicated it intends to submit
18 evidence and testimony at this hearing to support
19 Proposals 10, 11, and 12, NMPF unfortunately is unable to
20 support these three proposals at this time, since such
21 support would be inconsistent with NMPF's basic position
22 on updating Make Allowances and yield factors. Namely,
23 the only way to establish the "correct" values for those
24 critical component formula coefficients is through the
25 conduct of a mandatory, auditable survey of plants that
26 manufacture the products used in these formulas.

27 NMPF, together with other parties at this hearing,
28 is currently seeking to secure the authority and funding



1 for the Department to conduct just such cost studies for
2 the current Farm Bill. And those organizations have
3 agreed on the legislative language to do so.

4 This testimony provides an overview of our
5 justification for adoption of Proposal 7. More detailed
6 testimony will follow that supports all, or key portions
7 of, Proposal 7, including testimony provided by Christian
8 Edmiston and Paul Bauer, representing, respectively, NMPF
9 member cooperatives Land O' Lakes, Inc., and Ellsworth
10 Cooperative Creamery, as well as several expert witnesses,
11 other members of the NMPF task force that developed our
12 Federal Order modernization proposals, and producers who
13 are members of NMPF member dairy cooperatives.

14 The legislative -- the regulatory language that we
15 are proposing to implement Proposal 7 is butterfat price:
16 The butterfat price per pound rounded to the nearest
17 one-hundredth cent, shall be the U.S. average AMS AA
18 Butter survey price reported by the Department for the
19 month, less 21.00 cents, with the result multiplied by
20 1.211.

21 (m): Nonfat solids price. The nonfat solids
22 price per pound rounded to the nearest one-hundredth cent
23 shall be the U.S. average AMS nonfat dry milk survey price
24 reported by the Department for the month, less 21.00
25 cents, with the result multiplied by .99.

26 (n): Protein price. Strike all subsequent parts
27 of this paragraph and insert in lieu thereof: Subtract
28 24.00 cents from the U.S. average AMS survey price for



1 40-pound block cheese, reported by the Department for the
2 month, and multiply the result by 1.383.

3 As I had mentioned previously, our proposed
4 legislative language includes all of our -- all of our
5 proposals, and so this one includes our proposal -- our
6 language on Proposal 3, to eliminate barrel cheese from
7 the protein price calculation.

8 (2): Add the amount computed pursuant to
9 paragraph (n)(1) of this section, an amount computed as
10 follows: Subtract 24.00 cents from the U.S. average AMS
11 survey price for 40-pound block cheese reported by the
12 Department for the month and multiply the result by 1.572.

13 And, (o): Other solids price. The other solids
14 price per pound rounded to the nearest one-hundredth cent
15 shall be the U.S. average AMS dry whey survey price
16 reported by the Department for the month, minus 23.00
17 cents, with the result multiplied by 1.03.

18 Finally, (q): Advanced pricing factors. An
19 advanced butterfat price per pound rounded to the nearest
20 cent shall be calculated by computing a weighted
21 average-of the two most recent average AMS AA Butter
22 survey prices announced before the 24th day of the month,
23 subtracting 21.00 cents from this average and multiplying
24 the result by 1.211.

25 This concludes my testimony. I appreciate the
26 opportunity to testify on these subjects at this hearing.

27 MS. HANCOCK: Your Honor, we would make
28 Dr. Vitaliano available for cross-examination at this



1 time.

2 THE COURT: Anyone have any -- yes, Mr. Rosenbaum.

3 CROSS-EXAMINATION

4 BY MR. ROSENBAUM:

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

7 A. Yes.

8 Q. I, in my notes, intended to start by saying this
9 is the third time I have cross-examined you, but now
10 having examined you a few minutes ago, I have to amend
11 that, and this is now the fourth time I have
12 cross-examined you.

13 A. Well done.

14 Q. And I -- I want to try something a little
15 different --

16 A. Sure.

17 Q. -- since we have done it this time several times
18 already. I'm going to try to establish what I think are
19 actually the agreements between International Dairy Foods
20 Association and National Milk Producers Federation
21 relating to Make Allowances. And I have tried to put them
22 on one piece of paper, and I'm going to ask that this be
23 marked as an exhibit, and we'll see whether I have it
24 right or not.

25 MR. ROSENBAUM: And, your Honor, I would ask that
26 this document be marked as Hearing Exhibit 143.

27 THE COURT: Yes. IDFA Exhibit 35, top right-hand
28 corner, is marked Exhibit 143 for identification.



1 (Thereafter, Exhibit Number 143 was marked
2 for identification.)

3 BY MR. ROSENBAUM:

4 Q. So, Dr. Vitaliano, what I would like to do is just
5 go through these one by one. I don't want to ask you to
6 keep all nine of them in your head at one time, certainly.

7 And let me start with the first one if I could.

8 National Milk Producers Federation and IDFA both agree
9 that -- and I'm going to quote -- "inadequate
10 Make Allowances challenge manufacturing operations'
11 ability to pay minimum announced milk prices and still
12 operate their facilities at reasonable rates of return.
13 This discourages the plant investment needed to provide
14 market demand on a daily, seasonal, and annual basis, end
15 quote."

16 A. Yes. That statement is from my testimony.

17 Q. Exactly. So we -- I thought I would start with an
18 easy one. I think they are all easy actually.

19 A. Keep the easy ones coming.

20 Q. But you agree Number 1 is correct?

21 A. That's correct.

22 Q. Number 2: National Milk Producers Federation and
23 IDFA both agree that the current Make Allowances are too
24 low and should be increased?

25 A. That's correct.

26 Q. Number 3 -- I think Number 3 is correct, but you
27 can tell me if I'm wrong: National Milk Producers
28 Federation and IDFA both agree that if USDA issues its



1 final decision in or around October 2024, increased
2 Make Allowances should come into effect on January 1,
3 2025."

4 A. That's correct. We are not recommending or
5 proposing any delayed implementation as we did on
6 Proposal 1, as we do on Proposal 1, for the purposes of
7 not interfering with risk management positions.

8 Q. Okay.

9 A. That they should come into effect as soon as
10 regulatorily could.

11 Q. Okay. So we are in agreement on Number 3.

12 Number 4: National Milk Producers Federation
13 Proposal 7 -- which is your proposal, of course -- and
14 IDFA Proposal 9 -- which is our Make Allowance proposal --
15 are fairly close as to the Make Allowances that should
16 come into effect on January 1, 2025.

17 And what I have listed there, and I'll read it
18 into the record: For cheese, National Milk Producers
19 Federation is proposing that on that day, January 1, 2025,
20 the cheese Make Allowance be \$0.24, and IDFA is proposing
21 it be 24.22 cents.

22 Is that accurate as far as you know?

23 A. Yeah, I don't have your proposal in front of me,
24 but these -- I have reviewed those, and I have come to
25 roughly the same conclusion. Dry whey is a little bit
26 off. It is in the double digit variance percentages. The
27 other three are single digits.

28 And let me say that we -- we welcome your



1 recognition by adopting this -- you don't label them as
2 starting positions, but that's basically what both of ours
3 are, in different senses. We welcome your recognition
4 that adjusting the Make Allowances, which have been
5 allowed to go unadjusted for so long in the face of
6 increasing costs, should be done in a stepwise basis.

7 Q. That's exact -- we -- we -- that's our proposal.

8 And you mention the variances. And if you see, I
9 went ahead and calculated the variances that -- the cheese
10 Make Allowance, which we just covered, the variance
11 between your proposal and our proposal is only 0.9%.

12 Do you see that?

13 A. Yeah, using your numbers then.

14 Q. Yes. And I'm not -- you can eyeball it and see it
15 looks to be roughly right. I'm not asking you to
16 confirm --

17 A. No, I do not question your calculations.

18 Q. And then for butter, similarly, the National Milk
19 Producers Federation proposal is \$0.21; the IDFA proposal
20 is \$0.2251, correct?

21 A. That's correct.

22 Q. And, once again, the variance is relatively minor
23 of 2.4%, correct?

24 A. For butter.

25 Q. Yes.

26 A. Yeah.

27 Q. And then for nonfat dry milk, National Milk
28 Producers Federation proposal for the Make Allowance to



1 come into effect on January 1, 2025, your proposal is
2 \$0.21; IDFA is proposing \$0.2198, which is a difference of
3 only 4.7%, correct?

4 A. Correct.

5 Q. When it comes to whey, the variance is not huge,
6 but it is certainly a little larger than the others.

7 National Milk Producers Federation is proposing \$0.23;

8 IDFA is proposing \$0.2582, which is a 12.2% variance.

9 Do you see that?

10 A. Yes.

11 Q. Okay. So looking at what's written for Number 4,
12 you agree with me, that statement?

13 A. Yes. I would point out that in all cases, the
14 IDFA numbers are higher than the National Milk numbers,
15 but they are relatively close. And in comparison, for
16 IDFA's initial proposal, to go to the full -- full cost
17 level, as you identified it through your various means,
18 these are much closer.

19 Q. Okay.

20 A. And I understand that you arrived at these by
21 taking your initial proposal and dividing it by two.

22 Q. Exactly. That what -- and we're going to get to
23 the details of our proposal in a minute. But you're quite
24 right, that the IDFA proposals are halfway in terms of
25 addition over current to what we are ultimately proposing
26 being the Make Allowances.

27 That's your understanding?

28 A. Repeat that again, please.



1 Q. Yes. The -- the numbers shown here for what IDFA
2 proposes happen on January 1, 2025, represent 50% of the
3 increase that IDFA is proposing --

4 A. That's correct.

5 Q. -- above the current Make Allowances?

6 A. That's correct.

7 Q. Okay. Exactly right.

8 So let's go back to the statements of what I think
9 are agreement.

10 Number 5: National Milk Producers Federation and
11 IDFA both agree that the Make Allowances increasing --
12 start that again. I messed that up.

13 National Milk Producers Federation and IDFA both
14 agree that the Make Allowance increases they are proposing
15 to come into effect January 1, 2025, are less than the
16 average actual cost of production.

17 And I have quoted below your testimony, which you
18 read into the record a few minutes ago, and it was also in
19 your petition for hearing, that National Milk, quote,
20 "does not contend that its proposed increases fully
21 correct for the increases in butter, nonfat dry milk,
22 cheddar cheese, and dry whey manufacturing costs
23 experienced by manufacturers since 2008 when the current
24 Make Allowances were implemented."

25 A. I would object to one thing in Number 5, and that
26 is the second line: We agree that "Make Allowance
27 increases they are proposing to come into effect
28 January 1st are less than the actual average costs of



1 production." The way that is stated, is that implies that
2 we know what the actual costs are.

3 A key part of our proposal, as you gather from my
4 testimony, is we don't really know what those actual costs
5 are to the extent that we could confidently establish them
6 down to four decimal places of a dollar.

7 Q. But you -- based on the --

8 A. What may be.

9 Q. I appreciate your nuance. But based upon the
10 quoted language there, you have agreed with us that
11 increases along the lines set forth in your proposal and
12 in our proposal as it relates to January 1, 2025, do not
13 fully correct for the increases in --

14 A. That are -- that are --

15 Q. -- in the manufacturing costs?

16 A. -- that are likely, but are undetermined. And
17 that we are seeking, together with IDFA and the Farm
18 Bureau, we recently agreed, all three organizations, on
19 the legislative language, to seek that better information
20 that ideally we would have done previously, but so be it.

21 Q. And you're actually getting to my very next topics
22 here.

23 A. Yes.

24 Q. Number 6: National Milk Producers Federation and
25 IDFA both agree that USDA should be given the legal
26 authority and funding in order to conduct mandatory,
27 audited surveys of costs of manufacture and to use the
28 results of those surveys to set Make Allowances. We're



1 in --

2 A. Yes.

3 Q. -- agreement on that?

4 A. I agree. And National Milk has actually -- Farm
5 Bureau took the initial initiative to get some language in
6 the Langworthy bill. We have -- we took the initiative in
7 doing -- adding some refinements to that. So kudos to
8 Farm Bureau. We kind of initiated that second step of
9 refining the language for the Farm Bill. We appreciate
10 IDFA's participation. But we will note that, according to
11 our folks who don't -- it took a little while to get --
12 get you to be -- to agree on it, not because you disagreed
13 with anything, but it just -- we were anxious to go on
14 that language.

15 Q. We're in -- I don't know the timing, but at least
16 at this point, we have come into agreement, correct?

17 A. We are -- we are completely in agreement --

18 Q. Okay.

19 A. -- on that provision.

20 Q. And in Number 7, National -- and this may be sort
21 of implicit -- but Number 7: National Milk Producers
22 Federation and IDFA both agree that USDA currently lacks
23 that legal authority?

24 A. I'm not a legal authority, but people in USDA
25 whose -- whose judgment I totally trust have assured me
26 that that is the case.

27 Q. Okay. Number 8, along the same lines of what you
28 just testified to, I think this is accurate: National



1 Milk Producers Federation and IDFA -- and indeed, I guess
2 we should include the Farm Bureau perhaps -- are both
3 engaged in efforts to get language added to the proposed
4 Farm Bill that would provide USDA that legal authority.

5 Is that accurate?

6 A. Yes. And I would recommend that you add AFBF to
7 that list.

8 Q. Appreciate that. No problem with that. I would
9 agree with that.

10 And then Number 9, the last one: National Milk
11 Producers Federation and IDFA do not know whether that
12 language will, in fact, be added to the Farm Bill or ever
13 enacted.

14 Is that fair?

15 A. Well, that's a fair statement when you are talking
16 about any legislation.

17 Q. Okay.

18 A. But the fact that we have such widespread
19 agreement amongst the industry, and the agriculture
20 committees have had long experience with these same
21 organizations. Not necessarily should we say seeing eye
22 to eye, the fact that they actually are fully in agreement
23 on this issue, my guess is that it would -- would enable
24 us to establish a high priority in this getting done.

25 Q. Well --

26 A. To the point where we think -- again, our position
27 is an interim first step in the same direction, similar to
28 yours.



1 Q. Okay.

2 A. But then waiting for the next step, you know, to
3 have this kind of authority. And we are confident enough
4 that the chances of this being enacted in the Farm Bill
5 are so high that we're confident of waiting for that
6 authority.

7 We have manufacturing members that -- that need
8 higher Make Allowances. We also have other members on the
9 other side. It is a very delicate balance that we need to
10 strike at National Milk, and that's what I testified to.

11 Q. Certainly, when I read about the prospect of the
12 government shutting down at the end of the month,
13 etcetera, it is a little hard to place too much confidence
14 in what is actually going to happen.

15 A. But government shutdowns -- I don't keep score,
16 but I'm not aware that government shutdown last years.

17 Q. Sometimes what they end up, with legislation just
18 continues -- all continues -- all the existing
19 legislation, correct, essentially?

20 A. Yes. But the -- you know, continuing -- you know,
21 the Farm Bill could be extended.

22 I have not heard that the -- normally Farm Bills
23 are not that controversial. We are in a different
24 political environment, but we have to have some confidence
25 that -- particularly working together with your
26 organization, our organization, on the Farm Bill, we can
27 exert some influence to get Congress to move on the Farm
28 Bill.



1 Q. And one challenge -- and I don't want to turn this
2 into a legislative discussion -- but Farm Bills, for
3 better or worse, not only are they not limited to dairy,
4 but they actually involve all kinds of things that you
5 might not automatically think of as farm issues, like food
6 stamps and all kinds of --

7 A. Very much so.

8 Q. -- all kinds of other issues that sometimes are
9 politically controversial in ways that mandatory surveying
10 are -- surveying is not necessarily controversial,
11 contract?

12 A. But my experience, I have worked for National Milk
13 through many, many Farm Bills. They all get done.

14 Q. Well, so the disagreement really between National
15 Milk and IDFA is over how do you handle a situation in
16 which we want to have the mandatory surveying, but we
17 don't know if we're going to get it or when we're going to
18 get it. And we have different approaches to that
19 situation, I think that's fair to say.

20 A. That is correct.

21 Q. And so National Milk's attitude is, let's do year
22 one, which is the 2025 numbers, and stop, and with the
23 hope, maybe the expectation, that there will be mandatory
24 surveying authority provided, and then you can raise
25 Make Allowances further as a result. I mean, that's
26 essentially --

27 A. That is our position --

28 Q. -- where you are?



1 A. -- as I have testified.

2 Q. Okay. And just to lay it out. I mean, IDFA's
3 position is, that's all well and good; maybe we'll get the
4 legislation, but maybe we won't. And indeed, let me just
5 say, even after we get the legislation, which may or may
6 not be as soon as one would hope, USDA has to go through a
7 bunch of steps before they can use that authority, right?
8 They have to publish updated regulations that will reflect
9 their new legal authority, correct?

10 A. I would defer to them to describe the process of
11 implementing such legislation.

12 Q. Okay. Well, you -- you're aware that they do have
13 existing regulations that in some detail lay out what
14 surveying they currently conduct of prices under the
15 authority that was put in place to allow them to do that
16 for purposes of setting Make Allowances, correct?

17 A. Right. And the legislative authority would go
18 into the same provision of the 37 act as the --

19 Q. Right. And -- but -- but USDA -- but I'm just --
20 there's both the legislation that was enacted to give them
21 that authority, but then USDA then published regulations
22 to carry that out --

23 A. Correct.

24 Q. -- and provide additional details as to how they
25 were going to do it, correct?

26 A. Yes. I'm not a regulatory expert. But the extent
27 to which that process could be expedited, I think would be
28 something we would support.



1 Q. Okay. And then, of course, then they have to
2 conduct the survey, correct?

3 A. That's correct.

4 Q. And then they have to publish the results,
5 obviously.

6 And then -- do they then have to go through
7 another order hearing like the one we're in today?

8 A. Our proposal, basically, does not provide for any
9 automatic implementation of the results of the study.
10 This is too important. It -- that basically that
11 information would be provided on an ASAP basis to the
12 industry, and the industry would have -- would be able to
13 look at it and to decide whether or not they wanted to
14 call for a hearing, and any proponent in the industry
15 could do so.

16 You are aware of our two -- every two-year time
17 table that is in our proposal. Some of us think that it
18 might be a little tight, but that proposed -- the time
19 table in our proposal for the legislative -- you know, for
20 these mandatory studies indicates that we think it is
21 important for that to be done expeditiously and not
22 dragged out. And to the extent that the Department can
23 speed things up through their procedures, we would be
24 supportive of it.

25 Q. But it would be the current procedures that were
26 gone through that lead us to be here today that would
27 be --

28 A. Yes.



1 Q. -- that would be followed, that's under National
2 Milk's proposal?

3 A. We offered our -- the legislative language to the
4 Department for any of their suggestions. I would assume
5 that -- that any suggestions they would have to add to
6 that language that could be expeditive, they would have
7 given to us.

8 Q. All right. And so IDFA's proposal, basically,
9 looks at these -- the fact that, A, we don't have the
10 legislation providing authorization for mandatory surveys,
11 plus there is some process that has to be gone through,
12 both to put out regulations to conduct a survey and then
13 to hold hearings. IDFA looks at that and says, look,
14 we're not -- we want -- we don't think the 2025
15 Make Allowances being proposed by us or National Milk are
16 enough. We think actual cost of manufacture is
17 substantially higher. We're going to have witnesses
18 addressing that issue. I'm certainly not asking you to
19 accept our numbers.

20 But IDFA looks at and says, no, what we should do
21 is instead go ahead and adopt through these hearings
22 additional -- additional additions to the Make Allowances
23 in -- in years -- on January 1, 2025.

24 A. Subsequent phase-in to the full --

25 Q. 2026, 2020 (sic), 2028, which is when we would
26 finally reach what we believe to be the true average cost
27 to manufacture.

28 But, I am sure you've read our proposal, if in the



1 meantime USDA gets the authority to conduct mandatory
2 surveys, and conducts them, we go through whatever process
3 we need to implement them, a hearing presumably, then
4 whichever of our -- and then our proposal for these
5 increases would be displaced by whatever they came up
6 with.

7 Do you understand that to be the --

8 A. Can you repeat that? I didn't quite get that, the
9 whole --

10 Q. The long -- the long -- the long -- okay.

11 Our proposal is that USDA receive the data we're
12 going to provide as to what we think the actual costs of
13 manufacture are, which we have asked to be implemented in
14 phases: 50%, January 1, 2025; another 16% --

15 A. I'm aware of the phases in the schedule.

16 Q. Recognizing that if USDA gets the authority to
17 conduct mandatory surveys, it could replace -- and adopts
18 them, that would replace our -- our proposed
19 Make Allowances?

20 A. But by -- by the long implementation lag you just
21 outlined to me, my guess is, by your own logic, that your
22 full phase-in would -- based on your proposal, the full
23 phase-in would have taken place long before USDA --

24 Q. Oh, no --

25 A. We're -- we're more optimistic on what the USDA
26 implementation timeline would look like.

27 Q. I -- I'm not saying how pessimistic we would be
28 January 1, 2028, which is when our full implementation



1 comes. Whether we would be January 1, 2026, is -- would
2 be a closer question. And 2027, maybe even. And
3 obviously, all of this presupposes that -- that the -- in
4 the meantime USDA has been given the legislative
5 authority, correct?

6 A. Well, we would look forward to working with you to
7 see whatever we could do to speed up that process.

8 Q. But -- but under -- I mean, under our approach, we
9 have a backup, which increases the Make Allowances based
10 upon surveyed data, non mandatory survey data, except to
11 the extent we're using California data, which was
12 mandatory at the time it was conducted. We have that.
13 And you don't have anything that -- that provides for
14 that -- that potential --

15 A. I'm fully aware of your proposal, but I'm also
16 fully aware that our own members -- we have members of
17 National Milk that would like to be more aggressive in
18 increasing Make Allowances. Include people who have --
19 who have invested farmers' money in manufacturing assets
20 that will be testifying, subsequent to me, on this very
21 issue.

22 We have to -- in National Milk we have a delicate
23 balance of -- of interests that I'm sure you have
24 experienced in your own organization. And our position
25 is, as I have testified, make an adjustment at this point
26 and wait until we have the data, the adequate data,
27 through mandatory audited cost studies to make further
28 adjustments, whereas you're proposing a schedule that



1 would very likely result in full implementation of a level
2 of cost of Make Allowance adjustments that our members
3 could not support going to immediately or even over a
4 three-year phase-out. We are -- we are very constrained
5 by the delicate balance of interest amongst our members
6 to -- to the position that I have articulated. And
7 that's -- that is our position.

8 Q. Let me go back to the areas of agreement in the
9 very first one, and then relate it to some additional
10 questions. That's where National Milk and IDFA both
11 agreed that inadequate Make Allowances challenge
12 manufacturing operations' ability to pay minimum announced
13 milk prices and still operate their facilities at
14 reasonable rates of return. This discourages the plan
15 investment needed to provide market demand on a daily,
16 seasonal, and annual basis. Okay?

17 A. Many of our members remind me of just that fact.

18 Q. So let me -- so let me simply set forth two
19 scenarios. Scenario one is -- IDFA scenario, that is to
20 say, USDA adopts our proposal for Make Allowances, and
21 therefore an entity considering whether or not to make
22 investments to increase manufacturing capacity in the
23 United States for dairy knows that either the IDFA
24 Make Allowances will go into effect starting in January 1,
25 2025, and then increasing year by year over 2026, 2027,
26 2028. That's the reality they face. Or -- or maybe USDA
27 will conduct mandatory surveys and replace IDFA's numbers
28 with audited mandatory cost to manufacture numbers.



1 I mean, that person has a pretty good vision of
2 the future for making investment determinations; is that
3 fair?

4 A. Well, I'm not sure quite how to answer that
5 question in terms of assessing the visionary properties of
6 somebody proposing an investment.

7 Q. Well, I mean, we both agree that the
8 Make Allowances really cap what a handler can earn making
9 a Class III or IV product, correct?

10 A. Inadequate Make Allowances are a hindrance to
11 those who wish to make investments --

12 Q. Okay. And --

13 A. -- in manufacturing assets.

14 Q. And obviously people make investments based upon
15 the best future -- protections of the future as they can,
16 correct?

17 A. I'd recommend -- we have a whole stable of
18 experts, including representatives of cooperatives,
19 members that have manufacturing assets, that'd be a good
20 question to ask them.

21 Q. Okay. But just under -- I may ask them as well.
22 But under your approach, National Milk's approach, they
23 would know what the Make Allowances will be January 1,
24 2025, I mean, under the scenario where it's been adopted.
25 But the future beyond that would be unknown. I mean, that
26 is to say they -- that because -- especially if there
27 hasn't even been authorization provided to provide for
28 mandatory surveys, much less would you know under what



1 time table would those actually be implemented?

2 A. What I can say is that National Milk has members
3 that own manufacturing assets, significant manufacturing
4 assets, that are very anxious to have high -- increased
5 Make Allowances. And those members voted with our entire
6 Board of Directors, unanimously, to approve National
7 Milk's package of proposals, including what we -- what I
8 just testified to on Proposal 7 for the two-step process.

9 So -- and, again, there are representatives of
10 those cooperatives that are going to be testifying. These
11 are people who own those assets, that are very familiar
12 with the dynamics within their own organizations, of
13 investments, all of the things you laid out, and that
14 they'd be perfect experts at this hearing to answer your
15 questions.

16 MR. ROSENBAUM: That's all I have at this time.

17 THE COURT: Yeah. We probably need a break. We
18 have been going for an hour and three-quarters. So
19 let's -- let's come back at 3:25 p.m.

20 (Whereupon, a break was taken.)

21 THE COURT: Let's come to order. Witness
22 Vitaliano continued.

23 Do we have further cross-examination other AMS for
24 this witness?

25 Dr. Cryan.

26 CROSS-EXAMINATION

27 BY DR. CRYAN:

28 Q. Roger Cryan for the American Farm Bureau



1 Federation.

2 Hello, Peter.

3 A. Hello, Roger, Dr. Cryan.

4 Q. We meet again.

5 So I have -- I have the same piece of paper that
6 that Mr. Rosenbaum shared with you.

7 THE COURT: Exhibit 143.

8 DR. CRYAN: Is it Exhibit 143?

9 THE COURT: Marked for identification.

10 DR. CRYAN: Thank you.

11 BY DR. CRYAN:

12 Q. And there's some things we agree on. I won't go
13 over the ones we don't, but let's start with the -- I
14 think we -- National Milk and IDFA and Farm Bureau, as you
15 indicate, are both engaged in efforts -- are all engaged
16 in efforts to get language added to the Farm Bill that
17 would provide USDA direction to conduct a mandatory
18 audited survey of costs to manufacture.

19 We -- you agree?

20 A. Yes.

21 Q. You said that already.

22 And I agree with your assessment, dollars to
23 doughnuts, unless someone changes their support or some
24 clerk leaves it out on drafting day, final drafting day,
25 it will get approved because of the remarkable unanimity
26 on this issue.

27 And I think you -- you and I agree that we don't
28 know what the actual average costs of processing are.



1 A. That is correct. And that is not to impugn the
2 authors of previous voluntary cost studies. We are
3 questioning the basic -- you know, the basic fact that if
4 you do not have the authority to compel the full
5 collection of data, it is very difficult to establish the
6 correct cost. And that is our position.

7 Q. And I think we agree on that.

8 So, again, we agree that, ideally, these
9 Make Allowance changes would be based on an audited --
10 mandatory and audited survey.

11 And if I understand correctly, you -- you
12 essentially -- you don't fully trust the available numbers
13 and are aiming with your proposal at the highest number in
14 which you have a high degree of confidence that it doesn't
15 overshoot. Is that a fair way of putting it?

16 A. Why don't you rephrase that a little bit, make
17 sure I fully --

18 Q. You are trying to find a number that -- that will
19 not end up being too high once we get the full numbers.

20 A. Right. We will not -- we do not want to
21 support -- we would not support a number that we would
22 consider to be too high.

23 Q. And Mr. Rosenbaum talked about how you have
24 different approaches to that, different approaches to
25 addressing the need for audited and mandatory surveys, and
26 you talked about timelines and how long it would take to
27 get things up and running and -- I mean, I won't get into
28 that.



1 But -- but National Milk and Farm Bureau have two
2 different approaches as well. Your approach is to -- is
3 the one you described, and our approach is to -- is to
4 wait, because if you can't measure, you can't manage.
5 Would you agree with that?

6 No, not the last sentence, I'm sorry.

7 Would you agree we have different approaches as
8 well?

9 A. I --

10 Q. But our ultimate aim is to get to the same place?

11 A. I believe so, but I would ask you to articulate
12 how yours -- you have just heard my testimony -- our -- my
13 testimony as to what National Milk's position is. Could
14 you refresh my memory on those aspects of this issue which
15 we differ?

16 Q. You know, actually, it is very fair that you ask
17 that question because I have not had a chance to testify
18 yet, so it's not on the record. So let's hold off on
19 that.

20 A. Okay.

21 Q. So over the recent -- over recent years as
22 there's, on the one hand, been concern about
23 Make Allowances being inadequate, at the same time
24 there's -- cheese plants are being built. Quite a few
25 cheese plants have been built in recent years. And a lot
26 of those are -- is that correct? You nodded.

27 A. Cheese -- cheese processing capacity is one aspect
28 of the U.S. dairy industry where -- where significant new



1 assets are being added on a regular basis, yes.

2 Q. And I think it was in your testimony, I apologize
3 if -- if -- it was in somebody's testimony that that --
4 that those must be profitable plants or they wouldn't be
5 built.

6 Is that -- do you agree with that?

7 A. We would assume that -- that they are -- that they
8 will be profitable given expectations for what cheese
9 prices may -- may be in the future. I assume there's
10 relatively sophisticated project planners behind those
11 plants.

12 Q. Do you -- do you have a concern that if the
13 Make Allowances are higher, that it will contribute to an
14 overbuilding of capacity?

15 A. Yeah. I included some USDA references to, you
16 know, their concerns during historic previous
17 Make Allowances discussions --

18 Q. And you --

19 A. -- that share --

20 Q. I'm sorry.

21 A. Go ahead.

22 Q. And you shared those because you share that
23 concern?

24 A. Yeah. I think it would be detrimental to the
25 industry to establish Make Allowances that are, let's
26 say -- let's call them stimulatory -- stimulative.

27 Q. And -- and what then is the appropriate
28 non-overstimulative level of a Make Allowance? Should it



1 represent some -- something like an averaged cost of
2 production in the existing industry or should it represent
3 something more like the costs associated with new
4 efficient plants?

5 A. I have not looked into what would be the
6 appropriate way to interpret good data and draw those
7 distinctions.

8 Q. Okay.

9 A. We will wait until we have adequate cost studies,
10 and I'm sure that that will be subject to industry input.

11 Q. Very good.

12 DR. CRYAN: That's it. Thank you very much.

13 THE WITNESS: Thank you.

14 THE COURT: Further cross other than AMS?

15 Mr. Miltner.

16 CROSS-EXAMINATION

17 BY MR. MILTNER:

18 Q. Ryan Miltner representing Select Milk Producers.
19 Good afternoon, Dr. Vitaliano.

20 A. Good afternoon, Mr. Miltner.

21 Q. And easy -- hopefully easy preliminary question.
22 Pages 8 to 12 of your statement, is that all the same as
23 in your first statement? That's section about Dr. Brown's
24 analysis?

25 A. Yes. And I have emphasized that that is -- those
26 common provisions of my statements are overarching
27 principles -- sections that basically tie together our
28 entire package of proposals at this hearing.



1 Q. But there's no difference in --

2 A. No.

3 Q. -- in that text from your previous statement?

4 A. No.

5 Q. Great.

6 Do you have the document that Mr. Rosenbaum put
7 together, the areas of agreement?

8 A. The one marked Exhibit 143?

9 Q. Yes, IDFA Exhibit 35. And you said that --

10 A. I have it in front of me, yes.

11 Q. Okay. Great.

12 Point three on there, there was some questions
13 about that from Mr. Rosenbaum, and I -- this is something
14 that I'm trying to get my head around with all the
15 witnesses, if you haven't caught on. What specifically
16 in -- from National Milk's perspective causes you to want
17 to delay the implementation of a proposal versus implement
18 it immediately?

19 A. Among the many experts that we have amongst
20 National Milk staff, we have folks who are expert at risk
21 management. One of them, I believe Mr. Ed Gallagher from
22 DFA, I believe has already testified in connection with
23 the implementation -- proposed implementation lag for the
24 component -- you are referring to the component
25 composition factors?

26 Q. Yes.

27 A. Yeah. And he explained the difference in terms of
28 basically how it would -- how each of those would affect



1 risk management. And I think that was adequately
2 explained, and that should be in that hearing -- in the
3 hearing record on that.

4 Q. So you --

5 A. I'm not a risk management expert, so I would --
6 I'm not the best one to articulate that difference.

7 Q. Okay. Would you agree that the Proposal 1 and
8 Proposal 7 both have similar magnitudes of impact on
9 producer prices, though?

10 A. I don't have those numbers in front of me, but
11 they're -- they would be significant. They would be
12 offsetting.

13 Q. Right. That's why I said magnitude as opposed to
14 impact.

15 So is the -- I understand you are not a risk
16 management specialist, but that would lead me to believe
17 that the -- it's not the magnitude of impact on the
18 producer price, but there's some other reason that would
19 suggest delaying the implementation of a proposal?

20 A. Yeah. It basically has to do with the different
21 impacts on risk management positions.

22 Q. Okay. Still looking at the same exhibit now,
23 at point five. I want to make sure that your position is
24 clear on this.

25 When we're -- we're both on point five in the
26 statement -- the section of your statement that it refers
27 to. I interpret your position as we don't know what the
28 right numbers are, they might be higher, it might even be



1 likely that they are higher than what's proposed, but it
2 would be imprudent to adopt a higher number until we know.

3 A. If you talk -- if you are talking about the
4 initial increases that we're proposing, yes, I would agree
5 with that. That is basically our position.

6 Q. And I was talking about those initial changes, so
7 thank you for clarifying that.

8 If I could have you look at page 8 of your
9 statement where you talk about the proposals from Select.
10 I have some questions there.

11 Am I correctly summarizing your position if I say
12 that it is National Milk's desire to address the yields
13 only after USDA completes a mandatory audited survey of
14 costs and yields?

15 A. Yes, because my -- as I stated in my testimony, we
16 believe it is equally important to address all factors,
17 the component price formulas, which includes yield factors
18 as well as Make Allowances. The two go together.

19 Unfortunately, in the past -- the past instances
20 of updating those formulas have focused entirely on
21 Make Allowances, and our position should be that those
22 really need to go hand in hand.

23 So we have explicitly indicated that we need
24 better data on -- on yield factors along with
25 Make Allowances. We have a lot more data in -- from past
26 studies on Make Allowances compared to yield factors. And
27 yet we're still -- we're still contending that that
28 Make Allowance data is -- due to the voluntary natures of



1 the certain studies, etcetera, is -- needs to be replaced,
2 needs to be superseded by audited mandatory studies.

3 And therefore, by implication, the data we have,
4 which is even less so for Make Allowances, is not
5 something that we would be comfortable adjusting yield
6 factors, even though we would like to. It would be
7 inconsistent for us to say, with all the data we have on
8 Make Allowances, we still need better, and say, we're
9 comfortable with the data that is less so than on
10 Make Allowances to be used as a basis.

11 We're not -- we're not opposing the spirit -- the
12 sense of your -- Select's proposals. Simply, you know, we
13 tie it back to our basic position on the data and the
14 importance of getting adequate data.

15 Q. And yet in the absence of Make Allowance data, you
16 are willing to make an adjustment to make them perhaps --
17 to refer to a clause here, a statement you have in here --
18 to make them more accurate and specific than they are?

19 A. Can you repeat that question again.

20 Q. Sure. You said that there isn't great data on
21 Make Allowances because it's voluntary, correct?

22 But Proposal 7 adjusts Make Allowances partly out
23 of a recognition that they are stale, correct?

24 A. Correct.

25 Q. And partly out of a recognition that we need to
26 get somewhat more accurate until we get close to perfect,
27 correct?

28 A. Right.



1 Q. Okay.

2 A. We need to make a movement in the right direction.

3 Q. But National Milk's position as of now is that you
4 don't want to improve or make the yield factors more
5 accurate in the absence of perfection?

6 A. In the absence of adequate data. Nothing is
7 perfection in the real world.

8 Q. That is true. That was a bad choice of words on
9 my part.

10 Mr. Rosenbaum asked you a number of questions
11 about the Farm Bill process, and I don't want to belabor
12 that, but I do want to ask some questions on that topic.

13 You mentioned a bill, I think, in the Q&A, a
14 Langworthy bill; is that correct?

15 A. Yes.

16 Q. Okay. Is -- is that, if you know, what is HR1756,
17 the Dairy Pricing Opportunity Act?

18 A. I think it is. I'm -- I'm not real familiar with
19 what's been introduced or what's been proposed. But I did
20 see legislative language in the standard bill form, so --
21 and I do recall it had a bill number on it.

22 Q. I think you also mentioned, or perhaps it was
23 Dr. Cryan in questioning, that there were updates to this
24 legislation.

25 Do you know if the current -- is what you consider
26 the current language, is it -- is it incorporated into a
27 bill that's available through the Library of Congress or
28 the Congressional offices?



1 A. I do not know that. All I know is that the
2 agreement on that language had been reached among those
3 three organizations.

4 Q. I'd like to read from HR1756, as it was introduced
5 on March 23rd. And I want to read the entirety, which
6 won't take long, about mandatory reporting of dairy
7 product processing costs.

8 It reads: "Section 273 of the Agricultural
9 Marketing Act of 1946 is amended in subsection (b)(1), in
10 subparagraph (A)(ii), by striking 'and' at the end; in
11 subparagraph (B), by striking the period at the end and
12 inserting a semicolon; and by adding at the end the
13 following: '(C) for each manufacturer required to report
14 under subparagraph (A) for any product, require that
15 manufacturer to report cost and yield information, as
16 determined by the Secretary, for all products processed in
17 the same facility or facilities; and (D) require any
18 manufacturer of such other dairy products as determined by
19 the Secretary to report cost and yield information in the
20 same manner as under subparagraph (C), for the purposes of
21 providing information for the regulatory or administrative
22 establishment of pricing rules,' and (2), in subsection
23 (d), by adding at the end the following: '(3) Dairy
24 product processing costs, not later than 2 years after the
25 date of enactment of this paragraph, and every 2 years
26 thereafter, the Secretary shall publish a report
27 containing the information obtained under subparagraphs
28 (C) and (D) of subsection (b)(1).'"



1 That leaves an awful lot to be determined doesn't,
2 it?

3 A. Well, how do you define an "awful lot"? I
4 believe, I don't have it in front of me, but I think you
5 are quoting the Langworthy language?

6 Q. I am. Well, let me ask this --

7 A. I'm -- I'm not sure I can make that evaluation.
8 So could you specify your question, what you mean by an
9 "awful lot"?

10 Q. Sure. Well, first, have you -- have you had a
11 chance to read the Langworthy language before I just read
12 it to you?

13 A. Yes.

14 Q. Okay.

15 A. I worked on suggesting some changes to it.

16 Q. Very good.

17 When I say it leaves an awful lot open, it
18 requires the reporting of costs and yields, and everything
19 else is left to the Secretary to write regulations,
20 doesn't it?

21 A. I guess you could say that. But if you look at
22 the language in the same -- in the same provision, in the
23 same -- that's current law, that specifies the mandatory
24 price reporting, it's equally open ended, and yet we have
25 a system that seems to be working in providing adequate
26 price information for the operation of the Federal Order
27 component pricing formulas.

28 That language, as my understanding, is not



1 currently -- is not current in the agreement.

2 Q. Okay. May I assume that you are familiar with
3 Select's Proposals 10, 11, and 12?

4 A. Generally, their intent. I'm not necessarily --
5 the key thing -- when I read them, the key thing I was
6 looking for was the evidence, the data, and as I recall,
7 each of them indicated that, as I have phrased it here, we
8 will be providing that information at the hearing in
9 testimony.

10 Q. As most of the proposals stated, right?

11 A. Yes.

12 Q. So Proposal 10, which addresses the butterfat
13 retention or butterfat recovery, there's nothing in the
14 Congressional text that would necessarily address that
15 element of the yield, is there?

16 A. No. But I would interpret the, you know,
17 legislative language on yield factors to include that, and
18 to the extent that USDA would be -- perhaps call a hearing
19 for implementing that, we would so recommend.

20 Q. Select's proposal 11 addressing farm-to-plant
21 shrink, again, there's nothing in the Congressional
22 language which requires that element of the yield to be
23 addressed, is there?

24 A. Farm-to-plant shrink?

25 Q. Correct.

26 A. Technically, no. But we interpret the term "yield
27 factors" in the legislative language to be inclusive of
28 everything that affects basically the product price



1 formulas.

2 Q. And Select Proposal 12, which is a nonfat dry milk
3 yield, and addresses specifically buttermilk powder,
4 there's nothing in the Congressional language which
5 requires buttermilk powder and its effects on yield to be
6 addressed, is there?

7 A. Not technically.

8 Q. And would you agree that when you are looking at a
9 yield, there's a scientific portion, scientific
10 consideration and a policy consideration, when you are
11 figuring out what a yield is?

12 A. Yes. You're basically understanding a
13 manufacturing -- food manufacturing process and trying to
14 capture it in -- in a simple formula.

15 Q. Okay. And as much as we might like or a processor
16 might like, they are not going to get one and a half
17 pounds of butter out of a pound of butterfat, right?

18 A. Probably not.

19 Q. That's science part, correct?

20 A. Yes.

21 Q. But whether they get 1.2 pounds or 1.22 pounds,
22 that's a policy consideration, isn't it?

23 A. Well, there's got to be some science behind it.

24 Q. Right. That's why we're not going to get 1.5.
25 But USDA, for instance, made a policy decision that
26 there's an amount of milk that's lost between farm and
27 plant, and they pegged a number.

28 And that's a policy consideration, isn't it?



1 A. Well, what was the verb you used to talk about
2 what USDA did with the number?

3 Q. They --

4 MR. MILTNER: Could you read back my statement --

5 BY MR. MILTNER:

6 Q. I don't remember specifically what word I used.

7 A. Paved, did I hear?

8 Q. Pegged.

9 A. Oh, pegged. Yes. Okay.

10 They established a number, which in most of the
11 product price formulas, there are fixed numbers often
12 specified to several digits of exactitude that may or may
13 not be supported by the data, in particular, for the
14 Make Allowances.

15 But, yes, there are yield factors in the current
16 formulas. We propose that those need to be studied and
17 updated as well.

18 Q. Even when we get those yield formulas, though,
19 won't USDA still have to make some policy considerations
20 about where to peg that number?

21 A. Yes. It -- there is a policy dimension to USDA
22 decision-making, particularly in something as important as
23 the Federal Order product price formulas.

24 Q. And so we're going to have a statute which leaves
25 a lot of discretion to the agency, resulting in
26 regulations that industry will have input in, but not get
27 to write, and we're still going to have questions about
28 where to draw lines, won't we?



1 A. Probably have that in almost any regulatory
2 decision-making activity in the government.

3 Q. This -- the Farm Bill process, would you agree
4 that in each of the last three Farm Bills, Congress failed
5 to pass a new Farm Bill on time?

6 A. I don't recall exact timing, but I know Farm Bills
7 have often been delayed.

8 Q. Mr. Rosenbaum described IDFA's Make Allowance
9 proposal, and I forget, I think he used both of these
10 words -- and if not, Mr. Rosenbaum, I apologize for
11 picking the wrong one -- but he described the
12 Make Allowance proposal as having a backup or perhaps a
13 safety net against Congressional delay.

14 Do you recall him saying something like that?

15 A. I recall him using words to that effect.

16 Q. And he -- he stated that if the Farm Bill is
17 delayed, if the language doesn't end up the way National
18 Milk wants, that that proposal, IDFA's proposal, would
19 still allow the Make Allowances to be updated.

20 Do you recall that?

21 A. Yes. And I would so characterize them, given the
22 timeline for the subsequent phase-in steps in IDFA's
23 proposal, and the likely timeline, even though not
24 necessarily hugely extended, the likely timeline for the
25 enactment of the legislation and the implementation of it,
26 I would interpret IDFA's position as basically ensuring
27 that their proposal would be fully implemented before cost
28 data would be available.



1 Q. There is no such safety net or backup plan or
2 something for National Milk to address yields, though, is
3 there?

4 A. How would you define safety net in terms of
5 addressing yield factor updates?

6 Q. If Congress doesn't pass the language you want,
7 you will -- you won't have the data you expect to have to
8 adjust yields, correct?

9 A. I would expect that Congress will enact the
10 language with the general -- with the general provisions
11 on collecting data on yields to be included.

12 Q. You don't think that's wildly optimistic for a
13 Congress that can't even keep the lights on?

14 A. We don't have data on yields now.

15 Q. So National Milk's position is to allow its dairy
16 farmer members to have milk formulas less precise than
17 they might be, for some undetermined length of time, even
18 though you don't have good enough data on Make Allowances,
19 correct?

20 A. That's correct.

21 Q. But you want to address them in the best way
22 possible, right? That's the rationale for it?

23 A. We want to improve the system from what it is now.

24 Q. Even though that lowers the prices that producers
25 receive? Making them more accurate will lower their
26 price, right?

27 A. Making --

28 Q. Make Allowances.



1 A. Yes, we recognize that. That is why the issue
2 increasing Make Allowances is a delicate one amongst
3 National Milk's members, who have diverse interests. We
4 are fully aware of that. We live with it every day.

5 Q. But you lack the same good data in your opinion on
6 yields, and you won't address them, even though that would
7 increase producer prices? Making them more accurate with
8 the data available and would -- would increase the price,
9 National Milk doesn't want to do that?

10 A. We would favor updating the yield factors because
11 that would have that effect. National Milk's package of
12 proposals, including our five proposals before this
13 hearing, and our proposal on getting the Farm Bill
14 language, is a balanced one that includes offsets in other
15 areas, not just within the component price formula,
16 Make Allowances, and yield factors. We would love to have
17 the data needed to improve the yield factors, and we are
18 seeking that in the legislation.

19 Q. And you don't have data on Make Allowances, but
20 you chose to move forward with the one that would actually
21 lower your producers' prices?

22 A. In the context of our entire package, that
23 provision would lower producer prices when arithmetically
24 calculated. Dr. Brown is going to testify on the economic
25 impact of our total package of proposals. We have members
26 who want an increase in Make Allowances. Everybody
27 recognizes that arithmetically that will lower prices in
28 the short run. We have other provisions that would offset



1 that in the total package of proposals. Making that
2 calculation or that determination strictly in the context
3 of the component pricing formulas, the Make Allowances,
4 and the yield factors, basically, is not comprehensive
5 enough to examine the total impact of all of our
6 proposals.

7 MR. MILTNER: Thank you.

8 THE COURT: Cross by others, not AMS?

9 Mr. English.

10 CROSS-EXAMINATION

11 BY MR. ENGLISH:

12 Q. Good afternoon, Doctor.

13 A. Good afternoon --

14 Q. Chip English for the Milk Innovation Group.

15 A. -- Mr. English.

16 Q. So I just want to review a few things
17 historically, if I may, to start with.

18 So we haven't heard from yet -- although posted
19 for a while now, and you yourself cited a footnote --
20 Dr. Stephenson has prepared a couple of studies that we're
21 going to hear about later in the hearing, correct?

22 A. That's correct.

23 Q. And those are I think what you were referring to
24 as, among maybe one other, an unaudited survey, correct?

25 A. Unaudited and voluntary response.

26 Q. Okay.

27 So let's go back now for Federal Order Reform when
28 the Make Allowances were first established. USDA did



1 studies of plant costs, correct?

2 A. I wouldn't characterize it as did -- doing
3 studies. I think they looked -- they -- they used
4 existing studies, and as I recall, one of them was a study
5 that National Milk had requested from the old USDA
6 Cooperative Service to establish Make Allowances for the
7 old price support program. So that it was a question of
8 what was available on the shelf. I'm not sure that
9 USDA --

10 Q. Okay.

11 A. -- conducted special studies. I may be wrong on
12 that.

13 Q. No, thank you for correcting. My question was not
14 as precise as it should have been, so thank you.

15 So let's go there first because you mention --
16 that would be the RCBS studies, correct?

17 A. Yeah.

18 Q. Okay. And those studies were conducted on behalf
19 of cooperatives, correct?

20 A. Correct.

21 Q. And they were voluntary surveys, voluntary
22 studies?

23 A. I'm not aware of the methodology that was used,
24 but my guess is they were, yes.

25 Q. And they weren't audited, were they?

26 A. I'm not sure. They were conducted by a government
27 agency. But, yeah, I -- I can't say whether or not they
28 were.



1 Q. Do you know also if Dr. Stephenson was involved?
2 I mean, basically, Federal Order Reform, every single ag
3 economist got involved somewhere, correct?

4 A. Yeah.

5 Q. Correct? I mean, Dr. Stephenson was one of those
6 who conducted different studies for USDA that were
7 implemented in Federal Order Reform, correct?

8 A. Yes. Dr. Stephenson has a long history of being
9 involved in plant cost studies.

10 Q. And do you know if those studies that he
11 conducted, assuming USDA relied on them at all, whether
12 they were voluntary?

13 A. They were all voluntary.

14 Q. And they were all unaudited, correct?

15 A. I'm pretty -- yes.

16 Q. So then moving forward to 2006 and 2007,
17 Dr. Stephenson, again, as you said, did a lot of studies,
18 long involved. He did studies for both the 2006 and 2007
19 hearings, correct?

20 A. That is correct.

21 Q. And they were voluntary studies, correct?

22 A. That's correct.

23 Q. And they were unaudited, correct?

24 A. Correct.

25 Q. And USDA relied, at least, partially on them,
26 correct?

27 A. The word "partially" is very important in what you
28 just said.



1 Q. I understand that.

2 A. You are aware that USDA disregarded the cheese
3 studies from -- from Cornell in that proceeding as I
4 recall correctly. Even the Department felt there was
5 something -- I don't remember what it was, but they
6 disregarded the cheese studies and used only the
7 California CDFA studies. And they also disregarded the
8 CDFA whey cost study from that time based upon I think it
9 was an inadequate sample size.

10 Q. So didn't they --

11 A. So the USDA itself kind of implicitly criticized
12 the voluntary nature, you might say, of the CDFA study,
13 even though those were mandatory reporting surveys,
14 because USDA has been critical of some of that data
15 available itself.

16 Q. But they're not actually critical of
17 Dr. Stephenson's work, they combined it with some of
18 the --

19 A. Yeah, they --

20 Q. -- correct?

21 A. Yeah, they were not critical of Dr. Stephenson.
22 They were just critical of the studies because they were
23 presumably voluntary. There may have been some
24 methodological concerns. I don't know the details of
25 that.

26 Q. But didn't they end up, basically -- so, first of
27 all, let's back up.

28 They did rely on RCBS in Federal Order Reform,



1 correct?

2 A. In the -- yes.

3 Q. But they did not rely on RCBS later, correct?

4 A. Yeah. I believe that RCBS did not do any studies
5 subsequent to that. I think -- the initial Federal Order
6 Reform one may have been an older study as it is. We did
7 not -- in all the years that I've been at National Milk,
8 we did not request any RCBS study on Make Allowances. We
9 did request a study on casing, as I recall, from RCBS.

10 Q. So USDA no longer had RCBS or they didn't rely on
11 it, regardless, in 2006, 2007, correct?

12 A. Correct.

13 Q. But they did have CDFA, which they relied on
14 except for whey, correct?

15 A. Correct.

16 Q. And they did rely on Dr. Stephenson to the extent
17 they then used the results of his study and combined them
18 with the CDFA study, correct?

19 A. Right. They did not use the -- Dr. Stephenson's
20 cheese cost studies, as I recall.

21 Q. But nonetheless, they -- they did rely on
22 voluntary surveys that were unaudited, correct?

23 A. That's correct.

24 Q. Thank you.

25 So I am, I think, interested in National Milk's
26 position -- leaving aside the issue of audited mandatory
27 surveys, there's a couple of statements that I was trying
28 to reconcile in your statement. And so I think I'd like



1 to start with the quote on page 7 and then move back to
2 page 4.

3 On the middle of page 7, when you are talking
4 about accuracy and specificity being required, you say,
5 because, quote, "the Make Allowances...should cover the
6 cost of most of the processing plants that receive milk
7 pooled under the orders," end quote.

8 And you are citing USDA, correct?

9 Do you see in the middle, the very -- literally,
10 right in the middle of that page?

11 A. Yep. That was a quote from the Federal Order
12 Reform days.

13 Q. Okay. Does National Milk agree that
14 Make Allowances should cover the cost of most of the
15 processing plants that receive pooled -- milk pooled under
16 the orders?

17 A. Well, I'm not a methodologist of conducting cost
18 studies, but I have cited the USDA comments on ensuring --
19 or avoiding setting Make Allowances so high that almost
20 any plant can make a profit.

21 Q. And that's -- and that's your statement back on
22 page 4, correct?

23 A. Yes.

24 Q. Okay. But I'm trying to reconcile them a little,
25 at least understand where you thread the needle a little
26 bit. And part of this is we heard from Dr. Bozic earlier
27 today that maybe he's going to come back and talk about a
28 different concept in his testimony, which is the most



1 efficient plants.

2 Do you remember hearing him say that today?

3 A. Right. And there are folks who say that only the
4 most efficient plants should be surveyed.

5 I would point out that we have never had mandated
6 audited cost surveys on a nationwide basis. If we got
7 that data, we might do something different with it than
8 has been done when incomplete voluntary studies are
9 available. When you have the full set of data and can get
10 the whole spectrum of distribution of costs for each of
11 those products, that will be a richer data source that I
12 think will allow that judgment to be made more
13 effectively.

14 Q. So you don't have a position today as to whether
15 it should be average or most efficient?

16 A. Yeah, to some extent it depends upon the available
17 data and getting some sense of how representative it
18 actually is.

19 Q. But -- but the reality is that, as you yourself
20 have testified, producers who own manufacturing plant
21 capacity and bearing the costs of balancing, as in your
22 testimony, need to be able to maintain these facilities
23 and, basically, not lose money, correct?

24 A. That's correct.

25 Q. Okay.

26 A. We believe it is very important for producers to
27 have control over some of the manufacturing assets, and
28 adequate Make Allowances is necessary for that. We're not



1 disputing that.

2 Q. So going back to page 4. And now it's -- I'm
3 going to the sentence that's above the one that I was
4 trying to tie together with page 7. "Raising
5 Make Allowances to levels above those proposed would
6 reduce producer prices to levels that would narrow margins
7 and negatively impact the availability of adequate
8 supplies of milk," and then, comma, "and thereby create
9 disorderly marketing." So to be fair, that's the whole
10 sentence.

11 I do not want to focus on the narrow -- the
12 margins issue. I want to focus on the statement,
13 "negatively impact the availability of adequate supplies
14 of milk."

15 A. And which line are you looking at again?

16 Q. Okay. Again, essentially in the middle of the
17 page but a little lower than I was on page 7 -- 11th or
18 12th line down, where -- the line on the edge says
19 "cheddar cheese and dry whey," comma -- I mean, period,
20 and then the next sentence --

21 A. Yes.

22 Q. -- says "raising" -- do you see that now?

23 A. Yes.

24 Q. Okay. So I want to focus on the part of that
25 sentence, that "raising Make Allowances levels above those
26 proposed will negatively impact the availability of
27 adequate supplies of milk." I recognize I'm leaving out
28 the margin because I'm not -- I want to focus on the one



1 part. And you're welcome to comment otherwise, but I want
2 to focus on if --

3 A. If you're looking at that sentence that starts
4 "raising Make Allowance to levels above" -- in the second
5 line there's a reference to margins?

6 Q. Yes.

7 A. That refers to producer margins.

8 Q. I get that. I understand that, sir.

9 So -- and I'm not saying you can't talk about
10 that, but I'm saying I would like to focus on -- because
11 it says "and," so it's a separate phrase, "impact the
12 availability of adequate supplies of milk." That's the
13 part I want to focus on for the moment.

14 A. Uh-huh.

15 Q. Okay.

16 A. Yes.

17 Q. In doing so, I want to come back to our discussion
18 two weeks ago that that's adequate supplies of milk for
19 fluid use, correct?

20 A. That's correct.

21 Q. Okay. All right. I'm going to try something and
22 see how it goes.

23 So at the end of this proceeding, we'll get an
24 economic analysis from USDA, at some point, and I'm trying
25 to understand how and what analysis, either then or for
26 the decision USDA should make, when it comes to adequate
27 supplies of milk for fluid use. So that's my predicate.

28 And the thought that I'm having is National Milk



1 has a number of proposals: Issue 1, components; Issue 4,
2 the base skim milk -- base Class I skim milk price; and
3 Proposal 19, on the Class I price surface.

4 And while we differ in how we do deal with the
5 base Class I skim milk price, there's general agreement in
6 a general price level, so there's really no disagreement,
7 I think, among the parties that that's something that USDA
8 should do.

9 But let's assume for a moment that USDA over our
10 objections adopts, in addition to Issue 4, your
11 Proposal 19 and your Proposal 1, and yet, we're in this
12 position with Make Allowances where it's like, well, let's
13 go this far, and then we'll wait and see.

14 How is USDA supposed to perform its economic
15 analysis in the out years when we don't know what that
16 "wait and see" is?

17 A. The wait and see on Make Allowance?

18 Q. On Make Allowances, yes.

19 A. Economists make assumptions all the time for their
20 analyses.

21 Q. Well, what assumptions should USDA make under
22 those circumstances?

23 A. That's up to them and their -- their capable
24 economic staff.

25 MR. ENGLISH: I have no further questions. Thank
26 you, sir.

27 THE COURT: Further cross other than AMS.

28 Seeing none, Ms. Taylor.



1 CROSS-EXAMINATION

2 BY MS. TAYLOR:

3 Q. Good afternoon.

4 A. Good afternoon, Ms. Taylor.

5 Q. So your testimony talks a lot about how
6 Make Allowance do not currently reflect current
7 manufacturing costs. And I understand we can talk about
8 what the right level is to move to.

9 But you -- can you put any information on the
10 record that kind of discusses what the industry's response
11 has been to what you would see as inadequate
12 Make Allowances?

13 A. I would recommend you defer that question to the
14 lineup of experts that we have testimony -- that are
15 actually in the industry making -- dealing with that
16 reality itself.

17 Q. Okay.

18 A. There's a rich source of information that will be
19 available to you and will probably be put into the record
20 upfront.

21 Q. Okay. I'll save that question.

22 On your specific Make Allowance levels that
23 National Milk is proposing, I'm not sure if you are the
24 right person to ask, but we'll start with you. Do you
25 have information on kind of how you all determined those
26 to be the right numbers?

27 A. Well, again, reviewed the process, National Milk
28 initial -- embarked initially on its Federal Order



1 modernization effort by getting input -- by receiving
2 input from its members that own manufacturing facilities,
3 that the Make Allowances were too low and needed to be
4 increased.

5 Q. And when you say "receiving input," is that -- you
6 looked at cost information?

7 A. Right. When you're a membership organization, you
8 get input from your members. They indicated there was a
9 problem with the Make Allowances. From the very beginning
10 we decided that we needed to address that, but also we
11 needed to take a comprehensive approach to all of the
12 different components of the Federal Order Reform and
13 product price formulas. You were witnesses to many of
14 those deliberations.

15 It became obvious that we needed to address the
16 Make Allowances. We needed to -- we would not have been
17 able to get agreement amongst our members on a package of
18 proposals that included no action on Make Allowances. It
19 was -- became equally obvious as we became aware, through
20 our discussions with our members, that operate -- that
21 participate -- that operated manufacturing plants, that we
22 would be also unable to secure agreement amongst our
23 diverse members on a -- on a proposal that included a
24 Make Allowance proposal to move immediately to what
25 appeared to be generally the -- you know, the current sort
26 of full cost, so to speak. We knew, therefore, we needed
27 to strike a balance.

28 And the reason we couldn't have gotten agreement



1 on a -- on a -- you know, on a complete one-time increase,
2 among others, was that we could not assure our members
3 that the information about what the right costs were to
4 make such a big increase were available.

5 So we had to -- we, therefore, came upon this --
6 basically the two- -- two-part process, seek -- make an
7 initial increase, seek legislative authority to get USDA
8 finally the authority needed to conduct mandatory audited
9 cost surveys.

10 But that still left us with the issue of what do
11 we do for an interim step. It had to be a balance between
12 some increase, not the full increase. That made it
13 difficult for us to come up with numbers that technically
14 were, as USDA reminded us, needed to be data driven.

15 What we did was we basically took a survey amongst
16 our members to say, give us your estimates from your own
17 experiences of what the costs -- what you think the costs
18 are for each of the four products and tell us why. And we
19 basically looked at that data. We disregarded a few
20 outliers.

21 And then we -- we presented that anonymized data
22 to our decision-making bodies. The task force was -- was
23 basically only responsible for making recommendations, not
24 for making policy decisions. So we presented that data as
25 best we could to our policy-making bodies and said, here's
26 the data, here's how it looks, and they basically
27 recommended the numbers that we -- we are presenting here
28 as our proposal.



1 It was data driven to the extent that it was
2 information provided by the technical experts that worked
3 for those cooperatives, with the decision made by the
4 decision-maker representatives from those same
5 cooperatives, who were in very close touch with their
6 expert staffers to come up with that decision, which, you
7 know, had to be a compromise.

8 Q. So those numbers do in some way reflect actual
9 costs experienced by National Milk members?

10 A. That is correct.

11 Q. Okay. You talk about how you -- this is an
12 interim phased-in approach is what you all are taking.
13 And we won't get into the Farm Bill side of things because
14 that's outside of everyone's control, at least on this
15 side of the room.

16 But you say, you know, too large of an increase
17 could cause disorderly marketing. If we -- we have gone
18 15 years without increasing them, so we don't want to have
19 too large kind of shock to the system.

20 A. Correct.

21 Q. What constitutes -- what would constitute too
22 large of an increase?

23 A. Well, I'll go back to the quote that Mr. English
24 just referenced on page 4 of my statement: Raising Make
25 Allowances to above those proposed will reduce producer
26 prices to levels that would narrow margins at the farm.
27 And we will have testimony later about -- to the --
28 basically what the current financial condition of dairy



1 farms in the country is, which is not particularly strong
2 at the moment. We have already had some producer
3 testimony foreshadowing that.

4 So basically that is -- that sentence is kind of
5 like a condensation of what economists would call a supply
6 function. If the price received for a product is too low,
7 that will negatively impact the production of an adequate
8 supply of that product or service. And -- and with a --
9 particularly with a very important commodity like milk,
10 having an inadequate supply creates disorderly marketing.
11 So that's kind of what that all means.

12 Q. Okay. So if we increased the Make Allowances too
13 much, and farm margins got too tight and we saw farms
14 going out of business, you would see that as a disorderly
15 marketing --

16 A. Yes, that would be an un- -- that would be an
17 unfortunate consequence for a program like the Federal
18 Order program, whose purpose is to create order -- to
19 facilitate orderly marketing.

20 Q. I think your answers have touched on some of the
21 other questions I had, but it wouldn't be -- well, let me
22 see here.

23 On page 7 at the bottom, the bottom paragraph, you
24 say, "In the absence of definitive data, not increasing
25 them" -- which you mean Make Allowances -- "so high as to
26 be dependent on projections or on plant processing (sic)
27 survey results that have been disputed."

28 Can you talk a little bit about the disputed



1 processing costs that you are -- surveys that you are
2 referring to there?

3 A. Well, an example of disputed -- and, again, I'm
4 not impugning any researchers. But the first Stephenson
5 cost study that was somewhat delayed, based upon primarily
6 2018 data, which was eagerly awaited by our team looking
7 for guidance from that document, was -- had a problematic
8 issue in terms of the reallocation of costs between -- in
9 butter powder manufacturing, produced a curious result
10 that I would say fell into the category of disputed. And
11 that was corrected in the more recent study, as I recall.

12 Q. And how was that corrected?

13 A. I believe that allocation was made back to
14 something more similar to what previous cost studies
15 have --

16 Q. And you are talking about the allocation --

17 A. Yeah, the --

18 Q. -- on unallocated costs?

19 A. Right. The allocation of the earlier recent study
20 that would -- indicated that the cost of manufacturing
21 butter was below the current Make Allowances, and the
22 price -- the cost of manufacturing nonfat dry milk was
23 very much higher. Given that the two are kind of -- were
24 separated out from a butter powder manufacturing cost, it
25 was a curious thing, undertaken probably for the best of
26 intentions, but producing a result that the industry, I
27 guess, speaking for our members, would have considered to
28 be disruptive in creating disorderly marketing, if



1 implemented as such.

2 Q. All right. And I think -- I'm sure everyone in
3 this room has read that study, and we all kind of know
4 what you're talking about, but I want to make sure the
5 record is clear?

6 A. That's an instance.

7 Q. That is changing from the first version that went
8 from allocating those costs on a transformation factor,
9 that had not been done before, to the second version,
10 which allocated costs on a setback to a solids basis?

11 A. Put it back to the previous basis, yes.

12 Q. Okay.

13 Okay. I have one technical question of which --
14 well, two technical questions, actually.

15 The first is, we have been looking at the proposed
16 order language you have in the back of Exhibit 12. It
17 starts on page 12 of NMPF-12. That's, whatever exhibit
18 number this is, 142.

19 The first thing is we think that the order
20 language you have in here is what you have in the initial
21 proposal submitted by National Milk by the June 6th -- I
22 don't know what the date -- it is all confusing now -- the
23 earlier June deadline. And I think you all changed that
24 in your submission for your modified date -- submission
25 that was due on the 20th of June, and I think there's some
26 order language that was put in that modified version
27 that's missing in here.

28 Specifically, when you talk about (n), and you



1 say, delete all subsequent parts of this paragraph, and
2 then insert what you have here, I think there's a (ii) and
3 a (iii) that are missing in this exhibit that you might --
4 you probably want to have in there, because it -- it would
5 eliminate a couple of steps in the Class III price
6 formula.

7 A. Yes, I was -- by the language here, because it --
8 it combined --

9 Q. Yes.

10 A. -- the Proposal 3 language and the Proposal 7
11 language, I did not separate those out. But for -- for
12 this testimony on Exhibit -- on Proposal 7, I did not
13 include those other parts that were part of, you know,
14 (2) -- (n)(2), (2) and (3), correct?

15 Q. Yes.

16 A. Yeah. Those did not involve a Make Allowance
17 change, as I recall. I don't have that in front of me.

18 Q. Okay. But when you say, strike all subsequent
19 paragraphs --

20 A. Oh, okay.

21 Q. -- as a technical person, I'm going to read that
22 to say --

23 A. Okay.

24 Q. -- delete those two.

25 A. I was -- as a legislative drafting issue --

26 Q. Yes.

27 A. -- it is -- you are correct.

28 Q. Okay. I just want to make sure we're clear.



1 A. I will trust you to catch that.

2 But in terms of the implementing language for
3 the -- for the Make Allowance proposal, I think I have
4 everything in here that involved changing a -- technically
5 a Make Allowance. But your point is very well taken. I
6 appreciate your catching that.

7 Q. Okay. And if there was a place we found not
8 addressed in here that did have a Make Allowance, you
9 would want that changed as well?

10 A. Yes.

11 Q. Okay.

12 A. Those should be included, even though there was no
13 specific portion of them that dealt with Make Allowances.
14 But I inadvertently struck those and then forgot that
15 that's what that was and said, oh, these don't deal with
16 the Make Allowance.

17 Q. No problem.

18 A. But replace it by an asterisk.

19 Q. Okay. We had another question. I think back when
20 we were talking on your milk composition proposal, we
21 asked a question about, did you want to update in the III
22 and IV formulas, the composition factors in those, and I
23 believe the answer at that time was no.

24 A. Can you ask that question again.

25 Q. Sure. Back in the first or second week of the
26 hearing when we were on milk composition, your
27 Proposal 1 --

28 A. Yes.



1 Q. -- update those. I believe we had asked a
2 question about how -- if you -- if you also wanted to
3 change those composition factors, not only in the advanced
4 pricing formulas, but in the announced prices?

5 A. Yes, we wanted to include them in all.

6 Q. Okay.

7 A. I wasn't aware that -- did I misspeak on that?

8 Q. Well, I could have misheard, so I'm just clearing
9 that up.

10 A. I thought we made it very clear that all instances
11 in which the Class III and Class IV skim milk formulas
12 appeared, component and the -- what is your term for the
13 monthly component ones? That you just used?

14 Q. The announced.

15 A. Announced.

16 Q. We look at the advanced price and then the
17 announced.

18 A. Yeah, the announced and the advanced prices.

19 Q. Okay. So in that, then, in the protein price
20 formula, there's a 1.17, which is the butterfat to protein
21 ratio?

22 A. Yes.

23 Q. Which is based off 3.5 and 2.99?

24 A. That's correct.

25 Q. So you would -- is part of your proposal to update
26 that number to reflect 3.5 --

27 A. When --

28 Q. -- and whatever the --



1 A. When we looked, again, thoroughly through all of
2 the -- the numerical factors in the formulas, I looked at
3 that -- you know, taking the 3.5 and the 2.99, which gives
4 you that ratio, and suggested to the group that that be
5 updated to be consistent with updating the component
6 factors. It is not the same as the component factors in
7 the skim milk. It is part of the component formula.

8 The decision was made to keep, in that case, the
9 1.17, even though it is based on the component factors
10 that we're proposing to update in the Class III and IV
11 skim milk. So you're correct to observe that.

12 It would have been fully consistent to increase
13 that to I think -- I believe it was 1.22. But the
14 decision was made -- it was considered. A decision was
15 made not to increase that part that was component driven.
16 And that was a deliberate decision. So you're correct to
17 point out -- whether or not you would consider that to be
18 sort of an inconsistency, but it would -- that was a
19 decision. We considered that.

20 Q. And how come you guys don't find that appropriate?
21 Why would it not be appropriate to update that number or
22 updating other composition factors?

23 A. Well, we had many interests to balance in that --
24 in our discussion, and each of those things was considered
25 and -- and specifically decided upon. And so I can't -- I
26 would -- I would recommend that you follow up that
27 question with other witnesses. There's a -- there's a
28 large group of witnesses that are going to testify on



1 that. That's a question for them. All I can tell you now
2 is we definitely considered and proposed that, and it was
3 decided not to.

4 Q. Okay. Thank you.

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

6 THE COURT: Okay. Dr. Cryan.

7 CROSS-EXAMINATION

8 BY DR. CRYAN:

9 Q. Roger Cryan for the American Farm Bureau
10 Federation.

11 Ms. Taylor asked you about disputed results
12 related to Dr. Stephenson's studies over the years,
13 which -- which brought to mind the issue of just how this
14 study has sort of changed in the minds of the
15 participants.

16 Would you agree that before order reform -- you
17 talked about how Dr. Stephenson has been involved in these
18 sorts of cost studies for quite some time.

19 Would you agree that before order reform, they
20 were primarily seen as cost studies that served for
21 benchmarking for companies really purely as information to
22 serve those -- the operators of those plants?

23 A. Generally, yes. I am not aware of prior to order
24 reform where Dr. Stephenson's cost studies were used in a
25 policy-making environment, but I can't swear to that.

26 Q. And they were seen as a credible source, and they
27 were -- when -- when the approach to -- in order reform,
28 the approach to formulating the prices as -- as end



1 product pricing formulas was done, they were seen as
2 credible sources to go to, as a relatively credible,
3 unbiased source to generate results?

4 A. They were seen as the only available information.

5 Q. Right.

6 And would you agree that after order reform, it
7 became -- and through subsequent iterations of regulatory
8 application of these -- these -- the results from these
9 surveys, it became more and more understood by -- by
10 participants and potential participants that these would
11 be used for regulatory purposes?

12 A. Yes.

13 Q. And is that -- is that part of -- part of the
14 basis for -- for -- for National Milk to seek mandatory
15 audited surveys that would be comprehensive of everybody?

16 A. We feel that having mandatory audited studies is
17 the best way to get the data. And the example of the
18 state order of California used that procedure, and it
19 seemed to work very well.

20 Q. Very good.

21 DR. CRYAN: Thank you. Thank you very much.

22 THE COURT: Anyone else?

23 Redirect.

24 MS. HANCOCK: Thank you, your Honor.

25 REDIRECT EXAMINATION

26 BY MS. HANCOCK:

27 Q. Good afternoon, Dr. Vitaliano.

28 You were asked about a comparison of National



1 Milk's proposal, I believe, to IDFA's proposal. Do you
2 remember that line of questions with Mr. Rosenbaum?

3 A. Yes.

4 Q. And he had you verify some information that was --
5 or he had you respond to some questions about an exhibit?

6 A. Correct.

7 Q. And I think there was a comparison that he asked
8 you to make between the butter proposed -- or between the
9 Make Allowance increase that National Milk is proposing
10 with IDFA's proposal; is that right?

11 A. Correct.

12 Q. Were you able to actually do those calculations
13 when he was asking you those questions?

14 A. No.

15 Q. Okay. And have you since had an opportunity to do
16 those calculations?

17 A. Yes. There's an error in the butter calculation
18 in terms of the percent variance.

19 Q. And what is the percent variance that should be
20 accurately --

21 A. Assuming that the IDFA butter Make Allowance --
22 initial Make Allowance is indeed \$0.2251, that would
23 produce a 7.2% variance. The number here is 2.4%
24 variance, which was caused by the person who calculated
25 that using an IDFA butter initial Make Allowance of
26 \$0.2151 rather than \$0.2251. So if \$0.2251 is the correct
27 Make Allowance, then it should be 7.2%. If the 2.4% is
28 correct, then the Make Allowance IDFA should be \$0.2151.



1 Q. And you are qualifying each one of your responses
2 with, if this is correct, then this.

3 A. Right.

4 Q. Is it fair to say you didn't create that document
5 that he provided to you?

6 A. Yeah. I don't know which of these two numbers is
7 correct, but they are inconsistent.

8 Q. Okay. So you didn't create the document that he
9 gave to you?

10 A. No, I did not.

11 Q. And before he handed it to you, had you ever had
12 an occasion prior to that to look at it?

13 A. I -- not at this document.

14 Q. And -- and had -- you have not had any time to
15 verify if any of the questions that -- or any of those
16 paragraph numbers that he provided in that document are
17 actually accurate or not?

18 A. The actual citations, yeah. No, I have not.

19 Q. Okay.

20 A. But they sounded familiar enough that --

21 Q. Okay. So you were just going ad hoc off of the
22 questions that he was asking you?

23 A. Yeah. I was generally in agreement with the sense
24 of the document, but I couldn't -- but I didn't want to
25 stop and say -- challenge every -- every citation, every
26 comment. Generally, that looks appropriate.

27 Q. Okay.

28 A. Knowing that we'd have a chance to go back and do



1 exactly what -- what we're talking about here, verifying
2 those numbers but --

3 Q. And it's fair to say that the testimony that you
4 gave that's reflected through the transcript is the
5 accurate information that should be the takeaway from your
6 discussion; is that right?

7 A. Right. Yeah.

8 Q. Not the content within the document?

9 A. Right. In other words, I was testifying to my --
10 my quick interpretation of the language in this document.

11 Q. And you understood that at the very kind of base
12 level, Mr. Rosenbaum was just trying to figure out where
13 the commonality lies between IDFA's Make Allowance
14 proposal and National Milk's Make Allowance proposal?

15 A. Yeah. Yes.

16 Q. And is National Milk's Make Allowance proposal a
17 standalone proposal?

18 A. National Milk's Make Allowance proposal is part of
19 a package of five separate proposals that are being heard
20 at this proceeding, combined with a -- basically an effort
21 to secure, cooperatively together with IDFA and Farm
22 Bureau, to achieve legislation in the Farm Bill that would
23 give USDA the authority to conduct mandatory audited
24 surveys to get better data for the very purpose of
25 establishing Make Allowances.

26 Q. And if the recommended decision were to allow for
27 an increase in Make Allowance as National Milk provides
28 but not adopt any of the other four National Milk



1 proposals, would National Milk support that?

2 A. I cannot speak to the -- but it would be -- it
3 would be doubtful that we would be supportive of that.

4 Q. Okay. Because National Milk has put forth the
5 five proposals that all work together as a whole?

6 A. That's correct. Yes.

7 Q. Okay.

8 MS. HANCOCK: Thank you. That's all I have.

9 Your Honor, we would move to admit Exhibit 142.

10 THE COURT: Okay. Any objection to 142?

11 Mr. Rosenbaum, I assume you -- nothing you have is
12 going to affect 142, right?

13 MR. ROSENBAUM: I have no objection, your Honor,
14 to 142.

15 THE COURT: All right. Exhibit 142 is made a part
16 of the record.

17 (Thereafter, Exhibit Number 142 was received
18 into evidence.)

19 THE COURT: And Mr. Rosenbaum is recognized on
20 re-cross. Not surprised.

21 RE-CROSS-EXAMINATION

22 BY MR. ROSENBAUM:

23 Q. Dr. Vitaliano, just to make sure I have this --
24 let me start by saying, the Make Allowance numbers are
25 correct in the document. So for butter, National Milk's
26 proposal is \$0.21.

27 Of course, you can confirm that independently,
28 correct?



1 A. That's what I had kind of assumed.

2 Q. And IDFA's number listed here is \$0.2251 is
3 accurate. But you have correctly pointed out that in
4 calculating the variance, there was a mistake, which was
5 mine. And apparently I divided -- I used 0.2151
6 accidentally.

7 So the variance is not 2.4. Can you -- I think
8 you told us a minute ago what the variance is. But can
9 you just say that again?

10 A. 7.2%.

11 Q. Okay. And just -- okay. Are you dividing the
12 difference by -- just one second.

13 A. Let's calculate together.

14 Q. Yes. So obviously the difference between the two
15 1.51 cents, obviously. And if you --

16 A. Are you seeking to calculate the increase?

17 Q. The increase, yes.

18 A. Yes. If you divide 22.5 by 21.0, you will get
19 1.0719, which rounds to 1.072. You subtract -- subtract
20 the one -- I do these calculations all the time.

21 Q. All right.

22 A. Subtract one, and you get 0.72, rounded to the
23 nearest tenth of a percent --

24 Q. All right.

25 A. -- as the increase.

26 Q. The increase -- okay. The 1.51 --

27 A. Or you can take the 1.51 --

28 Q. I'm sorry. Your number is 7.2; is that correct?



1 A. Yes. If you divide -- if you take 7.51 and divide
2 it into 21, you will get 7.0 -- 7.2%. Same way, I just --
3 sometimes -- if you use the difference, you have to make a
4 separate calculation. If you just divide the two numbers
5 and take one off, it's an easier way to calculate the same
6 thing.

7 Q. In any event, whichever way you go about it, the
8 number --

9 A. 7.2.

10 Q. -- should not be 2.4, the number should --

11 A. That's correct.

12 Q. -- be 7.2?

13 A. No harm done.

14 Q. That's the only error along those lines you found?

15 A. So far. And in terms of calculating, assuming
16 that the four IDFA numbers are correct --

17 Q. And that -- and that I have gone back and
18 double-checked against our proposal.

19 A. Then I have double-checked all of the variance
20 calculations.

21 Q. All right.

22 MR. ROSENBAUM: Thank you.

23 THE COURT: Mr. Rosenbaum, do you want to make
24 this part of the record?

25 MR. ROSENBAUM: Your Honor, I would move
26 Exhibit 143.

27 THE COURT: Objection, AMS?

28 MR. HILL: Yes, I will object to this. I don't



1 think this is appropriate for admittance into the record.
2 This is not a document that a witness from IDFA, who is
3 under oath is testifying to. The witness under oath is
4 not testifying to this document. This is not a document
5 that is self-authenticating like the regulation that we
6 had earlier, I think it was 7 CFR 1170.8A. So it is not
7 self-authenticating. This, to me, appears to be a
8 creation of counsel as a reference point, as an aid for
9 cross-examination, and I don't think it's appropriate for
10 entry into the record, admittance into the record.

11 MR. ROSENBAUM: Well, your Honor, obviously it's a
12 created document, but it's a created document I had this
13 witness go through one by one to -- to -- and with --
14 subject to the correction he made, and I believe he made
15 also a correction to one of the other paragraphs where I
16 used actual average costs. But other than those
17 corrections, that he, I believe -- which we accept as his
18 corrections, we have -- I think he has verified the
19 information as being accurate, and we think this is highly
20 useful information.

21 MR. HILL: This witness did dispute several areas
22 of this document, your Honor.

23 THE COURT: Well, I think the transcript will
24 speak for itself. I do think Mr. Rosenbaum went through
25 this pretty carefully. And I think it's -- I think what
26 was discussed seems -- seems important to me. And this is
27 something -- it was an aid to cross-examination, and if
28 this document doesn't appear in the record somewhere,



1 anybody reading that transcript is going to have a hard
2 time following it.

3 Now, that doesn't mean that the weight -- you
4 know, you could -- I realize this witness didn't create
5 it, didn't testify perhaps to every part of it. So
6 someone else can make a determination of how much weight
7 to give it. I think there's an awful lot of caveats, you
8 know, on various statements in the document.

9 And, Ms. Hancock, you handled that on redirect.

10 But I certainly think on balance that it should
11 appear in the record. And I'm not going to be the one to
12 determine the weight, but I'm not going to exclude it.

13 Ms. Hancock, do you want to say more? I mean,
14 with your caveats, too.

15 MS. HANCOCK: Your Honor, the purpose of my
16 caveats were to establish that it has not satisfied any of
17 the foundational obligations for being admitted as an
18 exhibit in the record. It is essentially a lawyer's
19 arguments that they could include in their briefing based
20 on the record that they have created. To the extent that
21 Mr. Rosenbaum has read into each one of these paragraphs,
22 which he did, he read it into the record, and so he was
23 able to ask the witness to acknowledge or reject it.

24 But once you have a document that's admitted into
25 evidence, it becomes something that you can point to
26 separate and independent from the transcript because it's
27 evidence of record.

28 But the whole -- the important part here is, if he



1 instead had to point to the transcript that he created, it
2 would come with the qualifiers that Dr. Vitaliano made in
3 responding to those questions.

4 What you are essentially allowing him to do if you
5 admit this into evidence is to put his own arguments into
6 the record, and then there's no gatekeeping function
7 whatsoever. You can put arguments into the record, you
8 can put anything into the record that would stand separate
9 beyond what the transcript creates.

10 And I don't think that that's what the rulemaking
11 evidentiary rules are designed to protect against. I
12 think that the record that we're creating by transcript is
13 what should stand, and the evidence that can be pointed to
14 independently has to be supported independently in order
15 to become something that can be pointed to independently.

16 THE COURT: Well --

17 MS. HANCOCK: And so for those reasons, your
18 Honor, we would object and join in the objections of the
19 USDA.

20 THE COURT: Well, it does make it a little more
21 awkward, I think, to read something -- I mean, if he had
22 just read each one without giving the witness a
23 document -- well, I should let Mr. English speak.

24 MS. HANCOCK: Your Honor, if I could just answer
25 that really quickly --

26 THE COURT: Go ahead.

27 MS. HANCOCK: -- on my point. My point is that's
28 what cross-examination is. It is asking those questions



1 and being able to put it in. He put his cross-examination
2 questions into the record.

3 THE COURT: But I think it is hard -- it's harder
4 to read a long section. It's easier for the witness to
5 have it in front of him, and the witness made whatever
6 disputes to that that the witness had.

7 Mr. Rosenbaum.

8 MR. ROSENBAUM: Your Honor, I think you have it
9 exactly right. I mean, I -- if I had read these things
10 without their being before Mr. Vitaliano at the time, I
11 don't think he could have been expected to remember what
12 it was I was asking him.

13 And, you know, you look at, for example, the
14 numbers that he just corrected, where I do the comparisons
15 between our proposal and National Milk's proposal and the
16 variance. I mean, that would have been extremely
17 challenging to put in just by questions without a document
18 in front of him. And it's not unusual to create a
19 document and then ask the witness to -- to verify the
20 veracity of it, and they have the ability to do so.

21 And, you know, look every -- I mean, we have had
22 corrections of one sort or another to almost every exhibit
23 that's come in, and yet no one's resisted the exhibit
24 coming in.

25 I asked questions to Mr. Vitaliano on his
26 testimony before this one regarding his chart about
27 comparing barrels versus blocks. I suggested certain
28 revisions that would increase the 10% he was allocating to



1 barrels. I did not at the end of that resist the entry of
2 his exhibit into evidence because, obviously -- yes, the
3 document's before USDA. I think I pointed out some things
4 that caused that document to be subject to some certain
5 revisions or qualifications, but obviously I established
6 that, or not, through my cross-examination, and that will
7 all be available for anyone to brief to the Secretary. It
8 doesn't bother me that his exhibit came into evidence.

9 THE COURT: Yeah, I think it's -- I mean, it is a
10 fairly simple kind of document. You weren't putting in a
11 recent data and asking him to say, hey, this came out of
12 such and such study; do you agree with it?

13 I -- I think it's all in the record. I don't
14 think that he had -- he had some disputes with this. I
15 think it was an aid to cross-examination more than a
16 substantive evidentiary document. I would not encourage
17 having complicated documents that were hard to deal with
18 here. But this seems to be straightforward on its face
19 and useful to the record, even though AMS is the one that
20 has to look at the record and they seem to disagree.

21 I am -- my point is, I'm going to allow it in for
22 what it's worth. I'm not going to -- I don't make a
23 judgment on anything here, really, as to the weight to be
24 given it. But it helped me follow along, so -- my
25 recollection of the cross and the follow-up and all, it
26 made things pretty clear on this. And I don't see that
27 National Milk is disadvantaged by having this in the
28 record, and I think it makes for a clear record. So



1 I'm -- I'm going to allow it.

2 Mr. English, I was interested in what you had to
3 say, though. I mean, if you're -- I don't know whether
4 you are objecting or supporting the --

5 MR. ENGLISH: I'm supporting Mr. Rosenbaum, but he
6 covered the two points I was going to make, and therefore
7 I do not need to duplicate.

8 THE COURT: No, I just wondered -- wondered partly
9 where you were coming from. And I appreciate -- we have
10 competent counsel in this room, I'm convinced. But that's
11 the way I -- way I see it.

12 And so Exhibit 143 is admitted into the record, as
13 I said, for what it's worth. Thank you, everybody.

14 (Thereafter, Exhibit Number 143 was received
15 into evidence.)

16 THE COURT: It is 4:53. Are we done for the day?

17 MS. HANCOCK: Your Honor, we should probably use
18 the remaining time to figure out witnesses for tomorrow.

19 THE COURT: I was going to say, we should.

20 I think on the record. I think Ms. Hancock's
21 going to sort of summarize where -- where we should spend
22 our time overnight.

23 THE WITNESS: Am I dismissed, your Honor?

24 THE COURT: Yes, sir, thank you. You may step
25 down.

26 MS. HANCOCK: So I believe tomorrow -- shout at me
27 if I miss anything -- we have Christian Edmiston, Paul
28 Bauer, Darin Hanson. We do have -- I believe we have four



1 farmers -- or three -- I think we have three farmers -- or
2 producer testimonies, and then I believe that MIG has
3 producer testimony as well.

4 THE COURT: Yes.

5 MR. ROSENBAUM: It's actually IDFA, your Honor,
6 not Milk Innovation Group. It's Steve Schlangen.

7 MS. HANCOCK: And then our three are Paul
8 Windemuller, W-I-N-D-E-M-U-L-L-E-R; Eric, with a C, Palla,
9 P-A-L-L-A; Matt Johnson.

10 And then we have Jeff Bushey as well tomorrow,
11 B-U-S-H-E-Y.

12 THE COURT: Is he a regular witness or a producer?

13 MS. HANCOCK: He is an expert witness.

14 THE COURT: Very good.

15 MS. HANCOCK: And I think that should take us
16 through tomorrow. If we run out of witnesses, we'll find
17 some more.

18 THE COURT: Mr. English.

19 MR. ENGLISH: Jeff who?

20 MS. HANCOCK: Bushey, B-U-S-H-E-Y.

21 THE COURT: Thank you, Ms. Hancock.

22 Mr. Rosenbaum, did you have something you wanted
23 to say?

24 MR. ROSENBAUM: No, your Honor.

25 THE COURT: Okay. Anyone else? We all -- we all
26 set?

27 Okay. See everyone back here at 8:00 a.m. Have a
28 good evening -- yes.



1 MS. HANCOCK: Just so I don't commit to this, but
2 we might have to jockey our order a little bit depending
3 on when people get here. So we will do our best to stay
4 as close to that. But Jeff Bushey, for example, might
5 have to go earlier in the day, and I said him last. So I
6 just want to make sure that -- no surprises.

7 MR. ROSENBAUM: Yes, we're sort of discussing
8 things on the record, but for better or worse --

9 THE COURT: We can go off if you'd like.

10 MR. ROSENBAUM: No, I just -- in case we -- it may
11 be that witnesses you have identified will take up the
12 day, but if not, do you -- we know you have additional
13 proponents for your Make Allowance proposals. Are they --
14 are they going to testify if we have -- have finished all
15 those witnesses and we have time left? Is National Milk
16 going to be next?

17 MS. HANCOCK: We will find a way to fill the time.

18 THE COURT: Okay. But the Make Allowance
19 witnesses you have will be next up after this, all things
20 being equal?

21 That's what you asked about, Mr. Rosenbaum, right?

22 MR. ROSENBAUM: I'm just trying to make sure I
23 don't need to have an additional witness tomorrow because
24 National Milk is still on their Proposal 7, so if they
25 have more witnesses beyond those that their counsel has
26 mentioned so far.

27 THE COURT: Very good, sir. It will be a National
28 Milk and MIG kind of day.



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That looks like it. See you tomorrow. Off the record.

(Whereupon, the proceedings were concluded.)

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1 STATE OF CALIFORNIA)
) SS
 2 COUNTY OF FRESNO)

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4 I, MYRA A. PISH, Certified Shorthand Reporter, do
 5 hereby certify that the foregoing pages comprise a full,
 6 true and correct transcript of my shorthand notes, and a
 7 full, true and correct statement of the proceedings held
 8 at the time and place heretofore stated.

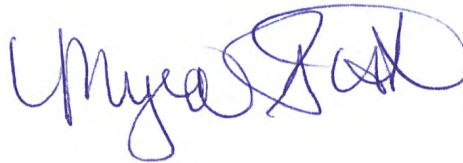
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10 DATED: September 28, 2023

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