

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 7, 2023

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Reported by:

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Certificate No. 11613

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Ryan Miltner

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Jill Lombard

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

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1 THURSDAY, SEPTEMBER 7, 2023 - - MORNING SESSION

2 THE COURT: Okay. Good morning.

3 Ms. Hancock, how are you?

4 MS. HANCOCK: Thank you, your Honor. We would  
5 call Christian Edmiston.

6 THE COURT: Welcome back, Mr. Edmiston.

7 CHRISTIAN EDMISTON

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

10 THE COURT: Your witness, Ms. Hancock.

11 DIRECT EXAMINATION

12 BY MS. HANCOCK:

13 Q. Good morning, Mr. Edmiston. Welcome back to the  
14 stand for your second round.

15 Are you here this time to testify on behalf of our  
16 Make Allowance proposal for National Milk?

17 A. I am.

18 Q. And did you prepare a witness statement on behalf  
19 of the position that you are going to be providing us  
20 today?

21 A. I did.

22 Q. Is that what's been previously identified as  
23 Exhibit NMPF-14?

24 A. Yes.

25 MS. HANCOCK: Your Honor, if we could mark this  
26 for identification purposes.

27 THE COURT: Yes. All right. I have our next  
28 exhibit as 144. That exhibit will be marked for



1 identification as 144.

2 (Thereafter, Exhibit Number 144 was marked  
3 for identification.)

4 MS. HANCOCK: Thank you.

5 BY MS. HANCOCK:

6 Q. Mr. Edmiston, would you go ahead with your  
7 statement?

8 A. Yep. So I'm going to skip the bio portion of my  
9 statement, and I'm also going to jump around for the sake  
10 of brevity. I'm going to do my best to read slowly.

11 So starting at the bottom of the first page -- I  
12 already got ahead, didn't I? I'm going to work on that, I  
13 promise.

14 Land O'Lakes acknowledges that these increases, if  
15 implemented, would not fully offset the increases in  
16 manufacturing costs for commodity-style butter, nonfat dry  
17 milk, cheddar cheese, and dry whey, experienced by our  
18 manufacturing plants since 2008 when the current  
19 Make Allowances were implemented. Instead, these  
20 increases offer a balance between the producer price  
21 impact from raising Make Allowances and the processor cost  
22 impact of raising Make Allowances.

23 These increases reflect the current cost of  
24 manufacturing commodity-style butter, nonfat dry milk,  
25 cheddar cheese, and dry whey more closely than current  
26 Make Allowances. Increasing Make Allowances to these  
27 levels strikes a balance between updates that are needed  
28 as a result of disorderly marketing conditions, detailed





1 later in this testimony, and dairy producer profitability.

2 Raising Make Allowances to levels above these  
3 proposed levels will reduce producer prices and would  
4 narrow producer margins on the farm that could negatively  
5 impact the availability of adequate supplies of milk and  
6 thereby also create disorderly marketing.

7 MS. HANCOCK: So I'm going to interrupt you. I  
8 think you can read a little bit faster, just so that it's  
9 a little bit more conversational, because I think for our  
10 own sanity, we can't listen to that.

11 THE WITNESS: I don't disagree with you. It is a  
12 challenge. And I know I speak way too fast.

13 THE COURT: Thank you, Counsel.

14 MS. HANCOCK: And we'll figure it out. It was  
15 very kind of you.

16 THE WITNESS: I'm trying. I swear I'm trying.

17 MS. HANCOCK: But we're only one paragraph in, and  
18 I was already hurting.

19 THE WITNESS: Let's give this another chance.

20 So I'm going to skip ahead. I'm going to go to,  
21 "In my testimony, I will speak to the following points,"  
22 and then I'm going to pause and check for pace at that  
23 point.

24 (1) Commodity manufacturing costs have increased  
25 by any measure since 2006 and exceed the current  
26 Make Allowances for all four commodities;

27 (2) Outdated, undervalued, inadequate  
28 Make Allowances have led to, and will continue to lead, to



1 disorderly marketing conditions;

2 (3) Producer impacts of increasing  
3 Make Allowances must be taken into account by USDA;

4 (4) The industry needs a mandatory audited survey  
5 of commodity manufacturing costs to provide data to use in  
6 discussions to propose updates to the Make Allowances.

7 Number 1: Actual audited manufacturing cost data  
8 from plants making the four commodity products represents  
9 the ideal data for USDA to use in establishing  
10 Make Allowances. Since no data has been collected by  
11 mandate, audited, and reported that covers the relevant  
12 population of plants processing these four commodity  
13 products, USDA should consider actual cost data  
14 voluntarily submitted by processors who manufacture these  
15 commodity products.

16 Land O'Lakes operates two manufacturing plants  
17 that produce branded butter and commodity-style nonfat dry  
18 milk. These plants are located in Tulare, California, and  
19 Carlisle, Pennsylvania. The Tulare plant is regulated  
20 under Federal Order 51, and the Carlisle plant is  
21 regulated under Federal Order 1. Combined, our Tulare and  
22 Carlisle plants process over 13 million pounds of producer  
23 milk per day. The manufacturing costs per pound of  
24 commodity product at both plants have increased since  
25 2006, as shown in the tables below.

26 So I'll speak to the tables briefly. This  
27 reflects an aggregation of the data that we submitted to  
28 the Stephenson surveys. For -- you know, for the reason



1 of wanting to keep our data -- our proprietary data out of  
2 the record, we provided aggregations.

3 And so what you see here are individual categories  
4 that we reported for butter, for nonfat, and then all  
5 other categories across butter and nonfat combined  
6 together, with the increases from the 2007 Stephenson  
7 survey to our actual costs on a percentage basis in the  
8 final column.

9 Land O'Lakes also operates a cheese plant in Kiel,  
10 Wisconsin. We have made significant investments in this  
11 plant to update the cheese and whey processing facilities,  
12 which has led to increased manufacturing costs per pound  
13 of cheese and per pound of dried whey since 2006.

14 Stephen Cain, National Milk economist, conducted  
15 an analysis that uses cost indexes to update commodity  
16 manufacturing costs from the 2006 levels. The results of  
17 that analysis show that commodity manufacturing costs have  
18 increased since 2006 and that the current Make Allowances  
19 need updating to reflect these increased costs.

20 Dr. Bill Schiek was also commissioned by IDFA to  
21 conduct similar analysis which likewise shows that  
22 commodity manufacturing costs have increased since 2006  
23 and shows that current Make Allowances need updating.

24 The voluntary surveys conducted by Dr. Mark  
25 Stephenson using 2018 and 2022 costs provide more data  
26 that shows commodity manufacturing costs have increased  
27 since 2006.

28 In summary, it is clear that manufacturing costs



1 have increased since 2006. This is confirmed by  
2 Land O'Lakes data, efforts to update past cross-surveys,  
3 and recently conducted voluntary cost surveys. However,  
4 the ideal data would be provided by a mandatory and  
5 audited survey does not exist today.

6 Number 2: Under Federal Order Reform, product  
7 price formulas replace the previous direct survey of  
8 prices paid for manufacturing grade milk. PPFs moved the  
9 process of establishing the basis for Federal Order  
10 pricing up the marketing chain one step to survey  
11 unregulated plants buying and selling of wholesale spot,  
12 commodity-style, dairy products.

13 The dairy products referenced in the Class III and  
14 Class IV pricing formulas are primarily commodity  
15 products, not retail or branded products. Those dairy  
16 product prices became the foundation, working backward via  
17 economic formulas, to determine the minimum price of milk  
18 used to make the four commodity dairy products. Adjusting  
19 the survey prices by subtracting the non-milk cost of  
20 manufacturing these products and applying appropriate  
21 yield factors, determines an implied value for the  
22 components of milk used to produce them.

23 Having accurate and updated plant processing  
24 costs, or Make Allowances, and appropriate product yield  
25 factors, are critical for this indirect method for  
26 determining prices, which is a principal function of the  
27 Federal Order program, yet a regular and systematic method  
28 of ensuring that these critical PPFs remain accurate and



1 current has not been established. More importantly, PPFs  
2 do not work as they were designed to when Make Allowances  
3 are not reflective of actual costs.

4 I'm going to skip through the quotes.

5 When Make Allowances are undervalued, disorderly  
6 marketing conditions ensue, including lack of investment  
7 in manufacturing plants to process and balance milk  
8 supplies, inequitable pay prices to producers  
9 participating in the same market.

10 Inadequate Make Allowances challenge manufacturing  
11 operations' abilities to pay minimum announced milk prices  
12 and still operate at reasonable competitive rates of  
13 return. Inadequate Make Allowances discourage plant  
14 investments needed to meet milk supply and product demands  
15 on a daily, seasonal, and annual basis.

16 When manufacturing costs of commodity products  
17 exceed the established Make Allowances, the calculated  
18 classified prices will essentially overvalue raw milk as  
19 an input.

20 Cooperatives operate dairy manufacturing plants in  
21 nearly all Federal Orders. Many of National Milk's member  
22 cooperatives own and operate plants that manufacture  
23 commodity dairy products.

24 To maximize plant throughput, cooperative  
25 organizations produce commodity-style products even though  
26 these products have a smaller margin than branded  
27 products. This approach of maximizing a plant's  
28 processing capacity is especially important in clearing



1 the milk supply available to local markets and utilizing  
2 milk processing assets more fully.

3 Many of these manufacturing plants also balance  
4 milk supplies when Class I, II, and III customers require  
5 more or less milk to meet their finished good demand  
6 needs. In this way, cooperative manufacturing plants  
7 balance the market by market -- balance the market by  
8 providing an outlet for milk not needed by their customers  
9 on a monthly, weekly and even daily basis.

10 Typically, balancing plants do not run at full  
11 capacity and are used as needed. This milk market  
12 balancing function implies running plants below full  
13 capacity, which increases the operating costs per unit of  
14 commodity plants.

15 Cooperatives making commodity-style products  
16 operating under Federal Orders cannot recover a larger  
17 margin on their commodity products. If they raise their  
18 commodity product prices to capture a larger margin to  
19 cover higher costs, those higher prices go directly into  
20 the class prices and effectively eliminate the larger  
21 margin. In effect, the Federal Order Make Allowances are  
22 the fixed margins to commodity production at cooperative  
23 plants.

24 Margins on commodity products are very low,  
25 typically only a few cents per pound. Given the cost of  
26 new plant construction that can easily run into multiple  
27 hundreds of millions of dollars, the decision to build new  
28 capacity for commodity and balancing plant assets is



1 difficult. Similarly, when existing plants see compressed  
2 margins, a natural first response is to attempt to cut  
3 costs.

4           Unfortunately, sometimes this comes in the form of  
5 underspending on needed maintenance. While this process  
6 of, quote, "bleeding the assets," end quote, can work for  
7 the short-term, it eventually results in devalued assets  
8 and shorter asset life.

9           When Make Allowances undervalue actual  
10 manufacturing costs, producer pay prices and their  
11 respective milk price returns are not equivalent.  
12 Producers participating in markets in which their  
13 cooperatives process a large portion of the producer milk  
14 into Class III and Class IV commodity products are  
15 disadvantaged competitively when Make Allowances  
16 undervalue the cost of processing that milk.

17           In short, outdated, undervalued, inadequate  
18 Make Allowances compress margins at cooperatively owned  
19 commodity manufacturing plants and place an unfair burden  
20 on cooperative producer members compared to producers who  
21 are not members of milk processing cooperatives.

22           I'm going to skip ahead.

23           Cooperative members experience these impacts  
24 through discounted milk prices going into their own plants  
25 to account for Make Allowances that are set too low, thus  
26 reducing current month milk checks, or pricing the milk  
27 closer to or below class prices, knowing there will be  
28 negative returns at their plants to be covered at the end



1 of the financial year.

2 Data from AMS shows the effect of both these  
3 discounts and the lack of investment in manufacturing  
4 plants to process and balance milk supplies. As  
5 Make Allowances have fallen further behind, actual  
6 commodity make costs, spot milk premiums have trended  
7 lower, as shown in the table.

8 These negative impacts absorbed by cooperative  
9 producers stem directly from Make Allowances that are set  
10 too low and are further exacerbated by the critical role  
11 that cooperatively-owned manufacturing plants play in  
12 balancing milk supplies in FMMO markets.

13 Cooperative manufacturing plants represent  
14 financial investments by their members. Cooperative  
15 members have paid to build and maintain their cooperative  
16 manufacturing plants and are responsible for the costs to  
17 operate them.

18 When Federal Order Make Allowances are established  
19 at levels below the cost of producing commodity dairy  
20 products, farmers whose cooperatives own and operate  
21 balancing plants end up absorbing those costs that other  
22 market participants do not experience. However, all  
23 producers benefit from the orderly marketing system  
24 enabled by cooperatives operating milk balancing plants  
25 within the market.

26 As cooperatives pass the marketwide balancing  
27 losses on to their members via reduced pay prices,  
28 producers shipping to handlers that do not operate





1 balancing plants do not experience these lower pay prices.  
2 This unfairly penalizes dairy cooperative members who  
3 invest in plant and marketing systems to support orderly  
4 marketing.

5 The outdated Make Allowances need to be revised to  
6 account for increases in costs to produce butter, nonfat  
7 dry milk, cheddar cheese, and dry whey. USDA should  
8 consider the best plant processing cost data available  
9 when updating Make Allowances.

10 However, given the length of time since the last  
11 Make Allowance update, making the sudden change to  
12 Make Allowances to fully reflect current manufacturing  
13 costs would be very disruptive to dairy producers and  
14 impose undue financial hardships on them.

15 Let me skip down.

16 Assuming the implementation of the proposed  
17 increase in Make Allowances, dairy market supply and  
18 demand factors for milk and dairy products would likely  
19 mitigate some of the initial price impact on milk  
20 producers.

21 Nonetheless, it cannot be overstated the impact of  
22 increasing Make Allowances will negatively impact producer  
23 milk prices and their margins will be compressed.  
24 Make Allowance increases larger than those proposed by  
25 National Milk will have a larger and negative impact on  
26 milk producers' margins and increase the likelihood of  
27 jeopardizing the milk supply going forward.

28 The larger changes in Make Allowances proposed by



1 IDFA and Wisconsin Cheese Makers Association, at the end  
2 of four years, would narrow producer margins to levels  
3 that would significantly impact producer profitability and  
4 put the availability of adequate supplies of milk at risk  
5 and, thereby, lead to disorderly marketing.

6 Producer margins have become significantly  
7 compressed in the first half of 2023 and may be more  
8 compressed in the second half of 2023, perhaps into 2024.  
9 Class III and Class IV prices have averaged \$5.47 and  
10 \$6.08 per hundredweight lower through June compared to  
11 2022 and have translated into major decreases in FMMO  
12 uniform prices.

13 USDA projects the 2024 U.S. all milk price will  
14 drop to \$19.10 per hundredweight. That represents a  
15 decrease of \$6.24 from the 2022 all milk price of \$25.34  
16 representing a decrease of nearly 25%. This drastic drop  
17 in milk price, without a similar decrease in other milk  
18 production costs, has narrowed margins on many dairy farms  
19 to the point of being below their cost of production.

20 Income over feed is shown in the chart below as a  
21 proxy for producer profitability. Historical data is from  
22 USDA Ag Prices reports, while corn, soybeans, Class III,  
23 and Class IV futures are used to show estimates of  
24 profitability into 2024, which remain near the 25th  
25 percentile of the ten-year history of data.

26 So to describe this chart a little, it actually  
27 uses the feed ration that's not quite USDA ration. And I  
28 need to make one little correction. It doesn't include



1 soybeans; it includes soybean meal. The development of  
2 that ration was done in cooperation with our Purina  
3 formulators. It uses a simple regression of Class III and  
4 Class IV versus all milk price to project milk prices into  
5 the futures, as well as, as I mentioned, corn and soybean  
6 meal prices to project ration costs.

7 I'm going to skip section 4 altogether and go to  
8 summary.

9 Land O'Lakes recommends that the Department  
10 increase the Make Allowances as proposed by National Milk.  
11 Land O'Lakes believes that the proposed Make Allowances  
12 are adequate, acceptable, and reasonable. These increases  
13 represent an interim step in aligning the Make Allowances  
14 more closely to actual manufacturing costs being  
15 experienced by processors of commodity dairy products.

16 Land O'Lakes manufactures these commodity products  
17 and has experienced a significant increase in  
18 manufacturing costs since 2006. This is corroborated by  
19 recent voluntary studies conducted by Dr. Mark Stephenson,  
20 an analysis that updates the 2006 manufacturing costs  
21 using publicly available cost indexes.

22 The effect of outdated Make Allowances that are  
23 set too low is to create disorderly marketing conditions,  
24 mainly in the form of lack of investment in manufacturing  
25 plants to process and balance milk supplies and  
26 inequitable pay prices to producers participating in the  
27 same market.

28 It is clear that commodity manufacturing plants,



1 especially those that are tasked with balancing milk  
2 supply and demand, struggle to make a profit since the  
3 effect of undervalued Make Allowances is to overvalue milk  
4 prices. This leads to a lack of investment in  
5 manufacturing capacity.

6 At the same time, losses on existing plants are  
7 shouldered by producers that have made the decision to  
8 invest in commodity processing assets creating inequitable  
9 pay prices for those producers which has been established  
10 in past decisions as a form of disorderly marketing.

11 The cost of maintaining the market balancing  
12 facilities must be borne by the market, not only by the  
13 owners of the facilities. However, the last  
14 Make Allowance updates in 2008 using 2006 data, and the  
15 gap between those Make Allowances and various estimates of  
16 current commodity manufacturing costs, are substantial.

17 As a result, National Milk has proposed  
18 Make Allowances that strike a balance between a necessary  
19 update and producer profitability that is obviously  
20 challenged in the current market landscape. The risk of  
21 not striking such a balance is jeopardizing milk supply  
22 and creating more disorderly marketing conditions.

23 Longer term, the industry needs a mandated audited  
24 survey of commodity manufacturing costs to provide the  
25 best data for future updates to Make Allowances. This is  
26 the one request that is included in both National Milk and  
27 IDFA petitions and supported by several other interested  
28 parties that submitted petitions as well.



1 Land O'Lakes thanks the Department for calling  
2 this hearing to consider the modernization of Federal Milk  
3 Marketing Orders.

4 BY MS. HANCOCK:

5 Q. Thank you, Mr. Edmiston. I just wanted to dive  
6 into a couple of items in your testimony to make sure that  
7 it is clear on the record what you are doing.

8 Can you turn to page 3 of your testimony, the  
9 chart that you have created comparing the percentage of  
10 increase of Land O'Lakes' cost with Stephenson's survey?

11 A. Yep.

12 Q. I'm just wondering if you can expand on that or  
13 maybe even reiterate what you had provided by way of an  
14 explanation as to what this is designed to show.

15 A. Yeah. Basically it's designed to show that our  
16 costs of making butter and nonfat dry milk have increased  
17 since the 2007 Stephenson survey. We were -- we were not  
18 interested in putting our actual costs into the record but  
19 wanted to show that our costs have increased, and so we  
20 did some aggregation and pulled out some separate factors  
21 that were components within the Stephenson survey, so, for  
22 instance, processing labor and utilities.

23 The 2007 column is the Stephenson survey weighted  
24 averages in those -- in those categories. The last column  
25 is the percentage increase from the 2007 Stephenson survey  
26 to our actual costs that we submitted in the 2022  
27 Stephenson survey.

28 Q. Okay. So does that mean if we look at under



1 butter for processing labor, Stephenson has \$0.0522 there  
2 for his weighted average in processing labor, right?

3 A. Correct.

4 Q. And then your 50% increase, is that a 50% increase  
5 over the 2007 number?

6 A. Correct.

7 Q. Okay. And -- okay. I think that helps.

8 And then I just want to maybe take a step back and  
9 put this into perspective. I mean, I think what you are  
10 saying is, is that there's no doubt that processing costs  
11 have increased over the Make Allowances as they are  
12 currently set. Is that fair?

13 A. Correct.

14 Q. And it sounds like there's no dispute probably in  
15 the room about that aspect?

16 A. Agreed.

17 Q. But you're -- you acknowledge that you're -- that  
18 on behalf of National Milk, you're making a recommendation  
19 that is likely somewhat less than what the actual  
20 Make Allowance costs would be if they were calculated at  
21 your current actual costs; is that right?

22 A. Agreed.

23 Q. Do you know, as you sit here today, how much less  
24 it is?

25 A. Than the industry cost?

26 Q. Yeah.

27 A. No.

28 Q. Okay. Sorry.



1 A. Go ahead.

2 Q. No, you go. I want to hear what you have to say.

3 A. And as -- you know, as discussed in previous  
4 testimony, I think it's a function of, you know, not  
5 having mandated audited survey data to provide the actual  
6 cost for the industry. So the voluntary survey takes --  
7 you know, takes a shot at it, and I think, you know, does  
8 a -- does a -- you know, gets us a certain distance  
9 towards it, but we don't have the actual costs for the  
10 industry via mandated audited survey to rely on.

11 Q. Okay. And you understand that the proposal from  
12 IDFA also has somewhat of a tempered, I guess, year one  
13 starting point as well for their proposed Make Allowance;  
14 is that your understanding?

15 A. Yes.

16 Q. And then what is your understanding about when it  
17 would get to full amount that they believe is the  
18 Make Allowance number?

19 A. I believe it is four years later.

20 Q. Okay. And what do you -- how do you feel about  
21 that proposal?

22 A. As stated in my testimony, I think it -- it risks  
23 impacting producers to an extent that, you know, it would  
24 be untenable for certain portions of the producer  
25 community.

26 Q. Do you have any concerns about whether it --  
27 there's a risk in there that it could capture an amount  
28 that is in excess of the actual Make Allowances?



1 A. Yeah, I think that's possible.

2 I also think that we don't know what costs are  
3 going to do going forward. So to lay out a four-year  
4 roadmap of what -- how Make Allowances are going to change  
5 without knowing necessarily what costs are going to do  
6 going forward, you know, is a bit of a challenge.

7 Q. And -- and for the proposal that is submitted by  
8 National Milk, I think that -- that in your testimony on  
9 page 7, when you are talking about those numbers, you  
10 state that any larger changes to the Make Allowance would  
11 put too much pressure on dairy farmers.

12 I'm wondering if you can talk about what process  
13 you undertook to -- to participate in National Milk's  
14 decision to put forth the numbers that it did that's  
15 stated in your testimony?

16 A. Yeah. So -- and it was discussed yesterday by  
17 Dr. Vitaliano. You know, we needed to reach a consensus  
18 among the National Milk members. We knew that we needed  
19 something on Make Allowance. And so it was a long process  
20 of trying to figure out the right balance across all five  
21 proposals that we ended up with to -- you know, to come up  
22 with a set of Make Allowances that -- that we could --  
23 that we could all support.

24 There was kind of an informal survey process done  
25 among National Milk membership, and that was kind of the  
26 driver for how we landed on the numbers that we landed on.

27 Q. And do you believe that you left much headroom  
28 that producers could actually absorb more than what





1 National Milk proposed for the increase in Make Allowance  
2 for year one?

3 A. Can you restate that question? I'm sorry.

4 Q. Yeah, I'm just -- I mean, what I'm wondering is  
5 did you go soft on the dairy farmers? Did you -- did you  
6 suggest a number where you thought, well, if the USDA  
7 doesn't like that number, we have left some head room  
8 where they could absorb more?

9 A. No. I mean, you know, it's a balancing act.  
10 Right? One of the things that I really like about the  
11 role that I have and the company that I work for is we do  
12 both. You know, we run manufacturing plants, and we have  
13 to -- we have to do that. And we also represent dairy  
14 producers, and we have to do that. We have a dual mandate  
15 in that respect.

16 And so, you know, we were trying to find that  
17 balance across all of membership that -- that we could  
18 support at National Milk, but we were also trying to find  
19 that balance between what we thought producers could bear  
20 and what we thought we needed for our manufacturing plants  
21 as well. So it was a balance -- it's a balancing act.

22 And, you know, I think that as you look at both  
23 the National Milk and the IDFA proposals, given that it's  
24 been 15 years since we have updated these, there's no  
25 easy, obvious, perfect answer here. Right?

26 I think Mr. Rosenbaum put it correctly yesterday  
27 that, you know, we -- we may have -- we have a bunch of  
28 things we agree upon. There are things that, you know, we



1 may differ in approach on. But directionally, I think,  
2 you know, both National Milk and IDFA see a need here.  
3 It's just a matter of how you strike that right balance  
4 given your stakeholders and given what you think is best  
5 for the industry.

6 Q. Thank you. Appreciate your time.

7 MS. HANCOCK: Your Honor, we would submit  
8 Mr. Edmiston for cross-examination at this time.

9 THE COURT: Yes, Mr. Rosenbaum.

10 CROSS-EXAMINATION

11 BY MR. ROSENBAUM:

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

14 Mr. Edmiston, did Land O'Lakes participate in the  
15 Stephenson survey that was conducted in 2007 used to set  
16 the current Make Allowances?

17 A. Yes, sir.

18 Q. And did Land O'Lakes participate in the 2021  
19 survey that Stephenson conducted at USDA's behest?

20 A. Yes, sir.

21 Q. And did Land of Lakes participate in the 2023  
22 survey that Dr. Stephenson also conducted?

23 A. I want to draw a distinction, if I could.

24 Q. Yes?

25 A. You mentioned a 2021 survey. I thought you were  
26 referring to the 2023 survey.

27 Q. Right.

28 A. Because the 2021 survey actually started in 2019.



1 Q. Okay.

2 A. I just want to make sure I'm answering the  
3 question correctly. Sorry.

4 Q. Yeah. Assigning the exact years to these things  
5 can be challenging because the survey covered a period.  
6 It's obviously the date of the actual result.

7 A. Let me answer it differently.

8 Q. Did you participate in all three surveys?

9 A. Yes. That's exactly how I was going to answer it.

10 Q. That simplifies it.

11 And I assume that Land O'Lakes did its best to  
12 submit accurate information?

13 A. Absolutely.

14 Q. And now, counsel -- your counsel asked -- or  
15 counsel from National Milk asked some questions regarding  
16 the IDFA proposal, which she actually accurately  
17 characterized as phasing in increased Make Allowances over  
18 a four-year period, correct?

19 A. Yes.

20 Q. But do you understand that the end result of that,  
21 that is to say the highest number, reflects what IDFA  
22 submits are the current costs of manufacturing?

23 A. Yes. Although I believe, correct me if I have  
24 this wrong, I believe they are slightly different than the  
25 Stephenson survey results.

26 Q. They are an amalgamation of the Stephenson results  
27 and Dr. Schiek's work, and we'll have testimony on that.

28 With that caveat, though, do you understand that



1 the IDFA proposal reflects, from IDFA's perspective,  
2 Make Allowances that at their fully-implemented level will  
3 be the current cost to manufacture as of now?

4 A. I understand that that is -- that's IDFA's  
5 perspective, yes.

6 Q. In other words, if the proposal to increase  
7 Make Allowances over time, does not reflect an effort by  
8 IDFA to project future increases in costs, it reflects the  
9 current costs, correct?

10 A. Yes, I understand that.

11 Q. And do you understand the phase-in reflected an  
12 effort to accommodate farmer concerns that implementing  
13 the entire Make Allowance increase at once would be  
14 quite -- would be -- you know, would be substantial?

15 A. So it's interesting you mention that. I didn't  
16 necessarily understand the justification for the phase-in  
17 that IDFA proposed. I suspected that it was an effort  
18 to -- to realize that implementing those all at once would  
19 impact farmers. I hoped that was the case, but I didn't  
20 necessarily know that that was the case. So it's good to  
21 hear that.

22 At the same time -- you know, I mentioned the dual  
23 mandate that co-ops have, co-ops like Land O'Lakes that  
24 both represent producers and process milk. You know, in  
25 terms of understanding what's best for producers, we're in  
26 it every day. I have to stand up in front of producers on  
27 a very regular basis and talk about things like this, and  
28 I have done so over the last several years, as we knew the



1 Make Allowance hearings were coming.

2 And I have had producers in very stern tones tell  
3 me, don't go too far with this. And they had fears about  
4 that. You know, producers that were already financially  
5 struggling and could see that going too far with the  
6 Make Allowances all at once would be very negative for  
7 their operations and their businesses.

8 So that kind of justification is what I believe  
9 drove the National Milk membership as a whole to come up  
10 with the proposal that we did.

11 Q. So let's -- what I'd like to do now is switch  
12 discussion a bit to the question of what the increase in  
13 costs of manufacture have actually been since  
14 Dr. Stephenson conducted his survey in 2007, which was  
15 used in part to set the current Make Allowances.

16 Just so we orient ourselves, you are aware that  
17 the actual Make Allowances as set were themselves an  
18 amalgamation of Dr. Stephenson's survey as well as  
19 information from the California Department of Food and  
20 Agriculture, correct?

21 A. Correct.

22 Q. Okay. So I would like to -- and my questions now  
23 are really going to focus on the table on page 3 of your  
24 report.

25 A. Okay.

26 Q. So in the second column, you make reference to  
27 Stephenson's survey weighted averages, correct?

28 A. Yes.



1 Q. Okay. So that we all can make sure we understand  
2 exactly what you did here -- and I think I understand, but  
3 you're going to correct me if I'm wrong -- let me hand you  
4 a copy of that -- of that Stephenson survey report from  
5 2007.

6 A. Sounds good. And hopefully the numbers that I  
7 have in there are all correct.

8 MR. ROSENBAUM: Your Honor, I would ask that this  
9 document be marked with the next Hearing Exhibit number.

10 THE COURT: IDFA Exhibit 28, top right-hand  
11 corner, is marked for identification as Exhibit 145.

12 (Thereafter, Exhibit Number 145 was marked  
13 for identification.)

14 BY MR. ROSENBAUM:

15 Q. And, Mr. Edmiston, can you identify this as being  
16 the Dr. Stephenson 2007 report?

17 A. Certainly appears to be.

18 Q. And this is the document that you relied upon, in  
19 part, in putting together the table that appears on  
20 page 3; is that correct?

21 A. Yes.

22 Q. Okay. So let's just go through the different  
23 headings on that document -- on that table -- excuse me --  
24 in your report.

25 So you start with butter, and you are providing  
26 combined data for your -- for two plants -- is it Tulare?

27 A. Tulare.

28 Q. -- Tulare and Carlisle, correct?



1 A. Yes, sir.

2 Q. And for -- and then you have a row for processing  
3 labor and a row for utilities, correct?

4 A. Yes, which I believe is marked in Dr. Stephenson's  
5 survey as energy.

6 Q. Exactly.

7 So if you turn to page 8 of Dr. Stephenson's  
8 report, which is Hearing Exhibit 145, there is a column  
9 that says labor, correct?

10 A. Correct.

11 Q. And it says \$0.0522?

12 A. Correct.

13 Q. Same as 5.22 cents, correct?

14 A. Why is.

15 Q. That is the source of the information in the  
16 second column of your table on page 3, correct?

17 A. Yes, sir.

18 Q. And then similarly, there is an entry that he  
19 calls energy, which is \$0.0157, correct?

20 A. Yes, sir.

21 Q. And same as 1.57 cents, correct?

22 A. Correct.

23 Q. And that is the number that you used for -- that  
24 you termed utilities, correct?

25 A. Yes, sir.

26 Q. Okay. Similarly, on keeping -- going further down  
27 on your table, you have -- then have an entry for nonfat  
28 dry milk. And if we turn the page in the Stephenson



1 report, Hearing Exhibit 145, to page 9, we see that  
2 there's an entry for labor of \$0.0362, correct?

3 A. Correct.

4 Q. And that's the number that appears in your second  
5 column with respect to processing labor, correct?

6 A. Correct.

7 Q. And then similarly, there's an entry for energy of  
8 \$0.0409, which is 4.09 cents, and that's what you entered  
9 for utilities in -- under the nonfat dry milk heading in  
10 the second column in your table, correct?

11 A. Correct.

12 Q. Okay. Now, continuing further down, you then have  
13 a row that's called butter and nonfat dry milk solids  
14 basis, and underneath that you have all other, correct?

15 A. Correct.

16 Q. And there you have \$0.1009, correct?

17 A. Correct.

18 Q. So if we go back to Dr. Stephenson's report,  
19 Exhibit 145, there are a number of entries in addition to  
20 the labor and energy entries that we have already talked  
21 about; namely, there's an entry for packaging, for repair  
22 and depreciation, G&A, general administrative, ROI, return  
23 on investment.

24 Did you lump those together to come up with the  
25 all other?

26 A. Correct. And then weighted on a solids basis  
27 across butter and nonfat dry milk.

28 Q. Okay. And so you -- you added those up -- you





1 added up the numbers -- I'm looking at page 9 for nonfat  
2 dry milk plants --

3 A. Yes, sir.

4 Q. -- in Exhibit 145.

5 So you added up the numbers for packaging, repair  
6 and depreciation, G&A, and ROI from that page, correct?

7 A. Correct.

8 Q. And then did you do the same thing with respect to  
9 the information on the previous page that related to  
10 butter?

11 A. So in effect, I did the same thing that you just  
12 described --

13 Q. Okay.

14 A. -- but I did it a little differently.

15 Q. Okay.

16 A. I subtracted the ones that are delineated  
17 specifically from the total.

18 Q. Yes. Of course.

19 A. And -- on both, correct.

20 Q. Yes. And then what did you do -- so that would  
21 give you a number for butter --

22 A. Yes.

23 Q. -- from page 8 and a number from -- for nonfat dry  
24 milk on page 9, correct?

25 A. Yes.

26 Q. And then what did you do with that to come up with  
27 your 10.09? Did you add them up and divide by two or --

28 A. I believe they are weighted roughly two to one --



1 Q. Okay.

2 A. -- based upon nonfat solids versus butterfat  
3 solids.

4 Q. That's the -- you did that weighting, you are  
5 saying?

6 A. Land O'Lakes FP&A did that weighting.

7 Q. Okay.

8 A. Because I don't keep track of -- it's not part of  
9 my responsibility to keep track of our -- our costs, and  
10 as we were -- as we were putting this together, that  
11 analysis was done by our finance group.

12 Q. So the \$0.1009 that appears in the other -- all  
13 other row, that is a weighted by --

14 A. Solids.

15 Q. -- solids average of the Stephenson cost data for  
16 butter and for nonfat dry milk; is that correct?

17 A. Correct. And directionally, just doing math off  
18 the top of my head -- which is risky on the stand, but I'm  
19 going to try it anyway -- if you average the two  
20 Make Allowances, you are going to get about \$0.175. If I  
21 add up the specifically delineated line items here, you  
22 get roughly \$0.07 apiece. 17 minus roughly 7 is about 10.

23 So if there was a mistake made in the calculation  
24 to the third or fourth decimal point, I suppose that's  
25 possible. But directionally I believe the \$0.10 to be  
26 relatively reflective of all of the other categories in  
27 nonfat and butter in the 2007 Stephenson survey.

28 Q. Okay. So let's now -- and if you were actually



1 making butter and nonfat dry milk, you would, if you will,  
2 incur the \$0.1009 twice; is that fair to say, once in  
3 making the butter and once in making the nonfat dry milk?

4 A. Those are on a per pound basis for products that  
5 you get out of milk.

6 Q. Right. So on a -- on a -- if you will, is it fair  
7 to say that on a per pound basis, if you wanted to know  
8 the per pound cost of butter based upon the 2007  
9 Stephenson survey, you could add the processing labor  
10 number and the utilities number and the all other number?

11 A. Not here because the last portion, the all other,  
12 is both butter and nonfat.

13 Q. Okay. All right.

14 A. In the Stephenson survey, yes.

15 Q. Yes, okay. And here -- and here the all other is  
16 it fair to say that the all other times two would be the  
17 combined per pound all other costs for butter and nonfat  
18 dry milk?

19 A. I'd have to think about that, in the way you are  
20 characterizing it. Is there a subsequent question that  
21 you are looking to answer?

22 Q. Well, I'm just trying to understand your -- your  
23 approach. I mean the 10.02 -- as I understand it, you,  
24 for competitive purposes, did not want to reveal with  
25 precision what Land O'Lakes costs are --

26 A. Correct.

27 Q. -- that are in the all other category, correct?

28 A. Correct.



1 Q. So you came up with a number that is a -- if you  
2 will, a weighted number, so that the real numbers, so to  
3 speak, for butter may be somewhat higher and the real  
4 number for nonfat dry milk would be somewhat lower,  
5 correct? Or vice versa as --

6 A. Or vice versa. I mean, the point is -- the point  
7 of the table, honestly, is to show that our costs have  
8 increased since the 2007 survey.

9 Q. Okay.

10 A. The way in which we put the table together, I have  
11 think you have -- I think you have correctly -- I think  
12 we, collectively, have collectively established. Drawing  
13 further conclusions past that by -- by multiplying the all  
14 other specifically across both butter and nonfat by two, I  
15 haven't had time to think about how you would characterize  
16 such a calculation, if that makes sense.

17 Q. All right. Well, let's just -- then let's just  
18 stick with the numbers as they are right here and give me  
19 one second.

20 So am I correct that the only amalgamation of data  
21 you did in order to protect confidentiality or  
22 competitiveness is with respect to the all other number?

23 A. Also across butter and nonfat dry milk. So we  
24 amalgamated the all other using the different categories  
25 that aren't processing labor or utilities, and we also  
26 amalgamated across the commodities.

27 Q. Yes. So you protected individualized information  
28 in two ways. First of all, you amalgamated them together



1 as opposed to breaking them out into these separate  
2 subcategories of packaging, repair and depreciation, G&A,  
3 and ROI, correct?

4 A. That's right. I would also point out that, I  
5 believe -- I believe that the categories change slightly  
6 from 2007 to 2022 in what we were asked to provide for the  
7 Stephenson survey. And so making a comparison across the  
8 2007 and 2022 category by category wouldn't really have  
9 been possible using the same categories. That was part of  
10 the rationale as well.

11 Q. Okay. So you added the entries together rather  
12 than breaking them out separately, you added them together  
13 and put them in all other, plus you put both butter and  
14 nonfat dry milk together. Those were both things you did  
15 to -- to protect the certain level of confidentiality,  
16 correct?

17 A. Correct.

18 Q. But when it comes to the number you have for  
19 processing labor -- and take butter as an example where  
20 it's \$0.0522. Okay? Now, you have indicated in the last  
21 column, as I understand it, that Land of Lakes' actual  
22 2022 processing costs are 50% higher than \$0.0522; is that  
23 what that indicates?

24 A. That's correct. One other -- this is a nuance and  
25 a pet peeve of mine. It's Land O'Lakes, not Land of  
26 Lakes. I'm sorry, but it's -- when you work for a company  
27 for 15 years and you hear it over and over again, it  
28 grates a little. So I just want to, if I could. I'm



1 sorry.

2 Q. I stand firmly corrected. Thank you. I have been  
3 admonished.

4 So -- but is it -- if -- is -- if I -- if I want  
5 to calculate the actual per pound cost of making butter at  
6 these two plants, with respect to processing labor, if I  
7 take \$0.0522 and add to it 50% of 5.22, that will tell me  
8 the answer; is that right?

9 A. Yes.

10 Q. And so I'm not asking you to confirm this  
11 calculation, but I have calculated that to be \$0.0783.  
12 Does that sound reasonable?

13 A. Ballpark.

14 Q. Okay. And similarly, when it comes to utilities,  
15 where you have in -- for butter costs of \$0.0157, and you  
16 say that's your current actual 2002 Land O'Lakes cost, are  
17 33% higher, you would simply add the \$0.0157 plus 33% of  
18 1.57 to determine what that number is, correct?

19 A. Correct.

20 Q. And once again, if I calculated correctly, that  
21 would give you \$0.0209. I'm not asking you to confirm  
22 that number. But the methodology is correct, yes?

23 A. Ballpark, yes. It sounds directionally correct.

24 Q. Okay. All right. And you would do -- and  
25 similarly, when we get to nonfat dry milk, processing  
26 labor would be the \$0.0362 indicated, plus 38% of -- of --  
27 of 3.62, to get you the current Land O'Lakes processing  
28 labor cost, correct?



1 A. Correct. Yes.

2 Q. If I have to throw the word "labor" into the same  
3 sentence, I get really thrown off.

4 Okay. And similarly, to determine the utilities  
5 costs for nonfat dry milk, you would take the \$0.0409 and  
6 add to it 36% of 4.09, and that would tell you what  
7 Land O'Lakes' current utility costs are for nonfat dry  
8 milk, correct?

9 A. Correct.

10 Q. And getting to the last entry, if one wanted to  
11 know what on a per pound solids basis Land O'Lakes' all  
12 other costs were, a number that reflects both butter and  
13 nonfat dry milk on a solids basis, one would take the  
14 \$0.1009 and add to it 112% of 10.09 to know what that  
15 number is currently, correct?

16 A. Correct.

17 Q. And -- okay. Now -- okay.

18 And you did not do it here, but one could add up  
19 the five data entries in the Stephenson survey, correct?  
20 Just sum it -- I mean, literally just add \$0.0522 plus  
21 \$0.0157 plus \$0.0362 plus \$0.0409 plus \$0.1009, correct?

22 A. One could.

23 Q. Okay. And I'm not asking you to confirm this, but  
24 at least my math would take -- would produce a number of  
25 \$0.2459 just simple math. Okay?

26 A. Okay.

27 Q. And one could similarly apply the percentages that  
28 you have set forth in the fourth column -- excuse me -- in



1 the third column that reflects Land O'Lakes' actual costs  
2 adjusted with the various additions reflecting the  
3 percentages you have in that column, in the manner I have  
4 gone through, and then add up each of those numbers  
5 that -- correct?

6 A. Could you restate the question, please?

7 Q. Yes. I mean, for example, we talked about how if  
8 you -- to take the first number as an example, if you --  
9 that assuming my math is correct, the process --  
10 Land O'Lakes' processing labor costs as of 2022 are  
11 \$0.0783, correct? Because that's what you get if you take  
12 the \$0.0522 and add 50% of 5.22 to it, correct?

13 A. So -- so what you are saying is you could scale up  
14 all of the second column by the percentages in the third  
15 column and add them. You could do that.

16 Q. Yes. Okay. And that would be reflective of the  
17 increase on a percentage basis of the costs that -- that  
18 Land O'Lakes currently incurs as compared to what the  
19 Stephenson report reported back in 2007; is that fair?

20 A. You said current. It is as of 2022.

21 Q. With that correction, that would be correct?

22 A. I believe -- as I understand the question, yes.

23 Q. Okay. And, once again, I'm not asking you to  
24 confirm the number, but it would not surprise you, I --  
25 would -- would it surprise -- start the question again.

26 I'm not asking you to confirm the number, but  
27 would it surprise you if by my calculation that would  
28 indicate a 70.26% increase in costs between the Stephenson





1 survey and Land O'Lakes' 2022 costs?

2 A. Insomuch as it's in between 112 and 33, it doesn't  
3 surprise me.

4 Q. Okay. And -- okay. And this, of course, is a  
5 study that focuses on two of the four commodities that are  
6 used to set minimum milk prices, butter, and nonfat dry  
7 milk, correct?

8 A. Correct.

9 Q. Okay. And we started the questioning with my  
10 statement that the -- not asking you to accept it, but my  
11 statement that IDFA's proposed ultimate Make Allowances,  
12 that's to say once they have been entirely phased in,  
13 is -- our view, I'm not asking you to accept it, but our  
14 view of what current costs to manufacture are. You  
15 understand that?

16 A. IDFA's proposal is your understanding of what  
17 current costs are, yes.

18 Q. Yes. And what -- and that is what the ultimate  
19 phased-in number reflects in IDFA's proposal, correct?

20 A. Understood.

21 Q. Okay. And do you know whether that -- with  
22 respect to butter and nonfat dry milk, IDFA's proposed  
23 increase in Make Allowances is actually lower than what  
24 Land O'Lakes is reporting as its cost increase?

25 A. I have not done that math.

26 Q. If you could turn to page 6.

27 A. Of the Stephenson survey or of my testimony?

28 Q. Sorry. Of your testimony, sorry.



1           Now, you have a sentence there, which you read  
2 into the record. I'll just repeat it for orientation  
3 purposes: "Cooperative members experienced these  
4 impacts" -- you're referring to reference -- actually, let  
5 me start the question again.

6           "Cooperative members experience these impacts  
7 through discounted milk prices going into their own plants  
8 to account for Make Allowances that are set too low, thus  
9 reducing current month milk checks or pricing the milk  
10 closer to or below class prices knowing there will be  
11 negative returns at their plants to be covered at the end  
12 of the financial year."

13           Do you see that?

14           A. I do.

15           Q. Okay. So when -- obviously, Land O'Lakes uses its  
16 own farmer milk to run its processing plants?

17           A. Correct.

18           Q. And as a handler, Land O'Lakes is technically  
19 required to account to the pool as that being the price  
20 it's paying for milk, the minimum Class III price,  
21 correct?

22           A. When pooled, yes.

23           Q. When pooled, yes.

24           And -- but you're not actually -- Land O'Lakes,  
25 like all cooperatives, is not actually required to pay  
26 that full amount to its farmers when it actually pays its  
27 farmers, correct?

28           A. Not required, correct.



1 Q. And that's typically referred to as reblending,  
2 correct?

3 A. As I understand it, yes.

4 Q. And so if I understand your sentence correctly,  
5 but tell me if I'm wrong, if the regulated price of milk  
6 is at a level that doesn't allow you to operate your plant  
7 at a profit, but instead at a loss, Land O'Lakes will  
8 reduce its actual payments to its farmers to cover that  
9 loss, correct?

10 A. It may.

11 Q. It may.

12 So it -- in effect, it's paying a price, you know,  
13 closer to or below the class price -- I'm using your  
14 language -- to make up for that loss, correct?

15 A. It may.

16 Q. It may.

17 That is not a -- that is not a power that a  
18 proprietary handler has, correct?

19 A. Closer to price, yes; below class price, no, as I  
20 understand it, when pooled.

21 Q. Okay.

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

23 THE COURT: Further cross, other than AMS?

24 CROSS-EXAMINATION

25 BY MR. MILTNER:

26 Q. Good morning, Mr. Edmiston.

27 A. Good morning, Mr. Miltner.

28 Q. I'd like to start with the data on page 3 of your



1 testimony that Mr. Rosenbaum went through.

2 A. Yes, sir.

3 Q. I want to summarize what I think I got from the  
4 question and answer with Mr. Rosenbaum, because I'm not  
5 clear on it, to be honest.

6 If you take -- I'm looking at the very first  
7 row -- well, the second row, processing labor under  
8 butter.

9 A. Yes, sir.

10 Q. Okay. If I multiplied .0522 times 50%, would that  
11 give me Land O'Lakes' actual processing labor costs --  
12 processing cost increase for butter?

13 A. For 2022, as we reported in the Stephenson survey,  
14 yes.

15 Q. Okay. So you are starting with the number from  
16 Stephenson's survey?

17 A. Circa 2007.

18 Q. Right.

19 We're ending with LOL's actual costs?

20 A. Correct.

21 Q. Okay. Thank you.

22 A. Because the table is meant to show our actual  
23 costs have increased since the 2007 Stephenson survey.

24 Q. Great.

25 But we don't know -- well, what was -- what was  
26 LOL's processing labor cost in 2007?

27 A. That is not in the table.

28 Q. So your processing costs have increased 50% over



1 the 2007 reported number, but they may have actually  
2 increased something more or less than 50%?

3 A. I don't have that data with me.

4 Q. In the final row of that data under all other, the  
5 increase is, you know, substantially larger than for --  
6 for the other categories listed.

7 Do you have a breakdown of the increases in each  
8 of the categories that are in all other?

9 A. Not that I would like to provide on the record,  
10 for proprietary reasons.

11 Q. Is repairs -- are repairs and depreciation the  
12 largest component of the increases?

13 A. I don't have that data with me. I don't have that  
14 data with me to answer that question accurately.

15 Q. If you had the data, would you share it?

16 A. As I mentioned -- well, no. As I mentioned, no.

17 Q. Okay. Did you compare or prepare similar data for  
18 your cheese operations?

19 A. We, can you define "similar data" for me?

20 Q. This -- the table --

21 A. This table specifically?

22 Q. Yes.

23 A. No, sir.

24 Q. Does Land O'Lakes process whey?

25 A. Yes, sir.

26 Q. Did you prepare a similar table for your whey  
27 operations?

28 A. No, sir.



1 Q. I'd like to ask about the Make Allowance survey  
2 that National Milk conducted of its members.

3 Do you know how many -- how many cooperatives  
4 participated in that survey?

5 A. I do not. The results and the participation were  
6 held from individual members.

7 Q. So they -- the results were withheld?

8 A. The -- I'm sorry, not the -- let me correct that  
9 statement. The detailed data within that survey and  
10 results such as, you know, individual co-op's responses  
11 were withheld from individual -- from the membership.

12 Q. Did they -- did they inform you about just the  
13 identity of the cooperatives that participated?

14 A. Not that I remember.

15 Q. So you don't know, for instance, if CDI's data was  
16 included in that survey?

17 A. No, I don't believe so. It's been six, eight --  
18 well, it's been more than that. It's been many months  
19 ago, so I don't -- I don't remember seeing which  
20 individual co-ops responded.

21 Q. If we -- I'm just going to use butterfat to -- as  
22 an example. The butterfat Make Allowance that National  
23 Milk proposes is \$0.21 per pound.

24 A. Correct.

25 Q. I understand -- correct me when I'm incorrect -- I  
26 understand that after these survey results were produced,  
27 or the results were provided to the members, that the task  
28 force or the participants then used that to come up with a



1 proposed Make Allowance for butterfat of \$0.21; is that  
2 correct?

3 A. Correct. The survey provided the data basis on  
4 which the proposal resulted.

5 Q. Do you know what the actual butterfat survey  
6 number was? In other words, did the task force say, it's  
7 \$0.25, but we -- we want to scale it down, as you  
8 described in your statement, and we're going to -- we now  
9 select \$0.21. Do you know what that number was?

10 A. I don't off the top of my head.

11 Q. Was it provided to you by National Milk?

12 A. I believe so, but I do not remember.

13 Q. Do you know if -- do you know if any of National  
14 Milk's witnesses intend to share that information?

15 A. I -- I don't know.

16 Q. And I used butterfat as an example, but that  
17 generally would be the same for nonfat solids, protein,  
18 and other solids?

19 A. Correct.

20 Q. In terms of how the number was arrived at within  
21 the committee and -- well, in terms of how -- how the  
22 committee arrived at that number?

23 A. Correct. And I would say that, you know, as I  
24 mentioned before, it was a process of trying to balance  
25 impact to the producers and the data that we received. So  
26 my -- my recollection, I don't remember the exact number,  
27 but as I think through it, I don't believe the proposal  
28 was the exact number. I don't remember --



1 Q. Okay.

2 A. -- I'll be honest. I don't remember.

3 Q. Thank you. I appreciate that. In the testimony  
4 you provided a few days ago, you stated that Land O'Lakes'  
5 members own several cheese, butter powder, and value-added  
6 plants in the Upper Midwest, East, and California. You  
7 reference three plants specifically today.

8 Are there any other plants other than the three  
9 you mentioned which produce any of the surveyed  
10 commodities?

11 A. We -- we have four milk receiving plants. I  
12 referenced specifically in here Tulare and Carlisle, which  
13 are our two butter powder plants. We have Kiel that I  
14 reference in here specifically. Melrose is the only other  
15 milk receiving plant. It generally makes part Italian and  
16 specialty cheddar for internal use.

17 So to answer the question, I don't -- I'm not  
18 leaving anything out I think is how I interpret the  
19 question.

20 Q. Yeah. Melrose doesn't produce commodity cheddar,  
21 does it?

22 A. It -- not on a regular basis. Occasionally, it  
23 can, but it's for internal use, generally.

24 Q. Did Land O'Lakes supply any information about  
25 Melrose's costs to Dr. Stephenson or any other survey on  
26 Make Allowances?

27 A. Certainly not on whey. We don't make whey at  
28 Melrose. On barrel cheddar, I don't believe so. I'd have





1 to go back and check. In fact, I -- actually let me -- as  
2 I -- as I think through that, I'm pretty positive we did  
3 not. During the span of 2022, which was the time period  
4 the Stephenson survey would have covered, I don't believe  
5 we had any external sales of commodity cheddar for  
6 Melrose. So I believe the answer to that question is no.

7 Q. With respect to your plants at Carlisle and  
8 Tulare, I want to go through some products, and if you  
9 just let me know if they produce these products, if you  
10 could.

11 A. Sure.

12 Q. Salted butter?

13 A. Yes, sir.

14 Q. Unsalted butter?

15 A. Yes, sir.

16 Q. With respect to salted and unsalted, do they  
17 produce both in bulk and in quarters?

18 A. On a regular basis, no.

19 Q. What would they produce most on a regular basis?

20 A. Most on a regular basis is salted and unsalted  
21 quarters for retail. And salted bulk.

22 Q. There was some testimony, it may have even been  
23 from you, about how salted bulk butter is what a butter  
24 manufacturer will use to help clear the market.

25 Is that the case with Land O'Lakes?

26 A. Most of our butter is used internally.

27 Q. Okay. Do -- do either of those plants produce any  
28 other butter products, anhydrous or anything like that?



1 A. Tulare and Carlisle do not produce anhydrous.

2 Q. Do --do any Land O'Lakes plants produce anhydrous?

3 A. Hillsboro, Wisconsin, produces AMF.

4 Q. I'm sorry, what was the city?

5 A. Hillsboro, Wisconsin.

6 Q. Okay. On the powder side, Carlisle and Tulare, do  
7 they produce powders as well?

8 A. Yes, sir.

9 Q. Do they produce nonfat dry milk?

10 A. Yes.

11 Q. Skim milk powder?

12 A. Yes.

13 Q. Whole milk powder?

14 A. Yes.

15 Q. Buttermilk powder?

16 A. Yes.

17 Q. Any other powders that are of any significance  
18 there?

19 A. No.

20 Q. Do -- do your drying plants dry any whey?

21 A. Kiel.

22 Q. Of that -- that whey, is it -- is it dry whey? Do  
23 they produce --

24 A. Yes.

25 Q. -- dry whey?

26 A. Yes.

27 Q. Do they produce any WPCs?

28 A. Kiel does not.



1 Q. Does Hillsboro produce any WPCs?

2 A. No. It doesn't have a dryer.

3 Q. Okay. Does Land O'Lakes produce WPC at any other  
4 facility?

5 A. Melrose produces liquid WPCs.

6 Q. Turning to Kiel, does it produce 40-pound blocks?

7 A. Yes.

8 Q. 640-pound blocks?

9 A. Yes.

10 Q. 500-pound barrels?

11 A. No.

12 Q. Any other cheeses in significant volumes?

13 A. No.

14 Q. Do Carlisle or Tulare report sales to the NDPSR?

15 A. Yes.

16 Q. Do they report weekly?

17 A. Yes.

18 Q. And so am I right that they would only be  
19 reporting the bulk salted butter they produce?

20 A. Powders.

21 Q. Powders.

22 Do they -- do they report butter?

23 A. When we have sales that fit the criteria for  
24 NDPSR, absolutely.

25 Q. Is that a weekly report? Excuse me, that was a  
26 bad question. The report, of course, is weekly.

27 Does Land O'Lakes report butter on a weekly basis?

28 A. Comes and goes.



1 Q. Do you report nonfat dry milk on a weekly basis?

2 A. Yes.

3 Q. Do you report dry whey on a weekly basis?

4 A. Yes.

5 Q. Of the powders that are produced at Tulare and  
6 Carlisle, are you willing to offer a rough percentage as  
7 to how much of that is nonfat dry milk?

8 A. I don't have that data off the top of my head. I  
9 could give a -- I don't have that data off the top of my  
10 head. It would be guesswork, and I'm not willing -- I'm  
11 not super interested in doing that on the stand.

12 Q. Are you at least inclined to guess as to whether  
13 it is more or less than half?

14 A. I don't want to issue that guess.

15 Q. Okay. Do the plants at Carlisle and Tulare  
16 regularly run at capacity?

17 A. Define "regularly."

18 Q. Would you consider them a demand plant or a  
19 balancing plant?

20 A. Define "balancing plant." I'm not trying to be a  
21 jerk. I'm sorry. They -- a portion of the plant is  
22 clearly demand driven. I -- you know, I'll put it in this  
23 context. Our Tulare and Carlisle plants have the same  
24 dual mandate that the co-op has as a whole, to run a  
25 manufacturing operation as well as serve our producers.  
26 There are times when that means we have to respond to  
27 demand, more so on the butter side maybe than on the  
28 powder side.



1 But we absolutely have powder customers with, you  
2 know, exacting specifications and expectations for what  
3 we're going to supply, and we have long-term relationships  
4 that, you know, we don't necessarily want to damage. So  
5 there are times when we do both.

6 That's why it was a hard an- -- that's why it was  
7 a hard question for me to answer.

8 Q. Sure.

9 A. I wasn't trying to be difficult.

10 Q. Of Land O'Lakes' total manufacturing costs at  
11 Carlisle and Tulare, how much of that is attributable to  
12 unused capacity that's then allocated across the capacity  
13 that's actually utilized?

14 A. I don't have any calculation to delineate that out  
15 with me.

16 Q. I'd like to ask a question about a statement on  
17 page 5 of --

18 A. Okay.

19 Q. -- your current testimony. The paragraph --  
20 second full paragraph beginning "cooperatives making  
21 commodity style products"?

22 A. Yep.

23 Q. Your statement that they cannot recover a larger  
24 margin on their commodity products, that's only true if  
25 you're looking at the commodity products that are actually  
26 surveyed by NDPSR, correct?

27 A. That is true of the commodity products surveyed by  
28 NDPSR.



1 Q. Wouldn't be necessarily true for whole milk  
2 powder, or skim milk powder, or the salted and unsalted  
3 quarters that make up the bulk of what Land O'Lakes  
4 produces, right?

5 A. What I believe you are saying is that the pricing  
6 of those products is not cycled back into NDPSR. Am I  
7 interpreting the question correct?

8 Q. Yes.

9 A. Then, yes.

10 Q. And when Land O'Lakes measures the profitability  
11 of its operations, does it do so on a whole unit, like an  
12 entire plant basis, or do you -- do you measure each --  
13 each output separately?

14 A. Both.

15 Q. Has Land O'Lakes had to reblend to its producers  
16 in the past year?

17 A. I don't have the data to answer that question.  
18 And even if I did, I don't think I would provide it due to  
19 proprietary reasons for payments to our -- you know, the  
20 payment price to our producers.

21 Q. Okay. You -- I think Mr. Rosenbaum used the term  
22 "reblending," but you agreed that was a concept referenced  
23 in your statement, right?

24 A. That's how I understand the term to be used,  
25 paying below announced class prices.

26 Q. Okay. Then just to make sure I'm clear then.  
27 You -- for proprietary reasons you won't answer if  
28 Land O'Lakes has, in fact, paid below class prices?



1 A. I'm not willing to provide indications on our pay  
2 price to our producers for proprietary reasons, broadly.

3 Q. Okay. Thanks.

4 MR. MILTNER: That's all I have.

5 THE COURT: Okay. We have been going for about an  
6 hour and a half. Let's take a ten-minute break. Be back  
7 at 20 of. 9:40.

8 (Whereupon, a break was taken.)

9 THE COURT: Okay. Let's go on the record.

10 We have further cross-examination for this  
11 witness?

12 Mr. English.

13 CROSS-EXAMINATION

14 BY MR. ENGLISH:

15 Q. Good morning, sir. This is Chip English for the  
16 Milk Innovation Group, and I appreciate your appearance  
17 for Land O'Lakes.

18 A. Thank you, sir.

19 Q. So I only found a couple questions, I hope.

20 And the first is, Mr. Miltner asked you some  
21 questions about the National Milk survey, correct?

22 A. Correct.

23 Q. On page 3, you reference Stephen Cain as of the  
24 NMPF economist.

25 A. Yes, sir.

26 Q. And did an analysis of cost indices.

27 The way I read that sentence is that suggests that  
28 is different from the survey that you discussed with



1 Mr. Miltner?

2 A. Correct.

3 Q. Okay. And do you know the results of that  
4 analysis of cost indices?

5 A. I know the results. I don't have them with me as  
6 data. But directionally, they were -- you know,  
7 directionally relatively similar to the results of  
8 Dr. Schiek's work, although not as -- what term do you  
9 want to use -- not as -- not as high.

10 Q. Do you know whether his indices were adjusting  
11 from 2006 levels or were they using the CDFA data that  
12 Dr. Schiek used?

13 A. I believe he did both, if I remember correctly.

14 Q. Further down, just on that page, you say,  
15 "However, the ideal data that would be provided by a  
16 mandatory and audited survey does not exist today."

17 And we all agree that mandatory data doesn't  
18 exist.

19 Without that data, National Milk is, nonetheless,  
20 proposing that there be an increase in Make Allowances,  
21 correct?

22 A. Correct.

23 Q. So another -- another item that -- that National  
24 Milk and IDFA agree on is that even in the absence  
25 currently of mandatory audited survey data --

26 For those online, we had a bit of a power blip,  
27 and I don't believe I caused it.

28 But -- so another item that National Milk and IDFA





1 agree on is that notwithstanding the fact we do not  
2 presently have mandatory audited surveys, there should be  
3 adjustments, correct?

4 A. Correct.

5 Q. So I want to turn just for a moment, I hope, to  
6 your testimony on page 7 about the impacts on producers.  
7 And this is the last full paragraph at the bottom of that  
8 page.

9 So first, you have a sentence that says, "Assuming  
10 implementation of proposed increase Make Allowances, dairy  
11 market supply and demand factors for milk and dairy  
12 products would likely mitigate some of the initial price  
13 impact on milk producers."

14 But then you say, further down, "Make Allowance  
15 increases larger than those proposed by National Milk will  
16 have a larger negative impact on milk producers' margins  
17 and increase the likelihood of jeopardizing the milk  
18 supply going forward."

19 Correct?

20 A. Correct.

21 Q. But you agree that over time markets will adjust  
22 to supply and demand signals, correct?

23 A. Correct.

24 Q. And your testimony, thus, recognizes that with  
25 those adjustments over time, declines in producer  
26 profitability will be adjusted, correct? It will account  
27 for that?

28 A. To some extent. I think that there is -- I think



1 that there will be testimony later to -- that -- where  
2 analysis has actually been done to help define that.

3 Q. Okay. But if the IDFA proposal were to be adopted  
4 and the Make Allowances implemented -- staged over time,  
5 industry would have advanced knowledge of what those  
6 prices are going to be, correct?

7 A. Yeah.

8 Q. And with that advanced knowledge, wouldn't you  
9 expect the market to adjust supply and demand in stages  
10 based upon the knowledge in advance of what those  
11 Make Allowances will be down the road?

12 A. That makes sense, however, the statements that you  
13 read there, we're thinking more simply, along the lines of  
14 if you change Make Allowances by X, it is going to reduce  
15 producer prices by Y, and that's a certain amount of  
16 change that the market has to react to. If you change  
17 Make Allowances by X-plus, that reduces producer pay  
18 prices by Y-plus, and that's a larger thing for the market  
19 to have to react to.

20 Q. But what I'm saying is if it is done over time,  
21 it's X now, it's Y a year later, it's Z a year later, it's  
22 not additive immediately, correct?

23 A. Understood.

24 Q. And you agree?

25 A. Yes.

26 MR. ENGLISH: I have no further questions.

27 THE COURT: Further cross for this witness, other  
28 than AMS?





1 prices is painful. Doing it more frequently is more  
2 painful. And that's kind of been the experience, I would  
3 say. It's been -- you know, the last -- call it the last  
4 two years. You know, I think it's been a good process to  
5 go through for us because -- in some ways because I think  
6 the communication required to help our producers  
7 understand the conditions we're facing as we try to run  
8 our plants but also maximize our pay price to -- and  
9 represent our producers the best we can, that  
10 communication process has been really helpful. But it's  
11 been tough.

12 Q. And on talking about deducts to producer checks to  
13 help cover that loss -- of course, I don't want any  
14 proprietary -- I'm not asking for any proprietary  
15 information. Can you talk a little bit about the length,  
16 the duration, the degree to which you have had to do that  
17 over time?

18 A. Well, it's ongoing. You know, costs are still  
19 changing. We're still running plants. And, you know, we  
20 still have financial obligations to meet as a business as  
21 well. And so as we try to balance those, I -- you know,  
22 the duration that you mentioned, you know, is not  
23 necessarily how we have looked at it. We -- you know, we  
24 have -- we have producers to pay, and we have a business  
25 to run, and we have to continue going forward to make sure  
26 that -- that we accomplish both of those things.

27 And so as we have communicated with our producers,  
28 you know, our obligation has -- has been to be as



1 transparent as we can with them since they do own -- you  
2 know, they are the owners of our plants and our co-op, be  
3 as transparent as we can. But also try to create the  
4 understanding that conditions change and will continue to  
5 change, and we can't see the future, right, to understand  
6 exactly what our costs are going to do next and -- and  
7 what other adjustments to meet those obligations that we  
8 have might be required.

9 As you might expect, that uncertainty in and of  
10 itself is very difficult for producers, right, that are  
11 trying to run their own business and yet can't necessarily  
12 forecast what change might come next in their pay price as  
13 Land O'Lakes tries to balance, you know, that -- that dual  
14 mandate that I keep talking about between running our  
15 plants, running a business, and, you know, representing  
16 and doing the best for our farmers.

17 Q. And so would you -- can you talk a little bit  
18 about how that might -- I mean, we're talking about how it  
19 impacts their milk checks. But co-op members typically  
20 get a 13th check at the end of the year. So has this  
21 impacted that at all as well?

22 A. Absolutely. I don't want to give details on that.

23 Q. Sure.

24 A. But the answer to your question is an  
25 unequivocal yes.

26 Q. You talk about how Land O'Lakes and its plants,  
27 primarily I think Tulare and Carlisle, balance your member  
28 milk.



1 Do you also act as like the market balancer for  
2 any nonmember milk or other co-op milk and provide that  
3 service, or do you just have -- or are you just balancing  
4 your own member milk?

5 A. At times, we do. Day by day, week by week, the  
6 fact is not every plant's going to run perfectly. That's  
7 true of our plant. It is true of our customers' plants  
8 for the milk that we sell. It is true of other co-op  
9 plants. And so we do provide that, some of that service  
10 to our milk customers, as well as to other cooperatives  
11 over time, while balancing or producer milk as well, which  
12 changes every day and every week, too.

13 Q. Sure. Okay.

14 And your statement, of course, talks a lot about  
15 the balance approach that you and other National Milk  
16 members are trying to take when it comes to increasing  
17 Make Allowances.

18 But I -- I kind of -- I mean, if you are not  
19 proposing to increase makes to their full -- whatever the  
20 full level is -- and that number's up for discussion  
21 here -- but if we only increase the Make Allowances, you  
22 know, halfway, let's say, or whatever that number is, I  
23 mean, what's the consequence of that? How will  
24 Land O'Lakes deal with the fact that still the  
25 Make Allowances will not be reflective of your actual  
26 costs?

27 A. I would say it will be more of the same way in  
28 which we have dealt with it thus far. But, you know, I'll



1 refer back to that conversation, the specific conversation  
2 with a specific California producer that I had at a -- I  
3 believe it was last fall's -- fall's meeting, you know, in  
4 front of a good collection of our California producers.  
5 I, you know, was specifically told, don't go too far with  
6 this. Understand that we need to do it, but don't go too  
7 far with it.

8 Q. Uh-huh.

9 A. So I think that's what we're trying to do, trying  
10 to balance out impacts on producers as well as, you know,  
11 some of the effects of having Make Allowances, you know,  
12 be inadequate over time and that that's had on our  
13 manufacturing plants.

14 Q. So would you see any increase in makes -- would  
15 I -- I would assume would help positively be reflected on  
16 the balance sheet of the plant since it would be covering  
17 more of your manufacturing costs.

18 So would you see -- I would -- I would like you to  
19 talk -- then the second side of that is the impact to the  
20 producer milk check. Will that also be reflected on that  
21 side as well?

22 A. Yeah. I mean, relative to --

23 Q. Where they are now?

24 A. -- where they are now, yes.

25 Q. So less of a deduct?

26 A. Because of the change in the announced pricing.

27 Q. Right. Correct.

28 A. Yes. I want to make sure I was understanding the



1 question you were asking and getting at. Yes. Yes.

2 Q. What I'm trying to get at is it's kind of like a  
3 rebalancing --

4 A. Yes.

5 Q. -- on both sides of the equation?

6 A. Correct.

7 Q. Yeah. Okay.

8 You talked about what happens when Make Allowances  
9 are undervalued and the disorderly marketing conditions,  
10 and one of those points is the lack of investment in  
11 manufacturing plants. But then you did talk previously  
12 about how you have invested in your Kiel plant since the  
13 Make Allowance.

14 So I just wondering if -- I wanted to explore that  
15 a little bit, since you have invested in a plant, like how  
16 was that decision made? Is it -- what did that  
17 generally -- you know, what kind of investment did you  
18 make in that plant?

19 A. Yeah. So when you are running a co-op -- I keep  
20 going back to the time dual mandate. I'm sorry if I sound  
21 like a broken record, but it's the life we live, right?  
22 So we need to be able to keep processing producer milk.  
23 You know, that Kiel plant processes, you know, a little  
24 over -- today, processes a little over 3 million pounds of  
25 milk a day, and it needs to keep doing that, you know, as  
26 a way to serve our members, provide a market for their  
27 milk, and add value to their milk in the products that we  
28 make.





1           That plant had gotten to the point where it needed  
2 investment. You know, the vats needed to be changed.  
3 They needed to be replaced. The vats that we had had, had  
4 been in place for decades, and so we had to make that  
5 investment. And I think the way we would -- you know, the  
6 way we viewed it was a little bit of a yes or yes, sort  
7 of, alternative -- set of alternatives, right? So  
8 that's -- I think that's -- maybe that gives you a little  
9 bit of insight into how we went about that.

10           But -- but given Make Allowances, yeah, it was  
11 a -- it was a tough decision to figure out the right way  
12 to do it.

13           Q. And there's been discussion in the record earlier  
14 in this hearing about how there are new plants coming  
15 online, specifically, it seems like to do 40-pound blocks.  
16 And I'm just curious your thoughts on that. You know, we  
17 hear on one side --

18           A. Uh-huh.

19           Q. -- the inadequate makes means you can't invest.  
20 On the flip side there's new plants being built, so  
21 somebody's investing.

22           I mean, how are we supposed to square those two  
23 what seem like contradictory things?

24           A. Yeah. And I think our example of Kiel is a good  
25 one to use, in that, you know, I think it provides  
26 rationale that isn't necessarily just profitability of the  
27 plant that drives decisions. I think that there are --  
28 you know, I can't necessarily climb into the heads of the



1 people that are making those investments and tell you  
2 exactly what's in there. However, I think there are  
3 justifications for processing more milk that can be a  
4 significant contributing factor to some of those  
5 decisions, you know, as opposed to solely plant  
6 profitability.

7 Q. So put another way, maybe, the decision to not  
8 invest for a co-op, let's say, might be worse than  
9 investing, in that at least you have somewhere to put your  
10 milk?

11 A. Correct.

12 Q. On the bottom of page 4 you talk about how you try  
13 to maximize your plant throughput, and that includes  
14 producing commodity-style product, even though they have a  
15 smaller margin.

16 So we have a question as -- are you -- is it true  
17 then that maybe your product mix kind of drives that  
18 effort? You kind of decide how you are going to -- I'm  
19 trying to word the question in my head -- you have many  
20 options in a plant for what you are going to make, and so  
21 that decision on product mix kind of drives how much milk  
22 you put through that plant and where you can make money?

23 A. So I think this is actually a very similar  
24 question to what Mr. Miltner asked around, you know, are  
25 we demand driven or supply driven.

26 And the answer is yes. It's both. Right? There  
27 are times when we're absolutely demand driven and we have  
28 to live up to what our customers expect of the products



1 coming out the back end of our milk receiving plants. And  
2 our producers also expect us to provide, you know, a home  
3 for their milk and value-added to it as we transform it  
4 from milk into products as well.

5 So we walk that balance each and every day. I'll  
6 give you an example. Yesterday at 4 o'clock I was here  
7 instead of being at a meeting where we decide for the next  
8 month or so what do we want to make at Tulare. And into  
9 those conversations, those conversations include our  
10 planning group, our operations group, our finance folks,  
11 milk -- you know, I represent the milk side of things --  
12 and -- and then sales, as well, a key part of it.

13 On a monthly basis, we -- and even, you know, at  
14 times, even on a daily and weekly basis, we run that  
15 balance, figure out -- understand what our -- from sales  
16 what our customers expect us for, you know, butter and  
17 milk powder, understand what milk we have coming at us,  
18 and figure out how those two things fit together. It's  
19 done very, very regularly.

20 Q. Okay. And on the topic of your balancing efforts,  
21 can you speak to the plant's ability -- or how often then  
22 it runs at full capacity? I'm guessing, because you're a  
23 balancing plant, there are many times when it's not.

24 A. So the term balancing plant, to me, feels like  
25 it's a light switch, either it is or it isn't. And I  
26 would argue there are a lot of varying shades of gray to  
27 be balancing or not balancing. I think that's kind of  
28 what I'm trying to get at from, you know, answering



1 Mr. Miltner's questions to also answering the, I think,  
2 similar questions you are asking now.

3 And, you know, every spring our plants are full.  
4 And that part's easy, right? I think -- easy to predict  
5 maybe is the best way to put it. What's harder to predict  
6 is, you know, in plants -- plants generally try to make  
7 planned downtime in -- you know, in the summer months,  
8 into the early fall months when milk seasonally is lower.  
9 If a partner plant is down, if our plant's not running  
10 well, if milk comes in stronger than expected, there are  
11 reasons why we might -- we could still be full in August  
12 despite the fact that it's the seasonal low in milk  
13 production. So I guess, you know, my -- my answer -- my  
14 direct answer to your question is it depends.

15 Q. Are you sure you're not an economist?

16 A. I'm absolutely an economist.

17 Q. That's not your title, but I'm glad to hear that.

18 Could you expand a little bit on the impact to  
19 your cooperative producer members when you talk about the  
20 unfair burden that they have in trying to keep the plants  
21 running and balance the market, that you talk about other  
22 nonmembers do not have?

23 A. Yeah. So my view of that is, you know, partially  
24 as I state, you know, the ownership of the assets and the  
25 resulting returns, I would say that's the -- that's the  
26 clearest justification I would -- or rationale I would  
27 provide versus, you know, producers that -- that don't  
28 have that ownership in assets that are struggling to



1 maintain profitability.

2 Q. Do you think that that has had an impact on  
3 your -- some of your producers' ability to even stay in  
4 business?

5 A. Yes. Inasmuch as we've had to make those  
6 continual adjustments, the impact that that has on milk  
7 price and the fact that, you know, we have seen producers  
8 exit the industry -- exit the -- exit the -- we have seen  
9 producers members exit the industry.

10 Q. On page 6 you have a chart there with Dairy Market  
11 News spot milk premiums and discounts. And in the  
12 sentence above that chart you talk about how this chart  
13 shows the effect of these discounts and the lack of  
14 investment on -- plant investment to process and balance  
15 milk supplies. And then you say, "As Make Allowances have  
16 fallen further behind actual commodities make costs, spot  
17 milk premiums have trended lower."

18 I was just wondering if you could expand on that  
19 and talk about how we should see that in this chart.

20 A. Yeah. So, you know, if you look -- it's faint,  
21 but there's a dotted trend line there. Right? That  
22 points downward. And it is meant to get at the idea, you  
23 mentioned the division of value between plants and  
24 producers. You know, I say elsewhere in my testimony that  
25 the effect of Make Allowances that are too low is  
26 essentially to overvalue the milk. I view these spot  
27 premiums as reflective of the market's attempt to do some  
28 of that balancing to offset what is currently milk that's



1 overvalued as a result of Make Allowances that are too  
2 low.

3 Q. So the market doesn't have the ability to offer  
4 premiums because that money has to go towards the  
5 manufacturing cost side of things.

6 A. Less and less over time, and it's resulted in less  
7 investment in manufacturing assets.

8 Q. Okay. I want to talk a little bit about your  
9 point 3 on page 7, about increasing Make Allowances too  
10 high and too fast is basically what you are getting at.

11 A. Uh-huh.

12 Q. And you talk about how that would be very  
13 disruptive to dairy producers. I wonder if you could  
14 elaborate on that.

15 A. Yeah. I mean, you know, as we saw -- I provide a  
16 little bit of color commentary in here around producer  
17 profitability. I think you will see a lot more here from  
18 other -- other witnesses over the span of the next couple  
19 of days. But, you know, if you are already seeing some  
20 producers that are struggling to make it and you lower  
21 milk price, right, the natural consequence is, you know,  
22 you will -- you will see further strain in terms of  
23 producer profitability.

24 Q. And if I can take that one step further. Are you  
25 saying you will see an increase in producers going out of  
26 business?

27 A. I think if you lower the milk price, that's a  
28 natural consequence.



1 Q. Below you talk about how after "implementation of  
2 the proposed Make Allowance increase, the dairy market and  
3 supply demand factors for milk and dairy products would  
4 likely mitigate some of the initial price impact on milk  
5 producers."

6 Can you talk a little bit about that, how when  
7 that happened, how would we see that?

8 A. Yeah. I mean, I'll just go back two questions to  
9 when we covered a little bit of the spot milk premiums.  
10 You know, I think the market finds its own way -- find its  
11 way to at least attempt to -- to balance supply and  
12 demand. And so a change here, you know, won't -- a change  
13 in Make Allowance won't necessarily change that effort on  
14 the part of markets. I think there will be more -- you  
15 know, as I mentioned before, I think there will be another  
16 witness here soon that's done a lot of analysis around the  
17 potential market adjustments over time that will provide  
18 better detail on that than I will, numerically.

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

21 THE COURT: Anyone else?

22 Mr. Cryan.

23 CROSS-EXAMINATION

24 BY DR. CRYAN:

25 Q. Roger Cryan for American Farm Bureau Federation.  
26 I apologize, I was really going to let this go,  
27 but Ms. Taylor asked some questions, and especially about  
28 cheese plant construction.



1           You have talked about some of the other reasons  
2 co-ops had for continuing to build cheese plants under the  
3 current Make Allowance regime.

4           But it's not only co-ops building cheese plants at  
5 this time, is it?

6           A.    And not only co-ops put producer milk into plants.

7           Q.    Beg your pardon?

8           A.    Not only co-ops put producer milk into plants.  So  
9 just --

10          Q.    Co-ops aren't the only ones that are building  
11 cheese plants, right?

12          A.    Correct.  But -- but the plants that are being  
13 built also take producer milk.

14          Q.    Of course.

15          A.    So the same driver of -- you know, that co-ops  
16 might face to build a plant, process milk, process more  
17 milk, could be experienced by non-co-ops as well, because  
18 there are also producers that put milk into those plants.

19          Q.    But a non-co-op plant doesn't have any obligation  
20 to the producer as the co-op does?

21          A.    Not the same structure.

22          Q.    Right.  And I mean -- so there's some return to  
23 the non-co-op manufacturers that are continuing to build  
24 plants; would you agree?

25          A.    But that -- yes, but that return may be at the  
26 plant level.  It could be at the producer level.

27          Q.    Okay.  And -- and I think you have said that there  
28 continues to be -- I think it's been repeated -- there





1 continues to be uncertainty about industry costs in the  
2 absence of a mandatory audited survey?

3 A. Correct.

4 Q. Okay.

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

6 THE COURT: Any other cross or re-cross?

7 Seeing none, redirect.

8 MS. HANCOCK: Thank you, your Honor.

9 REDIRECT EXAMINATION

10 BY MS. HANCOCK:

11 Q. Thank you for your time so far today,  
12 Mr. Edmiston. I just have two brief items to follow up  
13 on.

14 You have received some questions about the  
15 increasing costs that have been estimated by you and I  
16 guess amalgamated for your plant -- all of your plants,  
17 for at least your butter and nonfat dairy milk.

18 Do you remember that?

19 A. Yes.

20 Q. Is it fair to say that you have some plants that  
21 are newer than others?

22 A. Yes. And I would say some portions of some plants  
23 that are newer than other portions of the same plant.

24 Q. And as you update your processing plants, is it  
25 fair to say when either you are updating those plants or  
26 you're building new plants, you are really looking at  
27 building in efficiencies in the cost of producing whatever  
28 final product it is?



1 A. Absolutely.

2 Q. And so the goal is the more efficient you can make  
3 your processing, the more profitable you can actually be  
4 as a business?

5 A. Absolutely.

6 Q. And is it fair to say that as time has gone on,  
7 you have been able to improve some of those processing  
8 efficiencies such that you can make a product for less  
9 than -- than what the otherwise growth trajectory has been  
10 for input costs?

11 A. Can you restate that, please?

12 Q. Yeah. Have you been able to build in efficiencies  
13 as you have been able to either update plants or build  
14 your new plants?

15 A. Yes. We try -- you know, any investment we -- any  
16 investment we make in our plants, we're trying to do that  
17 for sure.

18 Q. And if you can beat the Make Allowance in your  
19 actual cost, it just assists you as a processor because it  
20 adds to your margins; is that right?

21 A. Absolutely.

22 Q. When you have a Make Allowance that's been  
23 established, it becomes kind of a watermark line for you  
24 as a processor to try and beat that market?

25 A. Absolutely.

26 Q. And you had also had a couple of questions about  
27 as a cooperative you have an ability to reblend, whether  
28 you do or not; is that fair?



1 A. Correct.

2 Q. I'm just wondering if you could talk about, as a  
3 cooperative, you have a dedicated membership that you are  
4 supporting of dairy producers; is that right?

5 A. Yes. And -- go ahead.

6 Q. With that, does that come with some responsibility  
7 that you are obligated to take the milk that your dairy  
8 producers produce for you?

9 A. Yes. Our commitment to our producers is to -- is  
10 to take their milk. And so while they are -- you know,  
11 while we have an ability under the letter of the law to  
12 reblend, we're also held to task by our producers to pay  
13 as -- both pay as much as we can, but also -- and be as  
14 efficient as we can, as you have said. But also, you  
15 know, to take all their milk every day, every week, and  
16 provide that balancing, both to the -- both to whatever  
17 milk may come off the farm, but also to making sure we  
18 find a home for all that milk.

19 Q. Okay. And do you also have responsibilities to  
20 balance the market as well?

21 A. Yeah. I mean, you know, as I mentioned a little  
22 bit, you know, we have got milk customers whose plants may  
23 not run perfectly. We have got our plants that may not  
24 run perfectly. And we have got, you know, other co-op  
25 partners whose plants may not run perfectly. And so that  
26 balancing responsibility is absolutely something that  
27 we -- a responsibility that we as a co-op have.

28 Q. So while you might have some opportunities to



1 reblend if necessary, you also as a cooperative have some  
2 responsibilities that proprietary plants don't have; is  
3 that right?

4 A. There's a responsibility that goes along with it,  
5 yes.

6 Q. Because a proprietary plant, for example, doesn't  
7 have to take all the milk of the producers that --

8 A. May or may not.

9 Q. -- they are delivering?

10 A. May or may not.

11 Q. All right. That's all I have.

12 MS. HANCOCK: Thank you, your Honor. We would  
13 move to admit Exhibit 144.

14 THE COURT: Any objection?

15 Exhibit 144 is admitted into the hearing record.

16 (Thereafter, Exhibit Number 144 was received  
17 into evidence.)

18 MS. HANCOCK: Thank you.

19 THE COURT: Mr. Rosenbaum?

20 MR. ROSENBAUM: Your Honor, we would move Hearing  
21 Exhibit Number 145 into the record.

22 THE COURT: Any objections?

23 Exhibit 145 is admitted into the record.

24 (Thereafter, Exhibit Number 145 was received  
25 into evidence.)

26 THE COURT: Thank you, Mr. Edmiston. You are --  
27 you may step down from the stand.

28 Who is next, Mr. Rosenbaum?



1 MR. ROSENBAUM: Your Honor, the next witness will  
2 be Mr. Steve Schlangen.

3 THE COURT: Thank you.

4 MR. ROSENBAUM: And, your Honor, he has two  
5 statements addressing two different proposals, and so I  
6 will -- will provide the copies of both.

7 THE COURT: Thank you.

8 Raise your right hand.

9 STEVE SCHLANGEN

10 Being first duly sworn, was examined and  
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. ROSENBAUM:

14 Q. Good morning, Mr. Schlangen. We've put before you  
15 two documents. One of them is titled IDFA Exhibit 25.

16 And is that your testimony with respect to the  
17 Make Allowance proposals?

18 A. Yes, sir.

19 Q. Okay. And we have also put before you IDFA  
20 Exhibit 36.

21 And is that your testimony relating to the  
22 proposal whether to exclude barrel cheese from the survey?

23 A. Yes, sir.

24 Q. Okay.

25 MR. ROSENBAUM: Your Honor, I would ask that these  
26 exhibits be marked with the next two Hearing Exhibit  
27 Numbers.

28 THE COURT: Yes. Exhibit IDFA 25, top right-hand



1 corner, will be marked 146.

2 (Thereafter, Exhibit Number 146 was marked  
3 for identification.)

4 THE COURT: IDFA Exhibit 36, top right-hand  
5 corner, would be marked 147 for identification.

6 (Thereafter, Exhibit Number 147 was marked  
7 for identification.)

8 MR. ROSENBAUM: Thank you.

9 BY MR. ROSENBAUM:

10 Q. Mr. Schlangen, could I ask you to go ahead and  
11 read what's been marked as Hearing Exhibit 146 into the  
12 record?

13 A. Yes, sir.

14 Well, good morning. I'm Steve Schlangen. I'm a  
15 dairy farmer from Albany, Minnesota, and I'm chairman of  
16 the Board of Associated Milk Producers, Incorporated.

17 My comments are on behalf of 800 fellow dairy  
18 farmer-owners and focus on our cooperative priority of  
19 updating Make Allowances to reflect the cost of processing  
20 milk into dairy products.

21 For context, a bit about my farm and the  
22 cooperative in which I'm an owner.

23 My wife Cheryl and I milk 60 cows with a robotic  
24 milker and farm 200 acres of land. We began our dairy  
25 farming career in 1986, buying a small herd of cows and  
26 renting a barn on the farm we now own. AMPI was there to  
27 help us when we got first started, and we've been members  
28 ever since.



1           The co-op is headquartered in New Ulm, Minnesota,  
2           and is owned by dairy farm families from Wisconsin,  
3           Minnesota, Iowa, Nebraska, South Dakota, and North Dakota.  
4           We are the largest farmer-owned cheese cooperative in the  
5           United States.

6           Our cheese, butter, and powdered dairy products  
7           are produced at eight manufacturing plants located  
8           throughout the region, and then marketed to foodservice,  
9           retail, and food ingredient customers.

10          AMPI supports proposals to update manufacturing  
11          allowances to 2022 levels. Over the past two years, the  
12          dairy farmer-owners and employees of AMPI participated in  
13          committees examining needed Federal Milk Marketing Order  
14          updates through the International Dairy Foods Association,  
15          the National Milk Producers Federation, and the Wisconsin  
16          Cheese Makers Association.

17          We are amid a once-in-a-generation opportunity to  
18          reset the Federal Milk Marketing Order system. The  
19          opening page of the USDA AMS Federal Milk Marketing Order  
20          website states the intended purpose of Federal Milk  
21          Marketing Orders.

22          And I quote, "Federal Orders serve to maintain  
23          stable marketing relationships for all handlers and  
24          producers supplying marketing areas. Thus, facilitating  
25          the complex process of marketing fresh milk."

26          The first step of fulfilling this mission is  
27          determining the minimum milk price for the four classes of  
28          milk utilization. In other words, Federal Orders



1 determine the minimum values for all milk -- all milk  
2 pooled under Federal Orders.

3 To accurately determine these milk values, the  
4 system must reflect current manufacturing costs for milk  
5 and require regular updates to reflect both changes in  
6 costs and efficiencies.

7 Today, the milk price regulations are outdated and  
8 increasingly irrelevant. Void of any updates since 2008,  
9 the current manufacturing milk calculations do not reflect  
10 today's costs. Simply put, it has become a system built  
11 on bad math. This is detrimental to dairy manufacturers  
12 and farmers alike, disregarding the basic purpose of the  
13 system, providing the stable marketing relationships as  
14 described on FMMO website.

15 Make Allowances are an estimate of dairy  
16 processors' costs of converting milk into dairy products.  
17 Many of those production costs, including labor and  
18 energy, have skyrocketed since Make Allowances were last  
19 updated in 2008. Capital and operating costs have  
20 increased significantly in 15 years.

21 As a dairy farmer and owner of eight manufacturing  
22 facilities through AMPI, I have witnessed the  
23 repercussions of outdated Make Allowances. When  
24 underestimating processing costs used to determine Federal  
25 Order Milk component values, inaccurate price signals are  
26 sent to the marketplace and may lead to the misallocation  
27 of capital and resources.

28 Make Allowances are important as they drive all





1 minimum milk prices. The impact of these overvalued  
2 minimum prices is drastic. Milk market premiums have been  
3 replaced with significant price reblends below regulated  
4 minimum prices across much of the country.

5 Most U.S. cooperatives have instilled production  
6 limits, as inadequate manufacturing capacity is not  
7 meeting many dairy farmers' desire to grow their business  
8 and be cost competitive.

9 To quote Tanner Ehmke, former lead dairy economist  
10 for CoBank, "Inadequate Make Allowances may lead to  
11 underinvestment in dairy processing facilities or result  
12 in over-investment in low-cost plants. Ultimately, that  
13 could result in limited market access for U.S. dairy  
14 products and allow international export competitors to  
15 meet the rising global demand for high-value dairy  
16 products."

17 To facilitate a timely update, the 2023 Cost of  
18 Dairy Processing survey tool was launched by Dr. Mark  
19 Stephenson. He has worked on production costs for  
20 manufacturing plants from cheese to fluid milk for  
21 decades. His work includes previous cost surveys for USDA  
22 in 2006 and in 2021. The 2021 survey, published last  
23 year, included mostly 2018 costs.

24 Recognizing the large shifts in capital and  
25 operating costs for their members over the past few years,  
26 IDFA and WCMA funded the update to Dr. Stephenson's most  
27 recent survey of 2022 cost data completed this spring.  
28 AMPI participated in that survey, submitting costs for



1 multiple products from our four cheese manufacturing  
2 facilities and one nonfat dry milk plant.

3 Dr. Stephenson used a computer survey process to  
4 collect the information, very similar to his earlier  
5 approaches. He also changed cost allocations back to a  
6 per solids basis as a standard practice for most of the  
7 industry, and the method used in his 2008 survey, and the  
8 well-regarded California Department of Agricultural audit  
9 surveys.

10 Dr. Stephenson collected cost information from 18  
11 cheddar manufacturing plants across the country. These  
12 plants produce an average of 122 million pounds of cheddar  
13 cheese annually, well above the average cheddar production  
14 per plant in this country. Even with significantly larger  
15 plants included in the survey, Dr. Stephenson's 2023 cost  
16 survey results were significantly higher than current  
17 cash -- current Make Allowance levels.

18 The 2023 survey found an average cheddar  
19 manufacturing cost of \$0.2643 per pound, more than \$0.06  
20 higher than the current Make Allowance. Average whey  
21 manufacturing costs averaged \$0.3361 per pound, \$0.137  
22 higher than the current make of \$0.1991 cents.

23 IDFA and WCMA also commissioned a study to project  
24 2022 costs based on the audited California cost surveys  
25 from 2002 through 2016. Dr. Bill Schiek found the  
26 projected 2022 costs for cheddar cheese were \$0.3006 per  
27 pound and for dry whey was \$0.2953 per pound.

28 As the largest cooperatively-owned cheese company



1 in the U.S., our costs of processing per manufactured  
2 pound clearly illustrates the outdated Make Allowance.  
3 I'll share these today through percent of change to  
4 protect proprietary information. The change is calculated  
5 from the cost of processing per manufactured pounds in  
6 fiscal year 2022, December through November, compared to  
7 fiscal year 2008. The years are significant as it  
8 reflects the same period since Make Allowances were last  
9 updated.

10 The high level percent change for AMPI bulk cheese  
11 products is 47% higher in 2022 than it was in 2008.  
12 General plant expenses are up 62%.

13 Since the last Make Allowance update in 2008,  
14 cheese making equipment to facilitate fat recovery has  
15 been installed in each of AMPI's major cheese plants.  
16 Despite these capital investments in increased yield and  
17 plant efficiencies, AMPI's cost to convert milk to cheese  
18 still increased immensely.

19 Though some caution, a 15-year leap in  
20 Make Allowance values will hurt U.S. dairy farmers, AMPI  
21 contends it brings about more orderly marketing  
22 conditions -- more orderly marketing conditions and better  
23 reflects the relative value of all products. It also puts  
24 regulated milk costs in greater alignment with the prices  
25 paid by the many unregulated competitors we compete  
26 against for product sales every day.

27 Experience in our plants more than justifies the  
28 proposed increases immediately. Some are proposing any



1 changes in Make Allowance or other pricing be further  
2 delayed, giving futures markets time to adjust to the  
3 Make Allowance changes. In our view, any delay will  
4 magnify an already disorderly marketplace.

5 Moving forward, AMPI supports most industry  
6 organizations in updating Make Allowances through mandated  
7 audited surveys. These updates must happen to avoid the  
8 current misalignment of actual costs with Make Allowances.

9 Thank you for the opportunity to underscore the  
10 need to update Make Allowances and restore credible  
11 Federal Milk Marketing Order system. The dairy  
12 farmer-owners of AMPI believe the system should be built  
13 on real numbers. We look forward to the day that  
14 Class III numbers truly reflect the value of milk for  
15 cheddar manufacturing.

16 Q. Thank you very much, Mr. Schlangen.

17 Can you please turn now to your other statement,  
18 which is Hearing Exhibit 147. I believe you can skip the  
19 first five paragraphs on the first page because those are  
20 duplicative of the paragraphs you have already read, and  
21 then if you could start with the paragraph that begins  
22 with "AMPI opposes Proposal 3."

23 A. In addition, I want to draw your attention to  
24 AMPI's opposition to Proposal 3, which would remove barrel  
25 cheddar prices from the Federal Order Class III protein  
26 formula.

27 As both a block and barrel cheddar manufacturer,  
28 AMPI recognizes the unstable relationship between block



1 and barrels prices in Class III has caused a variety of  
2 problems for the industry. We believe, however, that  
3 eliminating barrels will increase more volatility for  
4 barrel manufacturers and compromise their competitive  
5 position for milk.

6 Moving Class III to 100% block weighting would  
7 complicate milk pricing for manufacturers making barrel  
8 cheese. Barrels produced in the U.S. are almost always  
9 priced based on a CME spot barrel price, while Proposal 3  
10 would essentially disconnect Class III milk pricing from  
11 the CME barrel price. The resulting disconnect between  
12 revenue and the Class III milk price could increase margin  
13 volatility and the ability to compete for milk.

14 AMPI competes for sales with barrel manufacturers  
15 operating both inside and outside the Federal Orders.  
16 Unregulated manufacturers must still compete with other  
17 manufacturers for milk in the local markets, but their  
18 profitability will not be directly impacted by regulated  
19 minimum prices, just market competition for milk.

20 Supporters of removing barrels from the NDPSR  
21 cheese price, including some Midwest barrel manufacturers,  
22 believe the market price for barrels could move in -- move  
23 to a block basis. Removing barrels from the NDPSR cheese  
24 price by no means guarantees the CME will remove the  
25 barrel cheddar spot market from its daily market  
26 offerings.

27 The CME makes changes to its market offerings  
28 based on market demand, and there's no reason to expect



1 barrel manufacturers and buyers will agree to shift their  
2 pricing to the block market. Barrel buyers will want to  
3 be assured their costs are aligned with the commodity  
4 market for barrel cheese. Using the barrel cash market as  
5 a pricing reference point provides that assurance.

6 AMPI believes the primary reason to continue  
7 including blocks and barrels in the NDPSR cheese price is  
8 that both have comprised a total supply and demand picture  
9 for cheddar cheese. They are traded commodities at CME  
10 cash markets and, thus, have an openly-traded market to  
11 determine value. Combined, they provide a picture of the  
12 commodity cheddar market. AMPI is a major manufacturer of  
13 both block and barrel cheddar and believes a combination  
14 of the two provides the best indicator of overall market  
15 conditions.

16 AMPI recognizes there has been growth in barrel  
17 capacity in the Midwest over the past few years. Some  
18 barrel processors added the capacity to make block cheddar  
19 to best meet market demand for the variety of products  
20 they make. This capacity has been needed in a year like  
21 2023, where milk supplies in some markets, particularly in  
22 the Upper Midwest, exceeded processing capacity. It is  
23 hard to view capacity of any type of cheese as "surplus"  
24 when it was needed to clear markets of excess milk.

25 Q. So in summary, is it -- based upon the titles of  
26 your two testimonies, which I did not ask you to read, but  
27 based upon those summaries, AMPI supports Proposals 8 and  
28 9 and opposes Proposal 3; is that accurate?



1 A. Yes, sir.

2 Q. Okay.

3 MR. ROSENBAUM: The witness is available for  
4 cross-examination.

5 THE COURT: Who has cross for this witness?

6 CROSS-EXAMINATION

7 BY DR. CRYAN:

8 Q. I'm Roger Cryan for the American Farm Bureau  
9 Federation.

10 Good morning, Mr. Schlangen, how are you? Nice to  
11 see you again.

12 A. Pretty good.

13 Q. Are you a Farm Bureau member?

14 A. Yes, I am.

15 Q. I'm proud to hear that.

16 I would like to touch on a point of agreement,  
17 what I believe is a general point of agreement, because I  
18 think it's worth bringing it up repeatedly.

19 Ultimately, we both agree that the -- in the long  
20 run, the best solutions are to have mandatory audited  
21 surveys to -- to have the clearer measurement, clearer  
22 data in order to -- of cost to yields in order to set  
23 these Make Allowances; is that right?

24 A. I think that is a good thing they should shoot for  
25 in time. I think we have pretty good information as to  
26 right now to make some adjustments. And it's something we  
27 should have probably had ten years ago, was the survey  
28 prices, to get good information to make those adjustments,



1 and then we would have never got to this situation where  
2 we're short of marketing -- we're short of capacity, and  
3 we're dumping milk.

4 Q. I think we all agree it would be nice if we had  
5 done that ten years ago, if we had pushed for the  
6 legislation we're pushing for this year.

7 I'm sorry, I'm going to ask you one more question  
8 because I guess I hadn't really appreciated the barrel  
9 statement.

10 But it's my understanding, AMPI has taken -- taken  
11 steps and gone to some lengths to try to balance your  
12 block-barrel mix to match the mix in the price survey in  
13 order to avoid being hurt as much as possible by the --  
14 any imbalance in the survey; is that right?

15 A. Well, we try to do whatever we can to be able to  
16 process our members' milk and find a market for the  
17 products that we process them into. And, yeah, we try to  
18 do what we can in our plants to -- to make that happen.

19 Q. Very understandable. I appreciate that.

20 DR. CRYAN: Thank you very much for your time.

21 THE WITNESS: Thank you.

22 DR. CRYAN: Thank you.

23 THE COURT: Thanks.

24 Mr. Miltner.

25 CROSS-EXAMINATION

26 BY MR. MILTNER:

27 Q. Good morning, Mr. Schlangen.

28 A. Morning.





1 Q. My name's Ryan Miltner. I represent Select Milk  
2 Producers.

3 I would actually like to start with questions on  
4 your second statement, Exhibit 36, if I could.

5 You're testifying today on behalf of the  
6 cooperative, correct?

7 A. Right.

8 Q. Okay. You write in your statement that "we" --  
9 AMPI -- "is the largest farmer-owned cheese cooperative in  
10 the U.S."

11 Can you describe for me what you mean by "cheese  
12 cooperative"?

13 A. Well, we are a dairy farmer-owned business that  
14 produces cheese.

15 Q. Are there other cooperatives, dairy cooperatives,  
16 that you would consider cheese cooperatives?

17 A. I would say there are.

18 Q. Okay.

19 A. In the Upper Midwest probably, more so.

20 Q. Who would you consider to be a cheese cooperative  
21 like AMPI?

22 A. I would consider First District Association,  
23 Bongards Creameries, Ellsworth. Most of the folks in our  
24 Upper Midwest.

25 Q. Is AMPI a member of IDFA?

26 A. Yes, we are.

27 Q. Are you also a member of National Milk?

28 A. Yes, we are.



1 Q. Was AMPI a member of National Milk's task force on  
2 Federal Order Reform?

3 A. Yeah, we had a number of people involved in the  
4 task force. And I was on the economic policy committee.

5 Q. Did you also have people involved in a similar  
6 group with IDFA?

7 A. Yes.

8 Q. Were the same people on both committees?

9 A. I would say not totally. I don't -- I couldn't  
10 say for sure.

11 Q. Okay. At the top of page 2 on Exhibit 36, you  
12 write that: "Proposal 3 would essentially disconnect  
13 Class III milk pricing from the CME barrel price."

14 How does the CME barrel price right now factor  
15 into Class III?

16 A. Well, the barrel price is a big part of the  
17 formula of cheddar cheese produced in the country, and  
18 that's not going to just go away. I think this started a  
19 number of years ago, and we talked about it at National  
20 Milk, that the barrel price was oftentimes understated or  
21 it was -- to the point it actually -- because of the  
22 products that were getting sold on that barrel market, it  
23 didn't really reflect the value of barrels, really,  
24 because a lot of those products were not up to the  
25 standards that someone that was buying them would like  
26 them to be.

27 So I think that if there's any way to -- to drive  
28 a market down, the best thing to do would be to offer



1 something that nobody wants to buy. So instead of taking  
2 care of that problem and working on that, I think the idea  
3 to get away from barrels in the formula was the next best  
4 thing.

5 Q. I guess my question -- and I perhaps didn't phrase  
6 it as precisely as I should have.

7 The NDPSR barrel price feeds into Class III,  
8 correct?

9 A. I believe so. I -- I really don't know all the  
10 details of that all. I can tell you that.

11 Q. Okay. If -- if barrels were not part of the  
12 Class III formula, are you concerned that the CME would  
13 discontinue offering barrels on the spot market?

14 A. I wouldn't -- I wouldn't worry about that. I  
15 think it's the most highly traded product on the CME, and  
16 that's what they would continue to do is to trade that.  
17 But it wouldn't be connected to, you know, the price of  
18 the Class III that we're trying to find a discovery price  
19 for manufactured milk, and if you disconnect the barrel  
20 market, you disconnect a big chunk of what is getting made  
21 into cheddar cheese in this country.

22 Q. The answer you gave a little bit ago, were you  
23 suggesting that the barrel price was depressed because of  
24 low quality barrels that were put on the market?

25 A. I don't know if I would say they are low quality,  
26 but they are probably the quality that we, as a maker of  
27 processed cheese, would rather not use.

28 Q. Do you have any thoughts as to why barrels of that



1 quality appeared on the market?

2 A. I couldn't say for sure. It's probably because of  
3 processes that manufacturers of those barrels use to make  
4 products. I don't know.

5 Q. Are you aware of any barrel manufacturers that  
6 produce clean whey and perhaps view that as their primary  
7 output, with the barrel as the byproduct?

8 A. I couldn't say that I know that as happening. I  
9 know what we produce is we produce barrels, and the  
10 byproduct is a white whey that can be used probably in  
11 more -- maybe higher value products than, say, your  
12 colored whey out of a block plant where you make colored  
13 cheese. But I couldn't say that that's what people are  
14 doing.

15 Q. In your experience, does that clean whey command a  
16 higher value on the market than colored whey?

17 A. I would -- I guess I wouldn't know that for sure.  
18 I would think that it might, but I guess I wouldn't know  
19 that for sure.

20 Q. You mentioned that AMPI is a major manufacturer of  
21 both block and barrel cheddar.

22 The blocks you produce, are they 40-pound blocks?

23 A. No, we produce 640s.

24 Q. Okay. Only 640s?

25 A. 640s, yeah.

26 Q. At the end of your second statement you state that  
27 milk supplies in some markets, particularly the Upper  
28 Midwest, exceeded processing capacity.



1           Was there milk actually being dumped in the Upper  
2 Midwest?

3           A.    Yeah.  Yes, there was.  A lot of it.  And if  
4 there's one thing that makes a dairy farmer sick, is going  
5 through all the work and it -- the money to produce that  
6 milk, knowing that there's starving people around the  
7 world, and we have to run it down the drain, because that  
8 is the most economical answer to do with that milk at the  
9 time.

10          Q.    I have heard that from several farmers that I  
11 know, and when it occurs, it is tragic.

12                   Do you have an estimate as to how often that  
13 phenomena occurs in your part of the world?

14          A.    You know, it happened more this year than I  
15 remember in the past.  From a number of situations, I  
16 think around the country, you know, we had record milk  
17 prices last year, which always leads to more production.  
18 We had milk in parts of the country where the  
19 manufacturing wasn't in place yet to handle that milk, and  
20 that got hauled up into our region and, you know, took  
21 away some of the outside sales there.  So there's a lot of  
22 things that affected it this year, probably more than  
23 other years.

24                   But, yeah, it was a big deal this -- this winter,  
25 through the winter and into the spring.

26          Q.    When that occurs, is AMPI able to purchase spot  
27 milk at substantial discounts to Class III?

28          A.    When that occurs, AMPI has way too much milk, and



1 we're selling that milk, we're almost giving it away,  
2 because there's no market for excess milk.

3 Q. Who -- who would be your buyers in that situation?

4 A. For the excess milk?

5 Q. Yes, sir.

6 A. I guess I wouldn't know exactly who they are. We  
7 have a number of customers that we sell on a regular basis  
8 because we probably have 15% of our milk that we would  
9 sell off as fluid into a Class III market or to a bottler,  
10 where about 85% of our milk generally goes through our  
11 plants.

12 So we have a number of customers, but, I mean,  
13 when you get in that situation, you are going to sell milk  
14 for whatever you can get for it until you get to a point  
15 where it's like -- would be more cost effective to open  
16 the valve and run it down the drain.

17 Q. I'm turning now to your other statement.

18 THE COURT: 147?

19 MR. MILTNER: I'm sorry?

20 THE COURT: 147?

21 MR. MILTNER: No, this would be 146, I believe.

22 THE COURT: Okay. His first one.

23 MR. MILTNER: His first statement.

24 THE COURT: Thank you. Sorry.

25 MR. MILTNER: That's okay.

26 BY MR. MILTNER:

27 Q. Were you part of the National Milk task force or  
28 working group that submitted surveyed cost data to help



1 develop Proposal 7?

2 A. I was not on the task force.

3 Q. Do you know if AMPI submitted cost data from its  
4 plants to the National Milk survey?

5 A. I believe we did. Is that the Stephenson survey?

6 Q. No. This -- this would be the survey that  
7 National Milk conducted among its group to develop the  
8 numbers in their Make Allowance proposal.

9 A. I assumed those numbers came from the Stephenson  
10 survey from 2018, concluded 2021 or '22.

11 Q. Okay.

12 A. I believe that's where those numbers came from.

13 Q. You are not aware of AMPI giving numbers to  
14 anybody other than Dr. Stephenson?

15 A. That's who we have worked with in the past, yes.

16 Q. Okay. By the way, I do like your line that says  
17 the regulations have become "a system built on bad math."  
18 I don't necessarily agree with that, but the only other  
19 time I have heard that description is when someone  
20 described Las Vegas.

21 At the top of page 3 you say, "Most U.S.  
22 cooperatives have instilled production limits, as  
23 inadequate manufacturing capacity is not meeting many  
24 dairy farmers' desire to grow their businesses and be cost  
25 competitive."

26 I'd like to understand how you draw that  
27 conclusion. How -- what leads you to make the conclusion  
28 that inadequate manufacturing capacity has triggered base



1 programs?

2 A. I don't get what you mean.

3 Q. Well, you say that the base programs are a  
4 function of inadequate manufacturing capacity, and I'm  
5 just curious as to why and you how connect those two in  
6 that way.

7 A. Well, that's -- it's how it's worked for us. It's  
8 how it is working with others that are competing against  
9 us in our region that have those plans in place because  
10 they have to control that production because there's no  
11 home for some of that -- that excess milk because of all  
12 the years of the Make Allowance being outdated and us  
13 reducing -- getting rid of our balancing plants and  
14 getting rid of our outdated or inefficient plants, just to  
15 be able to hang in there and live in the world we live in  
16 with these outdated numbers on the Make Allowance.

17 Q. That's AMPI's experience, correct?

18 A. Yes, it is.

19 Q. You don't know necessarily if other cooperative  
20 base programs were motivated by a different reason,  
21 though, do you?

22 A. I don't. Right.

23 Q. You also quote the dairy economist for CoBank, and  
24 I'd like to understand. The first sentence of that quote  
25 reads: "Inadequate Make Allowances may lead to  
26 underinvestment in dairy processing facilities or result  
27 in overinvestment in low-cost plants."

28 I'd like to understand why inadequate





1 Make Allowances would lead to overinvestment in low-cost  
2 plants.

3 A. That's actually a good question. I guess I don't  
4 know the answer to that, either.

5 Q. Do you know what Mr. Ehmke meant by "low-cost  
6 plants"?

7 A. I don't. I could assume it might be some kind of  
8 a plant that would part -- remove part of the milk value  
9 just to get something out of it, and then relocate it to a  
10 buyer.

11 Q. Were you in the room this morning when I asked  
12 Mr. Edmiston about Land O'Lakes plants?

13 A. I was for most of it, yeah.

14 Q. Okay. I want to ask similar questions about  
15 AMPI's plants. So, although I don't have the page right,  
16 I don't think I'm turned to the right page, but did you  
17 say that AMPI had eight facilities?

18 A. We do have eight facilities.

19 Q. Are those all cheese plants?

20 A. No, they are not. We have four cheddar plants.  
21 We have one powder plant. We have a butter plant in New  
22 Ulm, Minnesota. And we have a further processing -- it's  
23 a re-packaging, packaging plant in Wisconsin. And we  
24 actually have one small cheese plant in South Dakota.

25 Q. Let's start with the small cheese plant in South  
26 Dakota.

27 Does it manufacture 40-pound blocks?

28 A. No, it does not.



1 Q. Does it manufacture barrels?

2 A. No, it does not.

3 Q. Does it handle its own whey?

4 A. We have -- no, we don't process our own whey. We  
5 find a market for that. It's an Italian-type cheese  
6 plant. It's small. It's old. It's made some of the best  
7 cheese in the country, been a winner at National Milk in  
8 the best parmesan cheese in the country a couple of years  
9 in a row. But it's a very small plant. It's very labor  
10 intensive.

11 Q. Produces more of a specialty cheese?

12 A. Right.

13 Q. Your re-packaging plant, does that do what I would  
14 expect it to, it takes products produced somewhere else  
15 and repackages them for further distribution?

16 A. Right.

17 Q. It doesn't manufacture, itself, any commodity  
18 products?

19 A. We don't take any milk into that plant, right.

20 Q. You mentioned a butter plant and a powder plant.  
21 Are those two separate facilities?

22 A. Right.

23 Q. Does your butter -- well, what products are  
24 produced at your butter plant?

25 A. The butter plant is really a packaging plant for  
26 either churning butter and making quarters and solids, and  
27 cups and different things for retail and foodservice, or  
28 we -- we buy bulk butter and re-package it in there -- in



1 there also.

2 Q. You are taking bulk butter and reworking it to  
3 quarters or something like that?

4 A. It depends on the season, yeah, and the cost of  
5 cream, things like that. You know, you try to get the  
6 best -- the best -- you know, to get the best return out  
7 of whatever you can sell those butter products for.

8 Q. We won't talk about cream multiples, unless we  
9 have to.

10 A. Well, you can. But I mean, when they get too  
11 high, we -- ice cream people buy them. And -- you know,  
12 but that's -- that's part of the equation, is when butter  
13 multiples are at a good level that are attractive to us,  
14 that's when we run our churns and we put through as much  
15 through our churns and make quarters or bulk butter even  
16 then, just to cash in on that market.

17 Q. Okay. AMPI will -- will change what it produces  
18 and what it does with cream in order to maximize the  
19 returns to its owners, correct?

20 A. That's what I think I meant in the first place,  
21 yes.

22 Q. Okay. So your butter plant does not produce bulk  
23 salted or unsalted butter?

24 A. I think we do produce some bulk salted and  
25 unsalted for certain customers.

26 Q. Do you know if the manufacturing cost information  
27 for that butter plant was reported to Dr. Stephenson?

28 A. I don't know that. No. I know that in the last



1 survey it was our four cheese plants and it was our powder  
2 plant.

3 Q. Okay. Your powder plant, does it produce nonfat  
4 dry milk?

5 A. Actually, yeah. It's in South Dakota. It  
6 produces the high-heat nonfat dry milk, which is a higher  
7 value powder used with -- for a lot of bakeries.

8 Q. Does it produce low-heat nonfat?

9 A. I don't believe we do. I couldn't say for sure.

10 Q. Does it produce skim milk powder?

11 A. I don't believe so.

12 Q. Whole milk powder?

13 A. Yes.

14 Q. Does it produce buttermilk powder?

15 A. I don't believe so.

16 Q. Does it dry any whey?

17 A. No.

18 Q. So its principal product is high-heat nonfat dry  
19 milk?

20 A. Correct.

21 Q. And your understanding is that plant did report  
22 its costs to Dr. Stephenson?

23 A. I believe it did on the powder side. The cream is  
24 separated off on the milk, and that -- that cream would go  
25 to our New Ulm plant for the butter manufacturing there.  
26 But I believe it's just the powder side that was reported.

27 Q. Do you know what happens to the buttermilk at your  
28 butter plant?



1           A.     That also probably gets dried somewhere. We have  
2 capacity at our Jim Falls plant to do some of that.  
3 Again, a lot of things depend on markets and the demand  
4 for different products, so if you sell them as a liquid or  
5 if you would dry them and sell them as a powder.

6           Q.     Is Jim Falls one of the plants we have been  
7 talking about already, or is that a separate plant?

8           A.     They are one of the four cheese plants that we  
9 were talking about.

10          Q.     Okay. So there's a dryer at the Jim Falls plant?

11          A.     There's a couple dryers there, yes.

12          Q.     Do you know if the cost of making high-heat nonfat  
13 dry milk is more or less than low heat?

14          A.     I don't know that.

15          Q.     At your four cheddar plants, do you produce any  
16 40-pound blocks?

17          A.     No, we don't.

18          Q.     Do you produce -- I think you answered earlier,  
19 you produce 640s only, correct?

20          A.     We produce 640s at three of them and barrels at  
21 the fourth one.

22          Q.     So you produce barrels at one of the four plants?

23          A.     Right.

24          Q.     And you produce no 40-pound blocks?

25          A.     Right.

26          Q.     And all four of those plants reported their costs  
27 to Dr. Stephenson?

28          A.     Yes, sir, I believe they did. And they are all



1 3-million-pound-a-day plants, so they are pretty -- they  
2 have all had new cheese equipment put in over the last ten  
3 years.

4 Q. Three of the plants, though, were reporting costs  
5 but they don't produce the products that are in the  
6 Class III survey, right?

7 A. Run that by me again?

8 Q. Sure. The Class III formula is based off surveys  
9 of 40-pound blocks and 500-pound barrels, correct?

10 A. Yes. But the 640s are really based off the  
11 40-pound market, also.

12 Q. Okay. Are the costs to make 640s and 40s  
13 identical?

14 A. I don't know that.

15 Q. In addition to the Jim Falls plant, how many other  
16 of your cheddar plants have drying capacity?

17 A. The Paynesville plant would have drying capacity.

18 Q. How do you spell that?

19 A. Paynesville? P-A-Y-N-E-S-V-I-L-L-E.

20 Q. See, I'm glad you did that because there's a  
21 Painesville, Ohio, that is spelled differently. I would  
22 have misspelled that.

23 A. Okay.

24 Q. Do those dryers dry the whey from your cheese  
25 plant?

26 A. The Jim Falls plant dries sweet whey; the  
27 Paynesville plant dries WPC.

28 Q. Is that WPC 34 or 80 or both?



1 A. We can do either or both, right.

2 Q. Can you produce WPI?

3 A. We haven't. I don't think we have the -- the  
4 technology or the equipment to do that at this point.

5 Q. It does require specialized equipment to do that,  
6 doesn't it?

7 A. Yes, it does.

8 Q. Your statement says that Dr. Stephenson collected  
9 cost information from 18 cheddar manufacturing plants. Am  
10 I right, then, that four of those plants -- four of those  
11 18 are AMPI facilities?

12 A. I guess I would assume that.

13 Q. I'm looking now at page 4 of Exhibit 146, and  
14 there's a sentence about two-thirds of the way down: "The  
15 high-level percent change for AMPI bulk cheese products is  
16 47% higher in 2022 than 2008."

17 I interpret that as saying that whatever your  
18 manufacturing costs were in 2008 for your bulk cheese  
19 products, it's 47% higher than that; is that correct?

20 A. That's what I would assume it would mean.

21 Q. And when you say "bulk cheese products" that would  
22 include your barrels and your 640-pound blocks, correct?

23 A. I would believe so.

24 Q. Do you have or does AMPI have the information  
25 about just the barrel portion of that?

26 A. They might. I don't know. I haven't seen it.

27 Q. Do you know today whether the increase in  
28 manufacturing barrels is higher or lower than the cost of



1 manufacturing 640-pound blocks?

2 A. I don't know that, but I know a lot of costs are  
3 related to labor, and energy, and ingredients, and  
4 packaging. And they are probably not exactly the same,  
5 but I would think they would be relatively similar.

6 Q. I think we can all agree costs have gone up since  
7 2007 or 2008, and for better or worse, we have to give  
8 these folks the information to figure out what that number  
9 is, right?

10 A. Right.

11 Q. All right. The next sentence is: "General plant  
12 expenses are up 62%."

13 I'm curious about what you include in "general  
14 plant expenses" there.

15 A. I don't know, but I would assume that it's the  
16 same thing included in all of our plant expenses. And  
17 I -- from reading that, being our general plant expenses  
18 are up 62%, our high-level percent changes 47%, that would  
19 tell me that the cheese equipment that we put in there has  
20 made us more efficient over time, and that our cost would  
21 be much higher had we not done that.

22 So I guess I don't know if that answers your  
23 question, but I -- I just, I guess I don't know exactly  
24 what would all be included in that general plant expenses.

25 Q. I know that in Dr. Stephenson's summary he breaks  
26 out a category of general and administrative expenses.

27 And I was -- I guess my question is, are your  
28 general plant expenses, is that the same thing





1 Dr. Stephenson puts in the bucket of general and  
2 administrative?

3 A. I would almost assume so, but I don't -- I don't  
4 know that for sure.

5 Q. Okay. Your next paragraph talks about some of  
6 those improvements that have been made to facilitate fat  
7 recovery and how the -- your cost to convert milk still  
8 increased immensely.

9 When you installed new equipment, that -- that, I  
10 assume, increases your depreciation and amortization  
11 costs. Would you agree with that?

12 A. It does.

13 Q. And then so those expenses would -- I think  
14 Dr. Stephenson has a bucket that would include those types  
15 of expenses?

16 Would that be where those costs would show up when  
17 AMPI figures out its manufacturing costs?

18 A. The thing is, you wouldn't install those pieces of  
19 equipment unless you knew there was a return on investment  
20 on those. So, yeah, there might be a different way to  
21 allocate some costs.

22 But if you look at what's happened with the --  
23 with the butter and cheese market over the last number of  
24 years, and especially since COVID, we make American-type  
25 cheese, which means it's got to be 50% fat or more. And  
26 if you're putting \$3 butter into \$2 cheese, it doesn't  
27 work out very good for very long. So you try to put in  
28 equipment that removes as much of that fat as you possibly



1 can, and still be legal, and still make the best product  
2 for your customers with that cheese you are making, and  
3 then you sell off the cream or put it to the butter  
4 plant -- well, we virtually sell it to the butter plant --  
5 to make butter out of it, because it's higher value when  
6 it's butter than if it's made into cheese.

7 Q. Right. So your -- your butterfat -- you describe  
8 your fat recovery has improved since 2007, 2008?

9 A. Well, we invested money in equipment to do that.

10 Q. Yeah.

11 A. And our cheese vats that we put in, the yields  
12 have improved and the returns have improved on all of  
13 those, because you just get more cheese out of every  
14 hundred pounds of milk.

15 Q. Are you using horizontal vats?

16 A. These are horizontal vats, yes.

17 Q. And were those installed after 2007?

18 A. I believe all of them have been.

19 Q. Do you also use additives like, you know, special  
20 coagulants or improved coagulants to improve your  
21 butterfat recovery?

22 A. You know, I don't know that part of it, the  
23 process.

24 Q. Do you know what AMPI's butterfat recovery is?

25 A. When making it into cheese you mean?

26 Q. Yes.

27 A. I don't know that number.

28 Q. But your investments have improved the amount of



1 butterfat you are able to recover, correct?

2 A. Absolutely, yeah.

3 Q. And those additional costs would be part of making  
4 the cheese, right? That would flow through to the  
5 Make Allowance, or at least you hope it should?

6 A. Yeah.

7 Q. Now, AMPI, as we said, is a member of National  
8 Milk, correct?

9 A. That's correct.

10 Q. Does AMPI support National Milk's Proposal 1, the  
11 one on the base Class I price and the component levels  
12 used to calculate it?

13 A. We -- we generally supported the whole package  
14 that National Milk put into the Federal Order hearing  
15 process here. Not that we're 100% on board on everything.  
16 I mean, if we all were, we probably wouldn't need a  
17 hearing, we could probably just ask to make the changes.

18 So I don't know if I want to get into too much  
19 detail on all that. I know, you know, things have changed  
20 over time with solids in milk and the value and things  
21 like that. But I mean, to me, this whole process is all  
22 about getting the right numbers and working together to  
23 come up with a program that's going to be something that  
24 dairy farmers will support at the end of the day.

25 Q. I think there's general agreement on -- on -- on  
26 that goal. And I don't want to -- because -- because of  
27 your answer there, I don't want to get into the real  
28 specifics of Proposal 1, but that is one that would have a



1 delayed implementation?

2 And your statement makes it pretty clear that when  
3 it comes to Make Allowances, you think there should be no  
4 delay in implementation, correct?

5 A. Well, we have been asking for Make Allowance  
6 changes for almost a decade. And just because it's taken  
7 this long, I don't know why we should wait another decade  
8 to get back to where we should have been a couple years  
9 ago. You know, I mean, we have been living this world.  
10 We have been having real costs. We couldn't tell our  
11 vendors, well, we can't afford to pay you so much, or tell  
12 our workers, you know, we are going to have to give you  
13 less per hour because we just can't make ends meet if we  
14 pay full price on everything. We have to pay full price  
15 on everything, where the Class III formula doesn't have  
16 that figured in.

17 And those folks -- I'm sorry, but as a dairy  
18 farmer that has been living this -- those folks that  
19 benefitted the most over the last 15 years from the  
20 Make Allowance being outdated are the ones that are going  
21 to feel it the most as the -- as this whole thing gets  
22 changed.

23 Q. I think one of the issues that, at least for me,  
24 is both interesting and hard to figure out, is which  
25 changes to the formulas should be delayed in  
26 implementation and which ones should not.

27 And so, I'd like, if you could, if you have  
28 anything else to add, explain why Make Allowances should



1 be implemented -- why changes to Make Allowances should  
2 happen now as opposed to a year down the road.

3 A. Well, if I think about our producers, there are  
4 many chomping at the bit to be able to expand, to be able  
5 to become more up to date and more competitive in  
6 producing milk. And we can't let them do it right now  
7 because we don't have the capacity to take that extra  
8 milk. In fact, we're limiting them to something that they  
9 produced -- a level that they had a couple years ago.

10 So it's really hard to be a dairy co-op that you  
11 want to be there for your members, you want to give them  
12 the ability to grow, but because of the situation we're  
13 in, we can't let them do that. We can't afford to build a  
14 new plant. It would -- it's out of the question.

15 We have expanded every one of our plants as best  
16 we could with the footprint we had. But, I mean, there's  
17 only so much you can do. And eventually, we need those  
18 real -- real costs figured in so that we are on a level  
19 playing field as far as competing for milk, and we -- we  
20 get credit for what we have invested in our plants and,  
21 you know, that whole market for our members' milk that we  
22 provide and get more value out of their milk by doing  
23 that.

24 Q. Thank you.

25 One of the reasons that have been suggested as a  
26 justification for delaying the implementation of a change  
27 would be because it would cause problems for risk  
28 management, both potentially for producers, farmers, and



1 for cooperatives that are participating in similar  
2 activities.

3 Has anyone at AMPI suggested to you that changes  
4 to the Federal Orders would -- would be detrimental to  
5 AMPI as an organization, from a risk management  
6 standpoint?

7 A. Well, we have talked about this for a number of  
8 years, is that there is real no good way to lock in a milk  
9 price right now because the Class III price does not  
10 reflect what we're able to pay for milk most of the time  
11 because it's overstated.

12 So you are really -- you are really locking in  
13 something based on what you think the difference between  
14 now is and the time, you know, when that thing would come  
15 through. So it's really not about locking in a price for  
16 your milk, and it's really not a -- there's no real good  
17 tools for risk management right now because the prices are  
18 so distorted.

19 Q. So would risk management actually become easier  
20 once these changes are implemented, if these changes are  
21 implemented?

22 A. I would think it would become more meaningful, so  
23 that if you locked in a certain price, you actually feel  
24 like that's the price you might end up getting.

25 Q. And I know you have been testifying on behalf of  
26 AMPI, and I asked you that right out of the gate. But for  
27 you as a producer, milking cows, do you have concerns  
28 about any of the proposals here making it harder for you



1 to manage your risk as a dairy farmer?

2 A. I guess I don't see any of these proposals making  
3 it harder to manage risk.

4 MR. MILTNER: Thank you very much. I really do  
5 appreciate how forthright you have been with answering the  
6 questions.

7 THE COURT: Further questions for this witness --  
8 I'm sorry, time-out, yes. We have been going for -- it's  
9 a little more than an hour and a half.

10 Let's take a ten-minute break. Come back at  
11 11:25.

12 (Whereupon, a break was taken.)

13 THE COURT: Back on the record. We're going to  
14 break -- I'm sorry, did you have something? Okay.

15 Off the record we had a discussion, we're going to  
16 put a witness on that has an earlier flight. We're going  
17 to break the examination of this witness so that we can  
18 allow another witness to come in, and then we'll come back  
19 to this witness.

20 MS. LOMBARD: Good morning, your Honor. I'm Jill  
21 Lombard. I'm here representing Dairy Farmers of America,  
22 or DFA, and I'd like to enter my appearance for the  
23 record. My last name is L-O-M-B-A-R-D.

24 Today I'm introducing three DFA farmer-owners who  
25 are here to testify.

26 So, your Honor, I'd ask that Mr. Palla's witness  
27 statement be marked for identification.

28 Do you have a copy of that?



1 THE COURT: Did you enter your business address?  
2 That seems to be required.

3 MS. LOMBARD: It's 1405 North 98th Street, Kansas  
4 City, Kansas, 66111.

5 THE COURT: Yes, I seem to have a set. It's  
6 Exhibit DFA-2?

7 MS. LOMBARD: Yes, Exhibit DFA-2, which I think  
8 would be number Exhibit 148.

9 THE COURT: We'll go ahead with that, then. Let's  
10 label for identification as Exhibit 148, Exhibit DFA-2.

11 (Thereafter, Exhibit Number 148 was marked  
12 for identification.)

13 THE COURT: Let me swear in the witness.  
14 Raise your right hand, please.

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

18 THE COURT: Thank you.

19 With that, we have marked the statement. You can  
20 ask him about that, and -- welcome.

21 MS. LOMBARD: Thank you.

22 THE COURT: Your witness.

23 MS. LOMBARD: Thank you.

24 DIRECT EXAMINATION

25 BY MS. LOMBARD:

26 Q. Mr. Palla, can you please state and spell your  
27 name for the record?

28 A. Eric Palla, E-R-I-C, P-A-L-L-A.





1 Q. Thank you.

2 Can you please state your business mailing address  
3 for the record?

4 A. 1405 North 98th Street, Kansas City, Kansas,  
5 66111.

6 Q. Thank you.

7 Mr. Palla, I understand that you have prepared a  
8 written statement for your testimony today. Would you  
9 please read that statement at this time?

10 A. Yes.

11 Hello, my name is Eric Palla, and I am a dairy  
12 farmer from Clovis, New Mexico, where our family farms  
13 15,000 acres and milks 10,000 cows. I'm a second  
14 generation dairy farmer and have been in the dairy  
15 business for over 25 years. I'm a farmer-owner of Dairy  
16 Farmers of America and currently have the opportunity to  
17 serve on the following boards: DFA Southwest Area  
18 Council, DFA's Board of Directors, and the Greater  
19 Southwest Agency. Outside of dairy, I also reside on  
20 another cooperative board and a couple of educational  
21 Advisory Councils. I am here today representing Dairy  
22 Farmers of America in support of the proposals submitted  
23 by National Milk Producers Federation.

24 This has been an extremely challenging year for  
25 our dairy farm. Since December of 2022, the All-Milk  
26 Price has declined by more than \$7 per hundredweight,  
27 which is far less than the over \$10 per hundredweight  
28 decrease in my net pay price over the last 12 months.



1           The challenge in this are costs of production have  
2 not gone down. Our dairy is experiencing the worst  
3 margins in our history. We have faced significant  
4 inflation in our input costs since 2020. For instance,  
5 our feed costs are \$5 per hundredweight higher,  
6 maintenance and repairs are up over 13%, and our fuel and  
7 interest costs have doubled.

8           Nevertheless, we are very proud of the  
9 efficiencies we have achieved over the same time period in  
10 order to limit cost -- our cost of increases in other  
11 items such as labor, vet, utilities, and miscellaneous  
12 costs. As dairy farmers, we always do. We come up with  
13 better, more efficient ways to operate, to help overcome  
14 some of our cost increases. However, even with our  
15 improvements and efficiencies in cost cutting, it doesn't  
16 go far enough given the current return in the marketplace.

17           All things equal, even a small increase in  
18 Make Allowances will be detrimental to milk prices. I  
19 understand that Make Allowances are an aspect in  
20 determining Federal Order class prices and from time to  
21 time there's a regulatory need to adjust them. However, I  
22 ask that in doing so, the Secretary of Agriculture take  
23 into account the impact on dairy farm milk prices and,  
24 more importantly, the impact on dairy farm profitability.

25           Our farms have been asked to come -- to become  
26 more efficient over time and to absorb the recent input  
27 cost increases, while at the same time, we are  
28 experiencing much lower milk prices.



1           We, as farmers, do not have a mechanism to pass  
2 along these cost increases to ensure our profitability.  
3 As a farmer-owner of a milk marketing cooperative, the  
4 financial performance of the cooperative's manufacturing  
5 assets also impact my milk check. However, the change in  
6 Make Allowance will have an even greater impact on our  
7 milk price as it comes out of 100% of our milk marketed.

8           Within these challenging market conditions, a  
9 \$0.50 per hundredweight decrease in Class III would move  
10 me into a negative operating income. The significant  
11 changes proposed by the International Dairy Foods  
12 Association and the Wisconsin Cheese Manufacturers  
13 Association would create an unsustainable decrease in milk  
14 pricing and should be rejected.

15           In fact, if the proposed change were in place over  
16 the last ten years, we would have experienced negative  
17 operating income. Over the years, dairy producers have  
18 had to deal with all of the same pressures of market  
19 competition and incremental cost increases, making  
20 profitability very difficult.

21           Dairy farmers are price takers, while processors  
22 are price negotiators. Cheese manufacturers can pass on  
23 their higher costs when they sell their products. I do  
24 not have that same ability. Milk buyers at manufacturing  
25 plants have additional means to cover their operating  
26 costs, including lowering over-order premiums.

27           I strongly object to allowing manufacturers to  
28 take additional money out of my milk check when they



1 continue to have other means to cover their production  
2 costs. I believe they have the ability and the duty to  
3 the dairy producers to exhaust all other avenues to become  
4 more efficient in their operations as opposed to paying me  
5 less for my milk.

6 I understand that for a vibrant dairy industry,  
7 both producers and processors need to be equipped with the  
8 right tools to reach financial success. I support the  
9 National Milk Producers Federation package in totality,  
10 because it works to modernize the Federal Milk Marketing  
11 Order system beyond the Make Allowance increase, but aims  
12 to balance added benefits for processors and producers.

13 However, as a farmer, this package is a  
14 compromise, and I would not be supportive of a sole  
15 Make Allowance change, especially an increase to the  
16 levels others are proposing.

17 Additionally, I understand that the proposal to  
18 change the skim milk component factors is based on dairy  
19 farmer component test increases. In 2022, my milk tests  
20 averaged 3.76% fat, 3.23% protein, and 9.09% solids  
21 nonfat. This has risen from 3.54% fat, 3.11% protein, and  
22 8.9% solids nonfat since 2017.

23 In my opinion, our milk components have risen over  
24 the last several years for a couple of reasons. One is  
25 the increasing speed of genetic improvement due to the  
26 adoption of new technologies by the dairy industry and the  
27 supporting businesses.

28 I also believe that our ability to feed the cows



1 with more precision, along with advancements in  
2 nutritional science, have enabled us to target components  
3 more effectively without sacrificing production per cow.

4 A third reason for component increases is the use  
5 of crossbreeding in herds across the United States.

6 It is my belief that improved management, along  
7 with scientific advancement, will continue to increase our  
8 ability to produce higher component milk in the future.

9 The timing of the changes to Federal Order milk  
10 price formulas could impact the outcome of the milk price  
11 risk management transactions I have used to hedge my  
12 dairy's future profitability.

13 Risk management is an extremely important part of  
14 our business. We use several different tactics to try to  
15 minimize large price fluctuations and its effect on our  
16 bottom line. We use a combination of fixed pricing in  
17 both classes of milk, along with Dairy Revenue Protection,  
18 and at times, target blend pricing that is offered through  
19 DFA risk management.

20 We tend to protect profitable pricing as far ahead  
21 as I can have feed contracted. This can range from three  
22 months to up to 18 months ahead depending on the futures  
23 price and my desire for risk. We are currently looking at  
24 forward pricing and/or adding DRP well into 2024.

25 It is important to the success of my business that  
26 the Federal Orders do not change the milk price formulas  
27 for transactions I may have entered into prior to my  
28 knowledge of the change in the timing of its



1 implementation.

2 Ideally, I would like an 18-month delay. This is  
3 necessary to protect my transactions from additional risk  
4 that was not in the marketplace at the time I made the  
5 transaction.

6 That said, I recognize the broader needs of the  
7 dairy industry and support an earlier implementation of  
8 the other NMPF proposals, apart from the changes in skim  
9 milk component factor which should be delayed 12 months or  
10 more.

11 I close by repeating my support for the National  
12 Milk Producers Federation proposal package in totality,  
13 but wish to, again, highlight the dire situation dairy  
14 farmers are facing within the current marketplace. We  
15 operate on very slim margins, even in a good year. As a  
16 second-generation dairy farmer, I have had the opportunity  
17 to step into the shoes of those that came before me, and  
18 work tirelessly to make improvements for the generation  
19 after me. Without dairy farmers, there cannot be a dairy  
20 industry.

21 Dairymen will always try to find a way to do what  
22 we love to do, which is milk cows, raise our animals, and  
23 provide for our families. However, we can't continue to  
24 take all of the risk for everyone else to make a dollar in  
25 exchange for pennies. We will continue to innovate,  
26 manage, and strive for success. We live in optimism, but  
27 we can only survive so much.

28 Thank you for allowing me to testify today on



1 these issues that are very important to my family and the  
2 future success of our dairy business.

3 Q. Thank you, Mr. Palla.

4 MS. LOMBARD: Your Honor, at this time I'll tender  
5 the witness for cross-examination.

6 THE COURT: Any questions for this witness?

7 CROSS-EXAMINATION

8 BY MR. MILTNER:

9 Q. Good morning, Mr. Palla.

10 A. Good morning.

11 Q. My name is Ryan Miltner. I represent Select Milk  
12 Producers.

13 I have some familiarity with New Mexico farms, and  
14 I wondered if you could offer for -- for everybody here, a  
15 little bit about the efficiency improvements that have  
16 happened at your farm and with other farms in Clovis and  
17 Roswell.

18 A. So to be sustainable in the business, we have to  
19 figure out ways to decrease costs or increase production  
20 on the facilities that we have in order to limit our cost  
21 per hundredweight, on our farm. So it can be anything  
22 from technologies, to products that increase feed  
23 efficiencies, to equipment, decreasing labor, and an  
24 opportunity -- you know, if there's an opportunity to do  
25 that, that those are things that we have done to try and  
26 be more efficient.

27 Q. You really look for efficiencies in every point in  
28 the process, from feeding to milking to loading out, don't



1 you?

2 A. 100%.

3 Q. Has your farm implemented any new technologies in  
4 terms of milk load-out and efficiencies, in that -- in  
5 that part of the operation?

6 A. The biggest thing is making sure that  
7 communication on scheduling for the milk trucks, the  
8 trucks come in, they load, they leave. We put in as high  
9 a capacity pump as we can to get them loaded quickly and  
10 get them to market as soon as possible.

11 Q. Those pumps also minimize the loss of milk in the  
12 transfer from tank to truck?

13 A. Absolutely.

14 Q. May I assume that most, or if not all, of your  
15 milk goes across the street to Southwest Cheese?

16 A. I would say most, yes.

17 Q. You -- you make a statement that "if the proposed  
18 change were in place over the last ten years, we would  
19 have experienced negative operating income."

20 A. That's correct.

21 Q. Unfortunately, my understanding is that over the  
22 last ten years, it's been more common than not for farms  
23 in your part of the world to have negative operating  
24 income. Is that correct?

25 A. That would be accurate.

26 Q. And there have been a lot of good dairy farms in  
27 your part of the world that have gone out of business in  
28 the last three, four years especially, correct?





1 A. Yes.

2 Q. So it's not even a matter of what happens if we  
3 make these changes, it's also already pretty hard in New  
4 Mexico right now, isn't it?

5 A. Yes.

6 Q. You make a statement that milk buyers at  
7 manufacturing plants have means to cover their --  
8 additional means to cover their operating costs, including  
9 lowering over-order premiums.

10 Right now, in New Mexico, is the agency able to  
11 get a Class III over-order premium?

12 A. I don't know for sure. I think in some instances  
13 we are able to achieve some, but not in all.

14 Q. Premiums are also hard to come by right now in the  
15 Southwest, correct?

16 A. Yes.

17 Q. This issue of risk management and when we  
18 implement changes or when USDA chooses to implement  
19 changes is something that's been coming up a lot, and you  
20 make reference to that in your statement. I have asked  
21 this of other witnesses because I want to get people's  
22 opinions on it because I really don't know the answer to  
23 this, and I don't know that anyone in here really does.

24 You say that for Proposal 1, which is the proposal  
25 that changes the skim milk component factors, you would  
26 like to see that delayed for your risk management, but not  
27 for the other changes from National Milk.

28 And I wondered what your thoughts are as a farm



1 operator, when a risk manager says, this is okay to  
2 delay -- or this is okay to do now, and this we need to  
3 delay.

4 Can you help provide some thought on that?

5 A. I probably don't know the exact specifics, so I'd  
6 probably rather not comment on that and not be accurate.

7 Q. Okay.

8 When you use DRP, do you purchase your coverage  
9 based on class or on components?

10 A. I will purchase on what is the best return for the  
11 time that I can make the purchase. So if the -- I have  
12 done both is the short answer. If the class price looks  
13 better than the component price. I'll do class price; if  
14 the component price looks better than the class price, I  
15 can do it on component.

16 Q. So it's the -- it is the overall economics of the  
17 cost of coverage and the potential return that drives your  
18 decision?

19 A. Correct. Basically if the component pricing nets  
20 me higher a Class III price, then I will -- you know, and  
21 it more than offsets the premium, then I will do the  
22 component pricing.

23 Q. Have you found that one option or the other, class  
24 or components, is better for matching the milk that you  
25 produce at your farm?

26 A. No. No, I have not.

27 Q. Okay. Thanks?

28 MR. MILTNER: That's all I have.



1 THE COURT: Other questions for this witness?

2 Seeing none, AMS.

3 CROSS-EXAMINATION

4 BY MS. TAYLOR:

5 Q. Good morning.

6 A. Good morning.

7 Q. Thank you for coming to testify today.

8 A. Thank you.

9 Q. I appreciate your statement. I don't actually  
10 have too many questions.

11 One question we do like to ask of all our  
12 producers is if they meet the Small Business definition,  
13 which for the government is producers making \$3.7 million  
14 or less in gross revenue on a farm basis a year.

15 Would your farm meet that definition?

16 A. No.

17 Q. I really just have a question or two that centers  
18 around the impact that you as a producer have seen on your  
19 milk check due to what everyone terms here is inadequate  
20 Make Allowances and as a co-op member how that's impacted  
21 you. Could you speak to that at all?

22 A. Not specifically. But I -- I do know that we ship  
23 milk to cheese plants that have been profitable with the  
24 current Make Allowances.

25 Q. Okay.

26 A. And we are getting paid at a minimum class pricing  
27 or class pricing plus. And so I do know that that is  
28 happening.



1 Q. Okay. And so if the Make Allowances increase for  
2 those plants that you ship to, you --

3 A. It's going to come out of my milk check.

4 Q. Right. I'll ask the good question that was just  
5 told to me.

6 On your risk management side of your operation,  
7 you talk about how you do contracts anywhere from three to  
8 18 months out. Just curious, kind of like what's the  
9 breakdown of that? Do you -- have the majority of those  
10 within six, nine, 12? I mean, where is the sweet spot?

11 A. You know, there's -- there's really not one.  
12 It's -- it is actually rare that you can lock in a profit  
13 on the futures board in the dairy industry, but if you  
14 can, then we typically will take advantage of that.

15 However, I won't sell my milk in the future unless  
16 I know I have my feed costs locked in at the same time.  
17 So depending on what positions I can take on feed through  
18 either cash or a futures price will determine how far I  
19 will go out.

20 I have locked milk in up to 15 months ahead a  
21 couple of different times. You know, more six months is  
22 probably more of the average of how far I'll go forward.

23 Q. Okay.

24 A. But we do -- we do a variety of different ways.

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

26 MS. TAYLOR: That's it from AMS. Thank you so  
27 much.

28 THE COURT: Any further questions in the nature of



1 cross?

2 Seeing none, redirect?

3 Redirect.

4 MS. LOMBARD: Your Honor, given that there are no  
5 additional questions, I move that the witness' statement  
6 be admitted as the next exhibit into the record. I think  
7 we identified that as 148.

8 THE COURT: Yes.

9 Any objections?

10 Hearing none, Exhibit 148 is made a part of the  
11 hearing record.

12 (Thereafter, Exhibit Number 148 was received  
13 into evidence.)

14 MS. LOMBARD: Thank you, Mr. Palla.

15 THE COURT: Thanks for coming in, Mr. Palla. I  
16 appreciate it.

17 THE WITNESS: Thank you for the accommodations,  
18 too.

19 THE COURT: Okay. I understand that we have  
20 another witness we want to get up and off the stand before  
21 lunch.

22 We want to recall the witness, Mr. Schlangen.  
23 Welcome back. Okay.

24 Mr. Rosenbaum, if you can do this as well -- who  
25 has questions for this witness?

26 MR. ROSENBAUM: Your Honor, I think if there's  
27 anyone else who wants to ask the witness questions, he's  
28 available --



1 THE COURT: Yes.

2 MR. ROSENBAUM: -- for cross-examination.

3 THE COURT: Does anyone else have any questions  
4 for this witness?

5 Does AMS have any questions for this witness --  
6 oh, yes, Ms. Hancock.

7 CROSS-EXAMINATION

8 BY MS. HANCOCK:

9 Q. Good morning, Mr. Schlangen. Again, I just had a  
10 couple questions I want to talk about you with your  
11 producer hat on and talk about your operational expenses.

12 Have your operational or input expenses increased?  
13 And I'm talking about -- yeah, maybe we ought to start  
14 there. Have your operational costs increased?

15 A. Yeah. Well, that's pretty clear they have  
16 gradually increased over the last number of years. But, I  
17 mean, the last three years a lot of things have really  
18 increased a lot.

19 Q. Things such as labor?

20 A. Labor's a big deal if you can even find it. And  
21 other supplies, cleaning supplies, things you use on the  
22 farm, you know, that -- just a lot -- everything is higher  
23 than what it was.

24 Q. And you have seen a greater increase over the last  
25 three years than what you have seen historically; is that  
26 right?

27 A. Yes, I would say so.

28 Q. And -- and that also would include things such as



1 your feed costs?

2 A. Feed costs have -- you know, we grow most of our  
3 own feed, and feed costs have been gone up and down over  
4 the years. They were actually higher a year ago than what  
5 they are now. They have come back some.

6 But generally speaking, feed costs and milk  
7 prices, they go fairly well together, just because -- and  
8 there's usually a lag in that, the milk price, so to  
9 recover, if feed prices really go high, but -- but the  
10 inputs to produce that feed have gone up, whether it's  
11 fertilizer, chemicals, fuel, everything. So generally,  
12 yeah, costs have gone up.

13 Q. Okay. And you just mentioned fuel. Your  
14 transportation costs have gone up quite a bit, haven't  
15 they?

16 A. Yeah. Well, just about everything has a surcharge  
17 on it now of one thing or another. But, yeah, fuel prices  
18 have gone up. They too can go up and down, but we're just  
19 waiting to see if they will ever go down again because we  
20 had -- we had better fuel prices a few years ago.

21 Q. And -- and just -- if we just look back over the  
22 last 23 years, that it's fair to say that transportation  
23 costs have continued to increase over that time; is that  
24 right?

25 A. I would -- I would say so.

26 Q. And is your farm a Grade A farm?

27 A. Yes, it is.

28 Q. Does it cost you more today to maintain that



1 standard versus what it cost you 23 years ago?

2 A. Well, everything costs more. We put in a robotic  
3 milker in 2010, and we actually had to switch out a bunch  
4 of the valves. It came in from Canada, and it was okay to  
5 use there. But with our regulations here, it wasn't okay,  
6 and we had to switch those valves over to make it  
7 compliant with -- with here, so -- but, I mean, if you  
8 look at a lot of other things that have come into play  
9 with the farm program, the EU somatic cell count  
10 situation -- you know, and then, again, the cleaning  
11 equipment -- cleaning chemicals and different things to  
12 keep your operation so it is Grade A, everything has gone  
13 up some.

14 Q. Okay. And you mentioned, you know, installing the  
15 robotic milker and the cleaning chemicals and some of the  
16 those extra items that are required in order to maintain  
17 that status. Any other items that you can think of that  
18 go into your operation -- your farming operation to  
19 maintain that Grade A status?

20 A. I'll probably think of some when I'm on my way  
21 home, but I can't think of anything right now.

22 Q. I'll think of some things when I leave as well.

23 Okay. So where you are located in the Upper  
24 Midwest, have you seen any of the Class I plants close in  
25 that area?

26 A. I am in Central Minnesota. I -- we hear, yeah,  
27 there are some that have closed over time, but none that  
28 are right in my location.





1 Q. Okay. Have you seen any additional costs that you  
2 or your that your fellow members have experienced in  
3 trying to serve the Class I market?

4 A. Well, the fact is the Class I market is actually a  
5 really small part of our co-op and our milk usage. And  
6 the costs for supplying any market has gone up.

7 So, yeah, you try to, you know, reduce the cost as  
8 much as possible, whether you do that through milk swaps  
9 or, you know, supplying milk to plants that is a long ways  
10 for someone else and you can -- you can swap with them.  
11 It's -- any way you can help reduce costs that -- if  
12 you're burning up fuel, that money is gone and nobody gets  
13 it, so you work together with other co-ops to --

14 Q. And that's one of the concerns when you are  
15 serving plants that would be located farther away are  
16 those additional transportation costs?

17 A. Well, absolutely. Yeah.

18 Q. So I just want to be clear in this. I think you  
19 touched on this earlier, on some of the proposals from  
20 National Milk. But does AMPI support National Milk's  
21 Proposal 19 for Class I differential increases?

22 A. You know, we went over that whole price surface  
23 study, and we saw the numbers that came in. And I guess  
24 I'm not in a position to say that -- I believe all those  
25 numbers are legitimate, but I would assume that if they  
26 have those numbers, that they -- they can document and --  
27 and defend those numbers as being legitimate in those  
28 areas. But I -- I couldn't say for sure if those are



1 really numbers that -- I guess we support the concept  
2 probably of some of that, but to know that that's actually  
3 what they believe they need in those areas, I couldn't say  
4 that that's 100% accurate.

5 Q. Okay. So you don't have any information to  
6 suggest the numbers that you saw were inaccurate, right?

7 A. No, I don't. It's just that when I hear about  
8 those numbers, and really most of that includes just  
9 hauling costs, and then I hear about the Make Allowance  
10 numbers that include all these other costs, I don't think  
11 the request for Make Allowance changes are anywhere out of  
12 line at all if those numbers are as legit as they say they  
13 are.

14 Q. Okay. And the numbers that you looked at when you  
15 were working with National Milk for the Class I  
16 differentials, as long as the numbers could be supported  
17 with the data that was put into the record, you would  
18 support those increases?

19 A. You know, I would think so. I would think and --  
20 but there, again, you know, if you are going to delay  
21 implementation of these other things, do you -- do you  
22 kind of do that -- everything gradually or do you do  
23 everything together, you know, maybe more quickly? I  
24 don't know.

25 Q. And do you have a position on that?

26 A. It is really hard because I think we all got to,  
27 you know, be careful about our whole industry, and we got  
28 to find a way to get to a point where it's fair across the



1 country for farmers. And, you know, we have been living  
2 in this, what we -- I believe is unfair to manufacturers  
3 for a long, long time. And I know it's going to be hard  
4 to wait for very long to get those numbers fixed because  
5 that affects what we do as far as investment and expanding  
6 our capacity and different things like that to provide a  
7 market for our members.

8 So it is not going to be an easy thing, but I  
9 guess that's why we're doing a hearing and why we're  
10 trying to get all the best numbers out here so that people  
11 can make good decisions based on those numbers.

12 Q. And if you are just looking at your dairy farming  
13 operating income, are those pretty -- are those numbers  
14 pretty tight as well?

15 A. Yeah. We have been pretty much a non-profit this  
16 year so far. But, I mean, we go through those times, and  
17 last year was a good year. We do have the Dairy Margin  
18 Coverage now for every farm in the country on their first  
19 5 million pounds of milk, which is helping us through.

20 But, yeah, the margins are relatively tight. They  
21 have been. Sometimes you do better than others. But so  
22 far this year I would say most people are -- are  
23 struggling. And there's a lot of farms that are selling  
24 out and they have had enough.

25 Q. Yeah. And then on National Milk's Proposal  
26 Number 13, reverting back to the higher-of on the mover,  
27 do you support that proposal as well?

28 A. You know, that's something that I -- we thought



1 was working pretty well before it got changed on -- in the  
2 first place. And it's pretty clear, if you look in  
3 hindsight, that that's not -- not something you should  
4 probably do through legislation. It should be done  
5 through a hearing process, because when you do those  
6 things, it affects other things. And I think this is an  
7 example of what can happen when you legislate something.  
8 And, of course, nobody predicted a pandemic to really  
9 throw a wrench into it really big. But, yeah, I think  
10 that's why you need to go through a hearing process to  
11 make those decisions, so that everything kind of works  
12 together and -- and you come up with a good outcome that  
13 people can live with.

14 Q. Okay. And now that we are here in this hearing,  
15 would you agree or support National Milk's proposal to go  
16 back to using the higher-of as the mover for the Class I  
17 pricing?

18 A. It seemed like the higher-of had been working in  
19 the past. I know there's -- there's talk about risk  
20 management and issues with -- with that also. But, you  
21 know, it just seemed like that had been working pretty  
22 good.

23 Q. It hasn't been working that great since it has  
24 gone to the average-of; is that fair?

25 A. Well, it did for the first six months or so. It  
26 actually looked like it was a real good thing to do until  
27 the pandemic hit.

28 Q. Uh-huh.



1       A.    So it just changes everything.  And so I don't  
2 know going forward through -- I don't know what's going to  
3 be normal going forward, exactly.  But I think higher-of  
4 has seemed to work pretty good in the past.  And I guess I  
5 don't know, unless there's a better idea that, you know,  
6 could fix this going forward.

7       Q.    Okay.  I really appreciate your time today.

8           MS. HANCOCK:  Thank you.

9           THE WITNESS:  Thank you.

10          THE COURT:  Further questions other than AMS for  
11 this witness?

12           Seeing none, AMS.

13                                    CROSS-EXAMINATION

14          BY MS. TAYLOR:

15        Q.    Good afternoon.

16        A.    Good afternoon.

17        Q.    Thank you for coming to testify today.

18        A.    Yep.  You're welcome.

19        Q.    I have got questions to ask you on the producer  
20 side -- with your producer hat and some on the plant hat.  
21 If there's questions on the AMPI plants, that you can't  
22 answer, that's fine.  I was just curious if there would  
23 perhaps be another witness from AMPI that might be coming  
24 later to testify kind of on the plant side of the house.

25        A.    I don't know if we have anyone.

26        Q.    Okay.

27        A.    It depends what the questions are if --

28        Q.    Well, I'll give it a try for you, and we'll see



1 where we go.

2 A. Okay.

3 Q. I think you stated in some of the questions that  
4 85% of AMPI's milk goes to your own plants, and then you  
5 sell the rest either to fluid plants or other Class III  
6 plants; is that correct?

7 A. That would be my guesstimate on that, but I think  
8 we're in the ballpark there.

9 Q. Okay. Do you know about how much milk AMPI  
10 markets on behalf of its members a year?

11 A. That would be that balance, whatever that would  
12 be.

13 Q. I meant in totality. What would 100% be if you  
14 happen to know that?

15 A. Oh, total milk?

16 Q. Uh-huh.

17 A. About 5.7 billion pounds a year.

18 Q. And do you know how many employees AMPI has in  
19 totality as well?

20 A. That's a good question too. It's in that 1200  
21 range, I think. But, I mean, we have -- we have also made  
22 investments in robotics and -- and, you know, different  
23 things that reduce those counts because you -- you just  
24 couldn't find people to help. So I don't know exactly  
25 but --

26 Q. Okay. That's a good estimate.

27 And I heard you say that of your plants producing  
28 cheese, you produce barrels and 640s, you do not produce



1 40-pound blocks; is that right?

2 A. Correct. Yes.

3 Q. And of those plants that produce those products,  
4 can they do either, or are some of them just dedicated to  
5 one?

6 A. For the most part, like we have a Paynesville  
7 plant that's just barrels. Jim Falls, Wisconsin, are just  
8 blocks. In Sanborn, Iowa, we're trying to work with some  
9 things to possibly make some -- have some more flexibility  
10 there. But we -- at this point we produce predominantly  
11 blocks out of that plant.

12 Q. Okay. Thanks.

13 I want to focus first on your statement that is  
14 marked 147, and that's in regards to dropping barrels. So  
15 we'll start on that topic.

16 You say that moving to pricing Class III 100% on  
17 blocks would complicate milk pricing for barrel cheese  
18 manufacturers. And I just wanted to see if you could  
19 expand on that. We've asked questions of witnesses  
20 previously in the hearing of what would the impact be to  
21 barrel makers, you know, who currently your price -- the  
22 Class III price at least has some representation of  
23 barrels in it, and under Proposal 3, it would obviously  
24 only be blocks. So what would you think the impact would  
25 be to you all or to AMPI?

26 A. Well, I think there would be a lot of uncertainty  
27 as far as where that barrel price would be, and it  
28 wouldn't be included then in what the real cheese market,



1 the cheddar cheese market, should be, even though --  
2 because barrels is a pretty significant amount of cheese  
3 produced in this country, and there's a possibility that  
4 that could increase over time with -- we're looking at  
5 more processed cheese going out of the country to other  
6 parts of the world, that they all use barrels.

7 And I just think it's risky to remove barrels  
8 completely. I think it would be safer to -- you know, to  
9 give them a -- a weighted ratio or whatever with blocks,  
10 because they are still a huge part of the cheddar market,  
11 and if you want a real honest value of what cheddar cheese  
12 is worth, I think it has to include barrels.

13 Q. Would you say if -- does AMPI already have trouble  
14 paying the Class III price because it's --

15 A. Well, it --

16 Q. -- it has blocks in it?

17 A. I would say, in most cases, we would be better off  
18 selling milk at a Class III price than we would be running  
19 that milk through our plants and making Class III  
20 products.

21 Q. Okay.

22 A. Because the value, the costs are not correct in  
23 that Class III price and -- but on the other hand, you  
24 can't do that. You have to make the products that your  
25 customers want.

26 But, yeah, if we had the option to just sell milk,  
27 you know, who would own a plant if they could sell off an  
28 overstated Class III price?





1 Q. But that's the service you offer your members is  
2 to make sure you have a place to put it?

3 A. Well, that's --

4 Q. As a co-op?

5 A. Well, that's a big deal.

6 Q. Right.

7 A. Yeah.

8 Q. Since you make or AMPI makes 640s, I'll ask you  
9 sort of an unrelated question.

10 We have a proposal that's being heard at the  
11 hearing to add 640s to the price survey. Do you know if  
12 AMPI would support that?

13 A. You know, I couldn't say that for sure one way or  
14 another. I just know that the 640s we already sell are  
15 based off of the 40-pound block market.

16 Q. Okay.

17 A. So it is really all related anyway as far as, you  
18 know, price discovery. So I don't know if that would  
19 change anything in that formula, but it would -- yeah.  
20 They are definitely connected to the 40-pound block price.

21 Q. Okay. Thank you.

22 We have had testimony earlier that talks about the  
23 spread between blocks and barrels, and it's been very  
24 volatile. The range has been large since 2017. And I'm  
25 wondering if you could speak to how the impact of that  
26 volatility -- spread volatility has impacted the co-op.

27 A. Well, that's -- that's been a big deal. We're  
28 lucky in a way that we do have one barrel plant that we



1 can -- you know, we can produce barrels and deal with that  
2 price and the other three are pretty much block plants.  
3 The only thing is you can't just switch over if blocks are  
4 ahead by \$0.20. That's \$2 a hundredweight. You can't  
5 just say, well, we're going to switch over to all blocks  
6 now because your customers need your barrels.

7 So, I mean, to have flexibility would be helpful,  
8 but you also need to have customers -- you know, you have  
9 to keep your customers happy with the products that they  
10 are looking for.

11 So there are times when barrels are ahead of  
12 blocks. There's times when blocks are ahead of barrels.  
13 I think a lot has to do with what has come on over the  
14 last five to eight years as far as capacity around the  
15 country, and it will continue to do with what's coming on  
16 as we go here, on -- are there more blocks coming on now  
17 that will offset it the other way.

18 But to -- to make those two totally unrelated and  
19 take the barrels out completely I think would be risky and  
20 be a mistake.

21 Q. Okay. We have had other cheese -- or cooperatives  
22 that produce cheese testify that if we removed barrels  
23 from the price survey, that there would be a transition  
24 period, but it is their belief that eventually barrels  
25 would just be priced off of blocks. I was wondering if I  
26 could get your thoughts on that sentiment.

27 A. Is that something they would guarantee?

28 Q. I don't believe they could guarantee it, but



1 that's what they testified to.

2 A. I mean, would they say, okay, we'll do this, and  
3 then eventually, barrels will be \$0.03 under the block  
4 market because that's where they belong?

5 You know, I think market is going to determine  
6 what the market price is for those products. And you have  
7 a barrel market, you have a block market at the CME, and  
8 they are separate, and I think it's going to depend on  
9 supply and demand on both of those products to figure out  
10 where those markets are going to land. But in all and  
11 all, they both produce cheddar cheese, and they all should  
12 be part of pricing -- minimum prices for cheddar cheese.

13 Q. Okay. So I want to move to your Make Allowance  
14 discussion. A question on your cooperative, you talked  
15 about how you have eight plants to put your member milk  
16 through. And obviously, you offer that -- I mean, that's  
17 a service to your members to help balance their supply and  
18 make sure there's a place for it to go. Does AMPI balance  
19 milk for any nonmembers or other cooperative members when  
20 needed?

21 A. Really we just have capacity for our own members.  
22 We really don't have any ability to balance because we  
23 have actually -- we have closed balancing plants. We have  
24 closed smaller inefficient plants that were there when we  
25 needed them to -- you know, when all of a sudden the fluid  
26 milk people didn't want milk for bottling, you got to find  
27 a place to put that milk. And we're so limited now. It's  
28 because we couldn't invest and we couldn't afford to keep



1 those -- those plants running at lower than full capacity,  
2 or if -- even if they were just a smaller plant, running  
3 them at full capacity.

4 Q. Thank you.

5 On page 2 of your statement, and that's  
6 Exhibit 146, when you are talking about the inaccurate  
7 Make Allowance, or current manufacturing allowance levels  
8 in our formulas, and you said: "Simply put, it has become  
9 a system based on bad math."

10 And I think I know what you mean, but I don't like  
11 to assume things. So can you expand on that statement and  
12 what you mean by that, "bad math"?

13 A. Well, basically the products we make supposedly  
14 set the market price for, in our case, Class III. If  
15 those numbers generated from, you know, this kind of a  
16 formula price, don't use the right numbers in the formula,  
17 the formula price is not going to be right. And that  
18 creates a trading situation with a price that's inaccurate  
19 and bad math. I mean, really, a lot of those -- when the  
20 Class III price is overstated by a certain amount, it  
21 means everything that gets sold off of that Class III  
22 price is overstated.

23 Q. And when you say it's overstated, that's because  
24 the manufacturing allowances, in your opinion, are not  
25 accurate?

26 A. Absolutely, yes.

27 Q. Later on that page you talk about when  
28 "underestimating processing costs used to determine



1 Federal Order milk component values, inaccurate price  
2 signals are sent to the marketplace that may lead to a  
3 misallocation of capital and resources."

4 Could you kind of expand what you are thinking  
5 there?

6 A. The thing is -- I mean, as a co-op, you are always  
7 looking for ways to add capacity, get better return for  
8 your farmers through making higher value products. But if  
9 you can't afford to do some of those things and follow  
10 through with them, then you got to do some other things.  
11 It would be like wire tying something together on a piece  
12 of equipment to try to limp along and try to keep things  
13 going.

14 And, you know, we just -- there's a lot of things  
15 you can't afford to do that you would really like to do,  
16 that would be a good return for your farm, all -- your  
17 farmers and their milk. But, yeah, it's -- so you end up,  
18 you know, doing whatever you possibly can. And some of  
19 those investments will probably pay off in the short-term,  
20 but they are not a long-term answer.

21 So it really puts your handcuffs on you as a  
22 cooperative to move in a direction you need to move in  
23 order to be there for the next generation of dairy farms  
24 or to be there for the dairy farmers that are in business  
25 right now that want to grow, so --

26 Q. And on that investment piece, I think -- I don't  
27 know where it is now. Somewhere in your statement you  
28 talked about how AMPI has put some investment into your



1 plants. Do you know when that occurred?

2 A. We have done a lot of investing in our plants over  
3 the last ten years. Every single one of our cheese plants  
4 has brand new cheese technology for making to get -- you  
5 know, making cheese and getting the best return, the best  
6 yields, the best quality cheeses out of there. So we have  
7 done a lot of investing as best we can.

8 But those are really small items compared to a --  
9 if you wanted to build a new plant, for example. I mean,  
10 you are talking -- any one of our cheese plants would cost  
11 \$400 million to build, to build a brand new -- and it's  
12 like that's just out of our reach because of -- there's  
13 not enough return to -- to ever pay that back.

14 Q. So if I can put that in -- what I have heard in  
15 kind of a simple way, right, it's like a Band-Aid  
16 approach?

17 A. That's kind of what I meant, I think.

18 Q. Okay. Yeah.

19 On the next page 3 is where you discuss "market  
20 premiums have been replaced with significant reblends  
21 across much of the country."

22 And I wanted to talk about like -- about AMPI.  
23 Does AMPI reblend to its producers?

24 A. You know, I don't know what we all do to try to  
25 pay the best we can for the milk that we receive. But we  
26 pretty much bring the milk in. We make it into the  
27 products. Then we supply our customers. We try to get  
28 the best price for those products. And then we try to pay



1 our farmers as best we can based on those returns. And we  
2 have real costs involved with that that are not included  
3 in some of your other pricing formulas that we don't have  
4 a choice but to deal with.

5 Q. So on the -- on your producer milk check side,  
6 then you would see something less than blend prices in  
7 order to help your co-op on the plant side?

8 A. We generally would see whatever the value of our  
9 milk is based on the components that we have in it and  
10 what we can get out of those components with the markets  
11 we have and the costs that we have.

12 Q. Does AMPI ever choose to not pool milk in order to  
13 try to help recoup some of that money?

14 A. Well, there's times that we have -- have always  
15 depooled their milk in different orders just because it  
16 makes sense, it is the best return for your co-op. I  
17 guess it's just something that's been going on forever.  
18 It has just been really exaggerated -- or really increased  
19 and magnified over the last five years here.

20 Q. The last five years. Okay.

21 If we were to increase Make Allowances and adopt  
22 the IDFA proposal that AMPI supports, how do you think  
23 that would be -- or impact your milk check as a producer,  
24 not on -- as how AMPI's balance sheet is on the plant  
25 side, but you as a producer?

26 A. You know, that will either give us the option to  
27 put more money on the milk check or invest more money in  
28 our plant capacity. Because of the competitive nature of



1 it all, that we will have a better chance of competing  
2 with folks that are just selling off that Class III market  
3 price, and hopefully we would be able to invest more in  
4 our supply plants and let our farmers grow, get more  
5 return, better return for those farmers and, you know,  
6 just have a brighter future for all of them.

7 Q. Okay. And we have had testimony previously in the  
8 hearing about other new plants coming online, particularly  
9 next year. And so I wanted to get your thoughts on that.  
10 And as I asked an earlier witness today, I'm trying to  
11 kind of balance how on one side we hear the discussion  
12 that Make Allowances are low, and so that's preventing  
13 plant investment, but then at the same time we have  
14 testimony testifying that there's new plants coming online  
15 soon. So just trying to square those two things, and I  
16 didn't know if you had any thoughts on that.

17 A. And I guess I don't know where the capital is  
18 coming for those new plant expansions. But from what  
19 we -- what we see in our experience, it isn't coming from  
20 the return on those plants. But time will tell, I guess,  
21 what their returns will be. You know, plants get more  
22 efficient as they get bigger also. But they also have a  
23 lot of expense to depreciate over time, and that's got to  
24 show up somewhere.

25 But I think in many cases, there is some outside  
26 money that could help to expand, and I would be happy  
27 to -- to help anyone that wants to help us expand our  
28 plants. If they want to -- want to donate some money, we





1 would be happy to --

2 Q. Well, you are being broadcasted, so maybe someone  
3 will hear that too.

4 A. I'm not going to hold my breath, I guess.

5 Q. You also talk about how a lot of cooperatives have  
6 installed production limits. Has AMPI had to that for its  
7 members?

8 A. We actually just did this year, yes.

9 Q. Okay. So they have a base?

10 A. It's a base/excess plan. So, yeah.

11 Q. Okay. And is that a result of lack of plant  
12 capacity, since you talk about you only have about  
13 eighty -- plant capacity for about 85% of your milk?

14 A. Yeah. And that's, you know, as productions come  
15 up some, we might have more production actually than --  
16 than plant capacity by -- it might be even more than that  
17 extra 15%. But there's a number of factors in that.

18 But, yeah, until we have the ability to invest  
19 money and grow our plant capacity, right now, we really  
20 have to wait for farmers to sell out to -- to allow others  
21 to grow, because we are limited on plant capacity. So --  
22 you know, for decades it was best to have an extra 15% of  
23 your milk to sell off to people that needed extra milk for  
24 this or that or the other thing. We have gotten to a  
25 point this last year where any extra milk was going to  
26 cost you dearly. And we have even seen competitors that  
27 are not co-ops actually just draw a circle and cut farmers  
28 off and say, find a new market, and they would actually



1 then go ahead and buy the surplus milk at a discount and  
2 do very well with that.

3 So it's not been a pretty -- pretty sight,  
4 especially this last half a year or a little better.

5 Q. Can you talk a little bit about AMPI members  
6 and -- and I guess the impact of these small margins they  
7 have had? Have you seen a lot of AMPI members having to  
8 go out of business, just they couldn't last any longer?

9 A. Well, there's -- there's some that they can't last  
10 any longer. There's some that just don't want to put up  
11 with it anymore. They are probably at an age where they  
12 are not going to invest more to stay in the business. And  
13 they have known that over the years it's been really tight  
14 margins. Thank God we have a really good safety net for  
15 our first 5 million pounds of milk per farm. That's  
16 actually kept a ton of farmers in business this year,  
17 probably including myself, that we need there -- to be  
18 there for the future.

19 But, yeah, it's been -- it's been challenging.  
20 And there's no doubt about that.

21 Q. At the bottom of page 3, and this is where you are  
22 talking about Dr. Stephenson's study and how AMPI  
23 participated in that. And you wrote that "these  
24 plants" -- and you are talking about the 18 cheddar plants  
25 in the Stephenson study -- "produced an average of  
26 122 million pounds of cheddar cheese annually, well above  
27 the average cheddar production per plant in this country."

28 And I just want to make sure I'm clear on what you



1 mean there, is that that's -- you would say that that is  
2 weighted more towards a larger plant than the smaller side  
3 of plants?

4 A. Well, to me, 122 million pounds of cheese would  
5 equate to about 1.2 billion pounds of milk per year. And  
6 our plants are in that 950 to a billion pounds of milk  
7 that they will take in a year's time if they are a  
8 3-million-pound-a-day plant, so -- it's really -- really  
9 close to what we average, that those -- those numbers come  
10 back at averaging.

11 Q. Okay. So your plants are a little bit smaller  
12 than the average --

13 A. Probably.

14 Q. -- in that study?

15 You talked about how AMPI's costs have gone up and  
16 the results of this Stephenson survey. Have you looked  
17 at -- or has AMPI looked at the Stephenson results and  
18 your own plant costs to see kind of how they line up on  
19 the cost side? I know we just talked about it on the  
20 capacity side of what was represented in the survey. But  
21 have you compared the cost side of the equation?

22 A. Between our plants?

23 Q. Between what you actually experience in, say, the  
24 average of what -- what Dr. Stephenson put out in his  
25 latest survey?

26 Are those -- I guess what I'm asking is, are those  
27 numbers representative of your cost or you have higher  
28 costs than kind of what his numbers show? Just trying



1 to --

2 A. I think those numbers show that we're really close  
3 to average of what's -- what's considered an average cost  
4 to make cheddar cheese around the country and in those  
5 size plants.

6 Q. Okay. You have a statement in here, and I'll read  
7 it: "The high level percent change for AMPI bulk cheese  
8 products is 47% higher in 2022 than 2028" -- "2008,"  
9 excuse me?

10 I'm just -- I'm not clear on what you mean by the  
11 "high level percent change."

12 A. To me, that would be really the overall increase  
13 in expenses over that time. We don't want to, you know,  
14 divulge too much information, but I think that's a pretty  
15 good estimate of what our costs have gone up.

16 Q. Okay. So your costs, on average, have gone up --  
17 AMPI's is costs -- about 47% over the 2008 cost?

18 A. Yeah. And that would be costs on a per pound  
19 basis, I believe, and not overall costs because we're  
20 going to have the efficiencies that we gain also with  
21 putting in new equipment, so --

22 Q. And the next sentence reads: "General plant  
23 expenses are up 62%."

24 Is that just a subset, is what you pulled out  
25 there or --

26 A. Well, to me, that would mean that we gained some  
27 efficiencies, otherwise we would be at 62% increase on  
28 overall costs. We were only 47% increase on overall costs



1 per pound because of the efficiencies we gained -- I mean,  
2 overall costs to the plant are up 62%, but that's  
3 probably, you know, spread out over more -- more pounds of  
4 product produced.

5 Q. More than just the bulk cheddar?

6 A. Yeah.

7 Q. Okay. That's clear now. Thank you.

8 I know you have talked about your cost increases,  
9 and we have all experienced the kind of large increase in  
10 inflation over the past year or two. Do you think those  
11 cost increases have accelerated in the last year or two,  
12 kind of all that inflation and maybe before that period  
13 they weren't quite as high? Trying to see what percentage  
14 of that cost we can attribute to just the last two years  
15 inflation.

16 A. You know, it would be hard to really quantify  
17 that, but I -- I think we have seen costs gradually  
18 increase up until when the pandemic hit, and at that point  
19 we saw supply chain issues, we saw issues getting  
20 packaging and ingredients and a lot of things, and labor's  
21 been increased dramatically since then. So it's really  
22 accelerated the last couple years, for sure, two to three  
23 years, on almost everything.

24 Q. Okay. Other co-ops' witnesses have talked about  
25 how any sudden increase in producer checks -- so larger  
26 than what National Milk is proposing, so the IDFA  
27 proposal, for example -- would be destructive and result  
28 in farms closing. And it doesn't seem like AMPI has that



1 same conclusion.

2 I'm just wondering if you can talk about that  
3 about, why you -- you might not find it as disruptive  
4 if -- since you are supporting the IDFA proposal.

5 A. Yeah. And I think I understand your question, and  
6 I think it's probably because, you know, 80 to 90% of our  
7 milk goes through our cheese plants, and we get what we  
8 get for that already. So we're really only affected if  
9 the Class III would get changed or Make Allowance would  
10 get changed. It would only be affecting the other  
11 percentage of the milk that was sold off that -- those  
12 markets. So we are already living those costs. They are  
13 out of our milk check already. Where folks that are  
14 depending on the Class III sales, they are not out of  
15 those sales.

16 Q. Okay. I understand. You are either living it --  
17 you are living it -- as a producer you are living it  
18 through either deducts in your milk check or -- somehow  
19 that money comes out of the co-op, either whether it is --  
20 somehow that money is out of your producer check as it is  
21 now?

22 A. Yeah. And it's a challenge to balance that  
23 because, of course, producers want to get paid more, but  
24 you also don't want to lose your co-op and your market for  
25 your milk. So you got to make sure you keep that co-op  
26 healthy and -- so that is there for the future. But at  
27 the same time, you've got to be as competitive as you can  
28 be.



1 Q. I'm sorry. I'm not distracted, I just get  
2 questions from like lots of other people sending me  
3 questions. So I'm trying to keep track of everything  
4 organized. Make sure I don't miss anything.

5 Let's see.

6 MS. TAYLOR: I think Mr. Wilson has a question.

7 CROSS-EXAMINATION

8 BY MR. WILSON:

9 Q. Good afternoon.

10 A. Good afternoon, Todd.

11 Q. On the top sentence on page 5 of the Exhibit 146,  
12 you talk about the prices paid by unregulated competitors.

13 I was just trying to figure out, is this  
14 unregulated -- FMMO unregulated? Is it unregulated  
15 markets? What kind of unregulated competitors are you  
16 thinking about in this sentence?

17 A. I would assume that's competitors that are not in  
18 the Federal Order system.

19 CROSS-EXAMINATION

20 BY MS. TAYLOR:

21 Q. We have a team of people and they remind me of the  
22 questions I forget to ask.

23 I did want to ask you as a producer, if your farm  
24 would meet the Small Business definition, which is farms  
25 producing -- or earning \$3.75 million or less in gross  
26 revenue a year.

27 A. Easily. Yes.

28 Q. And could you speak to what kind of the farm sizes



1 of other AMPI producers? I think you said you had 60  
2 cows. What's the range of --

3 A. We have farms of 12 cows up to 10,000 cows.

4 Q. Okay.

5 A. And everything in between.

6 Q. Everything in between.

7 MS. TAYLOR: I think that's it. Thank you so  
8 much.

9 THE WITNESS: Thank you.

10 THE COURT: Mr. Rosenbaum.

11 REDIRECT EXAMINATION

12 BY MR. ROSENBAUM:

13 Q. Steve Rosenbaum.

14 Is AMPI 100% Grade A?

15 A. I believe we are. Yeah, there was a time we had  
16 some Grade B, but we -- we went to 100% Grade A.

17 Q. And I think I neglected to -- at the early stage  
18 -- to ask you for your work address, which we're supposed  
19 to have for all of our witness.

20 A. Yeah, there we would use the AMPI home office  
21 address, which would be New Ulm, Minnesota.

22 Q. Is there a street address associated with that?

23 A. It's Broadway Avenue. I don't know what exactly  
24 the number would be, but you can't miss it.

25 MR. ROSENBAUM: Well, I love to end things with a  
26 humorous question and answer, and at this point I would  
27 simply move 146 and 147 into evidence.

28 THE COURT: Any objections?





1           Hearing none, Exhibits 146 and 147 are made a part  
2 of the hearing record.

3           (Thereafter, Exhibit Numbers 146 and 147 were  
4 received into evidence.)

5           THE COURT: Yes, ma'am.

6           MS. LOMBARD: Yeah, your Honor. We would like to  
7 ask you and the other parties to consider taking a shorter  
8 lunch. I know that we're pretty far into the day. We  
9 have two farmers who still need to testify, and they are  
10 trying to make it back to the farm. So I don't know if a  
11 30-minute lunch or shorter lunch option is --

12           MS. TAYLOR: I think the issue is we have got to  
13 balance our court reporter, give her a break.

14           MS. LOMBARD: Oh, yes.

15           MS. TAYLOR: We are running her already pretty  
16 hard for a lot of days, so --

17           MS. LOMBARD: I defer to you guys.

18           MS. TAYLOR: I think that's going to be an issue.  
19 I don't know what the time constraints are. I don't know  
20 the specific time constraints that you are talking about.

21           THE COURT: I think we have said in the notice --  
22 not we, not me, but you all -- we said something about a  
23 one-hour lunch, too. So I -- I understand we'll do the  
24 best we can to accommodate the dairy farmers, they are  
25 important to us, but I think with we probably need a --  
26 I'm sorry.

27           MS. LOMBARD: We have two left, so -- and I was  
28 going to originally propose that one go before we break



1 for lunch, but I know that we're -- again, it's -- it's up  
2 to you guys. My understanding is that Paul needs to get  
3 back as soon as he can.

4 No, he's not flying, so he's not catching a  
5 flight.

6 THE COURT: Let's go off the record.

7 (Off-the-record.)

8 THE COURT: We'll come back on the record. Break  
9 for lunch until 1:40.

10 (Whereupon, the lunch break was taken.)

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1 THURSDAY, SEPTEMBER 7, 2023 - - AFTERNOON SESSION

2 MS. LOMBARD: Jill Lombard representing Dairy  
3 Farmers of America, introducing a second DFA farmer-owner,  
4 who is here to testify today.

5 Your Honor, I would ask that his witness statement  
6 be marked for identification, that's Exhibit DFA-1. I  
7 think that will be 149.

8 THE COURT: Yes. So marked.

9 (Thereafter, Exhibit Number 149 was marked  
10 for identification.)

11 THE COURT: Please raise your right hand.

12 MS. LOMBARD: Thank you.

13 PAUL WINDEMULLER,

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

16 THE COURT: Your witness.

17 MS. LOMBARD: Thank you.

18 DIRECT EXAMINATION

19 BY MS. LOMBARD:

20 Q. Mr. Windemuller, can you please state your name  
21 for the record?

22 A. Paul Windemuller, P-A-U-L, W-I-N-D-E-M-U-L-L-E-R.

23 Q. Thank you.

24 Please state your business mailing address for the  
25 record?

26 A. 1405 North 98th Street, Kansas City, Kansas,  
27 66111.

28 Q. Thank you.



1 I understand that you have prepared a written  
2 statement for your testimony today. Would you please read  
3 that statement at this time?

4 A. Yes, I will.

5 My name is Paul Windemuller, and I appear before  
6 you today as a first-generation farmer and the sole owner  
7 of Dream Winds Dairy, LLC, located in Coopersville,  
8 Michigan. Together with my wife, we started our farm a  
9 decade ago with a modest herd of 30 cows, which has since  
10 grown to 260 cows in a state-of-the-art, robotic milking  
11 facility.

12 My journey into the agricultural world began at my  
13 parents' farm equipment dealership, where I was immersed  
14 in the foundational principles of farming. This  
15 invaluable experience nurtured my passion for agriculture  
16 and laid the groundwork for an understanding of and a  
17 commitment to the industry.

18 Today, my family lives on our farm where my wife  
19 and I homeschool our six children, providing them with a  
20 nurturing environment that fosters both academic growth  
21 and a deep connection to agriculture and the community.

22 I am not only a dedicated farmer but also a  
23 farmer-owner of Dairy Farmers of America (DFA), and my  
24 commitment to the cooperative has led me to serve in  
25 various leadership positions, from area delegate to  
26 Mideast Area Council Board Member.

27 Moreover, I hold a Series 3 commodity broker  
28 license, which I acquired to better serve my clients with



1 risk management strategies in my niche farm consulting  
2 business. I also have experience in dairy construction  
3 projects across the country, including general  
4 contracting, which has enriched my knowledge of the  
5 industry.

6 Beyond the U.S., I have explored the global dairy  
7 industry attending conferences and industry events in  
8 countries like New Zealand, Vietnam, Singapore, France,  
9 and the Netherlands. These international experiences have  
10 broadened my perspective and inspired innovative  
11 approaches to our dairy practices.

12 Dream Winds Dairy, LLC, is not just an enterprise;  
13 we strike to make it a pillar of our local community. We  
14 take great pride in contributing to the financial  
15 prosperity of 40 local businesses and neighboring farms on  
16 a monthly basis. We stay involved by hosting community  
17 events, 4-H meetings, and school tours, as well as  
18 volunteering over 400 hours annually.

19 Now, I am here today to lend my support to the  
20 five proposals put forth by the National Milk Producers  
21 Federation (NMPF). These proposals address critical  
22 issues impacting the dairy industry, and I believe they  
23 merit serious consideration.

24 They are:

25 (1) Limit the Make Allowance increase to NMPF's  
26 proposed levels;

27 (2) return to the higher-of in the calculation of  
28 Class I mover;



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

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

6           (5) Adopt NMPF's Class I price differential  
7 proposal.

8           Over the past year, our farm has faced  
9 considerable challenges as have many dairy farms in our  
10 community. Despite rising production costs, the pay price  
11 reflected in my milk check has plummeted by \$8.62 per  
12 hundredweight over the last 12 months, placing significant  
13 financial strain on our farm. Our input costs,  
14 particularly feed and labor, have surged dramatically  
15 since 2020. Further squeezing our farm's profitability.  
16 Additionally, milk hauling rates have increased by an  
17 astonishing 300% over the last nine years, increasing from  
18 \$0.45 per hundredweight to \$1.38 per hundredweight,  
19 creating an undue burden solely on farmers like us.

20           While I understand the necessity of adjusting  
21 Make Allowances from time to time, I urge the USDA to  
22 carefully consider the impact on dairy farm milk prices  
23 and the overall profitability of dairy farms when  
24 implementing such changes.

25           The more modest adjustments to Make Allowance --  
26 to Make Allowances proposed by NMPF, which amount to about  
27 \$0.50 per hundredweight reduction in producer pay prices,  
28 are reasonable and preferable to the much larger increases



1 suggested by International Dairy Foods Association and the  
2 Wisconsin Cheese Manufacturers Association.

3 The larger Make Allowances -- excuse me -- the  
4 larger Make Allowance increases would jeopardize the  
5 viability of our family farm.

6 Regarding the proposal to modify skim milk  
7 component factors, I can confirm the proven and documented  
8 tests showing notable increases in milk components. Year  
9 to date, 2023, our farm averaged 3.9% butterfat, 3.2%  
10 protein, and 5.76% other solids.

11 In 2018, our component averages were  
12 3.6% butterfat, 3.02% protein, and 5.72% other solids. We  
13 are proud to have achieved these increases through better  
14 management, better feeding practices, superior cow  
15 genetics, and improved cow comfort.

16 Our focus on producing milk with higher components  
17 aligns with market demands and has been an integral part  
18 of maintaining a profitable operation. Updating the  
19 component factors of the skim milk formula just makes  
20 sense through this Federal Order hearing process, given  
21 the on-farm progress toward higher milk components on our  
22 farm and across the country.

23 I would like to impress upon you the need for an  
24 adequate notification period prior to implementing any  
25 revisions to Federal Milk Marketing Order milk pricing  
26 formulas.

27 Over the last several years, we have delved  
28 further and further into developing a workable sustainable



1 risk management strategy for our farm. We are diversified  
2 and use several different tools for managing milk price  
3 risk.

4 The federal government's Dairy Margin Coverage is  
5 an important mainstay with our risk management strategy,  
6 but it is not the only tool that we use. We also use  
7 Dairy Revenue Protection (DRP) and forward contract prices  
8 up to 16 months in advance. We have used both Class III  
9 and Class IV forward contracts to try to stabilize our  
10 milk price.

11 In conclusion, I wholeheartedly endorse NMPF's  
12 five proposals. These proposals are crucial for the  
13 future success of our dairy business and the livelihoods  
14 of countless farmers across the nation.

15 Thank you for allowing me to share my testimony  
16 today, and I trust that USDA will carefully consider the  
17 concerns and recommendations expressed here. Your support  
18 in adopting and implementing these measures will  
19 undoubtedly strengthen the resilience of the American  
20 dairy industry. Thank you.

21 Q. Thank you, Mr. Windemuller.

22 MS. LOMBARD: Your Honor, at this time I'll tender  
23 the witness for cross-examination.

24 THE COURT: Very well. Any questions?

25 CROSS-EXAMINATION

26 BY DR. CRYAN:

27 Q. I'm Roger Cryan for the American Farm Bureau  
28 Federation.





1 Hello, Mr. Windemuller.

2 A. Good afternoon.

3 Q. It's nice to meet you today.

4 You've talked about some of the things you do for  
5 the community, including farm tours, and I understand you  
6 also do some farm tours to help folks from other parts of  
7 the State understand -- Farm Bureau tours to help folks  
8 from other districts to understand how you operate.

9 And you are active in Farm Bureau; is that right?  
10 You're a member and active?

11 A. Yes, that's correct.

12 Q. Thank you. Thank you for your participation.

13 I know that there have been some issues in -- in  
14 the Mideast order with negative PPDs and depooling,  
15 especially in 2020 and 2021.

16 Can you talk about some of the impacts that had on  
17 you and your -- your neighbors?

18 A. So during 2020, I was very fortunate for our farm  
19 to have forward contracted through DFA the PPD, and that  
20 was a very big help. We had PPDs that were in the range  
21 of negative \$7-plus for a few months. And I didn't feel  
22 the effects of that because of that forward contract that  
23 we had as much, which was, like I said, a big blessing.  
24 But many neighbors in our area had been negatively  
25 affected by that. And there is a lot of confusion I  
26 think, among producers of why that took place and how that  
27 happened.

28 Q. Thank you.



1 DR. CRYAN: Thank you very much. Have a safe  
2 drive home.

3 THE WITNESS: Thank you.

4 THE COURT: Mr. Miltner.

5 CROSS-EXAMINATION

6 BY MR. MILTNER:

7 Q. Good afternoon, Mr. Windemuller.

8 A. Good afternoon.

9 Q. My name is Ryan Miltner. I represent Select Milk  
10 Producers.

11 The milk from your farm in Coopersville, do you  
12 know where it goes on a regular basis?

13 A. Currently it goes to the cheese plant in  
14 St. Johns, Michigan.

15 Q. Okay. Midwest Cheese?

16 A. Correct.

17 Q. The only other question I had was about your  
18 statement at the bottom of page 2 where you said you would  
19 like to impress upon us the "need for adequate  
20 notification period prior to implementing any revisions to  
21 Federal Milk Marketing Order milk pricing formulas."

22 Would you be -- are you looking for a delay in  
23 implementation for any change or any proposal or specific  
24 proposals?

25 A. I put that in there, like I said, and -- I believe  
26 it was the paragraph following -- sorry, I can't find it  
27 right now -- where I specified that I have had contracts  
28 up to 16 months prior to that current time.



1 Looking at -- as I forward contract and look out  
2 to do risk management, if there are going to be any  
3 mechanisms that could affect contracts that I already have  
4 in place, that was my reasoning for making sure that that  
5 was taken notice of, that it wouldn't negatively affect  
6 contracts that were already currently in place.

7 Q. So is it -- am I -- would I be correct to say that  
8 if the contracts that you do already have in place would  
9 be honored according to their current terms, you would not  
10 see a need to delay implementation of any proposal?

11 A. I guess I don't have adequate information to  
12 decide whether there's any adverse effects to it at this  
13 time.

14 Q. Okay.

15 MR. MILTNER: Thank you very much.

16 THE WITNESS: Thank you.

17 THE COURT: Further questions other than AMS?

18 AMS.

19 CROSS-EXAMINATION

20 BY MS. TAYLOR:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. Thank you very much for being flexible today. We  
24 appreciate that.

25 Just a couple of questions, I don't know if you  
26 had heard earlier in the day, I asked some other farmers  
27 if they met the Small Business definition of \$3.75 million  
28 or less in gross revenue a year.



1           Would your farm need that definition?

2           A.    Yes, that would be correct.

3           Q.    I also had asked a question of other farmers.

4    Just if you could, you know -- in this discussion, we're  
5    here to talk about Make Allowances this week.  And I was  
6    just wondering if you could speak to how your farm has  
7    been impacted by, you know, the current manufacturing  
8    allowance levels that I think most parties in this room  
9    would agree that they are -- or would argue that they are  
10   not high enough as to the level they should be.  That's  
11   under discussion.

12           But just if you had any thoughts on how that has  
13   impacted you as a producer and a co-op member  
14   specifically?

15           A.    I would say I don't have adequate information on  
16   the manufacturing side of the equation.  I do know that  
17   there have been several very large new plants built in the  
18   Midwest area in the last decade.  So to me, that signals  
19   that there is an opportunity there for processors.

20           But I do know -- I did some math, rough math, off  
21   of what the IDFA's proposed increase would mean to my  
22   farm.  Looking at that increase difference between what  
23   NMPF is proposing would actually be -- the difference for  
24   my farm on a monthly basis would be double our family  
25   living expenses, to give you perspective.

26           Q.    Thank you.

27           You talked about your risk management use and how  
28   you protect anywhere up to 16 months in advance, just kind



1 of depending on circumstances. I had asked this of other  
2 people just kind of -- I mean, that's your range, but kind  
3 of, what do you -- a sweet spot you look to protect and do  
4 you -- I think our previous dairy farmer witness we had  
5 before lunch talked about how you try to forward contract  
6 out feed at the same time to protect both sides. So if  
7 you could speak to that.

8 A. Yeah. I actually gave that some thought when you  
9 asked the last producer that.

10 So looking back at my contracts, they would  
11 usually range in the six to 12 months depending on what  
12 type of contract it was. And then like the former speaker  
13 mentioned, I also do try and lock in our feed. I am 100%  
14 purchased feed operation, so it is very critical to me to  
15 make sure I have that protection on the feed side as well,  
16 because I don't have the hedge of growing it myself, so --

17 Q. Okay. Thank you.

18 And one just kind of technical question. You talk  
19 about on the bottom of page 2 the need for adequate  
20 notification. I was just wondering if you wanted to  
21 define what that would be or are you supporting for the  
22 one piece of National Milk's Proposal the 12-month delay,  
23 and that's what you are talking about?

24 A. Sorry. Could you repeat the last part of your  
25 question there?

26 Q. Sure. I was just -- you talk about the need for  
27 adequate notification, but you don't define what adequate  
28 would be, like that's kind of subjective. So I was



1 wondering if you would just kind of give a guess on what  
2 you think is adequate?

3 A. Yeah. I would speak for myself, that 12-month  
4 mark, and that's where the vast majority of my contracts  
5 would be out. Very few times have I locked out -- or  
6 locked anything beyond 12 months. I have a few times, but  
7 very little. So that 12-month window for me would be  
8 something that I would look to, as a -- as a definitive  
9 range.

10 Q. Okay.

11 MS. TAYLOR: That's it. Thank you so much.

12 THE WITNESS: Thank you.

13 THE COURT: Any other questions?

14 Redirect.

15 MS. LOMBARD: Thank you, Mr. Windemuller.

16 Your Honor, if -- given that there are no  
17 additional questions, I would move to admit Exhibit 149.

18 THE COURT: Exhibit 149 is entered into the record  
19 of this hearing.

20 (Thereafter, Exhibit Number 149 was received  
21 into evidence.)

22 THE COURT: Thank you, Mr. Windemuller, you are  
23 dismissed.

24 THE WITNESS: Thank you.

25 THE COURT: Your right hand, please.

26 MATT JOHNSON,

27 Being first duly sworn, was examined and  
28 testified as follows:



1 COURT: Thank you.

2 Your witness.

3 MS. LOMBARD: Thank you.

4 Again, Jill Lombard representing Dairy Farmers of  
5 America, and I'm here to introduce our final DFA  
6 farmer-owner who is testifying for us today, Mr. Matt  
7 Johnson.

8 Your Honor, I'd ask that Mr. Johnson's witness  
9 statement be marked for identification. It's Exhibit  
10 DFA-3. It should be Exhibit 150.

11 THE COURT: Yes. So marked. I think we're up to  
12 150, yes.

13 (Thereafter, Exhibit Number 150 was marked  
14 for identification.)

15 MS. LOMBARD: Thank you.

16 DIRECT EXAMINATION

17 BY MS. LOMBARD:

18 Q. Mr. Johnson, can you please state your name for  
19 the record?

20 A. My name is Matt Johnson. That's M-A-T-T,  
21 J-O-H-N-S-O-N.

22 Q. Thank you.

23 Please state your business mailing address for the  
24 record?

25 A. 1405 North 98th Street, Kansas City, Kansas,  
26 66111.

27 Q. Thank you.

28 And I understand that you have prepared a written



1 statement for your testimony today. Would you please read  
2 that statement at this time?

3 A. I will.

4 My name is Matt Johnson, and I am a first  
5 generation dairy farmer from Southwest Georgia. In May  
6 1999, my father, uncle, and I purchased the farm from one  
7 of my dad's veterinary clients. The day we took  
8 ownership, we were milking 350 cows and farming 250 acres.  
9 Today, the farm consists of 28 employees milking 1400  
10 cows, raising 1250 replacement animals, and growing  
11 multiple crops on approximately 1,000 acres, primarily for  
12 forage for our farm.

13 I am blessed to serve the dairy farm families of  
14 Georgia and Dairy Farmers of America through several  
15 leadership positions. Currently, I reside in DFA's  
16 Southeast Area and serve on the Southeast Area Council as  
17 well as DFA's corporate board. I also serve as President  
18 of the Board of Directors for the Dairy Cooperative  
19 Marketing Association.

20 Additionally, I have the honor to serve as the  
21 President of the Georgia Milk Producers Association,  
22 representing the dairy farm families of Georgia. I am  
23 also involved with the U.S. Dairy Export Council's Dairy  
24 Trade Envoy, a cohort of farmers and industry staff  
25 working together to help educate legislators on the  
26 importance of dairy exports.

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





1 (1) Limit the Make Allowance increase to National  
2 Milk Producers Federation proposed levels;

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

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

7 (4) Increase and regularly update the skim  
8 component test used to determine the Federal Order skim  
9 milk price;

10 (5) Adopt NMPF's Class I price differential  
11 proposal.

12 This has been a challenging year on our farm.  
13 Since December of 2022, my pay price, as reflected in my  
14 milk check, has decreased by \$5.84 per hundredweight. Our  
15 costs of production have not gone down to the same degree,  
16 and our dairy's profitability has been reduced  
17 substantially. We have faced significant input cost  
18 inflation since 2021, which are summarized in the table  
19 below.

20 I understand that Make Allowances are an important  
21 aspect in determining Federal Order class prices, and from  
22 time to time, there is a regulatory need to adjust them.

23 That being said, I am displeased about the impact  
24 on my milk price when Make Allowances are increased.  
25 Simply said, my milk price will go down when  
26 Make Allowances go up. I ask that when increasing  
27 Make Allowances, the Secretary of Agriculture consider the  
28 impact on dairy farm milk prices, and more importantly,



1 the impact on dairy farm profitability.

2 NMPF has proposed a more modest change to  
3 Make Allowances, which are projected to lower farm milk  
4 prices by about \$0.50 per hundredweight. While that level  
5 of price decrease is troublesome and concerning, we can  
6 live with the change. The much larger increases to  
7 Make Allowances as proposed by the IDFA and the Wisconsin  
8 Cheese Manufacturers Association would crush my farm's  
9 profitability and should be rejected.

10 Cheese manufacturers have the opportunity to pass  
11 on higher manufacturing costs when they sell cheese.  
12 Unfortunately, I do not have the ability to pass along the  
13 increased cost of production.

14 Milk buyers at manufacturing plants have other  
15 means to recover their operating costs, including reducing  
16 over-order premiums and using revenues obtained by  
17 depooling from the Federal Order. Because dairy  
18 manufacturers have other means of passing along their  
19 costs, there is no need to place a large burden on dairy  
20 farmers with large Make Allowance increases. A more  
21 modest approach to increase -- increasing Make Allowances  
22 is appropriate.

23 I understand that the proposal to change the skim  
24 milk components factor is based on proven and documented  
25 tests from farm milk that show inarguable increases in  
26 milk components.

27 In 2022, my milk averaged 3.69% butterfat, 3.18%  
28 protein, and 5.76% other solids. These have increased by



1 3.5% percent since 2021. These increases have come from  
2 management decisions to crossbreed our herd to capture  
3 higher components and revenue in the same volume of milk.  
4 Better forage harvest management as well as better feed  
5 bunk management have also contributed to our increased  
6 components. As technology and information continue to  
7 improve, along with more -- along with more of our  
8 genetically superior young stock moving into the milking  
9 herd, I expect our component levels to continue to  
10 improve.

11 Updating the component factors of the skim milk  
12 formula just makes sense to the Federal Order hearing  
13 process given the on-farm progress toward higher milk  
14 components across the country.

15 It is important to the success of my risk  
16 management strategy that the Federal Order milk pricing  
17 formulas are not changed without a lengthy notification  
18 period. Ideally, there would be a 12-month delay in  
19 implementation after the revised skim milk component  
20 factors in the class pricing formula have been adopted.

21 That said, I recognize the broader needs of the  
22 dairy industry and support an earlier implementation for  
23 some of the other changes found in NMPF's proposals, for  
24 example, increasing Make Allowances, reinstating the  
25 higher-of in the Class I formula, and eliminating  
26 500-pound barrel cheese pricing from the Class III protein  
27 price formula.

28 I close by reiterating my support for NMPF's five



1 proposals:

2 (1) Limit the Make Allowance increase to their  
3 proposed levels;

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

6 (3) Eliminate the barrel cheese price from the  
7 calculation of the Class III protein price;

8 (4) Increase and regularly update the skim milk  
9 components test used to determine the Federal Order skim  
10 milk price;

11 (5) Adopt NMPF's Class I differential proposal.

12 Others representing DFA will be speaking more  
13 directly on some of these issues. Thank you for allowing  
14 me to testify today on these issues that are very  
15 important to my family and the future success of our dairy  
16 business.

17 Q. Thank you, Mr. Johnson.

18 MS. LOMBARD: Your Honor, at this time I'll tender  
19 the witness for cross-examination.

20 THE COURT: Any questions?

21 Dr. Cryan.

22 CROSS-EXAMINATION

23 BY DR. CRYAN:

24 Q. Roger Cryan for the American Farm Bureau  
25 Federation, and I have a completely surprising set of  
26 questions.

27 Mr. Johnson, thank you for coming. It's -- I'm  
28 really -- I'm glad to see you.



1           And you are a Farm Bureau member; is that correct?

2           A.    I am.

3           Q.    And you have been pretty active over the years?

4           A.    I have been.

5           Q.    I appreciate that down there in Georgia, so you  
6 are a compatriot of our AFBF president.

7           A.    Know him very well.

8           Q.    Also a former dairy farmer.

9           A.    Yes.

10          Q.    Not that you are a former dairy farmer. He's a  
11 former.

12                   And then I'll mention that President Duvall has  
13 told me that every day he misses his dairy cows. He's got  
14 beef cows, but they are not the same.

15                   And you attended our forum last October, the Farm  
16 Bureau forum?

17          A.    I did.

18          Q.    I appreciate that as well.

19                   And I'll say again, I appreciate the support from  
20 you and from DFA and from National Milk in participating  
21 in that and leading to some good consensus on that. And  
22 I'd just like to highlight a couple of those.

23                   If I understand, two of the -- in particular, of  
24 the consensus points that came out of that were support  
25 for the "higher-of"; is that correct?

26          A.    Yes.

27          Q.    And that ultimately that we should have  
28 Make Allowance increases based on mandatory audited



1 surveys --

2 A. Correct.

3 Q. -- data?

4 And I appreciate that we're all -- we're all  
5 aiming ultimately for both of those, among other things,  
6 so -- and I'll -- I'll leave it at that.

7 DR. CRYAN: Thank you very much for coming. Safe  
8 travels.

9 THE WITNESS: Thank you.

10 CROSS-EXAMINATION

11 BY MR. MILTNER:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. I'm Ryan Miltner. I represent Select Milk  
15 Producers. You have probably heard that throughout the  
16 day. They like me to say it for the record.

17 A non-surprising question from me as well.

18 A. Okay.

19 Q. Your statement suggests that we -- that USDA  
20 include a lengthy notification period when adopting  
21 certain changes to the orders, but not for others.

22 Given your risk management on your farm and your  
23 experience in the industry, which is pretty extensive,  
24 what do you think is the -- what are the factors that USDA  
25 should consider when deciding what should be delayed, and  
26 what should be implemented right away?

27 A. I think if there's going to be any consideration  
28 for a delay, on-farm -- on-farm risk management programs



1 and how these changes could affect those should be  
2 considered. Beyond that, I'm okay with -- with any  
3 changes being implemented immediately.

4 Q. Would changes that increase the price to you on  
5 the farm affect your existing risk management contracts?

6 A. At this time, no.

7 Q. Would changes that lower the on-farm price affect  
8 your current risk management programs?

9 A. At this time, no.

10 Q. You mention that you're -- you are the president  
11 of DCMA, of their board?

12 A. I am.

13 Q. Does DCMA set over-order premiums for your order?

14 A. I wouldn't say DCMA sets over-order premiums.  
15 DCMA negotiates with processors to collect over-order  
16 premiums.

17 Q. Do they announce what the premiums are for a given  
18 month?

19 A. They do.

20 Q. Does DCMA announce an over-order premium for  
21 Class III milk?

22 A. Not that -- no.

23 Q. How about Class II?

24 A. Class II we do.

25 Q. And Class IV?

26 A. Don't think so. No.

27 Q. Okay. Do you know if they ever have?

28 A. I don't know if they ever have.



1 Q. Okay.

2 MR. MILTNER: Thanks very much.

3 THE WITNESS: Thank you.

4 THE COURT: Further questions other than AMS for  
5 this witness?

6 Seeing none, AMS.

7 CROSS-EXAMINATION

8 BY MS. TAYLOR:

9 Q. Good afternoon.

10 A. How are you?

11 Q. I think I had the pleasure of having you on the  
12 witness stand a few months ago, so --

13 A. Yes.

14 Q. Thank you for your continued participation in our  
15 rulemaking efforts this year.

16 A. Thank you.

17 Q. For your farm of 1400 cows, would that meet the  
18 Small Business definition?

19 A. No, it does not.

20 Q. Okay. And Mr. Miltner was asking you about risk  
21 management and the impacts on your farm, but I gather from  
22 your answers maybe perhaps right now you are not using any  
23 risk management tools.

24 A. I have used all of the risk management tools out  
25 there. Currently I'm not using any.

26 Q. Okay. But you have in the past, and you may in  
27 the future?

28 A. Yes. Yes. And it's always an option. It's --





1 right now it is just not -- I tend to move in and out of  
2 risk management at different times depending on the milk  
3 price and the opportunities involved.

4 Q. Sure. And when you do use risk management tools,  
5 about how far out in the future do you look to lock in?

6 A. I typically don't look at anything closer than six  
7 months, and I'm typically not going any further than about  
8 12 months.

9 Q. Okay. Six to 12 months.

10 You do -- on the topic of premiums, you talk about  
11 how milk buyers at manufacturing plants can have other  
12 ways to recover their operating costs, including reducing  
13 over-order premiums.

14 Is that something that you have experienced in the  
15 Southeast?

16 A. Yes.

17 Q. Reduced premiums?

18 A. Yes.

19 Q. And not just on -- well, not on Class III as you  
20 answered?

21 A. So my market is typically -- is 80 -- 60 to 80%  
22 Class I.

23 Q. And I'm curious if you can just expand on the  
24 record how you as a producer have been impacted,  
25 particularly since your speaking as a cooperative  
26 producer. How has your milk check been impacted by what  
27 those here are -- are inadequate Make Allowances?

28 A. So because I'm in a Class I market, any



1 Make Allowance increases will be negative to my farm. To  
2 my knowledge, Class I plants can't draw Make Allowances,  
3 so the fact that the Make Allowance is included in the  
4 Class III and Class IV pricing, which is then used to  
5 determine the Class I mover, most of my milk goes into  
6 Florida, which is an 85% Class I utilization, it's all  
7 negative.

8 MS. TAYLOR: I think that's it. Thank you so  
9 much.

10 THE WITNESS: Thank you.

11 THE COURT: Redirect?

12 MS. LOMBARD: Thank you, Mr. Johnson, for your  
13 testimony.

14 Your Honor, I move to admit Exhibit 150 into the  
15 record.

16 THE COURT: Exhibit 150 is admitted.

17 MS. LOMBARD: Thank you.

18 (Thereafter, Exhibit Number 150 was received  
19 into evidence.)

20 THE COURT: Thank you, Mr. Johnson. Appreciate  
21 you coming out.

22 What's next?

23 MS. HANCOCK: Your Honor, we would call Jeff  
24 Bushey to the stand now.

25 THE COURT: Raise your right hand.

26 JEFFREY BUSHEY

27 Being first duly sworn, was examined and  
28 testified as follows:



1 THE COURT: Your witness.

2 DIRECT EXAMINATION

3 BY MS. HANCOCK:

4 Q. Good afternoon, Mr. Bushey. Would you mind  
5 stating and spelling your last name for the record?

6 A. Jeffrey Bushey. Last name B-U-S-H-E-Y.

7 Q. And what is your mailing address?

8 A. My office address is 7274 Hartley Street, Pigeon,  
9 Michigan.

10 Q. And where are you currently employed?

11 A. At Nietzsche & Faupel.

12 Q. And are you here to testify on behalf of National  
13 Milk's proposals today?

14 A. I'm here to testify on some information that was  
15 used, I believe, in some of the other testimonies.

16 Q. Okay. And you understand that that's on behalf of  
17 National Milk Producers Federation?

18 A. Yes.

19 Q. And did you prepare the written statement that is  
20 identified as Exhibit NMPF-26?

21 A. Yes.

22 MS. HANCOCK: And, your Honor, if we could mark  
23 for identification his written testimony, as I believe we  
24 are at Exhibit 151?

25 THE COURT: We are. So marked.

26 (Thereafter, Exhibit Number 151 was marked  
27 for identification.)

28 MS. HANCOCK: Thank you, your Honor.



1 BY MS. HANCOCK:

2 Q. And, Mr. Bushey, did you also prepare two exhibits  
3 to accompany your written testimony?

4 A. Yes, I submitted two documents.

5 Q. And the first one that's identified as Exhibit  
6 NMPF-26A, and the title of that is the Happy Cow Dairy,  
7 LLC, Financial Statements, dated December 31st,  
8 20XX and -- or I'm sorry -- 20XY and 20XX; is that right?

9 A. Yes.

10 MS. HANCOCK: Your Honor, if we could mark that  
11 for identification purposes as Exhibit 152.

12 THE COURT: So marked.

13 (Thereafter, Exhibit Number 152 was marked  
14 for identification.)

15 BY MS. HANCOCK:

16 Q. And then finally you have your second attachment,  
17 which is titled Nietzsche & Faupel, PC, December 31st, 2022  
18 and 2021, dairy averages, and we have identified that as  
19 exhibit NMPF-26B as in boy. Is that right?

20 A. Yes.

21 MS. HANCOCK: Your Honor, if we could marked for  
22 identification purposes, NMPF-26B as Exhibit 153.

23 THE COURT: So marked.

24 (Thereafter, Exhibit Number 153 was marked  
25 for identification.)

26 BY MS. HANCOCK:

27 Q. Mr. Bushey, would you proceed with providing your  
28 testimony today, please? And just a reminder, if you can



1 read slowly for our court reporter, that would be great.

2 A. Okay.

3 My name is Jeffrey Bushey, CPA. I'm the Managing  
4 Principal of Nietzsche & Faupel, PC, a CPA firm that serves  
5 a wide range of clients, specializing in tax and  
6 accounting for agricultural business, particularly the  
7 dairy industry. I have over 30 years of experience in  
8 serving the accounting needs of farmers in the Great Lakes  
9 region.

10 I graduated from Central Michigan University with  
11 a Bachelor of Science in Business Administration. I began  
12 working at Nietzsche & Faupel after graduation and earned my  
13 CPA license in 1987. In 1992, I became an owner of the  
14 firm and now serve as Managing Principal.

15 I am also a member and past president of the Farm  
16 Financial Standards Council, a nationwide organization  
17 committed to standardizing the reporting formats of  
18 agricultural entities. I currently serve as the co-chair  
19 of the Technical Committee for the FFSC. I am also a  
20 member of the Michigan Association of CPAs and the  
21 American Institute of CPAs.

22 As the Managing Principal of Nietzsche & Faupel, PC,  
23 I lead a team of 14 accountants who provide accounting  
24 solutions to our clients. We offer a wide range of  
25 services to over 50 large dairies in the Great Lakes  
26 region, such as tax preparation and planning, specialized  
27 financial reporting, payroll, business valuations, estate  
28 planning, and more.



1 I have been asked by the National Milk Producers  
2 Federation to appear today to provide an overview of our  
3 dairy farm client operating trend information and answer  
4 any questions you may have.

5 You were provided with a sample dairy financial  
6 statement, as well as a copy of the dairy industry  
7 averages that our firm has compiled. In this testimony, I  
8 will describe how we prepare the financial statements and  
9 compile these averages for our dairy clients.

10 The process begins by receiving the quarterly data  
11 from our dairy client. This usually comes in the form of  
12 a QuickBooks backup. We perform various procedures to  
13 ensure the accuracy and completeness of the data provided,  
14 such as ensuring all material bank accounts are reconciled  
15 to the bank statements, confirming loan balances with the  
16 lenders, and resolving any errors or discrepancies in the  
17 transactions. This ensures that the data is accurate and  
18 consistent for the preparation of cash basis tax returns  
19 for the dairy farm. It also serves as a starting point  
20 for preparing financial statements.

21 We compile the dairy financial statements  
22 according to Generally Accepted Accounting Principles,  
23 known as GAAP, G-A-A-P, with one exception, which I will  
24 explain later. GAAP is a set of rules and standards for  
25 accountants to prepare financials in a consistent and  
26 comparable manner.

27 The main differences between a GAAP basis  
28 financial statement and the tax-basis data are as follows:



1 (1) GAAP basis financial statements recognize  
2 income and expenses on the accrual basis when incurred;

3 (2) GAAP basis financial statements recognize  
4 inventory on hand;

5 (3) GAAP basis financial statements depreciate  
6 capital assets at a different rate than the farm uses for  
7 tax preparation.

8 There are significant adjustments made when  
9 preparing GAAP financial statements from the cash basis of  
10 accounting to the accrual basis. The accrual basis of  
11 accounting requires adjustments to recognize revenues and  
12 expenses in the period in which they are earned and  
13 incurred, respectively.

14 Regarding the timing of the cash flows, for  
15 example, a commodity receivable is recorded for milk  
16 checks that are earned in the current month but not  
17 deposited until the next month. Similarly, accounts  
18 payable are recorded as well as any prepaids or accrued  
19 expenses to correctly present the expenses in the period  
20 incurred.

21 Another adjustment made when preparing GAAP  
22 financial statement is recognizing the feed inventory.  
23 For tax purposes, feed inventory is expensed when paid.  
24 For financial statements, forages are capitalized to  
25 assets at the cost of planting, harvesting, and storing  
26 the crops, or the cost of purchasing forage from another  
27 producer.

28 MS. TAYLOR: Excuse me, Mr. Bushey. I hate to



1 interrupt. Could you slow down a little bit for our court  
2 reporter?

3 THE WITNESS: Sure.

4 THE COURT: Thanks.

5 THE WITNESS: It gets kind of technical in here.

6 The capitalized cost of forages may also include  
7 costs such as interest, labor, and depreciation that is  
8 directly attributed to the raising of the crops for  
9 forage. These costs are expensed over time as the forages  
10 are fed to cattle. Feed inventory is shown at the lower  
11 of cost or market using the average cost method.

12 In addition, depreciation is adjusted to reflect  
13 the more accurate useful life. The tax basis to  
14 depreciation is accelerated and allows for a higher  
15 expense recognition in the initial year of placing an  
16 asset in service.

17 However, the GAAP standards require that  
18 depreciation should be distributed over the useful life of  
19 an asset. This results in a more consistent and reliable  
20 metric to match the cost of a capital asset to the revenue  
21 produced by that asset.

22 Generally Accepted Accounting Principles maintain  
23 that livestock should be capitalized at the purchase price  
24 and depreciated similar to machinery and equipment and  
25 other capital assets.

26 However, a well-maintained dairy herd does not  
27 lose value over time. Although individual dairy cows do  
28 depreciate, the herd, as a whole, does not. Lowering --





1 lower-performing cows are constantly replaced with  
2 higher-performing cows. Therefore, the dairy herd is  
3 valued at cost on the balance sheet.

4 If the dairy purchases milking cows, the cost is  
5 the purchase price of the livestock. If the dairy raises  
6 their own heifers, any heifer-raising input costs such as  
7 feed and breeding are capitalized to the cost of heifers  
8 until they first calve and become begin milking. At that  
9 point, the heifers are transferred to the dairy livestock  
10 at cost to raise -- at the cost to raise them to that  
11 point.

12 When cows are sold or die, a "cull cow expense" is  
13 charged to the operating expense at an average cost per  
14 head of the herd. Revenue received from the sale of cull  
15 cows is reported separately under the label "cull cow  
16 revenue." The financial statements value livestock at  
17 cost and are not depreciated, which constitutes a  
18 departure from GAAP.

19 These are the main accounting adjustments that are  
20 required to adjust from tax basis to GAAP financial  
21 statements. The final product each quarter is a financial  
22 statement which comprises a balance sheet, a statement of  
23 income, and a statement of changes in members' equity.  
24 Additionally, a statement of cash flows and notes to the  
25 financial statement are included at year-end.

26 One of the greatest services we offer to clients  
27 is a comprehensive dairy financial benchmarking and  
28 averages. The dairy averages provide a reliable dataset



1 clients can use for benchmarking their own financial  
2 results to their peers. This allows them to compare their  
3 performance with the industry standards and identify areas  
4 for improvements.

5 We publish the dairy averages every quarter after  
6 the preparation of the financial statements. These  
7 averages contain both financial and non-financial metrics.  
8 Below is a table showing key non-financial information for  
9 the selected years 2007 through 2022.

10 I'll skip over the chart.

11 The dairy averages consist of operating revenue  
12 and expenses calculated per hundred pounds (or CWT) of  
13 milk produced per cow, per day. Each client receives this  
14 schedule in the supplementary information of their  
15 financial statements showing their actual performance  
16 compared to the latest averages.

17 The per CWT transactions are used to analyze  
18 trends in expenses. The three largest expenses are:  
19 Feed, labor, and cull cow expense, or herd replacement  
20 cost. Breaking those down per CWT produced reveals the  
21 change in cost over the years. Chart 1 shows this  
22 information from 2006 through the first quarter of 2023.

23 Most of our dairy clients are family-owned limited  
24 liability companies, or LLCs. LLC members do not take a  
25 wage for their work they perform, instead they take a  
26 withdrawal to cover family living costs.

27 Included in Chart 1 is also the average  
28 withdrawals per CWT taken by the owners. This is net of



1 any capital they contributed to their farm in each year.  
2 These withdrawals are not reflected in the net income from  
3 operations, but still may be taken into consideration when  
4 looking at how industry decisions will impact producers'  
5 ability to provide for their living.

6 As shown in Chart 1 above, the feed expense per  
7 CWT has increased every year since 2018, jumping  
8 dramatically from 2021 to 2022. As the largest and most  
9 volatile expense account, feed expense greatly impacts the  
10 profitability of the producer. Labor has also seen an  
11 upward trend per CWT.

12 The trends in per CWT revenues and expenses reveal  
13 how the milk price received compares to the price needed  
14 to break even. Break-even milk price is calculated -- is  
15 the calculated price at which the farm's operating  
16 revenues would equal their operating expenses, holding  
17 other revenues, expenses, and production constant.

18 At the break-even milk price, they would have  
19 shown neither profit nor loss from farm operations. The  
20 following Chart 2 compares the average milk price paid to  
21 producers to the average break-even from 2006 through the  
22 first quarter of 2023.

23 The difference between the actual milk price and  
24 the calculated break-even price shows the average  
25 profitability per unit of output for each year. Chart 3  
26 below presents the average net income or loss from  
27 operations per CWT over the same range of years as before.

28 Average net operating income from 2006 through



1 2022 was \$1.54 per CWT produced, or per hundredweight, of  
2 milk produced. Consider also that this number is before  
3 any withdrawals by the producer to compensate their labor  
4 and provide for their family living expenses. The average  
5 net withdrawals from 2006 through 2022 was \$0.31 per CWT  
6 of milk produced. This leaves \$1.23 per CWT of milk  
7 produced remaining after family living.

8 As shown, these dairy averages are not only  
9 valuable for producers but also for understanding the  
10 profitability and trends in the industry. By providing  
11 accurate and reliable financial information and meaningful  
12 benchmarks, our data can help inform you as you consider  
13 these proposals.

14 I thank you for your time and attention to these  
15 matters and look forward to answering your questions.

16 BY MS. HANCOCK:

17 Q. Thank you, Mr. Bushey. I just have a few  
18 questions.

19 On the first page of your testimony you talk about  
20 the process begins by receiving quarterly data from our  
21 dairy client.

22 And I'm just wondering, it's not just one client,  
23 is it, it is multiple?

24 A. Yes. It's approximately 50 clients that we work  
25 with right now.

26 Q. Okay. And then on that first page as well, you  
27 said you were provided with a sample dairy financial  
28 statement. Is that one of the attachments that you have



1 included with your testimony?

2 A. Yes. That was one of the exhibits you referenced  
3 earlier.

4 Q. Is that Exhibit 152, which is identified as  
5 NMPF-26A?

6 A. Happy Cow Dairy?

7 Q. Yes.

8 A. Yes.

9 Q. Okay. Can you walk us through that exhibit and  
10 let us know what it is that you are showing us with this  
11 exhibit?

12 A. So we use this as promotional material when we're  
13 talking with potential clients and also with financial  
14 institutions when they are asking us what kind of  
15 information can we provide.

16 So page 5 -- I believe there's page numbers in the  
17 bottom of the exhibit.

18 Q. It is the balance sheet?

19 A. Yes.

20 Q. Yep.

21 A. Page 5, the balance sheet.

22 So this is a standard balance sheet that you would  
23 see with most industries.

24 And then page 6 is the statement of income, which  
25 I think is what we're focused on. So this is a sample of  
26 that statement of income. Again, these aren't real  
27 numbers. These are just numbers that we have just -- you  
28 can see it is all round numbers. It's just things we have



1 used for a sample.

2 Page 7 is that statement of changes in members'  
3 equity that we talked about earlier in my testimony.

4 Page 8 would be the statement of cash flows. So  
5 those are the four basic -- page 8 and 9 is the statement  
6 of cash flows, which are the four basic financial  
7 statements.

8 Then page 10 through page 18, basically the notes  
9 to a financial statement.

10 And then after that we get into page 19 is the  
11 supplementary information. So this is some of the more  
12 unique data that we would provide.

13 And so this is a year end financial statement.  
14 And what we will generally do is, also, besides providing  
15 that page 5 balance sheet, page 20 shows what we call a  
16 schedule of assets, liabilities, and net worth, which is  
17 this is now on the basically estimated current value  
18 method, whereas page 5 was based on cost.

19 So here we're trying to determine if a producer  
20 were to sell the -- sell their farm, or we use this also  
21 in succession planning, we use it for estate planning, you  
22 know, what's their estate worth, what's their net worth.  
23 So the bottom line on this schedule shows the net worth,  
24 of the operation.

25 Then pages 21 through 23 are just notes to  
26 those -- to that schedule 20, which basically defines how  
27 all those values were determined. Page 24 is just a  
28 reconciliation from one year to the next to show a



1 producer how their values increased or decreased.

2 Page 25 is a schedule of capitalized forage costs.  
3 This is a schedule where we tried to be transparent and  
4 how did -- the value of the forages, how are those  
5 determined. So every quarter all the costs that are  
6 associated with growing forages are accumulated onto this  
7 capitalized forage cost and then they are attributed to  
8 the inventory.

9 Page 26 is another important schedule. This is a  
10 schedule of feed expense, since it's one of the most -- it  
11 is the most highest expense that the dairy by far has. We  
12 tried to break that down so that producers can understand  
13 what is their cost, where is it coming from.

14 So at the top portion of this schedule on page 26  
15 is the forages used. So these are the forages that a  
16 producer would have on their farm, and they are using out  
17 of their own -- their own bunker silos generally.

18 And then other feed purchased would be if they are  
19 purchasing it from other farms and/or other suppliers, so  
20 they would have their purchased feed costs.

21 Then we also -- when we are trying to determine  
22 what's their cost of milking cows, we want to take out any  
23 cost that's associated with the heifers. So at the --  
24 towards the bottom of page 26, you see an adjustment, and  
25 it shows heifer feed adjustment. We're subtracting out  
26 the estimated cost of feeding the heifers. So that feed  
27 comes out of there. So we're only then talking about feed  
28 that went to the dairy cows.



1           And we reconcile that at the bottom with the  
2 average number of cows on the farm for each period number  
3 of days and come up with a -- a cost per cow per day so we  
4 can kind of see how does that look from period to period,  
5 and then how does that look to their different -- to their  
6 average to their peers.

7           Page 27 is that schedule of capitalized heifer  
8 raising costs. So this is where all the costs of raising  
9 the heifers is accumulated. So, again, these costs are  
10 accumulated outside of the cost of just milking the cows.  
11 So we're segregating those costs out, adding these in, to  
12 come up with what does it cost to raise a heifer, so that  
13 way we'll know what's the value of the heifer when she  
14 enters the herd.

15           And then page 28, 29, and 30, basically what we  
16 call a schedule of income and expenses per hundredweight  
17 of milk produced, and we also have it listed as a per cow  
18 per day. And we started listing it also -- so it is per  
19 milk delivered and also energy-corrected milk.

20           So you will see on page 30 is where we would then  
21 compare the client's data, which is in this case Happy Cow  
22 Dairy, with on the right-hand column is the Nietzsche &  
23 Faupel, PC, in this case under 2,000 cows averages. So  
24 this is where we start to compare client's data with the  
25 benchmark data.

26           Q.    Okay. And -- and remind me again how it is that  
27 you -- that you create your benchmark data?

28           A.    I'm sorry, in what way?





1 Q. What's all included in that? How do you create  
2 that benchmark for them?

3 A. So we take each client's basically schedule that  
4 you see here on page 30, on the left-hand column, we add  
5 those all together, and divide them out to get the  
6 average.

7 Is that what you are asking?

8 Q. Yep. Exactly.

9 And do you divide -- how do you divide that up?  
10 How do you -- is it divided up by a per cow basis or how  
11 did you divide that up?

12 A. Yes.

13 Q. So is the purpose of you including Exhibit 152 as  
14 part of your testimony just to highlight the level of  
15 detail and information that you collect from each one of  
16 your clients?

17 A. That's correct.

18 Q. And then you use that amalgamated data to create  
19 that -- that control or that compare set so that your  
20 individual client knows how they are stacking up against  
21 the total grouping?

22 A. Yes.

23 Q. And that way they know if they are trending above  
24 or below or more efficient or less efficient, to give them  
25 some insights into making some business decisions; is that  
26 fair?

27 A. Yes, that's fair. That's correct.

28 Q. Okay. And then let's look at Exhibit 153, and



1 walk me through what we're looking at in this exhibit.

2 A. So this is a Nietzsche & Faupel, PC, dairy averages.  
3 I don't have the Exhibit Numbers on my copy. That's --

4 Q. Yes, that's the right one. And this is identified  
5 as NMPF-26B, which we have marked as Exhibit 153 for our  
6 record.

7 A. So this is the accumulation of the whole year of  
8 all the dairies that -- from all the dairies of our  
9 clients through the year end of December 31st, 2022, and  
10 then it's also compared with the year ended December 31st,  
11 2021.

12 And so we start out at the top line there with --  
13 starting over on the left-hand column, quantity of milk  
14 and CWT. So we measure that. We add those all up and  
15 divide them by the number of dairies there, so we got  
16 995,115 hundredweights of milk produced on average there.

17 We have the average number of cows milked per day  
18 of 3,354.

19 So then we do a little math there. We divide that  
20 into that 995, and we divide it by the number of days of  
21 365, to come up with 81 pounds of milk produced per cow,  
22 per day.

23 We take the number of cull cows there is just a  
24 metric there that we like to measure. So we take that  
25 1523, add -- we, again, do some math, divide that by the  
26 total cows, and come up with an average then cull rate for  
27 the farm of 38.73%.

28 Just for reference, then, the average number of



1 mature animals on the farm would be 3,932. And then,  
2 again, the number of days in the period there, 365, and  
3 then we get to the break-even milk price of \$19.78.

4 We also have a break-even production per cow per  
5 day there. And that varies quite significantly based on  
6 the milk price. You can see here in 2022 it was  
7 64 pounds.

8 Moving down to the revenue from operations. So we  
9 have milk revenue there, focusing on, again, that per  
10 delivered CWT produced column. So it's \$25.28 was the  
11 average milk price received there for the year.

12 Q. And is that -- I'm sorry, just to interrupt one  
13 moment -- is that still all under that year end  
14 December 31st, 2022?

15 A. Yes.

16 Q. Okay. So we're just going to look at those, those  
17 three main columns going straight down under that?

18 A. Yes.

19 Q. I guess it would be four columns. I apologize.  
20 Amount, per delivered hundredweight, per  
21 energy-corrected hundredweight produced, and per cow per  
22 day, all four of those columns fall under that year end,  
23 2022?

24 A. That's correct.

25 Q. Okay. I apologize for interrupting. Go ahead.

26 A. So just focusing on that column of per delivered  
27 CWT produced there, you can see the livestock revenue of  
28 \$0.52, the cull cow revenue of \$1.14, and other income



1 there \$0.65. So a total revenue to the operations there  
2 of \$27.59.

3 And then you can see the operating cost. I won't  
4 read every one of them to you. You can see the total  
5 operating cost at the bottom is \$22.09.

6 So then subtracting that from the total revenue  
7 from operations of \$27.59, we get \$5.50 income from  
8 operations. And, again, that was before the family  
9 withdrawals.

10 And to get the break-even milk price, we simply  
11 then say, they made \$5.50, so to break even we would take  
12 the milk price of \$25.28, we subtract \$5.50 from that, and  
13 we get the \$19.78. So in other words, if they got \$19.78,  
14 they would beak even in that period.

15 Q. Okay. And then -- and this is the data that you  
16 used in -- in your Exhibit 151, which is your written  
17 testimony?

18 A. That's correct.

19 Q. Okay. And if we go on to the next page, you just  
20 have different time periods for each year, and you are  
21 just comparing two years at a time?

22 A. That's right.

23 Q. Okay. And if we just go all the way back, it  
24 looks like the last page --or the next -- next to the last  
25 page takes us back to 2007.

26 A. And, actually, I think you should have a page  
27 2006. Does it go back that far?

28 Q. Well, I guess the comparison of the two years, I



1 have it goes back to 2007, and then there's a final page  
2 that just shows all entries for 2006.

3 Is that how yours is as well?

4 A. Yes.

5 Q. Okay. And this is all based on actual data that  
6 you have collected over all of those years from 2006  
7 through 2022?

8 A. That's correct.

9 Q. And in 2022, we saw that milk prices -- and we  
10 heard testimony on this -- were doing very well that last  
11 year?

12 A. That's correct.

13 Q. And that's what you have reflected here in this  
14 \$5.50 a hundredweight net income?

15 A. That's correct.

16 Q. And what are you seeing happening so far in 2023?

17 A. Well, the first quarter was still some profit, but  
18 I -- we don't have the numbers all collected for the  
19 second quarter, but it's not looking that good.

20 Q. And I just want to look at a couple of the charts  
21 that you have.

22 If we look at Chart 1, and you were graphing there  
23 the feed expense per hundredweight; is that right? And  
24 I'm on page 4 of your testimony.

25 A. Yes. So the top line of that chart is the feed  
26 expense. Then there's three other lines there that they  
27 don't show as much change there. It's a little bit harder  
28 to see because the change is a little bit more minute.



1 But we're also showing the cull cow expense, the labor,  
2 benefits, and taxes, and then also the producer  
3 withdrawals --

4 Q. Okay.

5 A. -- were shown on there.

6 Q. And your first line of text on that page says that  
7 "as shown in Chart 1 above, feed expenses per  
8 hundredweight has increased every year since 2018."

9 That's -- and that's just following a few years --  
10 a couple of years' worth of a drop in prices; is that  
11 right?

12 A. That's right.

13 Q. But then when it increased again since 2018, it's  
14 continued to go up and surpass even the high point from  
15 before; is that right?

16 A. That's correct.

17 Q. And so the overall trend is that feed prices over  
18 the years have gone up without -- without ever netting  
19 back down lower than where they originated?

20 A. Yeah. Yeah. I think if you would start back in  
21 2006, you can see that it makes a -- a pretty clear upward  
22 trend there.

23 Q. And then it looks to me like the other -- the  
24 other items for cull cow expense and labor have been, at  
25 least based on the lens that we're looking through here,  
26 doesn't reflect a whole lot of change; is that fair?

27 A. Yeah, that's fair. It is a little hard to see  
28 that because it's -- we probably need a bigger chart.



1 Q. Well, that was going to be my question. If we  
2 zoomed in to smaller increments, we would be able to see  
3 the volatility a little closer; is that right?

4 A. That is right.

5 Q. Okay. And then when we look at the producers'  
6 withdrawals, that net there, that's what you said was the  
7 amount that the dairy farmers take out for just their  
8 everyday family expenses; is that right?

9 A. Yes.

10 Q. And most of us in -- in the non-dairy world kind  
11 of hope that our salary will increase year over year to at  
12 least keep up with inflationary growth. Is that fair?

13 A. That's fair.

14 Q. The cost of living that we hope to get each year?

15 A. Uh-huh.

16 Q. You have to answer audibly for the record.

17 A. Yes.

18 Q. Okay. And it looks like here, the producers'  
19 withdrawals have either maintained pretty flat or even  
20 dropped down; is that fair?

21 A. That's fair on a per hundredweight of milk  
22 produced, yes.

23 Q. So would you say that this is reflecting the dairy  
24 producers are not receiving that cost of living increase  
25 that would be keeping up with the inflationary standard?

26 A. Yes. Except that's if you -- on average, our  
27 dairy herds have gotten larger, so they have been able to  
28 expand their way to make up for that.



1 Q. And that's where I was going to go next, which is,  
2 is it dependent on them being able to expand in order to  
3 create their own cost of living increase or to -- in order  
4 to kind of maintain the same standard of living?

5 A. Yes.

6 Q. And if they are, for example, not able to increase  
7 their herd size, then -- then -- then they are not able to  
8 keep up with that cost of living increase?

9 A. Yes, I would agree.

10 Q. Okay.

11 MS. HANCOCK: That's all I have, your Honor. I  
12 would offer Mr. Bushey for cross-examination.

13 THE COURT: Mr. English.

14 CROSS-EXAMINATION

15 BY MR. ENGLISH:

16 Q. Good afternoon, Mr. Bushey. By name is Chip  
17 English. I'm an attorney for Milk Innovation Group. And  
18 thank you for being here today. I have been doing this  
19 for just a little while, and I will say that clearly over  
20 time the sophistication of these financial statements has  
21 clearly gotten better, for what it's worth.

22 I just have a few questions. And I may not have  
23 heard -- I'm going to ask the first one, and if I didn't  
24 hear the answer, I apologize.

25 But looking at Exhibit 153, in the very middle you  
26 have the term "energy-corrected."

27 A. Yes.

28 Q. And then there's an asterisk, and the asterisk





1 below says "corrected to 3.5% butterfat and 3.2%  
2 protein."

3 A. Yes.

4 Q. Okay. So I guess this is the first time I have  
5 heard the term "energy-corrected" as opposed to what we  
6 use.

7 So could you explain why you used phrase  
8 "energy-corrected"?

9 A. I'm not exactly sure. I know that a lot of  
10 nutritionists who help feed the cows, and that's where we  
11 found some of these calculations to come up with that.  
12 They want to correct the milk to basically make all  
13 producers' milk look the same. So taking it to a 3.5  
14 butterfat and to a 3.2 protein is kind of some -- in some  
15 ways a standard. There's some standards that say 3.0  
16 protein.

17 Q. I appreciate that. I mean, listen,  
18 standardization and GAAP, it's just the phrase  
19 "energy-corrected," so I was just trying to understand.  
20 When I looked at the phrase in the footnote, it didn't --  
21 it didn't immediately resonate with me. So thank you.

22 So you have -- you have got over 50 large dairies  
23 as your clients. Are any of these that are included in  
24 this material today organic?

25 A. No, I don't believe so.

26 Q. Are any of them A2 milk?

27 A. No.

28 Q. Are any of them pasture-fed milk?



1 A. Pardon me?

2 Q. Pasture-fed.

3 A. No, not that -- I don't believe so.

4 Q. Is that because they have a different business  
5 model structure?

6 A. I'm not sure. We just don't -- we have a couple  
7 of organic dairies, but we don't actually use this kind of  
8 information for them.

9 Q. Okay. So I want to pick up where you left off  
10 with Ms. Hancock and the commentary that the living  
11 expenses go up -- you know, are flat unless they grow.

12 The reality is, if you look at your materials,  
13 especially page 3 of page 5 of the testimony, when I look  
14 at the quantity of milk in hundredweight from 2007 to  
15 2022, on average, they have tripled, correct?

16 A. Correct.

17 Q. Okay. So that \$0.31 per hundredweight is now on  
18 almost a million hundredweight, correct?

19 A. Yes, that's the math.

20 Q. And that's the living expense portion, correct?

21 A. That's their -- what we claim -- we call their  
22 withdrawals. I mean, we can't determine exactly what they  
23 are using it for, but they take it out of the business.

24 Q. Right. But -- but that -- that still leaves, in  
25 your own statement, \$1.23 per hundredweight, correct?

26 A. Correct.

27 Q. And so if you -- if you calculated, say, \$1.23 --  
28 and let's just use 2022 -- if you multiplied that by the



1 995,115 hundredweight, that would come out somewhere north  
2 of \$1.2 million, correct?

3 (Court Reporter clarification.)

4 BY MR. ENGLISH:

5 Q. If you look at page 3 --

6 A. Okay.

7 Q. -- your testimony at page 3. And you have got the  
8 quantity of milk in hundredweight, last column -- I'm just  
9 going to do one year, I'm not going to try to go through  
10 all of them -- just quantity of milk in hundredweight, the  
11 column under 2022 where it's 995,115 hundredweight?

12 A. Yes.

13 Q. After you have accounted for the \$0.31 per  
14 hundredweight average net withdrawals?

15 A. Uh-huh.

16 Q. You have got \$1.23 per hundredweight. If you  
17 multiply \$1.23 a hundredweight by that first line of  
18 995,115, you are going to come up with a number larger  
19 than 1.2 million, aren't you?

20 A. Yes. That's the math.

21 Q. And that's in addition to their withdrawals for  
22 family living, correct?

23 A. Correct.

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

25 THE COURT: Any further questions, other than AMS?  
26 Mr. Miltner.

27 CROSS-EXAMINATION

28 BY MR. MILTNER:



1 Q. Good afternoon, Mr. Bushey. Ryan Miltner  
2 representing Select Milk.

3 USDA's helping me get a previous exhibit that I  
4 wanted to ask you some questions about as well, but while  
5 that is getting ready, we can start with a few other  
6 questions.

7 When you say your clients are the Great Lakes  
8 region, that would include Michigan and Ohio. Are there  
9 any other states where you -- where your firm has clients?

10 A. Yes.

11 Q. What states would that include?

12 A. It includes some in Indiana here, Wisconsin. And  
13 we do have a few clients spread out. I believe one in  
14 Minnesota, one in Kansas.

15 Q. Great.

16 Are all of those dairies included in the data  
17 represented in Exhibit 153?

18 A. Most of them.

19 Q. And just to be clear when, when you refer to the  
20 steps you take to ensure accuracy and completeness of  
21 data, that's different from an audited financial  
22 statement, right?

23 A. That's right.

24 Q. Okay.

25 MR. MILTNER: Your Honor, could I approach the  
26 witness to hand him this exhibit?

27 THE COURT: Yes.

28 MR. MILTNER: Thank you. It's Exhibit 84 that was



1 introduced, I think, last week. It's also noted as  
2 NMPF-25E.

3 BY MR. MILTNER:

4 Q. Mr. Bushey, are you familiar with the accounting  
5 firm Frazer, LLP?

6 A. Yes.

7 Q. Am I correct that generally the dairy clients that  
8 your firm works with are not in the same region of the  
9 country as the -- as Frazer's clients?

10 A. I would agree with that.

11 Q. Do you have a generally favorable opinion of the  
12 work that Frazer does?

13 A. Yes, I think they do good work.

14 Q. Great.

15 A. Yes.

16 Q. And both of your firm and Frazer specialize in  
17 accounting for dairy farms, correct?

18 A. I know what our firm does. I believe they do. I  
19 can't speak for them.

20 Q. Okay. You're aware that they do a lot of work  
21 with dairies?

22 A. Yes.

23 Q. I just gave you an exhibit, which is Exhibit 84,  
24 and it's titled Dairy Farm Operating Trends, December 31,  
25 2022. And what I'd like to spend a few minutes doing is  
26 trying to see if -- if we can try to match up some of your  
27 data with theirs because they are -- I find them very  
28 similar. Okay?



1 A. Okay.

2 Q. So if you would turn to what is numbered page 5 of  
3 that document, and the top of that page reads "Condensed  
4 Statement of Dairy Farm Income and Costs." Let me know  
5 when you've found that.

6 A. Okay. I have it.

7 Q. So that has columns Southern California, San  
8 Joaquin Valley, and Kern County.

9 Do you see that?

10 A. Yes.

11 Q. Okay. So here's the assumption that I want to  
12 make. And I'm not asking you to agree that my assumption  
13 is correct, but for our exercise, let's do so.

14 I want to assume that both Frazer and Nietzsche &  
15 Faupel accurately measure the bottom line figure of their  
16 clients, and that the line four lines from the bottom,  
17 total cost of operations, is the same as what you have  
18 measured on Exhibit 153, total operating costs and  
19 expenses. So assume you're both trying to get to the same  
20 point and you have achieved that. Okay?

21 A. Okay.

22 Q. Now, what I want to do, if you can manage to leave  
23 that open, and also pick up your Exhibit 153, which are  
24 your averages.

25 A. Okay.

26 Q. And what I want to do is go through your -- we're  
27 going to start with revenue items and go down through  
28 costs and expenses, and I want to ask you about what your



1 title is and tell me where you think that would fit on  
2 Frazer's category. And some will be real easy, and some  
3 you're just going to have to give me your best judgment as  
4 to where you would shove that. Okay?

5 A. Okay.

6 Q. So let's start with milk on yours.

7 I assume -- and I would put that under milk sales  
8 on the Frazer column.

9 Would you agree?

10 A. Yes.

11 Q. And then, livestock, cull cows, and other income  
12 on yours, I would lump that under calves and other because  
13 it's the only other income figure.

14 Would you agree with that?

15 A. Yeah, with the exception of, I'm not sure on cull  
16 cows how they are handling that, because they do have a  
17 herd replacement cost, so I'm not sure if they are netting  
18 some of that into there.

19 Q. Okay. That's a good call-out.

20 So let's go down to operating costs and expenses.

21 You have a line item for animal health?

22 A. Yes.

23 Q. Given the dozen or so cost items -- well, a few  
24 more than that -- but given the cost items that are on the  
25 Frazer exhibit, where would you think animal health would  
26 best fit?

27 A. I think they have kind of combined a couple of our  
28 accounts in veterinarian and breeding and testing. And so



1 we have animal health, and down a couple lines is  
2 breeding. I would group those two together.

3 Q. And you would put them in the veterinary breeding  
4 and testing?

5 A. Yes.

6 Q. How about your line item for bedding?

7 A. Yeah. I'm not sure where they would put that.  
8 They may have that in that same line item or -- I don't  
9 know where it would be, supplies.

10 One of my, I think -- I'm not very familiar with  
11 Southern California, but I believe a lot of their dairies  
12 do not have freestall barns, they are dry lots.

13 Q. Right.

14 A. So they may not have a lot of bedding. That might  
15 just be a cost that they don't have.

16 Q. Can we -- can we put it under miscellaneous then,  
17 since we don't know exactly where it goes?

18 A. Sure.

19 Q. Okay. We talked about breeding expense, and you  
20 have a line item for cull cow expense. And that was what  
21 you mentioned about netting out those two items, correct?

22 A. Yes.

23 Q. Do you see a good spot where that might fit -- I  
24 guess they have a herd replacement cost figure on the  
25 Frazer exhibit.

26 A. That's right.

27 Q. Would -- well, where -- how would you net that  
28 out, if you were trying to do so?





1           A.     I guess I would take the \$2.74 and subtract the  
2     cull cow revenue of \$1.14, come up with -- what would that  
3     be, \$1.60-something -- \$1.58, something like that.

4           Q.     Whatever the math is, you would take the cull cow  
5     expense, reduce the cull cow revenue, and that net number  
6     becomes a herd replacement cost, if you are -- if you are  
7     looking at Frazer's?

8           A.     Yes.

9           Q.     Okay. Waste removal might be another one that  
10    cost varies by operation.

11                    But custom hire waste removal, do you have a spot  
12    where that might fit best?

13           A.     Again, it would be -- we're comparing these to  
14    California dairies with dry lots. I don't know -- I don't  
15    think they have a lot of waste removal issues there.

16           Q.     Okay. So in the absence of a better category,  
17    maybe miscellaneous again?

18           A.     Sure.

19           Q.     Okay. Depreciation. There's a depreciation  
20    category.

21                    That would seem to fit well, yes?

22           A.     Yes. I do have a caveat here. It says  
23    depreciation of equipment. So I'm not sure where they  
24    are -- again, that may be -- they might not have a lot of  
25    other buildings and barns and things like that in  
26    California, so --

27           Q.     Okay.

28           A.     It's a little hard to compare.



1 Q. We have a single line on yours for feed. They  
2 appear to break it down between grain and hay and other.

3 But we think we know where feed would go, right?

4 A. Right.

5 Q. You have a line item for fuel. You also have a  
6 line item for utilities.

7 I don't see a fuel expense on Frazer's. Do you  
8 have a thought as to where you might categorize that?

9 A. No, I don't know where they --

10 Q. Okay.

11 A. No.

12 Q. Insurance, there's a -- we have a line item for  
13 insurance I thought I saw.

14 A. No.

15 Q. Oh, we have a line item for hauling, so we know  
16 where that goes.

17 Insurance, could we put that under miscellaneous?

18 A. Well, they may have some of those types of costs  
19 in occupancy costs, so it could be in there.

20 Q. Okay. There is a line item for interest, which  
21 matches up.

22 There is labor, benefits, and taxes. And on yours  
23 they have labor including fringe costs.

24 So do you think that matches up well?

25 A. Yes.

26 Q. Lease and rent.

27 A. Again, I think that would go into their occupancy  
28 cost.



1 Q. Okay. Marketing and promotion?

2 A. That's probably under their state and association  
3 charges. I'm assuming.

4 Q. You have a miscellaneous line also, professional  
5 fees and DHIA?

6 A. That may go under that state association charges.  
7 I'm not sure how they handle that.

8 Q. Okay. Repairs and maintenance, those categories  
9 match up very well, as does supplies.

10 And then taxes, I didn't see a line item on there  
11 for taxes under Frazer's.

12 A. Taxes are generally property taxes, so that may be  
13 part of that occupancy cost again.

14 Q. Okay.

15 A. And, again, they may not have as much with dry  
16 lots.

17 Q. So assuming we could then lump -- we could match  
18 up categories to -- with some level of logic, if not  
19 accuracy and precision, do you think that we would have a  
20 fair comparison between a Great Lakes region income and  
21 expense and profitability, along with the western states  
22 that are included on the page you are looking at, and then  
23 also the following page has some other regions?

24 A. Well, because there's some significant differences  
25 in whether you have a dry lot or you have freestall barns,  
26 I think there's some -- some major differences in  
27 expenses. And it looks to me like feed costs is quite --  
28 quite a bit higher there than what we see here with a lot



1 of our producers producing their own forages, so that kind  
2 of changes things. I'm not sure how good of a comparison  
3 you can get other than maybe just looking at total  
4 expense.

5 Q. But I guess from the -- from the bottom line,  
6 would you think we would have a fair gauge?

7 A. I think, again, looking at just maybe their total  
8 operating costs compared to the total operating cost and  
9 expense would be a little easier to make a comparison.

10 Q. Okay. Thanks.

11 MR. MILTNER: I don't think I have anything else  
12 for you.

13 THE COURT: We have been going a little more than  
14 an hour and a half. Can we take a ten-minute break?  
15 Let's come back at 3:26.

16 (Whereupon, a break was taken.)

17 THE COURT: Back on the record.

18 Any further questions in the nature of  
19 cross-examination, not from AMS, for this witness?

20 No one? AMS.

21 CROSS-EXAMINATION

22 BY MS. TAYLOR:

23 Q. Good afternoon. Thank you for coming to testify  
24 today. Just a couple quick questions to clear up a few  
25 things.

26 On page 3, when you have your chart of your  
27 averages?

28 A. Yes.



1 Q. And I know you said you have about 50 clients. Do  
2 these averages represent all 50 clients or a portion of  
3 them?

4 A. 50 clients. But -- so from 2007 through 2022 it  
5 would be maybe not the same 50 all the time, because  
6 there's clients coming and going.

7 Q. Sure. Okay.

8 And I see -- well, I won't ask that question. I  
9 think I know the answer.

10 Okay. I wanted to turn to your next Chart 1 on  
11 page 4.

12 A. Okay.

13 Q. And you have a line for labor, benefits, and  
14 taxes. But I assume that's not family labor, so that's  
15 other employees?

16 A. That's correct.

17 Q. Okay.

18 A. In most cases.

19 Q. In most cases.

20 A. There might be a few clients that are incorporated  
21 and take a wage, but in most cases it is just other labor.

22 Q. Okay. And then on your break-even chart down  
23 there, Chart 2, does the break-even include somewhere the  
24 family withdrawals?

25 A. No.

26 Q. Okay. So that's not -- so you might have a  
27 break-even price, but that doesn't include your family  
28 living expenses?



1 A. That's correct.

2 Q. And I wanted to compare kind of what's represented  
3 on this chart with what you have in your table on what is  
4 Exhibit 153 or 26B.

5 And under revenue, I take it from some questions  
6 and answers from other attorneys, that the revenue from --  
7 represented in this break-even price is only the milk side  
8 it doesn't include livestock, cull cows, and other income?

9 A. Which revenue are you referring to?

10 Q. Well, when you went over -- on Exhibit 26B, when  
11 you were discussing how you came up with the break-even  
12 price there of \$19.78, I believe what you said is you took  
13 the \$25.28 minus the \$5.50 income or loss that was at the  
14 bottom of that column, and that's how you got to \$19.78.

15 Would that be correct?

16 A. That's correct.

17 Q. So that's not factoring in these other kind of  
18 revenue sources?

19 A. Well, it is factoring in other revenue sources  
20 since it is -- those other revenue sources are allowing  
21 that break-even to be lower.

22 Another way to look at it would be the total  
23 operating costs and expenses are \$22.09, but we're seeing  
24 the break-even is \$19.78. So the difference between that  
25 cost and the \$19.78 is that other revenue.

26 So the other revenue is allowing a lower  
27 break-even because they do have that other revenue there  
28 to help offset some of those costs, if that makes sense.



1 Q. Yeah, I follow that. Thank you.

2 I was curious, in any of this, because I know  
3 there were government targeted payments for dairy  
4 producers in '21 and '22. Is that accounted for anywhere  
5 here?

6 A. Yes. That is in the other income.

7 Q. Okay.

8 A. And if you turn to the next page, and you will see  
9 in the year ended December 31st, 2020, the other income  
10 was significantly higher. That's where most of the  
11 dairies collected a lot of their government payments in  
12 2020.

13 Q. Okay. And so this is when they collected them,  
14 right? That's on a cash basis, when money came in the  
15 door, not necessarily for the time period that the payment  
16 was to reflect for them. Does that make sense to you?

17 A. It makes sense, but I'm not sure on that. We do  
18 try to basically report the revenue in the time period it  
19 was earned.

20 Q. It was earned, okay.

21 A. So that's what we're trying to do. I'm not saying  
22 we get perfect, but that's what we're trying to do.

23 Q. Okay.

24 And on the final chart, just so I'm clear -- and I  
25 think it's the same answer -- this doesn't include  
26 withdrawals for family labor, that net income line?

27 A. That's correct.

28 Q. Okay. And so would it be correct if I read this,



1 I think you said the average operating income was \$1.54;  
2 then if you include withdrawals, it was \$1.23.

3 If I were to look over this chart over time, then  
4 operating income ranged during this time period anywhere  
5 from a low of negative \$3 to a high of positive \$6?

6 A. Yes.

7 MS. TAYLOR: I think Mr. Wilson has a couple  
8 questions.

9 CROSS-EXAMINATION

10 BY MR. WILSON:

11 Q. Good afternoon.

12 Just one quick question just to -- for  
13 clarification. For the year 2020 ending, you have two  
14 columns of metrics: One as-delivered, one  
15 energy-corrected; is that correct?

16 A. Yes.

17 Q. The other years you only have one column. Is  
18 that -- do those other years compare with the as-delivered  
19 reference in 2022?

20 A. Yes. Yes, we just started adding that column for  
21 the energy corrected in 2022, so that's why it only shows  
22 up in that --

23 Q. Thank you.

24 A. -- period.

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

26 THE COURT: No other questions?

27 Ms. Hancock.

28 REDIRECT EXAMINATION





1 BY MS. HANCOCK:

2 Q. Thank you, Mr. Bushey. I -- I have a question.  
3 If you have what we have marked as Exhibit 153, this is  
4 the Nietzsche & Faupel December 31, 2022 and 2021 averages,  
5 on the first page?

6 A. Yes.

7 Q. And it shows, for 2022, that the net income from  
8 operations on a per hundredweight basis was \$5.50 in 2022;  
9 is that right?

10 A. Yes.

11 Q. That was kind of an exceptional year; would you  
12 agree?

13 A. It was a great year.

14 Q. Okay.

15 A. Our clients were happy.

16 Q. And if we look at 2021, it was \$0.96 per  
17 hundredweight; is that right?

18 A. That's right.

19 Q. Okay. So it's not that great of a year that year.

20 A. No. Early 2020, if you look at that, the  
21 government program payments really made that year. That's  
22 exactly what their income is, really, the owner income.

23 Q. Okay. So when we see the net income in -- on the  
24 second page there of \$1.43 a hundredweight, you are saying  
25 that's from the government subsidies that were paid out?

26 A. Most of it, right.

27 Q. Okay. And if you didn't have that subsidy in that  
28 year, it would be close to zero or a loss?



1 A. Well, it probably wouldn't be a loss, but it would  
2 be, yeah, close to zero. There's some other income in  
3 that other income, so wouldn't have all -- wasn't all  
4 government payments, but a lot of it was.

5 Q. And if we look at, for example, 2018, it was a  
6 loss on a per hundredweight basis, and that's \$0.48 a  
7 hundredweight that was a loss that year?

8 A. That's correct.

9 Q. Okay. And then just looking at the next page on  
10 2016, was a positive but only \$0.04?

11 A. Right. Basically break even.

12 Q. Or I should say \$0.04, I'm sorry.

13 A. And keeping in mind, that's before family living  
14 withdrawals, so it would actually be negative, like in  
15 2016.

16 Q. Okay.

17 And then Mr. English did a calculation with you  
18 based on the -- I think the \$1.23 a hundredweight average  
19 net income based on your calculations between 2006 and  
20 2022.

21 Do you recall that?

22 A. Yes.

23 Q. And I think the math that he did was \$1.2 million  
24 in positive net income?

25 A. Yes.

26 Q. That doesn't take into account the capital  
27 investment that's required in order to maintain a dairy,  
28 does it?



1           A.    Well, right.  Most of that money is used to  
2 maintain or expand the dairies.  Yes.

3           Q.    Okay.

4           A.    That's where that profit goes.

5           Q.    Okay.  And have you calculated an estimate of --  
6 on a per-cow basis of what it takes in order to even have  
7 that capital investment?

8           A.    Yeah.  We have some of that data.  I don't have it  
9 with me.  But just to do a fast calculation, if we just  
10 assume some round numbers of investment of \$2,000 per  
11 dairy animal, another roughly 1,000 on average for your  
12 young stock, so you're at 3.  And you got facilities are  
13 probably going to cost \$3500 a cow.  Now we're at 6500.  
14 We're going to have investments in inventory, receivables,  
15 those types of things, all the feed they have to have,  
16 another \$1.5 million.  Now you are at 8.  And then you got  
17 to have your land.  Most of these farms have some land.  I  
18 think that's what help keep their costs a little bit lower  
19 on the feed.  Even another \$2,000 for land.  You are  
20 looking at \$10,000 a cow investment.

21          Q.    Okay.  So if you had a herd size of, in 2022,  
22 which you said your average was 3,354, I believe, at  
23 \$10,000 a cow, that's over \$33 million capital investment  
24 that would be required to maintain a herd that large; is  
25 that right?

26          A.    Yeah.  And actually, when I was doing those  
27 calculations, I was assuming all mature animals, so we're  
28 probably closer to 4,000 -- I believe it's 3900 and



1 some -- 3932, so let's just say \$4,000 an animal -- 4,000  
2 animals.

3 Q. Okay. So you would be --

4 A. 40 million.

5 Q. 40 million capital investment for a 3300-cow herd;  
6 is that -- milking cow herd?

7 A. Right. That's correct.

8 Q. And -- and if I -- do you have a general rule of  
9 thumb, if I were to invest on the stock market, they say  
10 the average return -- rate of return should be somewhere  
11 around 8% over time; is that right?

12 A. My daughter's in wealth management, and she would  
13 know those numbers. I'll take your word for it on that.

14 Q. If I did the math correctly, you know, if it was  
15 35 million or \$40 million investment, that works out to  
16 be, at \$1.2 million net income, about -- just at about 3%  
17 return on the investment; is that right?

18 A. Right.

19 Q. And that also takes into account where we have a  
20 really phenomenal year in there, 2022, which really helped  
21 increase that average; is that fair?

22 A. That's correct. Yes.

23 Q. Okay. So while \$1.2 million net income might  
24 sound like a lot of money, when you look at the amount of  
25 invested capital that it takes to even get to that,  
26 there's not very much wiggle room in there, is there?

27 A. No.

28 Q. And -- okay. Thank you.



1 MS. HANCOCK: I think that's all I have.

2 Appreciate your time today.

3 THE WITNESS: All right.

4 MS. HANCOCK: Your Honor, we would move to admit  
5 Exhibits 151, 152, and 153.

6 THE COURT: Seeing no objections, those exhibits  
7 are entered into the record in this proceeding.

8 (Thereafter, Exhibit Numbers 151, 152, and  
9 153 were received into evidence.)

10 THE COURT: You may step down from the stand.  
11 Thanks for being here.

12 MS. HANCOCK: Your Honor, we will call Mr. Darin  
13 Hanson back to the stand as our next witness.

14 THE COURT: Welcome back, Mr. Hanson. Please  
15 raise your right hand.

16 DARIN HANSON

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

19 THE COURT: Your witness.

20 MS. HANCOCK: Thank you.

21 DIRECT EXAMINATION

22 BY MS. HANCOCK:

23 Q. Good afternoon, Mr. Hanson. I appreciate you  
24 being back again to testify with us.

25 You're here to talk today about Make Allowances;  
26 is that right?

27 A. Yes.

28 Q. And did you prepare a written statement on behalf



1 of National Milk related to your Make Allowance testimony?

2 A. I did.

3 Q. Is that what's been marked as Exhibit NMPF-16?

4 A. Yes.

5 MS. HANCOCK: Your Honor, if we could mark for  
6 identification purposes, I think we're at 154?

7 THE COURT: We are. So marked.

8 (Thereafter, Exhibit Number 154 was marked  
9 for identification.)

10 MS. HANCOCK: Thank you.

11 BY MS. HANCOCK:

12 Q. Would you proceed with giving us your statement?

13 A. Yes.

14 THE COURT: I'm sorry, do I have that?

15 Let's go off the record.

16 (Off the record.)

17 THE WITNESS: And like yesterday, I won't repeat  
18 my bio and company profile into the record.

19 Good afternoon. Again, my name is Darin Hanson,  
20 senior vice president of supply chain and risk management  
21 at Foremost Farms.

22 Foremost supports Proposal 7 to increase the  
23 Make Allowance in the butterfat, nonfat solids, protein,  
24 and other solids component formulas as recommended by  
25 National Milk. This includes raising butter to \$0.21 per  
26 pound, nonfat dry milk to \$0.21 per pound, cheese to \$0.24  
27 per pound, and dry whey to \$0.23 per pound.

28 As other National Milk members have stated, these



1 allowances are a stretch for dairy producers to absorb  
2 with their thin margins, even though these proposed  
3 Make Allowance increases may not fully compensate for the  
4 cost increases realized by dairy processors in the  
5 manufacturing of dairy products. Instead, these allowance  
6 increases strike a fair balance, between the reduction in  
7 producer pay price and the reduction in processor milk  
8 costs resulting from these increasing Make Allowances.

9 Foremost plants have experienced higher operating  
10 costs due to inflation since 2008, but especially over the  
11 past two years. Labor, energy, packaging, capital, and  
12 other non-dairy costs have risen significantly during this  
13 time. It is fair to note that some of these costs have  
14 decreased in 2023. For example, natural gas prices have  
15 fallen back to pre-pandemic levels, and diesel costs, a  
16 large driver of hauling costs, have trended downward.

17 Allowing these proposed Make Allowance increases,  
18 while we work towards a mandatory audited survey of cost  
19 data, will balance the need for the increase while not  
20 devastating our producer market.

21 An important note is that manufacturing -- the  
22 manufacturing class Federal Order prices are not mandatory  
23 prices that are required to be paid by milk buyers to  
24 dairy producers. Payments to dairy producers can also  
25 include other pluses and minuses, such as volume premiums,  
26 quality incentives, hauling costs allocation, and market  
27 adjustments.

28 Also, milk customers can be charged a basis, or



1 over-order premiums, that can be added to the milk price  
2 to account for higher increased costs as well. This basis  
3 can also be positive or negative. The level of the basis  
4 is determined by regional supply and demand factors and  
5 various other market factors.

6 If a processor is buying milk from a cooperative  
7 at agreed upon basis and their operating costs rise  
8 unexpectedly, the basis can be negotiated lower to offset  
9 some of these higher processor costs. This, in turn, may  
10 force the cooperative/processor to pay their members less  
11 for the milk produced by reducing member premiums. If the  
12 cooperative is also a processor, they may be required to  
13 pay less premiums to their members to ensure that earnings  
14 targets are met in the face of these higher operating  
15 costs.

16 With Make Allowances changing infrequently,  
17 customer basis and member milk premium programs allow  
18 parties to adapt to higher manufacturing costs over time  
19 in a natural way.

20 Since 2015, in the Midwest and the Mideast,  
21 customer basis has been declining, which has pressured  
22 member premiums for milk procurement to also go lower.  
23 This is partially in response to higher processor  
24 operating costs. Ideally, when Make Allowances are  
25 changed, customer basis and dairy producer premiums would  
26 adjust at the same time. However, since these premiums  
27 tend to change gradually over time, they are sticky and do  
28 not change quickly.





1           This may be due to contractual agreements between  
2 parties that lock in milk and finished product basis and  
3 overages. When these longer-term annual agreements are in  
4 place, it is difficult to adjust producer premiums without  
5 impacting earnings, because only one of the side of the  
6 equation is fixed.

7           In addition, milk supply may be slow to rebalance  
8 due to abrupt change to producer pay prices, as it takes a  
9 long time to ramp down or back up when prices recover.  
10 Large increases to Make Allowances would be a good example  
11 of an abrupt change to producer prices, and such a change  
12 would likely force changes to farming operations.

13           Due to financial pressures of lower milk prices  
14 resulting from a large Make Allowance increase, dairy  
15 producers may decide to reduce cow numbers or exit the  
16 industry altogether, at a time when processors are  
17 incentivized to ramp up production.

18           This would disrupt supply and pressure milk  
19 premiums and customer basis levels to move higher as  
20 processors compete for milk, partially or totally  
21 offsetting the impact of the Make Allowance change.

22           If Make Allowance changes are implemented, the  
23 full impact to the milk price will be felt by dairy  
24 producers immediately. The milk premiums to dairy  
25 producers and basis to customers would be much slower to  
26 adjust. This is an important reason to limit the  
27 magnitude of the Make Allowance change to ensure that  
28 markets remain orderly and not disruptive to dairy



1 producers.

2 Foremost also supports the recommendation for  
3 mandatory USDA plant cost surveys to ensure that  
4 Make Allowance calculations are as accurate as possible.  
5 Costs will change over time with inflation, consistently  
6 causing some costs to go higher. For other costs, such as  
7 energy, costs can increase and decrease from year to year.  
8 A consistent and robust survey process that refreshes the  
9 manufacturing cost data on a timely basis is critical to  
10 the validity of the Make Allowance values.

11 In summary, Foremost supports the National Milk  
12 proposal to increase Make Allowances. The proposed change  
13 directionally accounts for changes in higher operational  
14 costs experienced by processors, while minimizing the  
15 impact in financial disruption to dairy producer pay  
16 prices.

17 The reality is that there are other mechanisms to  
18 account for higher operating costs for processors,  
19 including the customer basis and milk premium programs for  
20 dairy producers. These likely have been adjusted lower  
21 over the years to reduce the impact of higher processor  
22 operating costs. The key is to adjust Make Allowances to  
23 better represent reality, but ensure an orderly  
24 marketplace for dairy producers. Thank you.

25 MS. HANCOCK: Thank you, Mr. Hanson.

26 Your Honor, we would make him available for  
27 cross-examination.

28 THE COURT: Mr. Rosenbaum.



## 1 CROSS-EXAMINATION

2 BY MR. ROSENBAUM:

3 Q. Steve Rosenbaum for the International Dairy Foods  
4 Association.5 Mr. Hanson, on page 2, you say that diesel fuel  
6 costs, a large driver of hauling costs, have trended  
7 downward, correct?

8 A. Yeah, versus last year.

9 Q. And what line item is that in in the calculation  
10 of Make Allowances?

11 A. I'm not -- just energy costs, in general, I mean.

12 Q. Well, you said hauling -- you said diesel fuel  
13 costs, a large driver of hauling costs, have trended  
14 downward. I'm trying to figure out whether that has  
15 anything to do with Make Allowances whatsoever. Does it?16 A. I don't know the specifics of what goes into the  
17 calculation, but I mean, it's a very significant cost that  
18 we incur as milk processors just to get the milk to the  
19 plant.20 Q. On that same page you make the statement, quote,  
21 "an important note is that manufacturing class FMMO prices  
22 are not mandatory prices that are acquired to be paid by  
23 milk buyers to dairy producers," end quote.24 Is that sentence presupposing that the milk buyer  
25 has depooled?

26 A. Could be -- that could be a situation.

27 Q. Well, if you -- if you haven't depooled, if you  
28 are a regulated handler, I thought FMMO prices are

1 mandatory. I thought that was the whole point the system.

2 A. I believe that if they are -- well, if they are  
3 pooled, and they contract directly with independent dairy  
4 producers, then I believe there is a minimum that they  
5 have to provide. But if they are contracting with  
6 cooperatives, they -- they can buy milk under class.

7 Q. You mean -- you are talking about a situation in  
8 which the handler, the regulated handler, is the  
9 cooperative itself; is that what you are saying?

10 A. No. No.

11 Q. You -- it's your understanding that proprietary --  
12 a proprietary handler contracting with a cooperative for a  
13 milk supply for Class III purposes is not required to pay  
14 the minimum Class III price?

15 A. That's what I understand and experience. I mean,  
16 definitely on a spot basis.

17 Q. Sorry, I couldn't hear you.

18 A. Definitely on a spot basis, you know, you are  
19 selling milk under class just to, you know, market the  
20 milk. And even when you get to contract basis.

21 Q. Are you aware that -- is it your view that there's  
22 a contract exception to the minimum milk price  
23 requirement?

24 A. I'm aware that there -- if you have a private  
25 processor, working with a cooperative, that's -- it is --  
26 different rules apply for the contracting price.

27 Q. Do you have any particular regulation or statute  
28 to cite for these propositions?



1 A. No.

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

3 THE WITNESS: Okay.

4 THE COURT: Questions from others?

5 CROSS-EXAMINATION

6 BY MR. ENGLISH:

7 Q. This is Chip English for the Milk Innovation  
8 Group.

9 Good afternoon, Mr. Hanson, again.

10 A. Good afternoon.

11 Q. So I think I figured it out, but I was puzzling  
12 over the use of the phrase because I don't think I have  
13 seen it yet in this proceeding. But several times on  
14 page 3, in the long paragraph for Exhibit 154, you discuss  
15 a term called "customer basis."

16 And I'm -- I am figuring that what you mean is the  
17 value -- the price that people are willing to pay in total  
18 is declining.

19 A. Yeah. I was counselled to use that term instead  
20 of over-order premium.

21 Q. I don't want to know what the lawyer told you  
22 but -- but -- but -- so it's -- it is another term for  
23 over-order premium; is that what you mean?

24 A. Yes. It was to avoid confusion, because you  
25 always assume over-order premiums are positive, but  
26 over-order premiums can be negative, too. You can add a  
27 positive number or you can add a negative number.

28 Q. And, in fact, they have been negative in the Upper



1 Midwest, correct?

2 A. Yeah, this year.

3 Q. And so if Make Allowances were adjusted upward, to  
4 the extent that customer basis has been negative, the  
5 market value of the milk will remain, correct, the market  
6 value? It will still be the market value?

7 A. Yes.

8 Q. Okay. So wouldn't you expect if the  
9 Make Allowances went up, if customer basis is negative,  
10 that that customer basis would adjust with the  
11 Make Allowances going up, correct?

12 A. Yes, I would expect that. That's kind of the  
13 point of that paragraph, kind of the opposite direction,  
14 where it said that those basis levels have been declining.  
15 Where the opposite reason, so if you shift -- if you  
16 increase the Make Allowance, then over time, you would  
17 think that you would start to see an increase in those  
18 over-order premiums.

19 MR. ENGLISH: That's all I have. Thank you.

20 THE COURT: Further questions?

21 CROSS-EXAMINATION

22 BY MR. MILTNER:

23 Q. Good afternoon, Mr. Hanson.

24 A. Good afternoon.

25 Q. Ryan Miltner representing Select Milk Producers.  
26 I wanted to ask some questions about Foremost's  
27 plants that are mentioned your statement.

28 A. Sure.



1 Q. Your three Italian cheese plants --

2 A. Yes.

3 Q. -- do any of those plants have the ability to  
4 transition and produce cheddar cheese?

5 A. No, none of them do.

6 Q. Does Foremost dry the whey that is produced from  
7 those Italian cheese plants?

8 A. We dry some of the whey, and other -- some -- the  
9 other we sell in liquid form.

10 Q. The whey that is dried, is that done at those same  
11 facilities or is it moved to a different location?

12 A. It's -- one facility dries its own; then  
13 another -- there's another drying facility where whey  
14 solids are transported to.

15 Q. The whey that is dried then, is it -- are the  
16 sales of that whey reported to the NDPSR?

17 A. I believe the whey -- the dry sweet whey itself is  
18 reported.

19 Q. For your two cheddar plants -- and I may have  
20 asked this the last time you were on the stand, and I  
21 don't remember.

22 A. That's okay.

23 Q. -- do they produce blocks?

24 A. Yeah. One plant produces 640s, and the other  
25 plant produces 40s.

26 Q. Do either of them produce barrels?

27 A. Neither produce barrels.

28 Q. Is the whey from those plants dried at all by



1 Foremost?

2 A. Yes, but not at those facilities.

3 Q. And would that whey, once it's dried, would the  
4 sales be reported to NDPSR?

5 A. No, they wouldn't be in -- they are not in sweet  
6 whey form.

7 Q. Did Foremost Farms report plant processing costs  
8 for Dr. Stephenson's study that was conducted on or around  
9 2019?

10 A. No.

11 Q. Did it report any plant processing costs for the  
12 updated study in 2022?

13 A. Yes.

14 Q. When it did report to the second study, did it  
15 report for cheese or whey or both?

16 A. Cheese -- cheddar cheese and whey.

17 Q. Did it report the cheddar cheese from both your  
18 40-pound processing plant and your 640-pound processing  
19 plant?

20 A. I believe it was just the 40-pound plant.

21 Q. When it report -- when you reported the whey, did  
22 it -- did you have to pull costs from both the plant at  
23 which the whey was produced as well as the plant that  
24 dried the whey?

25 A. I believe there was a cost to transport the whey  
26 to the facility. And the facility we reported, it was no  
27 longer in operation. It was closed in December of 2022.

28 Q. Okay. Do you still have facilities that dry whey?





1 A. At our Italian plants.

2 Q. Did that Italian plant report its costs to  
3 Dr. Stephenson's survey?

4 A. I don't believe so because it was an Italian  
5 plant.

6 Q. Was Foremost Farms part of National Milk's survey  
7 of plant processing costs?

8 A. Yes.

9 Q. A witness earlier today didn't know the answer as  
10 to whether -- whether his cooperative participated and how  
11 it was reported. Can you -- can you confirm that when  
12 National Milk did its survey, it only used the data from  
13 its own member survey and did not include Dr. Stephenson's  
14 data?

15 A. That's what I understand.

16 Q. Okay.

17 A. It was a survey of National Milk cooperatives in a  
18 task force group.

19 Q. Do you recall if when that National Milk survey  
20 was completed, if the members of the task force or  
21 committee or survey group, whatever we are calling it, if  
22 they received a summary of those costs that said something  
23 along the lines of the average cheddar cheese make cost is  
24 X cents?

25 A. Yes, we received a summary but not the detail.

26 Q. How then, if you recall, did the committee take  
27 the summary number and arrive at the number that is now  
28 included in Proposal 7?



1           A.     Well, these numbers, as from what I understand,  
2     were very close to what the average of that survey was.  
3     And, you know, the discussions we had was it was not just  
4     about the number. We know that this probably  
5     underrepresents what the true cost is. We -- we --  
6     Foremost met with our board to get their perspective on  
7     it, and we agreed that we do want to increase  
8     Make Allowances to represent higher make costs, but we do  
9     not want to be disruptive to the market. And this was  
10    that fair compromise of the set of numbers that National  
11    Milk arrived at.

12          Q.     And I think you said it was -- the number that was  
13    arrived at for Proposal 7 was close to the average of the  
14    survey number?

15          A.     I believe so.

16          Q.     Okay. So that would mean that there are some  
17    plants with higher costs than what National Milk has  
18    proposed and some with lower, correct?

19          A.     Yes.

20          Q.     And that's your recollection as to how that was  
21    arrived at?

22          A.     Yes.

23          Q.     Okay.

24                 MR. MILTNER: Thank you very much.

25                 THE WITNESS: Thank you.

26                 THE COURT: Anyone else have questions that's not  
27    AMS?

28                 AMS.



## 1 CROSS-EXAMINATION

2 BY MS. TAYLOR:

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. Let's see, where do I want to start. Well, first,  
6 I don't think this is kind of covered in your statement,  
7 but I'll ask of your Foremost plants. Have you all  
8 done -- invested in things to help you be more efficient?  
9 Whether it's on the cost side or increasing your yields,  
10 have you done that since the Make Allowances were last  
11 updated?

12 A. We have made some changes. A lot of our  
13 investment is in maintenance of the plants to make sure  
14 that we can successfully operate them. But we have made  
15 investments in tracking solids going through the plant to  
16 make sure that we're capturing all that data, to make sure  
17 that we're using the solids as best we can. We have  
18 invested a -- not in the cheese operations, but we  
19 invested in a greenfield milk separation plant in  
20 Greenville, Michigan. And that was back in 2018.

21 Q. '18 --

22 A. Yes.

23 Q. -- did you say?

24 A. Uh-huh.

25 Q. You mentioned to Mr. Miltner that Foremost did  
26 participate in the 2022 survey from Dr. Stephenson?

27 A. That's correct.

28 Q. So we'll be discussing that next week, I'm sure.



1           And the numbers that came out of that, do you find  
2 that those averages are representative of Foremost's  
3 costs?

4           A.    I believe so.  I mean, we have no reason not to  
5 believe that.  We provided the data and went through that  
6 model's formula, and then we got the numbers back.  So we  
7 weren't surprised relative to some of the other benchmarks  
8 that we saw.

9           Q.    Okay.  You -- in your statement you say that the  
10 Make Allowances that NMPF have proposed "strike a fair  
11 balance between the reduction in the producer pay price  
12 and reduction in the processor milk costs resulting from  
13 the increasing Make Allowance."

14                  I just wanted you to expand a little bit on what  
15 you consider a fair balance.

16           A.    Right.  Well, when we looked at what was going to  
17 be the impact to the class prices with the National Milk  
18 Make Allowance changes, they were going to have an -- they  
19 will -- they would have an impact of around \$0.50 to \$0.60  
20 per hundredweight, both on Class III and IV.  If you  
21 looked at some of the -- if you look at the higher levels  
22 where IDFA is at, it has more of an impact, about \$1.50  
23 per hundredweight.

24                  And in talking with our board, talking with our  
25 members, we just -- we felt that that impact was too great  
26 to -- to impose on dairy producers at one time.

27           Q.    Okay.  And so -- well, I'll get into this in a  
28 minute, I guess.  That leads me to the question.



1 I wanted to talk a little bit about the basis  
2 discussion you have on the top of page 3. And that's --  
3 another word we can think of it as a premium, I guess, but  
4 plus or minus, acknowledging it is not always positive,  
5 for sure.

6 A. Exactly. Uh-huh.

7 Q. Are these premiums -- how are they determined?  
8 Are they negotiated between Foremost and -- and I'm  
9 assuming since you are talking about it, that Foremost has  
10 some kind of process in place to negotiate this basis.

11 A. Yeah, I have a team that works for me, and their  
12 job is to market milk. And so they are going out,  
13 developing those relationships with customers, both on a  
14 contract basis, annual or multiyear, and then also on a  
15 spot basis, to -- to -- just making sure that we have  
16 long-term and short-term market access to our milk.

17 Q. And you talk about how those can -- those are not  
18 set in stone, right? They can fluctuate.

19 A. Yes.

20 Q. And so I wanted to talk a little bit about how  
21 that is impacting your producer pay prices already,  
22 because, you know, generally when I read this statement,  
23 the sentiment I walk away with is it's -- obviously it's  
24 impacting the producers already, whether it's through less  
25 premiums, you know, reblends, etcetera, and I just wanted  
26 to see if you could talk a little bit about Foremost and  
27 how at the producer level these increased manufacturing  
28 costs are impacting the milk check that they receive from



1 Foremost.

2 A. Whether it's from our customers or whether it's us  
3 internally, our higher costs, you know, have to get  
4 reflected back to the dairy producer for our customers to  
5 remain financially viable, for us to remain financially  
6 viable. So that -- yes, that has resulted in lower  
7 premiums pay paid to producers, with the higher  
8 manufacturing costs.

9 Q. Okay. And if under NMPF's proposed makes, which  
10 aren't -- you know, they are not a -- they are a  
11 compromise, I guess that's the word I'll use --

12 A. Sure.

13 Q. -- a middle ground, as you see it, would you say  
14 you would expect the reblending or the deducts, whatever  
15 you want to term, to be less? I mean, there would be some  
16 impact to the -- some positive impact to the producer milk  
17 check in that way?

18 A. That's what I would expect.

19 Q. I guess what I'm trying to ask as well is if  
20 you -- I mean, what I'm hearing is the numbers might  
21 change, but will the overall impact change? Does that  
22 make sense? You know, you have to pay it out of one side  
23 or the other, so are we netting anything positive?

24 A. I think there's a lot of value just to get the  
25 truth in the numbers, to making sure that the formulas are  
26 really acc- -- like really reflecting what's happening in  
27 the marketplace. Otherwise, there's a lot of confusion.  
28 There's a lot of angst out there, because if you have



1 reblends that are negatively impacting members, they don't  
2 understand where those are coming from. If you can  
3 explain what's going on with the Make Allowances and why  
4 you have higher costs, I think it becomes easier to get  
5 acceptance of the -- what the formulas are and what they  
6 represent.

7 Q. Okay. And so that leads me to a thought I had at  
8 the end. And I think what you are saying then is you find  
9 a benefit to find -- having more of that reflected in the  
10 regulated minimum prices rather than somehow reflected in  
11 the market --

12 A. Yes.

13 Q. -- prices that you see?

14 A. Yeah. Because if we're going to use this as our  
15 benchmark for how we price in the marketplace, in my mind,  
16 it has to have -- resemble what reality is, so everybody's  
17 engaged and on board.

18 Q. Okay. Thank you.

19 A. Uh-huh.

20 Q. On the top of page 4 -- and I think this leads to  
21 kind of -- the discussion is kind of the same, but what I  
22 read from this, kind of the reality is -- and this is a  
23 discussion you write up of why we shouldn't increase  
24 Make Allowances too much, too fast, right? Don't shock  
25 the system, I think is what you are saying.

26 A. Right. Yep.

27 Q. And what I read from that, if I can summarize, you  
28 can tell me if I'm correct, is that if we would increase



1 the makes too high, it's going to result in either less  
2 milk production and less -- and/or less farm members,  
3 right, because people are going to go out of business?

4 A. Right.

5 Q. And eventually that will lead to higher prices,  
6 but that's --

7 A. You're correct.

8 Q. -- sticky and slow?

9 A. Exactly. That's exactly right.

10 Q. I'm looking through my list to make sure I have  
11 covered everything.

12 Does Foremost use any risk management tools to  
13 help navigate this volatile market?

14 A. Yes, we do, quite extensively.

15 Q. Would you like to expand on that?

16 A. Specific to Make Allowance or specific to --

17 Q. Well, you're up here now, so just generally.

18 A. Well, in general, we spend -- my team spends a lot  
19 of time trying to hedge the block-barrel spread because it  
20 has such an impact on us that we spend a lot of time,  
21 spend a lot of resources managing that. And that's why  
22 we're so emphatic about some -- why we think you need to  
23 have one price series to represent each of the main  
24 commodities, because when you have more than one, it's  
25 very disruptive to our earnings on a month-to-month,  
26 year-to-year perspective. And then we talked about the  
27 impact it has on dairy producers, too.

28 We spent a lot of time -- we -- we pass through





1 most of our milk costs to the finished product, but  
2 there's a lot of nuances in there that can add up,  
3 especially on a mozzarella operation. So there's a lot of  
4 protein and butter hedging that we spend a lot of time on,  
5 and then a lot of customer hedging that we're working with  
6 our customers, if they want fixed pricing, we can put  
7 positions on for them.

8 MS. TAYLOR: I think that's it. Thank you.

9 THE WITNESS: Okay. Thank you.

10 THE COURT: Anyone else?

11 Redirect?

12 MS. HANCOCK: Your Honor, that's all we have at  
13 this time. We would move to offer 154 as an exhibit.

14 THE COURT: Exhibit 154 is entered into the  
15 record.

16 (Thereafter, Exhibit Number 154 was received  
17 into evidence.)

18 THE COURT: Thank you. You may step down.

19 MS. HANCOCK: Your Honor, at this time we would  
20 call Mr. Rob Vandenheuvel.

21 THE COURT: Off the record.

22 (Whereupon, a break was taken.)

23 THE COURT: Unless you want, I can swear the  
24 witness in again.

25 ROB VANDENHEUVEL,

26 Being first duly sworn, was examined and  
27 testified as follows:

28 THE COURT: Your witness.



## 1 DIRECT EXAMINATION

2 BY MS. HANCOCK:

3 Q. Good afternoon, Mr. Vandenheuvel. Welcome back to  
4 the stand.5 This time you understand that you are here to talk  
6 about Make Allowances?

7 A. Yes.

8 Q. And did you prepare a written statement --

9 A. Yes.

10 Q. -- to testify today?

11 A. Yes.

12 Q. Is that what we have marked as Exhibit NMPF-18?

13 A. Yes.

14 MS. HANCOCK: And, your Honor, if we could mark  
15 this as the next exhibit number?

16 THE COURT: I have 155. So marked.

17 (Thereafter, Exhibit Number 155 was marked  
18 for identification.)

19 BY MS. HANCOCK:

20 Q. And, Mr. Vandenheuvel, do you have three exhibits  
21 that are attached to your testimony that we have now  
22 marked as Exhibit 155?

23 A. Yes.

24 Q. And the first one is NMPF-18A.

25 A. Yes.

26 Q. And that's titled CDFA Manufacturing Cost Annual  
27 Data for California 2016 Data?

28 A. Correct.



1 MS. HANCOCK: Your Honor, if we could mark that  
2 for identification purposes as Exhibit 156?

3 THE COURT: Yes. So marked.

4 (Thereafter, Exhibit Number 156 was marked  
5 for identification.)

6 MS. HANCOCK: Thank you, your Honor.

7 BY MS. HANCOCK:

8 Q. And, Mr. Vandenheuvel, did you also have Exhibit  
9 NMPF-18B attached to your testimony, this one dated  
10 September 18th, 2007, on CDFA letterhead?

11 A. Yes.

12 MS. HANCOCK: Your Honor, if we would mark this as  
13 Exhibit 157?

14 THE COURT: So marked.

15 (Thereafter, Exhibit Number 157 was marked  
16 for identification.)

17 BY MS. HANCOCK:

18 Q. And then third we have what has been identified as  
19 Exhibit NMPF-18C, and it's titled Cost of Processing in  
20 Cheese, Whey, Butter, and Nonfat Dry Milk Plants?

21 A. Yes.

22 MS. HANCOCK: And, your Honor, if we would mark  
23 that as Exhibit 158?

24 THE COURT: So marked.

25 (Thereafter, Exhibit Number 158 was marked  
26 for identification.)

27 MS. HANCOCK: Thank you.

28 BY MS. HANCOCK:



1 Q. Mr. Vandenheuvel, would you mind proceeding with  
2 your testimony today?

3 A. Sure. For the sake of efficiency, I'll skip the  
4 introductory paragraphs, and as I go through the written  
5 testimony, I'll also skip over paragraphs that are largely  
6 repeated testimony from other National Milk witnesses.

7 The issue establishing appropriate Make Allowances  
8 here -- or manufacturing cost allowances, hereafter  
9 Make Allowances, in the Federal Order formulas is of  
10 critical importance to CDI, as we view this issue not only  
11 through the lens of a marketing cooperative co-owned by  
12 258 member-owners, but also as a partnership of those same  
13 member-owners in making large-scale investments in dairy  
14 product manufacturing.

15 Unlike some of the other issues being considered  
16 by USDA in this hearing proceeding, there is overwhelming  
17 recognition across the industry by both producer and  
18 processor representatives that Make Allowances are in need  
19 of an update. Few businesses, regardless of industry, can  
20 say their fundamental economics are unchanged in the more  
21 than 15 years that have passed since the last update.

22 It's also important to keep in mind the broader  
23 picture, especially in a hearing like this, where we will  
24 delve into the minutia of the Federal Order formulas.  
25 Federal Orders utilize end product pricing formulas which  
26 calculate a minimum price for milk purchased by pooled  
27 milk handlers based on the wholesale price of four end  
28 products, specifically butter, nonfat dry milk, cheddar



1 cheese, and dry whey.

2 The Make Allowances that are part of these  
3 formulas are intended to generally represent the cost of  
4 converting raw milk into those end products. Simply put,  
5 the cost structure associated with converting raw milk  
6 into those four end products is different today than it  
7 was in the mid-2000s when the Make Allowances were last  
8 evaluated. An update is clearly warranted.

9 Specifically, Proposal Number 7 would adjust the  
10 Make Allowances used in all four classified milk pricing  
11 formulas. And the levels there noted are consistent with  
12 previous testimony and the proposal.

13 I'll skip over the next paragraph that references  
14 the mandatory reporting, which has been fully vetted in  
15 earlier testimony.

16 And risk of inaction:

17 While CDI joins National Milk in proposing  
18 long-term improvements to this process through better  
19 data, the immediate adjustments reflected in Proposal  
20 Number 7 in this hearing process are also a critical need  
21 for the industry. The risk of inaction or delayed action  
22 is simply too great to put the issue off any further.

23 Cooperatives are most exposed to financial risk of  
24 inaction:

25 Market-wide balancing is primarily conducted by  
26 farmer-owned cooperatives that have built milk  
27 manufacturing plants that produce storable dairy products  
28 like butter and nonfat dry milk. While non-cooperative



1 manufacturers that purchase their raw milk from  
2 cooperatives as needed can scale milk purchases to their  
3 profitable demand for various end products, cooperatives,  
4 in their role as milk balancers, receive the residual  
5 volumes of milk and turn it into storable products.

6 CDI, like many of our fellow cooperatives, is on  
7 the front lines of this market dynamic, experiencing  
8 significant swings in milk processing volumes as we  
9 balance the seasonal ebbs and flows of our member-owners'  
10 milk production, as well as the ebbs and flows of seasonal  
11 demand for raw milk.

12 In 2022, the six CDI-owned manufacturing  
13 facilities processed as much as 31.8 million pounds per  
14 day in April of 2022, and as little as 24.6 million pounds  
15 per day in October of 2022, a swing of 7.2 million pounds  
16 per day, or 23% from the peak to the valley.

17 Managing that level of volume volatility is  
18 challenging enough. Doing so with an artificially  
19 elevated Federal Order Class IV price due to outdated  
20 Make Allowances magnifies the difficulty and increases  
21 costs borne by our member-owners.

22 Inaction creates winners and losers:

23 When the Make Allowance is set too low, a scenario  
24 that is playing out right now, the system creates winners  
25 and losers within the dairy farmer community. The losers  
26 are those producers who have made an investment in  
27 manufacturing infrastructure, either individually or  
28 through a cooperative, as their return on that investment



1 is diminished or completely eliminated due to a milk price  
2 formula that essentially overvalues the raw milk being  
3 processed.

4 The winners are those producers simply selling  
5 milk to a third-party processor that is pooling milk on a  
6 Federal Order. Those producers are guaranteed an  
7 artificially-inflated Federal Order blend price and yet  
8 are contributing nothing to the financial stress the  
9 system is placing on the producers who have made  
10 investments in processing.

11 In essence, failure to maintain a Make Allowance  
12 that fairly represents current manufacturing costs creates  
13 a disincentive to invest in processing infrastructure for  
14 use in balancing supply and demand, which will ultimately  
15 create disorderly conditions if or when producers are  
16 unwilling to or unable to take on that cost.

17 Risk of over correction:

18 While an update to Make Allowances is warranted,  
19 CDI recognizes that there's also a risk to overcorrection.  
20 There are certain unknowns due to limitations in the  
21 available manufacturing cost data sources, such as the  
22 range of costs that may be seen if all plants making  
23 eligible products were required to report plant costs to  
24 USDA as opposed to the voluntary data sources we have  
25 today.

26 Another limitation is product yields using current  
27 technology; another limitation is benefits of automation;  
28 and finally, energy efficiencies or other improvements to



1 plant efficiencies.

2 While CDI supports mandatory cost reporting that  
3 could provide reliable data in these key areas -- key  
4 issue areas, we believe that for the purposes of this  
5 hearing, the absence of available reliable data provides a  
6 justification for a more tempered adjustment in the very  
7 near term, which is what Proposal Number 7 represents.

8 Furthermore, the impact on dairy farms and on the  
9 regulated monthly milk price must be considered when  
10 evaluating these adjustments. It is simple arithmetic  
11 that an increase in Make Allowance will generate a lower  
12 resulting classified milk price. While a regulated milk  
13 price reduction due to higher manufacturing costs can be  
14 justified, the impact on dairy farms from a sudden and  
15 large milk check adjustment is a consideration that  
16 supports a more tempered approach.

17 The balanced approach:

18 Proposal Number 7 takes a balanced approach making  
19 incremental change to the current Make Allowances while  
20 erring on the side of conservatism. The proposal garnered  
21 unanimous support from the National Milk Board of  
22 Directors across cooperatives with and without significant  
23 ownership in processing assets.

24 The following are considerations that CDI made in  
25 supporting Proposal Number 7, particularly with --  
26 particularly with respect to the adjustment in butter and  
27 nonfat dry milk Make Allowances.

28 CDI has experienced significant cost inflation





1 across our network of manufacturing facilities since 2007  
2 when the manufacturing cost allowances were last updated.

3 While CDI supports mandatory cost reporting to  
4 USDA as previously referenced, CDI participated in a  
5 statewide and mandatory cost study for dairy manufacturing  
6 plants when California operated under a state marketing  
7 order prior to 2018. This mandatory audited cost study  
8 was conducted by California Department of Food and  
9 Agriculture, or CDFA. The most recent publication from  
10 the results from that annual cost study reported results  
11 using 2016 data. And while I have a summary below, that  
12 was Attachment A of my testimony.

13 Also attached to this testimony are the results  
14 from CDFA's 2006 cost study, which is Attachment B  
15 referenced earlier, and also summarized in the table  
16 below. That 2006 cost study was specifically used, in  
17 part, as a basis for establishing the current  
18 Make Allowances in 2008.

19 So Table 1 has the breakdown. One area I would  
20 note is the next paragraph: As evidenced by the data in  
21 Table 1, the cost of producing butter and nonfat dry milk  
22 at California manufacturing plants surveyed by CDFA rose  
23 across all cost categories in that 11-year timeframe. The  
24 category processing labor saw some of the most significant  
25 inflation, a rise of 51.4% for butter and 48.6% for nonfat  
26 dry milk, an interesting finding in a cost area that one  
27 would expect to see some benefit of automation during that  
28 11-year window of time.



1           The University of Wisconsin report:

2           In December 2021, Dr. Mark Stephenson, director of  
3 dairy policy analysis at the University of Wisconsin  
4 Madison, published a report in entitled Cost of Processing  
5 in Cheese, Whey, Butter and Nonfat Dry Milk Plants. And  
6 that is Attachment C referenced earlier.

7           This report requested and funded by USDA was based  
8 on feedback from 57 dairy manufacturing plants making  
9 either butter, nonfat dry milk, cheddar cheese, and/or dry  
10 whey. Included in the report was feedback from 12 butter  
11 and 27 nonfat dry milk plants that had fully completed the  
12 survey.

13           Specific to Dr. Stephenson's findings on the plant  
14 cost for butter and nonfat dry milk, the report found a  
15 weighted average processing cost for all respondents of  
16 \$0.1411 per pound for butter and \$0.2933 cents per pound  
17 for nonfat dry milk.

18           Upon review of the report's findings, CDI grew  
19 concerned about the widely divergent findings for the cost  
20 of manufacturing butter and nonfat dry milk, especially  
21 when compared to other plant cost results published  
22 previously by Dr. Stephenson.

23           We questioned the method used to allocate costs  
24 among the various products being produced in a single  
25 facility and whether those methods contributed to the  
26 significant divergence in the reported cost of  
27 manufacturing.

28           Unable to reconcile precisely what caused the



1 difference, we evaluated the butter and nonfat dry milk  
2 results in total, rather than individually. Below are the  
3 results of that evaluation.

4 And what I show here in this table is the reported  
5 butter processing cost on a weighted-average basis and the  
6 reported nonfat dry milk processing cost on a weighted  
7 average basis, and that 14 -- .1411 -- or \$0.1411 per  
8 pound weight average as referenced earlier for butter and  
9 \$0.2933 cents per pound for nonfat dry milk.

10 I then multiplied that cost per pound by 3.5  
11 pounds of butterfat and a yield of 1.211 pounds of butter  
12 per pound of butterfat to get 4.2385 pounds of butter from  
13 a hundred pounds of milk at 3.5% butterfat and 8.685%  
14 solids nonfat.

15 And then I did the same calculation, 8.685 pounds  
16 of nonfat dry milk -- I'm sorry -- 8.685 pounds of solids  
17 nonfat times a yield of 0.99, gives a result of 8.5982  
18 pounds of nonfat dry milk for every 100 pounds of milk at  
19 those stated components.

20 I multiplied the cost from the University of  
21 Wisconsin report in the second column by the number of  
22 pounds identified in the third column to get the total  
23 cost per 100 pounds of milk.

24 And then summed those to get \$3.1198 per  
25 hundredweight combined, and divided that by the total  
26 number of product pounds, which would be the 4.2385 pounds  
27 of butter and the 8.5982 pounds of solids -- of nonfat dry  
28 milk, to get a weighted average cost per pound of butter



1 and nonfat dry milk of \$0.243 per pound.

2 We then compared the weighted average cost of  
3 \$0.243 per pound to the current Make Allowances of \$0.1715  
4 per pound for butter and \$0.1678 per pound of nonfat dry  
5 milk.

6 Under that comparison, the proposed updated  
7 Make Allowance of \$0.21 per pound for both butter and  
8 nonfat dry milk included in Proposal Number 7 represents  
9 the capture of 50% of the difference between the current  
10 Make Allowances and weighted average cost per pound of  
11 butter and nonfat dry milk as calculated above, rounded to  
12 the nearest penny per pound.

13 Given the intent of Proposal Number 7 to err on  
14 the side of conservatism and be reviewed once again at a  
15 later date with the availability of data from a mandatory  
16 audited reporting of plant costs and yields, it seemed  
17 very reasonable to propose an updated allowance equal to  
18 approximately 50% of the difference between the current  
19 Make Allowances and the updated weighted average  
20 manufacturing costs as calculated in Dr. Stephenson's USDA  
21 commissioned and funded cost study.

22 This was further validated by the California  
23 specific data from CDFA in 2016 that demonstrated, even at  
24 that point, seven years ago, the real cost of producing  
25 better and nonfat dry milk in California was already  
26 around \$0.20 per pound.

27 Weighing all the available information, and in the  
28 context of the broader goal to provide USDA with the



1 authority to collect mandatory cost data in advance of the  
2 next Make Allowance adjustment, CDI joins National Milk in  
3 supporting Proposal Number 7, a balanced adjustment to  
4 Make Allowances that, again, garnered the unanimous  
5 support of the National Milk Board of Directors.

6 That concludes my written testimony.

7 Q. Thank you, Mr. Vandenheuvel.

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

10 THE COURT: Cross other than AMS?

11 CROSS-EXAMINATION

12 BY MR. ROSENBAUM:

13 Q. Steve Rosenbaum for the International Dairy Foods  
14 Association.

15 If we turn to page 4 of your testimony, which is  
16 Exhibit 155, you have a table that reports as to what the  
17 what the California Department of Food and Agriculture  
18 cost studies had shown to be the costs of making butter  
19 and nonfat dry milk in 2006 and 2016, correct?

20 A. Correct.

21 Q. And what this study showed for nonfat dry milk was  
22 that the cost of making that product in 2016 was \$0.2082  
23 correct?

24 A. Correct.

25 Q. And -- and to state the obvious, we are in 2023  
26 today, correct?

27 A. Correct.

28 Q. And it is National Milk Producers Federation's



1 proposal that the Make Allowance be set in the Federal  
2 Order system, in 2023, or whenever the actual decision  
3 comes out, at \$0.21, correct?

4 A. Correct.

5 Q. So you -- your -- which is really a rounding, if  
6 you will, of what the cost to manufacture was deemed to be  
7 for nonfat dry milk seven years ago in 2016, correct?

8 A. Correct.

9 Q. And it is certainly -- and by the way, this  
10 document shows that between 20016 and two thousand -- let  
11 me start that again.

12 This document shows that between 2006 and 2016,  
13 the cost of making nonfat dry milk had increased by 25.1%,  
14 correct?

15 A. Correct.

16 Q. And -- and certainly you would agree with me that  
17 the actual costs have gone up substantially since 2016,  
18 correct?

19 A. They have definitely increased since 2016. I  
20 would -- I would note that these are California-specific  
21 numbers, which -- and California certainly has some of its  
22 own dynamics around manufacturing costs, which would be a  
23 limitation of this dataset.

24 Q. You're aware, though, the federal government has  
25 relied upon the CDFA data in the past in setting  
26 Make Allowances, correct? Not as the sole source of  
27 information, but as part of the source of information,  
28 correct?



1           A.     In my review of the documentation from the last  
2     Make Allowance reset, I believe they applied -- USDA  
3     applied the California product volumes to the CDFA data  
4     and the non-California volumes to another dataset.

5           Q.     Okay. So when you then sort of describe what the  
6     National Milk proposal would do, and I think you laid out  
7     pretty plainly at the bottom of page 5 and the top of  
8     page 6, that your proposal would only attempt to capture  
9     15 -- 50% of the actual increase in cost of manufacture  
10    since Make Allowances were set back in 2008; is that  
11    correct?

12          A.     50% of the difference between the current  
13    Make Allowance and this interpretation of Dr. Stephenson's  
14    numbers from his 2021 report.

15          Q.     Are you aware that his 2021 report was based  
16    primarily upon 2018 data, with a few entries from 2019?

17          A.     I don't know the exact timing of when all those  
18    entries were made, but they were as early as 2018, yes.

19          Q.     Okay. So it's more accurate, isn't it, to state  
20    that Proposal 7 would represent the capture of 50% of the  
21    increase in cost of manufacture between 2008 and 2018?

22          A.     That would be -- that would be an accurate  
23    statement with the caveat of the items noted on page 3,  
24    which is the limitations of the available data, not having  
25    the confidence that all plants making eligible products  
26    required to report costs, not having updated information  
27    on product yields, which Dr. Stephenson's analysis does  
28    not include a yields update, and then any other



1 efficiencies that might not be captured. So with that  
2 caveat, I would agree with your statement.

3 Q. And you are aware that -- that Dr. Stephenson  
4 conducted cost of manufacture reports in 2006 and 2007,  
5 which were then relied upon by USDA to set Make Allowances  
6 along with the California Department of Food and  
7 Agriculture data?

8 A. I'm aware from reading the material that that's  
9 the case.

10 Q. And are you aware that the general methodology  
11 Dr. Stephenson engaged in to conduct his reports remained  
12 the same, with the exception of the problem you identified  
13 on page 5 about how properly to allocate certain costs  
14 between butter and nonfat dry milk?

15 A. I'm aware that the -- most of the methodology did  
16 remain the same. There was a distinct difference in the  
17 length of time from the previous reset of the  
18 Make Allowance. That was about a seven- or eight-year  
19 gap, and we have got about double that. But, yes, I'm  
20 aware the methodology has been consistent.

21 Q. I'm sorry, is --

22 A. Has been consistent.

23 Q. Thank you.

24 Now, I assume you would agree costs have increased  
25 since 2018?

26 A. They have definitely increased since 2018.

27 Q. By that, I mean the cost of making butter and  
28 nonfat dry milk, correct?





1           A.     My guess is the cost of making almost anything,  
2     but, yes, butter and nonfat dry milk.

3           Q.     Okay. Now, you do know, I'm sure, that  
4     Dr. Stephenson has produced a more recent report than the  
5     one that you had marked as Hearing Exhibit 158, correct?

6           A.     Yes. At the time of preparing this testimony, I  
7     didn't have that information available. I also felt it  
8     was most appropriate to rely on an analysis that had been  
9     commissioned by USDA as part of this proceeding.

10          Q.     Have you had a chance to read the more recent  
11     report?

12          A.     I have had a chance to review some of the numbers.  
13     I would not claim to be an expert in all the in and outs  
14     of it.

15          Q.     Okay. Do you -- have you at least concluded that  
16     the problem that you identified on page 5 relating to  
17     Dr. Stephenson having used, I will call it a  
18     non-traditional method of allocating costs between butter  
19     and nonfat dry milk, have you determined that in the more  
20     recent report, which is yet to be -- which is IDFA  
21     Exhibit 1, that -- not yet introduced into evidence --  
22     that he has reverted to the traditional method of  
23     allocation?

24          A.     That -- that does make it easier to make a  
25     comparison to historic numbers. I did -- I did notice  
26     that.

27          Q.     Okay. Now, you say on page 3 that, quote,  
28     "failure to maintain a Make Allowance that fairly



1 represents current manufacturing costs creates a  
2 disincentive to invest in processing infrastructure for  
3 use in balancing milk supply and demand, which will  
4 ultimately create significant disorderly conditions if or  
5 when producers are unwilling or unable to take on that  
6 cost," end quote.

7 Do you see that?

8 A. Yes.

9 Q. But you are not, in fact, proposing a  
10 Make Allowance that would, quote, "fairly represent  
11 current manufacturing costs"; isn't that fair?

12 A. I don't believe there's going to be testimony  
13 entered into the record at this hearing that can fairly  
14 represent to the penny current manufacturing costs because  
15 of some of the limitations. So what I have proposed as a  
16 justification for National Milk's Proposal 7 is using the  
17 available data, but putting conservatism into that because  
18 of the lack of data.

19 Q. But -- but you have agreed -- you have agreed, I  
20 believe, that insofar as Dr. Stephenson's reports are  
21 concerned, the methodology he has used in his most recent  
22 report is fundamentally consistent with the methodology  
23 that he used in the earlier reports that USDA found  
24 sufficiently reliable to utilize in its setting of  
25 Make Allowances; is that right?

26 A. Yes. In terms of his methodology, that  
27 methodology has not resulted in the past in USDA using  
28 that data exclusively in setting Make Allowances. But, in



1 part, just as I have done here in this justification.

2 Q. Okay. But the end result is your numbers only get  
3 halfway to what Dr. Stephenson said in his 2021 report  
4 were the 2018 -- or 2019 data weighted average cost to  
5 manufacture; is that right?

6 A. The use of that 50% to account for the data  
7 lacking is -- is a correct observation.

8 Q. And the National Milk proposal would, if you will,  
9 leave processors high and dry with only 50% of the cost  
10 increase as of 2018 having been accounted for by higher  
11 Make Allowances, unless and until there was some other  
12 milk order hearing to do something to change that; is that  
13 right?

14 A. I think it's important not to evaluate a proposal  
15 against perfection but to evaluate it against where we are  
16 today. This represents, in our opinion, in CDI's opinion,  
17 as a significant manufacturer in the United States, as a  
18 significant improvement in the minimum price formulas,  
19 while still balancing the limitations of data, the impact  
20 on producers, and all the other things in my testimony.

21 Q. Okay. I recognize you, I presume -- well, I don't  
22 know. Did you participate in Federal Order issues prior  
23 to California joining the Federal Order system?

24 A. I did not.

25 Q. Okay. Do you know whether USDA has ever -- since  
26 the product pricing formula approach to setting minimum  
27 prices came in effect in 2000 -- has ever failed to adopt  
28 Make Allowances that it viewed as reflecting the weighted



1 average cost of manufacture 100%?

2 A. I'm not -- not aware of a response to -- to that  
3 particular question in the way you framed it. But I will  
4 observe that if it was a simple plug and play, this cost  
5 data, put it into the formula, these hearings would be a  
6 lot shorter. And so there's a lot of different  
7 perspectives that need to be put into the record, looking  
8 at different angles beyond just the numbers on a singular  
9 report.

10 Q. And just so the record is clear, you are aware  
11 that we -- that Dr. Schiek has performed certain analysis  
12 using the most recently available California Department of  
13 Food and Agriculture data as well and that that also forms  
14 part of the IDFA proposal?

15 A. I'm aware of some of the work. Look forward to  
16 hearing his testimony.

17 Q. Okay.

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

19 THE COURT: Ms. Hancock.

20 MS. HANCOCK: Your Honor, I see that we're at  
21 5:00. Mr. Vandenheuvel will be available here tomorrow.  
22 I thought now would be a good time to talk about the  
23 line-up for tomorrow as well.

24 THE COURT: I think so unless -- I see no  
25 objections. Yes, thank you.

26 Are you the keeper of the lineup?

27 MS. HANCOCK: Well, for this part of the hearing,  
28 while we're still putting on our witnesses, I am, your



1 Honor.

2 And anybody can shout out if you think that what I  
3 have is wrong, but we will complete Mr. Vandenneuvel's  
4 testimony tomorrow morning. We will move on to Paul  
5 Bauer -- maybe not in this order, but this is the list of  
6 witnesses -- Paul Bauer, Monty Schilter, Mike John. And I  
7 believe we're only going until 11 o'clock, at which time  
8 we'll take an early lunch to get back by noon to do the  
9 dairy farmers.

10 MS. TAYLOR: That is correct. We'll start virtual  
11 dairy farmer testimony at noon. We have seven signed up  
12 to testify tomorrow, so I imagine that will take us again  
13 to around 1:30-ish, and maybe we can take a break and use  
14 up the last hour of our day, and then finish at 3:00.

15 THE COURT: Anyone else have anything to  
16 contribute? That sounds good to me. Thank you for the  
17 organization on this.

18 MS. TAYLOR: Does anyone else have someone that  
19 needs to testify tomorrow?

20 MR. ROSENBAUM: I think our expectation is that we  
21 will use up tomorrow with the witnesses that National Milk  
22 has, your Honor. And I don't think -- if it turns out we  
23 have, you know, 45 minutes extra, I think it would not  
24 make sense to try to -- frankly, our witnesses are at this  
25 point scheduled to come in next week.

26 THE COURT: Ms. Hancock, you look like you might  
27 have had something to say.

28 MS. HANCOCK: Nope.



1 THE COURT: Back on the record.

2 Off the record there was a little further  
3 discussion, and it was suggested that the line-up of  
4 witnesses that we discussed earlier on the record would  
5 probably take us through the whole day tomorrow, Friday.  
6 And then -- so we won't -- we won't have any witnesses in  
7 the batter's box, so to speak, and in the on-deck circle  
8 for the purposes of that day. If we have a little bit  
9 left over, that would be fine. I concur with all of that.

10 And unless anyone else has anything, it's 5:02,  
11 let's adjourn for the day. See everyone back here at  
12 8:00 a.m., just like usual.

13 (Whereupon, the proceedings 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.

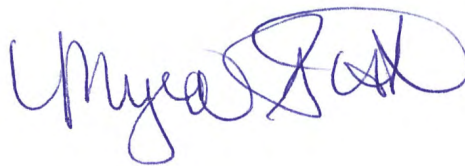
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10 DATED: October 1, 2023

11 FRESNO, CALIFORNIA

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**Zealand** 2676:8

**zoomed** 2718:2

