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 8, 2023

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Reported by:

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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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SESSIONS

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IN CHRONOLOGICAL ORDER:

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FRIDAY, SEPTEMBER 8, 2023 - - MORNING SESSION
THE COURT: On the record.
We have a witness on the stand. I remind you, you are still under oath. Welcome back.
Who is up?
Mr. Miltner, good morning, sir.
CROSS-EXAMINATION
BY MR. MILTNER:
Q. Ryan Miltner representing Select Milk Producers.
Good morning, Mr. Vandenheuvel.
A. Good morning.
Q. I wanted to start by going over CDI's plant information like I have done with other witnesses, if we could start there.
How many plants does CDI operate today?
A. Six facilities in California. Those are our only six.
Q. And of the six, how many are -- well, tell me what kind of plants they are?
A. We have -- all six facilities make powder, milk powder products. Four of those facilities also make butter.
Q. Of those that make powder, do they make nonfat dry milk?
A. Yes.
Q. Do they make skim milk powder?
A. Some of them do.
Q. Whole milk powder?

A. No.
THE COURT: Yes, Mr. English.
MR. ENGLISH: Excuse me, your Honor. I got a text message that they can't get the audio right now.
THE COURT: Off the record.
(Off-the-record.)
THE COURT: Back on the record.
We're back on the record after some technical difficulties with the virtual feed we have here, but it seems to be in good shape now.
You may continue, Mr. Miltner, your witness.
BY MR. MILTNER:
Q. Okay. And to recap for those that couldn't hear on audio, we had asked and you had answered, I'll see if I have my notes right, CDI has six processing facilities, all of which produce some type of powder, four of which produce butter, correct?
A. Correct.
Q. You said that the plants produce nonfat dry milk, some produce skim milk powder. You do not produce whole milk powder, correct?
A. Correct.
Q. Do any of them produce buttermilk powder?
A. Yes.
Q. Are there any other powders that are regularly produced at any of your facilities.
A. We produce some milk protein concentrates and milk protein isolates.

Q. Do you dry any whey at those facilities?
A. No.
Q. The plants that produce butter, do they produce bulk salted butter?
A. Yes. We have some facilities that produce bulk salted butter, not all.
Q. How about bulk unsalted butter?
A. Same answer: Some, not all.
Q. Do all of the plants produce quarters?
A. Produce, I'm sorry?
Q. Packaged butter in quarter-pound sticks?
A. All but one produces cut butter in a retail or foodservice variety.
Q. Do any of the plants produce butter in the smaller foodservice packages, like single-serving pats or cups?
A. We do have some limited continental chip production. That would be like the only of those single-use products that we make.
Q. Are there any other butter products of any substantial volume produced at those facilities?
A. Butter, we make a variety of retail butter: Spreadable, whipped, cut. And then we do -- it is not a butter product, but we do make anhydrous milk fat at one of our facilities.
Q. All right. Turning to page of Exhibit 155. You have you have four bulleted items under the heading "Risk of Overcorrection."
The first bullet point you identify has a

limitation in available cost data sources: The "range of costs that may be seen if all plants making eligible products were required to report plant costs to USDA." Can you expand on what you mean by that bullet point, please?

A. While we have a variety of data sources that are being discussed in this hearing, they all have one shortcoming or another, just by their design, through no fault of the dataset, it's what's available.

And so one of those limitations is the data we have that's most recent does not include mandatory reporting, and so it's limited by those plants that voluntarily chose to participate in that survey. And so what that bullet intends to identify is that limitation of the data, that we don't have an accurate accounting of what we would see if all plants making NDPSR-eligible products were reporting into a mandatory cost survey.

Q. And so in Exhibit 158, which -- which accompanied your testimony, which is the white paper from -- or the working paper from Dr. Stephenson, he identifies a universe of plants that were asked to participate, 153, and notes that 50 responded.

So is that what you are getting at, that one-third of the plants that they were asked to respond, for one reason or another, chose not to, correct?

A. Correct.

Q. So that's a gap in -- in I guess the breadth or universe of data we're working with, correct?

A. Correct. And for the record you're referencing the numbers on page 4 of that report.
Q. I was. Thank you.
And then on page 5 of your statement, where you are discussing some of the findings in Dr. Stephenson's working paper, you go through and you describe his findings for butter processing costs and nonfat dry milk and then how you tried to reconcile what you perceive to be divergent findings on those two points.
And I want to suggest that -- well, let me express my understanding of what you did. You averaged those two results and achieved a weighted number that aligned with your professional experiences to manufacturing costs on those products, correct?
A. Correct.
Q. And so the methodology got you to a number that you thought was rational. But you really can't say that the result you achieved, the fact that it makes sense doesn't mean that that's necessarily representative of costs, right?
A. I -- I would agree. The basic premise of that calculation is that you are looking at a whole bucket of milk that makes butter and powder, and so coming up with a weighted average gives you a cost per pound of all the products in that representative bucket.
I do not believe that should be interpreted to say that costs are always exactly the same for all those products and that this study found that. That was an

interpretation of the data with those assumptions.
Q. Is it possible that although the methodology you laid out makes some logical sense, the fact that the result seems to line up with your experience could be as much coincidence as it is reality?
A. Well, I do think that there is -- when you are looking at -- at costs, and as I noted in the -- in the testimony, you know, I also looked at CDFA data. The limiting factor with that data being that it's aged at this point. It is 2016, perhaps, based on data from as early others 2015. The numbers fit in the realm of the possible. And so it fits that experience, and as a butter and powder manufacturer, these are not numbers that are significantly out of balance with what I would see in our own profit and loss statements.
Q. Where in your statement you write, "We questioned the method used to calculate costs among the various products being produced in a single facility," is that a reference to the degree of transformation methodology that's in the -- in Dr. Stephenson's working paper?
A. That appeared to be the one significant difference in methodology in that particular survey of plant costs that seemed to generate some results that were confusing.
Q. Did you -- knowing that CDI makes predominantly powder and butter, did you do any looking into the other findings from the white paper to see if the costs for cheese and whey might have been skewed by that degree of transformation factor?

A. We did -- we did not.

Q. As you continued describing what you did to -- to try to reconcile those numbers or -- or make some sense of them, you testified that after that comparison, the updated Make Allowance of $0.21 per pound for both butter and nonfat dry milk is included in Proposal Number 7.

You were here all day yesterday?

A. Yes.

Q. And did you hear my questions of other witnesses from National Milk on how the particular numbers for Proposal 7 were determined?

A. Yes.

Q. So what is your recollection or understanding as to how the numbers for butter and nonfat dry milk were set?

A. Well, as you can imagine, the process of building consensus in a large group of organizations with different priorities, different mixes of what they process at their own facilities versus what they sell as bulk raw milk, was a complicated process. National Milk went -- went through a number of exercises in that -- in that process, including getting input from the various parties. You heard about some of that in prior testimony.

As part of that input process, CDI did participate. Our participation pointed to analyses, exactly like what I have described here in the testimony, in terms of where we believed the appropriate proposal should be, in terms of manufacturing costs allowances.

And so it was a separate process, but CDI had the opportunity to participate with our own interpretation of what's appropriate, as I laid out in testimony.

Q. Do you agree with the testimony from a previous witness that the numbers utilized in Proposal 7 represent somewhat of an average of the survey results that National Milk obtained from its committee members?

A. I would -- I would say it represents -- it represents a cost and a Make Allowance proposal that could secure consensus among the organization.

Q. From the -- the answer you gave a minute or so ago, I understand that CDI did contribute information to that National Milk survey --

A. Yes.

Q. -- correct?

Did CDI also provide and participate in -- provide information to and participate in Dr. Stephenson's study from 2018?

A. Our accounting team or finance team did. I was not involved in that submittal.

Q. Did CDI also provide information to Dr. Stephenson's updated report from last year?

A. Again, the accounting and finance team. I was not directly involved.

Q. Do you know if CDI participated in Dr. Stephenson's studies that he published in 2006 and 2007?

A. I don't. It predates my time at CDI.

Q. Thanks.
MR. MILTNER: I don't think I have anything else.
THE COURT: Further cross?
AMS.
CROSS-EXAMINATION
BY MS. TAYLOR:
Q. Good morning.
A. Good morning.
Q. Thanks for coming back and testifying again today.
A. Of course.
Q. Can you talk a little bit about how CDI has had to manage through this time of what you consider inadequate Make Allowances in the formulas and how has that impacted your producers?
A. Yeah. It's definitely been a financial stress on the organization and, therefore, on the member-owners who -- who are the 100% full owners of the organization. We have had opportunities during some of that time to not pool milk, and -- and that has allowed us to avoid some pool contributions that were then used to offset losses on the purchase of milk, turning it into these products that, you know, just are not -- you are not able to generate a margin. And so that's -- that's created a lot of financial stress on the farm, where -- where we have had challenges being competitive in the marketplace at times.
CDI has had times of not being able to pay the full blend price, if you define paying the full blend price as -- as, you know, all milk checks are the blend

price and paying some sort of a 13th check at the end of the year. We have not been able to do that.

We are actively working on diversification efforts to try to mitigate of some this. We have announced investment into an ultra-high temperature and extended shelf life fluid facility that we're in the process of building. We have tried to increase our -- our retail butter presence survey versus that butter ending up in a bulk package. That all takes investment, and it all takes time.

We produce somewhere around 8 to 900 million pounds of powder a yeah and somewhere around 400 million pounds of butter. That's not a ship that turns quickly. You try to make adjustments on the margins, and those things will be improvements to our business structure long-term. But, admittedly, making the kind of volumes of bulk butter and nonfat dry milk that we do to balance the market, but also just because those are the assets we have built, they are operating at a loss in those particular sectors, and that has been borne 100% by the dairy farmers.

Q. On the investment piece that you touched on, can you talk a little bit about how CDI makes those decisions given that we have had testimony that the inadequate makes have -- causes plants and companies to not invest in -- they don't have the money to invest?

A. Well, cooperatives are not your typical business entity or organization. And so we -- we do have the opportunity to invest when our members are willing to put more money into the cooperative, and that's what they have done. We have had to raise our investment level for members that are owners of CDI in order to make these investments. It's not easy. Nobody can -- nobody has extra dollars to just spend. But in terms of the long-term sustainability of CDI, it is critical. And so we have asked our members to put more money into the co-op so that we can make these necessary investments, so that in the long-term we can be a more competitive purchaser and handler of their milk.

Q. Thank you.

I want to turn to where -- on page 5 in your statement, and that's where you go through kind of the math behind how you looked at what would be a representative cost. And you used the UW study. And you talked a little bit about this with Mr. Miltner on the allocation issues that you saw with the Stephenson study.

I'm just curious, for CDI, if you are looking at your own costs, how do you internally allocate those costs in the plants that do butter and powder, if you are trying to figure out what your costs are?

A. You know, not being part of the finance team, I'm looking at it somewhat from the outside looking in. My very high level understanding is where there are opportunities to allocate direct costs to a process, it's fairly straightforward. When it comes to indirect costs, corporate overhead or, you know, shared costs amongst

multiple assets within a plant, there's an attempt to allocate those based on the pounds of production in each of those -- each of those categories. But it's possible it might be more complicated and I'm simplifying it.
Q. Okay. Thank you.
So I think it's sort of in your statement, but I wanted to make sure it's clear for the record, if you could explain why you chose to combine butter and powder together to come up with a weighted average number for those products combined.
A. Well, being an organization and a co-op that -- that predominantly makes our products exclusively off our member milk, we're making both products. So whether it is a weighted average cost per pound of product that you are making or one is way higher and one is way lower, the net impact on us would be the same.
And so -- and for us, it made logical sense to say, okay, let's look at an entire Class IV bucket and what would that adjustment to the Class IV price be. I know we talk about it as a, you know, per pound of product on a Make Allowance basis, but really it's a change in the Class IV butterfat and solids nonfat calculations, and so -- and ultimately, a Class IV price.
So that's why we looked at it that way. It's -- it's -- it's admittedly an imperfect calculation because you don't end up with a cost -- I would argue that butter and powder do have slightly different costs. I mean, you have got different energy uses. One has a dryer; one does

not. You know, different -- different gas, electricity utilization, different work force, labor, different automation.

But in terms of taking the cost data, that I'm sure Dr. Stephenson got, in terms of what does it cost to run these plants and trying to interpret that in a way that's a little closer to our current Make Allowances where butter and powder are within less than a penny of each other, the exercise seemed to be warranted.

Q. You looked at it more of a whole plant -- a whole plant look and not a product look?

A. Correct.

Q. Can you explain, for the record, why when you did your calculations, you used 8.685 solids nonfat?

A. I believe that calculation is based on the kind of built-in assumption that a hundred pounds of milk has 8.685 pounds of solids nonfat in it, that's built into the Class IV formula, which I think is nine pounds of solids nonfat and skim times .965.

Q. Okay. I think that's right, but I just needed you to walk through that to make sure we were thinking along the same lines.

A. I don't have a calculator to verify my math but --

Q. Especially at 8:35 on a Friday, so thank you.

Let's see.

I was wondering if you could just elaborate for the record CDI's position on why inaction, or no change, what the risk is to that, you know, for the Department to kind of understand.

A. Well, I spoke earlier about the significant negative financial implications of what we're dealing with right now, and so exacerbating that creates more financial stress on the organization.

But, you know, I also talked in my testimony about what I call the winners and losers in the current scenario and why a more balanced approach is needed to avoid creating those winners and losers. We believe Make Allowances are set too low. They are not fairly representing a -- closer to the real cost.

And so the financial -- the negative financial impact on that is falling on those farms who have made the investment in plants. It's not falling on those who are just selling milk, especially if they are selling milk to a pooled plant and getting guaranteed the Federal Order blend price each month, which we believe is elevated as a result of inadequate Make Allowances. And so you have got this perverse incentive in the current system to not invest in plants.

Obviously, the plants that we have play a critical function in balancing the California supply and demand. We're the largest milk handler, and we have got the largest manufacturing footprint in the state. And so you certainly don't want a scenario where you're disincentivizing the continued operation of those plants.

But the reality is we have shut down two plants in the past five years. We opened one back up to run a little bit differently, to help us clear milk and to hopefully do it at a lower cost when we reopened it in a different -- to operate in a different way. But it's just getting tougher and tougher to justify running assets that -- operating assets that lose money.

And so what's going to happen if we don't address this is -- is it will create disorderly marketing conditions, but it is also going to put an enormous amount of economic pain on those farmers that are still left holding those assets.

Q.   So two questions then. So kind of what you described to me in economics terms is a free rider problem?

A.   Yes.

Q.   Okay. And then on your plant that you shut down, can you just elaborate on whether or not the current manufacturing allowances was the contributor to that decision to shut those plants down?

A.   The plant that's been shut down was shut down a couple years ago. It was in Southern California. It was a plant was probably in the wrong location in today's market to be making a powder product. Make Allowances in that particular case contributed to the shutdown but were not the -- I wouldn't point to them as the exclusive reason.

We shut down temporarily another facility in the Central Valley. That was certainly caused by just an inability to capture our costs. We ended up bringing it back and tried to run the nonfat dry milk dryers as little as possible, just for minimal balancing. It's predominantly used as a process fluid, making different mixes, different cream, condensed, and ice cream mixes out of that plant.

But we evaluate all of our facilities on an ongoing basis, and that current Make Allowances, the current regulatory structure, it's -- it's definitely a challenge long-term.

Q. Thank you. I have asked some other witnesses, you know, trying to, I guess -- you know, there's been testimony that the Make Allowances are too low, and the market has somewhat adjusted that -- to that in a way that you see less premiums, for example, and co-ops -- you have talked that CDI has had to pay less than blend to its farmers, and you have had to reblend those losses across the co-op.

And just trying to understand if, you know, we raise Make Allowances to some level, how the market will adjust to that, and do the numbers wash out the same, you know, in the end? Is the final number the same as -- if you cover your Make Allowance -- more of your manufacturing costs and so maybe your reblend is less, but just trying to see how we net out. Is there a winner in this or we just kind of net out the same? Is there some way that this helps enable producers to, you know, function better or to -- you can talk about the more orderly, if there would be more orderly marketing conditions, etcetera.

A. I don't know if the numbers will net out the same, but it will make a huge difference on who wins and who loses. Maybe you have -- I'm not saying it flips and all of a sudden the winners become losers and the losers become winners, but you don't have this significant disadvantage that those dairy farmers that have invested in plants are currently facing.

So in that way, I very much would not believe this would be a zero-sum game because those farmers are carrying the brunt of the costs. You know, our farmers make up 40% of the -- make up 40% of the state's milk and a significant amount of the milk that is getting processed in the state in our own facilities. They are carrying an unfair burden today that would be somewhat mitigated by an adjustment in the Make Allowances.

I do think that, as written in the testimony, there's a balance. You don't want to go so far that you are incentivizing commodity production as the -- as an ideal business model. You want to encourage innovation and encourage going up the value chain.

But where we are today is so far from a balanced approach, just -- I mean, just look at the amount of time since the last adjustment. Certainly a change is needed. Even if from a purely holistic standpoint, maybe some of these things will be offset by changes in the premium or over-order premium structure. It's a critical adjustment for balancing that impact across the industry rather than

isolating it on those that have invested in facilities.
Q. Thank you.
One final question. If CDI -- I know you did this calculation using the Stephenson study, but if CDI has looked at your own internal costs to see if, yes, you know, as you look at the costs put out that you are supporting through the National Milk proposal, it is representative somewhat of the cost you guys experience?
A. It is generally representative. Without getting too much into the details --
Q. Sure.
A. -- for proprietary reasons, it is -- it is closer to our current cost than the current Make Allowance, I can say that.
Q. Okay. Thank you.
MS. TAYLOR: That's it from AMS.
THE COURT: Mr. English.

CROSS-EXAMINATION

BY MR. ENGLISH:
Q. Good morning again, Mr. Vandenheuvel. My name is Chip English with the Milk Innovation Group. I have one or two questions as direct follow-up on AMS.
Just for clarity for the record, you used the term operating cooperatives and non -- cooperatives with -- operating like plants, correct?
A. Yes.
Q. And then there's co-ops that don't, correct?
A. That's right.

Q. So let's just see if we can categorize. In the simplest form, there are cooperatives who own no facilities of any kind that process milk, either to fluid milk, or ice cream, yogurt, cheese, or nonfat dry milk, correct?
A. Correct.
Q. And then in the other extreme there's co-ops who own significant assets in nonfat dry milk, butter, and cheese, correct?
A. Correct.
Q. And that latter is primarily what you mean by operating cooperatives in this case, correct?
A. Yes.
Q. Because to the extent cooperatives may own fluid milk plants, they aren't balancing plants, correct, in your view?
A. I think that's a fair assessment.
Q. And is it also the case that the -- they are aren't the ones who are bearing the burden, as you have described, in terms of the Make Allowances, correct?
A. I think the Class I model is just fundamentally different from the Class III, Class IV models.
Q. So to the extent you have been using the term "operating cooperative" in response to AMS questions, you are referring to cooperatives with ownership in the nonfat dry milk, butter, and cheese category, correct?
A. I'm speaking from the position I'm familiar with, which would be CDI, and that's certainly the category we

would fit in.
MR. ENGLISH: Thank you.
THE COURT: Anything further in the nature of re-cross?
Redirect?
MS. HANCOCK: Your Honor, we have no further questions at this time. We would move to admit Exhibits 155, 156, 157, and 158.
THE COURT: Those exhibits are admitted into the record.
(Thereafter, Exhibit Numbers 155, 156, 157, and 158 were received into evidence.)
THE COURT: Thank you.
MS. HANCOCK: We are going to call Monty Schilter next, please.
THE COURT: Very good.
Raise your right hand.
MONTY SCHILTER,
Being first duly sworn, was examined and testified as follows:
THE COURT: Your witness.
MS. HANCOCK: Thank you.
DIRECT EXAMINATION
BY MS. HANCOCK:
Q. Would you mind stating and spelling your name for the record, please?
A. Yes. It is Monty, M-O-N-T-Y, Schilter, S-C-H-I-L-T-E-R.

Q. And what is your mailing address?
A. It is 5601 6th Avenue South, Suite 300, Seattle, Washington, 98108.
Q. Where are you currently employed?
A. Northwest Dairy Association.
Q. Okay. And is that affiliated with Darigold?
A. Yes.
Q. And did you prepare a written statement in support of National Milk's Make Allowance proposal?
A. Yes.
Q. Is that what we have identified as Exhibit NMPF-19?
A. Yes.
MS. HANCOCK: Your Honor, if we could mark this as the next exhibit number for identification?
THE COURT: Yes. I have the next exhibit number as 159. And that Exhibit NMPF-19 shall be marked 159 for identification.
(Thereafter, Exhibit Number 159 was marked for identification.)
MS. HANCOCK: Thank you, Mr. Schilter.
BY MS. HANCOCK:
Q. Would you --
MS. HANCOCK: Or thank you, your Honor.
BY MS. HANCOCK:
Q. And, Mr. Schilter, would you please proceed with your testimony?
A. Thanks.

My name is Monty Schilter. I am testifying today on behalf of Northwest Dairy Association, which is usually referred to as NDA. My title is senior vice president of NDA. I am responsible for leading the NDA member services team and lead matters pertaining to Federal Orders. I have been an employee of NDA for over 15 years and have worked milk pricing and Federal Orders under the direction of Dan McBride for a majority of those years.

NDA is a cooperative marketing the milk of approximately 295 dairy farmers in Washington, Oregon, Idaho, and Montana. Approximately 240 of our producer members are part of the Pacific Northwest Federal Milk Marketing Order, Order 124. Approximately 45 producers are located in the unregulated area of eastern Oregon and Southwest Idaho. Approximately ten producers are located in the state regulated Montana.

NDA conducts all processing and marketing operations through a wholly-owned subsidiary known as Darigold. Darigold is a fluid milk processor in the Northwest region.

Darigold operates three fully regulated pool distributing plants in Order 124 (Seattle and Spokane, Washington, and Portland, Oregon), one partially regulated pool distributing plant in Boise, Idaho, and one unregulated bottling plant in Bozeman, Montana.

Darigold operates fully regulated pool manufacturing plants that dries milk products located in Lynden, Chehalis, and Sunnyside, Washington, and one unregulated plant in Jerome, Idaho, that dries milk products.

Darigold also operates a fully regulated pool manufacturing plant in Sunnyside, Washington, that produces cheese and whey, and operates two butter plants in Issaquah, Washington, and Caldwell, Idaho.

NDA would like to thank USDA for their timely response to the hearing request by NMPF and others. We appreciate the opportunity to address the important issue of updating the Federal Order Make Allowances at this hearing.

Points I will make today: NDA/Darigold supports NMPF's proposal as it is directionally correct with the increased cost to the operation of our manufacturing and balancing plants. The lack of investment in manufacturing and balancing plants has driven up transportation costs in which producers bear all of the costs. Make Allowances should serve to approximate the average cost of production, and we support the need for a formal, mandatory, and audited regular update to the Make Allowances to stay in line with the industry trends.

NDA/Darigold supports NMPF's proposal to increase Make Allowances for cheese, whey, butter, and NFDM, and would support the concept stated by the USDA in -- during the 2008 ruling that Make Allowances serve to approximate the average cost of producing cheese, whey, butter, and NFDM.

It is widely known that manufacturing costs have increased since 2008. In looking at our 2002 cost data, we have seen notable increases in energy, fuel, labor, and packaging. From 2008 to 2022, manufacturing costs increased by over 80%.

Our fiscal year 2023, which ended in March 2023, was one of the worst years in recent history of our cooperative, attributed in large part to these increased costs that are not captured in the current Make Allowance formulas.

Additionally, and not unlike other cooperatives across the United States, we have needed to implement a producer paycheck deduction to help balance the books for these continued cost challenges. The continued challenges to pay our members the Federal Order minimum price and to show a profit to reinvest in our plants, as well as position manufacturing plants and balancing plants near milk supply sources, cast a dark shadow over the cooperative in the eyes of our membership and puts strain on members' financials.

However, our membership and board understand the value to reinvest into these facilities for the next generation, but it has put our cooperative at a significantly higher level of financial risk and strain.

Since 2000, we have continued to shift milk production from West -- from the Western Washington and Western Oregon region over to Eastern Washington. With the cows moving east, we have needed to haul the milk back to the manufacturing and balancing plants in Western

Washington, and we're shipping daily volumes of milk to Idaho to avoid dumping the milk. The transportation costs have at least doubled during that time period, in which our producers pay 100% of those costs.

In 2014, the cooperative decided to invest in additional capacity in Eastern Washington to help minimize this transportation cost, and built an additional drying plant at our Sunnyside location. It would have been a better business choice long-term to -- to build a bigger greenfield facility, but we chose to expand on the existing facility because it made more economic sense based on the current economic conditions driven by the Make Allowance formulas.

I will note that neither a greenfield or a chosen expansion -- or the chosen expansion in Sunnyside were forecasted to be profitable under the 2008 Make Allowance values.

Two years ago, we announced a greenfield manufacturing plant to be built in Pasco, Washington. The plant will take in 8 million pounds of milk per day and will produce dried milk powders and butter. Again, under the current Make Allowances, we don't expect the plant to be profitable. But enough milk has moved into this region that the transportation costs have become large enough to promote this construction.

We clearly expect a lower cost of production due to the efficiency of the new operation and its size and scale, but combined with our other manufacturing plants, we don't expect the manufacturing products -- we don't expect to be manufacturing products that cost less than the current Make Allowances.

We intend to produce more value-added milk powders rather than NFDM. I will also note that it is more experience to run balancing plants in the current environment since they are not running full all the time, thus creating additional strain to help service the pool distributing plants.

There is a tipping point when running your balancing plants full makes more economic sense than selling milk into a pool distributing plant. At the risk of no balancing, the producers will face lower prices at the farms and the consumers will face higher prices in the market.

We support the call to immediate action and support the need for a formal mandatory and audited regular update to the Make Allowances to stay in line with the industry trends.

However, we do not support a significant change in year one as it would have a devastating impact on our producers. We recognize increasing Make Allowance has an impact on our producer prices, but we have discussed with the NDA Board of Directors and our members and -- I'm sorry -- and our members understand the need to protect their huge investments in our manufacturing plants.

However, extreme changes will have extreme impacts on milk production in our region and the investment our members have in our existing manufacturing plant footprint.

Even though we recognize that NMPF's Make Allowance recommendations are less than the Stephenson voluntary and unaudited survey, a dramatic change immediately would have an unnecessary negative impact on the producer community.

In summary, NDA/Darigold supports NMPF's proposal, that it is directionally correct with the increased cost to operate our manufacturing and balancing plants. The lack of investment in manufacturing and balancing plants has driven up transportation costs in which our producers bear all of the costs. Restating Make Allowances should serve to approximate the average cost of production. And finally, we support the need for a formal, mandatory, and audited regular update to Make Allowance -- to Make Allowances to stay in line with the industry trends.

Thank you for the opportunity to present my testimony.

Q. Thank you, Mr. Schilter. I just want to follow up on one item. I hope we can expand on it a little bit.

When you are talking about making investments into your plant on page 2 of your testimony, you talk about that it is anticipated that these modernization projects that you are undertaking, either through updating your current existing locations or through building new plants, are expected to build in some efficiencies.

Can you talk about what you mean by that?

A. Yeah. Absolutely. The facility that we are building in Pasco right now is at least twice the size of any of our other facilities. Our ability to spread overhead over larger volumes of milk has a -- a very big impact on what it costs for us to convert raw milk into finished good.

We looked over the years at a lot of different operations, different sizes and scale. And over the last two -- within the last -- or two years ago it was decided that this was the current sweet spot in size and scale for the future of our -- of our cooperative.

Q. And when you say the "current sweet spot," do you mean the place in which you maximize efficiencies and reduce costs as much as possible, for producing the most volume possible?

A. Yes.

Q. Or another way to say it would be your costs as it compares to each unit of production?

A. Yes.

Q. And so it's true that as you sit here today, while you have forecasts of anticipated efficiencies that would be built in, you don't yet know what those will be until you start producing?

A. Correct.

Q. Okay.

A. Yeah.

Q. And -- and one of the aspects of your testimony, on the third page you talk about that you don't -- while

you support a change in Make Allowance, you said it would be devastating to have too great of an increase. And you are talking about for producers absorbing the impact of too great of an increase; is that right?
A. Yes.
Q. Is another risk of increasing too much or automatically over a phased in number of years, such as what's proposed by IDFA for Make Allowance increases, is it true that an additional risk would be that with those increases in Make Allowance, that it could be set too high and not capture some of the efficiencies that could be revealed as processors were building new plants?
A. Yeah, I would agree with that statement.
I will add the dramatic increases in cost as we have seen, at least internally. In 2000, April of 2000, we instituted a retain for processors in order to invest into the Pasco facility. What we experienced going through that was what I would describe as an increased consolidation within our membership. We expected our membership over time to continue to consolidate. We sped up the process, and it created some shifts of milk from, like I said, Western Washington and Western Oregon over to Eastern Washington and dramatically increased transportation costs. And it was an unforeseen impact of those changes.
And so when I reference the fact that it can be disruptive to our farms, that is a clear example of how -- of what happens.

Q. And it is also fair to point out that we did just come out of somewhat of an -- of an abnormal time period with the pandemic and the effects that the pandemic had on not just the dairy industry, but just globally across all markets?

A. Yes. And I will say that the -- even though the retain was implemented in April of 2000, we messaged to our members in December of -- of two -- I'm sorry -- of 2019, and it took effect in April of 2020. Got my year wrong there. But even before the pandemic, we recognized the impact that it immediately had on our membership and how they had to make decisions on what to do with their businesses in a short period of time.

Q. And would -- would coming out of kind of a recent phenomenal activity period, would that also contribute to your belief that it's important that the changes not happen too much, too fast, so that we can see how the markets will settle down after that period?

A. Yeah. I believe we have a responsibility to send the right signals to the marketplace. But as being a family of dairy farmers and understanding what it takes to operate businesses, having a lead time of what's coming helps you prepare -- prepare you for -- or helps you have time to make the right decisions for your family and your business.

Q. Okay. And then I think under National Milk's proposal, it's recommending the changes that were outlined in the proposal. But then having a mandatory cost survey that would allow the USDA and the industry to see what the actual costs are, and that would be able to be the basis for any kind of forward-looking changes; is that right?

A. Absolutely.

Q. And then it would allow the industry to take into account any kind of settling that happens coming out of the pandemic as well as any efficiencies that are captured in the actual marketplace from any kind of plant expansions or modernizations as you have talked about?

A. Yep. Absolutely. The -- within our own numbers -- and we haven't looked at, obviously, 2023 numbers, but 2022 numbers were by far the highest that we have seen. And I don't know if that is related to pandemic-influenced cost events. Are we going to see a decrease in costs moving forward in certain areas? Maybe. But we are making moves internally to try to reduce our costs through investment and expansion within our co-op.

Q. Okay. Thank you very much for your time.

MS. HANCOCK: Your Honor, we would make Mr. Schilter available for cross-examination.

THE COURT: Cross?

Yes, Mr. Rosenbaum.

CROSS-EXAMINATION

BY MR. ROSENBAUM:

Q. Steve Rosenbaum for the International Dairy Foods Association.

Good morning, Mr. Schilter.

A. Good morning.

Q. I want to focus on your statement on the bottom of page 1 carrying over to page 2 where you recite what increases in costs NDA has, in fact, experienced during the period from 2008 to 2022. Okay?
First of all, can you tell me what work was done to calculate the numbers that led you to state in that paragraph, quote, "From 2008 to 2022, manufacturing costs increased by over 80%"?
A. Yep. The detail in that dealt with our manufacturing plants, what we refer to as our ingredients plants, so those are the butter, nonfat dry milk, cheese, and whey. For proprietary purposes, we -- we group those numbers together. And those are the numbers that came out of our accounting department, our cost accounting department, that I referenced to get to that percentage.
Q. So the 80% is the increase experienced if you combine your butter, nonfat dry milk, cheese, and whey operations, basically?
A. Correct.
Q. And so if you totaled the cost of operating those facilities in 2008, and totaled them in 2022, the 2022 number is 80% higher than the 2008 number?
A. Correct.
Q. Okay. Now -- so if one were to base Make Allowance increases solely upon the experience of your cooperative, which obviously is not how it's done, but if that were how it's done, your figures would support an 80% increase in the Make Allowances, recognizing you

don't want to do that immediately, etcetera, etcetera. But, I mean, that's what the numbers would justify; is that fair?
A. I would disagree with that statement. The starting point of what we used to get to the 80% is not the same starting point as where the Make Allowances are right now. So those percentages could be misleading in the way that you are interpreting them.
Q. Okay. To the extent that Make Allowances accurately reflected what the average cost of manufacture was in 2006 and 2007, assuming the industry as a whole has experienced the kind of cost increases you have, that would support an 80% increase in the Make Allowances; is that fair?
A. Can you restate that question?
Q. Yes. Assuming that, as was the effort, the Make Allowances now in effect reflected the average weighted cost of manufacture in the years 2006 and 2007, and assuming that the industry as a whole having participated in the surveys that led to those Make Allowances has experienced the kind of cost increases that NDA has, that would support an 80% increase in the Make Allowances, correct?
A. I -- I can't connect that logic to answer that as correct.
Q. Because you don't --
A. I'm sorry.
Q. -- you don't know what their costs were precisely?

A. Yeah. I -- my view of the surveys that have been used and the surveys that recently have been used, you know, the -- not the integrity of the data or the completeness of the data, I feel like that it would be much better if we had audited and non-voluntary information to help make those determinations.
Q. Is it fair to say that your numbers do provide a useful benchmark to assess what kinds of cost increases have been experienced in the manufacturing world for dairy?
A. I would say that it represents the directional movement of costs. Our information -- and understanding that we run -- in comparison to the rest of the U.S., we run more nonfat drying plants, that we may experience a different set of costs than cheese manufacturing plants.
Q. Were you here when the Land O'Lakes witness testified? It was yesterday.
A. Yes.
Q. And do you recall that, in my questioning, I suggested that the data he put in as to the Land O'Lakes -- Land O'Lakes' cost increases between 2008 and 2022, that that appeared to reflect 74% increase in cost?
A. I don't recall that exact number.
Q. If that is what his data supports, that would indicate that your experience does not appear to be an outlier, correct?
A. I think that's a fair comparison.

Q. Do you, in general, feel that the kind of experience that your cooperative has gone through in terms of increased costs of production are typical?
A. Typical of the industry, I don't know -- I don't know the rest of the industry.
Q. Okay. I mean, do you try to benchmark in some way? Many companies do that, not just in the dairy industry, but try to get some sense as to how they stack up against their competition. Does your company do that?
A. If we do, I'm not involved. I would say that a more appropriate benchmark is how you win business in the marketplace and stay competitive in that -- in that aspect.
Q. Okay. So you -- you did express some concern, especially in the examination by your counsel, that you didn't want to end up with Make Allowances adopted that overshot the mark, correct?
A. Correct.
Q. A fair way to characterize what you were saying?
A. Sure.
Q. Okay. And you are familiar with -- at some level, I take it -- with the International Dairy Foods Association proposal for what to do with the Make Allowances?
A. Yes.
Q. Okay. And have you -- okay. And so -- and you are aware that IDFA's proposing a phase-in of -- of Make Allowances that would ultimately reach more or less

January 1, 2028, what IDFA asserts this most recent survey data indicates to be the current cost of manufacture.
Do you understand that?
A. I understand that.
Q. I'm not asking you to accept the veracity of that -- those surveys. We'll have -- the people doing the surveys are going to testify next week, so we'll listen to them.
But have you examined -- in connection with your -- let me start that question again.
In connection with your concern that the Make Allowance increase does not overshoot the mark, and indeed that they fail to recognize the potential for further innovation, have you compared what percentage increase the IDFA proposals would impose with respect to the current Make Allowances as compared to let's say your 80% increase?
A. I have not.
Q. Okay. So let me just ask you to assume with me, it's simple math, that the IDFA proposals, once they are fully implemented at the end of the phase-in, would represent a 62% increase in the current Make Allowance for butter, a 62% increase in the current Make Allowance for nonfat dry milk, a 42% increase in the current Make Allowance for cheese, and a 59% increase in the current Make Allowance for dry whey. Okay?
Those numbers are all materially lower than the 80% cost increase that you have experienced, "you" being

NDA, correct?
A. Agree.
Q. So I mean --
A. Yeah. Yeah.
Q. You could bring your costs down quite a bit through innovation, etcetera, and still not be as low as the Make Allowances that IDFA is proposing; is that fair?
A. Maybe. Did we know what the 2022 costs were in 2020?
Q. Well, I presume we didn't.
A. We did not.
Q. They are higher.
A. Right. And for -- for me to say that we can predict what the 2028 costs are today, and that we can build a business case around that, I would hesitate to stand in front of producers and tell them that, which is why I support the audited regular surveys of the plants as we move forward.
Q. Just so we're clear. You do understand that the IDFA proposal with respect to what the 2028 Make Allowances would be is not based upon a projection of trends in costs, they are based upon what we say the survey data says are that -- were the costs as of 2022.
Do you understand that?
A. I understand that.
Q. Okay.
A. And as I stated before, we are building a facility to help remove costs out of our system, and that

information is not included, obviously, in the 2028 proposed data.

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

THE COURT: Anyone else have cross?

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Good morning, Mr. Schilter. Chip English for the Milk Innovation Group.

A. Good morning.

Q. I don't have a lot of questions, but I do want to just focus on a couple of pieces, similar to where Mr. Rosenbaum was.

Your statement on page 2 describes an increase over -- of your costs since 2008, correct?

A. Correct.

Q. And you -- did you use 2008 because that's when the decision came out, the last decision came out from USDA?

A. Yes.

Q. Did you know that the data USDA was actually relying on was from 2006?

A. That's a fair point.

Q. Okay. So would it be fair to say that whatever that increase is from 2006 to 2022 would actually be larger than the increase from 2008 to 2022, correct?

A. That's a fair point, yes.

Q. And believe me, I respect --

A. But what I -- of course. Yes, yes.

What I will say is also during that time period, the amount of change in costs in that 2025 to 2028 period was far less volatile than it is today. So I would draw a safe assumption that the twenty -- or the 2008 numbers -- sorry if I misstated the years -- but 2006, 2008 were the years I was referencing. So I would -- I would say that the 2006 to 2008 numbers were directionally aligned.

Q. I get that. And I get it that the slope was probably much higher, you know, from 2019 to the present. But, nonetheless, there was an increase likely from 2006 to 2008, correct?

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

Q. Okay. And I understand that the 80% is your cost compared to your cost and not 80% compared to your cost, unlike what Land O'Lakes did, compared to the Mark Stephenson study, correct?

A. Correct.

Q. But nonetheless, it's directionally --

A. Yes.

Q. -- correct?

A. Costs went up.

Q. And the National Milk Producers Federation proposal would increase Make Allowances, until there's studies in the future, for butter by 22%, correct?

A. I haven't done the math, so I will take your calculation.

Q. Okay. And for nonfat dry milk, 20%?

A. Again, I will take your calculation.

Q. So how is it financially viable for your producers to only go 22% or 20%, if you accept my numbers, and we don't know when, if ever, there will be studies?

A. I -- if I step on the other side of the conversation -- and I do spend quite a bit of time talking to producers -- and I'm a producer in the room asking me questions, about how can we make significant -- more than the 20, 22% increases without having valid audited data that represents information in the industry. So if we can't -- if we can't go all the way there -- and I feel like, again, we have a responsibility as an industry to send the right signals to the farms -- something is better than nothing until we have a process in place to create credibility in these numbers.

Q. I assume your manufacturing cost increases of over 80% are carefully studied and audited, correct?

A. Internally, yes. I -- but I cannot speak on behalf of fellow co-ops and the processors in the area. And this industry is changing very rapidly right now, much more so than I have seen in the last 15 years.

Q. So to the extent that NDA/Darigold has invested in existing or new plant facilities and gained efficiencies, those efficiencies would be reflected in reduced costs of production per pound, correct?

A. Yes.

MR. ENGLISH: Thank you. That's all I have.

THE COURT: Further cross?

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CROSS-EXAMINATION

BY MR. MILTNER:

Q. Good morning, Mr. Schilter.

A. Good morning.

Q. I'm Ryan Miltner, and I represent Select Milk Producers. I wanted to ask some questions about your facilities, if I could.

A. Sure.

Q. Your drying plants in Lynden, Chehalis, and Sunnyside, what type of dry products do they produce?

A. With those plants, aggregated as one -- and I do want to protect some proprietary information -- we dry skim products. So nonfat dry milk, and as we have stated publicly, skim milk powder.

Q. Do you make any whole milk powder at those plants?

A. We do not.

Q. Do you dry any buttermilk powder there?

A. We do, yes.

Q. Do you use those plants to dry any whey?

A. We do in Sunnyside, which is also a cheese facility.

Q. Are there any other dry products of any consequence that you produce at those plants?

A. No.

Q. Is Jerome, Idaho, similar to the other three in what is produced?

A. Yes.

Q. The plant in Issaquah, does it produce 40-pound

block cheddar?
A. Issaquah is not a cheese facility.
Q. Did I misread that statement then? I'm sorry, Sunnyside.
A. Sunnyside, per information available with USDA and FDA, manufactures cheddar cheese.
Q. Does it produce 40-pound cheddar?
A. Yes.
Q. Does it produce 640-pound cheddar?
A. No.
Q. Does it produce barrels?
A. No.
Q. Any other cheeses other than cheddar?
A. There are other cheeses that we produce. I -- I know we have changed different varieties over the years, but nothing of significance that -- that -- that I'm aware of. But it is mostly cheddar.
Q. The whey that is dried there, is it -- do you produce only dry whey?
A. Yes. Dry whey that is eligible for price reporting through the NDPSR. That is all.
Q. Does the Lynden plant report sales to the NDPSR?
A. Yes.
Q. For powders?
A. For the products that are available. For milk powders, for the products that --
Q. For nonfat dry milk?
A. Correct.

Q. Does the Chehalis plant report to the NDPSR?
A. Yes.
Q. And Sunnyside, I think you said it does. Does it report cheese?
A. Yes.
Q. Does it report its whey?
A. Yes.
Q. Okay. The drying plant at Jerome, does it report to the NDPSR?
A. Yes.
Q. Just nonfat dry milk?
A. Yes.
Q. Okay. So Issaquah and Caldwell, those are the butter plants, correct?
A. Correct.
Q. Do they produce -- well, do they report to the NDPSR?
A. Yes.
Q. So they produce bulk salted butter?
A. Correct.
Q. Do they also produce bulk unsalted butter?
A. They have the capability of producing bulk unsalted butter. I currently do not know which ones are -- which plants are producing the unsalted, but it is a product that we do produce, market, and sell.
Q. Do those two plants produce consumer butter in one-pound packages?
A. Yes.

Q. Do they produce single-serving butter for foodservice or other uses?
A. Define "single-serve" for foodservice.
Q. Well, like the little butter cups or the butter chips --
A. Oh.
Q. -- that you would get at a restaurant?
A. Yes.
Q. The buttermilk from those plants, what does Darigold do with that buttermilk?
A. We -- we dry the buttermilk, when we have drying capacity available. There was a period, unfortunately, when we had a dryer fire in Caldwell and went through a time period where buttermilk was disposed of because there was no market for that.
Q. In the absence of that loss, you would have dried it, though?
A. Yes.
Q. I had a few questions on your statement, if I could ask those as well.
On page 1, the paragraph second from the bottom, you testified that the "lack of investment in manufacturing and balancing plants has driven up transportation costs in which producers bear all the costs."
Can you elaborate on how -- how the transportation costs have increased as a result of the inability to invest in new plants?

A. Yeah. Absolutely. The footprint of our milk production, specifically in the state of Washington, has shifted dramatically over the last 20 years. The majority of the milk production was on the I-5 corridor, which is west of the Cascades, if you know the geography.

The increase in milk production in Eastern Washington has grown exponentially. NASS numbers, or at least Market Administrator numbers, would say 3 to 4% annual growth for 25 years.

The concept and philosophy that I have always lived under and been taught is that you build your balancing plants where your milk supply is, and as that shift of milk has occurred, our balancing plants were in areas where milk production was leaving. And the lack of investment, or at least the delay of the lack of investment, occurred for a handful of years.

So what happens is when cows move four hours east, the milk gets put on a truck and goes back to where those cows were to get processed. Those are transportation costs that our producers have had to bear and has, ultimately, doubled their -- their costs in that time period.

Q. Would it be fair to say that most of the new farms in Washington State, over the last 25 years, have been in the eastern part of the state?

A. Most of the growth.

Q. And those are decisions made because producers have decided that for whatever reason, access to feed and water, land availability, any number of factors, they have made a decision to either relocate their operations or construct new operations in the eastern part of the state rather than over near Seattle?

A. Yes. The urban pressures, the environmental pressures, the cost pressures, the scale has had a dramatic impact on what our co-op looks like today versus 25 years ago and where our milk is being produced.

Q. And, of course, when they do that, the balancing plant is still, as you noted, four hours away?

A. Yes.

Q. Presumably those producers have taken into account the additional hauling costs when they have to pencil that out in their head, correct?

A. I would hope so. Economics say that it works.

Q. In that same paragraph there was something that you read differently than what was in the statement. You -- the line is: "Make Allowance" -- as it's written, the line is: "Make Allowances serve to approximate the average cost of production."

I think you read: "Make Allowances should serve to approximate the average cost of production."

A. Yes. Good catch.

Q. Well, I wondered if that was an intentional insert by you or if it was just something that happened.

A. Yes. As written, I had directly quoted what was in the 2008 interim final, in the 2013 final decision. And as I re-read it after submission, to put it into my

point and position, I added the word "should."
Q. Okay. So put aside what USDA may have said in that decision, I'd like to ask a question about what you think should -- should happen with Make Allowances.
Let's assume that there is a survey done and that it is audited and mandatory as you have advocated for. And it says that the cost to produce butter is a weighted average of $0.20, but that the range is $0.15 to $0.25.
Do you think that the Make Allowance should be that weighted average or should it be somewhere else in that range of 15 to 25?
A. I think from a -- number one, as I have said before, sending appropriate signals to the marketplace I think is important; number two, taking into consideration of the impact that it has on producers; three, the impact that it would have on what producers decisions would be to impact plant footprints, industry structure, industry stability. I think those are all considerations that would need to be considered in that -- in that decision.
So I have not thought through that. I cannot offer an opinion other than the guidance that I would advise.
Q. Thank you.
Did NDA participate in Dr. Stephenson's study from 2018, 2019?
A. I don't know.
Q. Do you know if Darigold participated in the update to that study in 2022?

A. We did.
Q. Did NDA provide information to National Milk's committee when they were trying to survey manufacturing costs?
A. I was not part of the process at that point. My understanding is that we did not.
Q. NDA is a member of National Milk, correct?
A. Yes.
Q. Okay.
A. I will go back and comment on the National Milk. We did not -- to my understanding, did not submit information. However, I will not object that the information is too different than what we would have provided.
Q. Okay. It was in the range of reasonableness?
A. Yes.
Q. Thank you.
At the top of page 2 of your statement, this was another one that I think I heard you read something, and I think this was just a mistake, but I want to make sure it's correct.
Third line, the written statement says, "Our 2022 cost data."
You may have read "2002," but it should be "2022," correct?
A. As written, 2022. I may have misspoke. My intent was 2022.
Q. Great.

At the bottom of page 2, the last two sentences, I would like you to elaborate on that, if I could. And just so the transcript reflects, it reads: "There is a tipping point when running your balancing plants full makes more economic sense than selling milk into a pool distributing plant. At the risk of no balancing, the producers will face lower prices at the farms and consumers will face higher prices in the market."

A. Yes. Absolutely. And this is in reference to current market conditions that we're seeing right now in the Northwest and current negotiations that we are having with -- with pool distributing plants.

What has come to light as we are in the process of building what has publicly been written as a $600 million, 8-million-pound-a-day butter and powder facility, we are going to run that facility full, and we have the milk and -- or will need the milk to run that facility full.

The opportunity cost of pulling milk out of that facility to move into a pool distributing plant is quite high. With depreciation, with location to market -- actually, let me say it's in -- it's going to be quite high relative to the current price point in which milk is purchased into pool distributing plants.

We have an obligation to return maximum value to our farms, and I foresee a situation in which we will prioritize a decision to make -- to move milk into a manufacturing plant at a pool distributing plant.

Q. As a co-op, you are making an analysis as to the value of a sale to a customer, whether that's a Class I plant or a Class III or IV plant, correct?

A. Correct.

Q. And -- and I guess what you are saying is that analysis, at least in this instance, the greater return to your member-owners is to deliver to the manufacturing plant?

A. Yes.

The second statement is a follow-on to the first. Because we have experienced where, in that marketplace, a pool distributing plant does have the choice of -- of recruiting and obtaining our members as direct shippers. In our area, I would say over the last 15 years, the amount of balancing capacity has been reduced dramatically, most likely because of market forces and the cost of upkeep and maintaining the plants.

So what I have observed is individual farms have left the cooperative. They have received premiums. However, they have also received the cost of balancing to those pool distributing plants in the form of either cutbacks of what can be purchased off the farm, or actually dumping milk on the dairies.

So when I say that there's an impact to the marketplace when there's no balancing that is available, when the market is long, meaning there's more milk than to supply these pool distributing plants, what I have observed is that the farms will pay for the dumping of milk, and -- which lowers the price that they receive.

And when the market is short, and the pool distributing plant reaches out to acquire milk to meet their demands, then they pay over and above the marketplace, which I would interpret means that they would pass that along to the consumers.

So that's what I'm observing over the course of the last two or three years based on decreased balancing and/or the increased cost to build these butter and powder facilities to help service the market.

Q. The dumping of milk you talk about and then paying higher prices to obtain milk when needed, is that a phenomena that is primarily associated with independent shippers?

A. In our area, I would say yes. I cannot speak on behalf of the rest of the country.

Q. When you say balancing capacity is decreased in the Pacific Northwest, is that -- are you referring to available balancing capacity or absolute balancing capacity?

A. Yeah, great question. It's a combination of both. We have had -- as milk production has increased and we have tried to keep up with increased milk production by adding the Sunnyside dryer, we will -- we have continued to run into producers growing milk supply, using up -- using up capacity.

Most recently, we had a fellow cooperative experience a fire and lose dryer capacity for a period of time. As of right now, they are not -- that capacity that was used for conventional balancing is not being used for conventional balancing today. So we have seen a small increase of capacity, but we have seen a continued significant increase in milk production that puts pressure on those facilities.

Q. Does Northwest Dairy Association have a base program?

A. Yes.

Q. Is it new or is it something that's been in existence for a while?

A. Our base program started in 2011. So we have been struggling -- I'm sorry -- helping to manage the supply and capacity balance for 12 years now.

Q. Do you find that within your cooperative you are able to manage growth of milk supply?

A. Yes.

Q. So is the excess milk supply in the region coming from farms that are not members of Darigold or members of NDA?

A. They are -- it is coming from members of NDA.

Q. Coming from members of NDA?

A. Yes.

Q. Okay.

A. We will always prioritize member milk over non-member milk in our facilities.

Q. At the top of page 3, and Ms. Hancock asked you some questions about -- about this -- this language. And my questions are a little bit different.

Some of the proposals that are at issue in the hearing, there are -- there have been requests to delay the implementation of those proposals for purposes of risk management, and there's been testimony that some proposals should be delayed and others should not.

You're speaking to a different timing issue, though, here at the top of page 3, correct?

A. Yeah. I -- I'm referencing the -- if we -- you want to pick out a specific sentence to make sure we're aligned on what your question is?

Q. Sure. The sentence: "However, we do not support a significant change in year one as it would have a devastating" -- "as it would have devastating impacts to our producers."

Am I correct in reading that that you're supporting National Milk's Proposal 7 to increase -- I think they have described it as a modest increase in Make Allowances rather than a larger increase in Make Allowances; is that correct?

A. Agree. Yes.

Q. Okay. There are other proposals, Proposal 1, for instance, which is a National Milk proposal, that would not take effect until 12 or 15 months after USDA makes a decision.

So I guess let me put a fine point on this. If USDA decides to adopt Proposal 7, National Milk's Make Allowance proposal, does NDA believe it should take effect right away?

A. I would -- I would defer to comments that were made by Peter earlier, Peter Vitaliano, in regards to the package that National Milk had put together and the overall net impact that it would have on producers. There is definitely a needed consideration on overall impacts in totality rather than separating out individual -- individual ideas.

I do also understand the potential impacts to risk management programs. Understand that. But I also balance that with the fact that sending appropriate timely signals to the marketplace is -- is the responsibility of the industry that we all must uphold to.

Q. Either as part of the cooperative's risk management activities or the risk management activities of your members, does NDA have a concern about the impacts of any proposal on risk management that you would like to share?

A. I would view it as no matter what we're doing, there's risk everywhere, and we all understand that there's -- everyone's going to manage their risk differently as information is available. So from our view point, it's a -- you know, you can pick any day that you want in regards to how that works, and we'll all manage our way through it. Until that day is picked, we are all managing it to that point, no matter what, anyway.

MR. MILTNER: Thank you, Mr. Schilter. I don't have any other questions.

THE COURT: Further cross?

I think we should take a ten-minute break as we cut off at 11:00 as I understand it. Let's come back at five of. 9:55 a.m.

(Whereupon, a break was taken.)

THE COURT: Okay. Back on the record for the further examination of Mr. Schilter.

Did I get that right?

THE WITNESS: Yes. We'll say close enough; is that okay?

THE COURT: I think I asked if there was further cross, and I don't see any.

So AMS is up.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Ms. Taylor. Good afternoon -- oh, morning.
A. Good morning.
Q. Thank you for coming to testify today.

First question, on your cooperative, could you just give us a little bit more information on your members, their size, kind of how they are structured. I have asked other producers and some cooperative witnesses if their members would fit the Small Business definition, which, in case you weren't here, was $3.75 million or less than gross revenue per year?
A. Yeah. I would like to translate that into, I don't know -- a number of cows. That's where I'm at. So I will give you a number of cows size scale.

295 farms, we range from operations that have

8,000 cows down to probably 40 or 50 cows.

The average size of our farms -- and this is a point for reference just on what consolidation has looked like in our industry -- from I'd say 2010 to 2023, our average herd size in the co-op has gone from 450 cows up to 1,000 cows per facility.

The -- over half of our membership right now is still milking under we'll say 250 cows, and I -- if we made the assumption that 3.7 million is -- was that maybe 400 cows?

Q. It is around the 400 range.

A. 400 cows, yeah. Then probably -- I would say it is safe to say that close to 60, 65% of our producers would fit in that category.

Q. Thank you.

And can you talk a little bit about whether your producers do use risk management tools?

A. Yeah. Yeah. I think -- I mean, all producers manage risk differently. We started our risk management program in two -- in 1999, and we have had an internal risk management program, which is a fairly -- I would say a simplified forward-contracting program. At the peak of forward contracting, that I have ever seen, we have either had 20% of our membership contracting roughly 20% of their milk.

But those trends have changed significantly in the last five or six years, and I would say that that is because of three factors. The first factor being that

Dairy Margin Coverage is an incredibly valuable tool to our producers in regards to supplementing income when margins are tight. I would say that -- and I think it's been proven through the consolidation of the brokerage world within the dairy industry that the Dairy RP program, has been a widely used tool that obviously has reduced liquidity that has caused I would say consolidation within the -- into that world. However, we are a big proponent and always promote Dairy RP for our producers.

That has dramatically reduced what our producers do with our forward-contracting program. But I would say that the vast majority of our producers, it's probably a significant majority of our producers, are using some form of risk management tools today.

Q.   Okay. Thank you.

On the first page you talk about your manufacturing and balancing plants, and I'm curious if we should look at those as separate plants or you consider all of your manufacturing plants to serve a balancing role?

A.   Yeah, I think that is a pretty valid point in how the industry is changing. Before, at least how we operate, our world, our -- we classify our plants as demand plants and balancing plants.

Q.   Separately?

A.   We do.

Q.   Okay.

A.   Yeah. We currently balance the Washington and

Oregon market through Chehalis, and we balance the Idaho market through Jerome. All other facilities, including one of our powder plants in Lynden and Sunnyside, we refer to as demand plants. And in those demand plants, even though they are manufacturing milk powders in which others would call balancing plants, we are trying to create value-added products to maximize the returns back to our producers.

I stated before that the expansion in Sunnyside and the Pasco build would not be profitable under the current Make Allowances. How we have countered that is by aggressively going after more value-added products that we can manufacture in those facilities.

So we are really towing the line between what was formally a balancing plant into what is going to be a demand plant. And my fear is, is that as we continue to increase capacity and increase our usage that -- that it -- the balancing will look a lot different than it -- in the next five years than what it looked like ten years ago in our area.

Q. Uh-huh. And for your balancing plants, do you balance non-member NDA milk there?

A. When available. But it depends. So when we look at the PNW, we will have two ways of balancing. We will -- when it's possible, we will balance in the Chehalis plant, but when that complex is full, we will send milk to Idaho and balance into the Idaho market. When both the PNW and the -- when Washington and Oregon are full and Idaho are full, we're mostly on an island at that point, and our form of balancing is dumping milk or -- or others dumping milk.

We always -- we will always protect members before non-members, and so we have built a production management program that tries to -- tries to help do that.

Q. Could you give a guess on kind of for those balancing plants what your swings are on maybe an average basis for a year in what you take in?

A. Chehalis is 100%, meaning the -- if I'm doing my math right, it should. During the valley months, we are running half as much product through that facility as we are during the peak.

In Jerome, it is a different story because I think the Idaho market -- the Idaho market is much bigger, has much wilder swings, has much -- much more different ways to move milk out of the marketplace. Per the NASS milk production report, if I remember right, that's a 40-, 42-, 44-million-pound-a-day market.

And we -- in the Northwest we experience 10% peak to valley swings, so a 4-million-pound-a-day swing is the size of a medium-size manufacturing plant in Idaho, so there are -- there can be some significant swings in that area.

Q. Thank you.

You talk about how your plants under current Make Allowances don't expect your -- at least your new plant to be profitable. Without, of course, revealing proprietary information, how would the -- either the -- how would, since you support the National Milk Make Allowances, impact under that statement?

A. It would get us closer. So the ways that we are trying to -- the justifications for building the plant is where I'm going to go with this, if that's -- if that's okay.

The -- our producers continue to want to grow and expand their operations. That desire is there. But we also have to recognize that, in simple terms, we have two types of producers in our co-op. And when I talk to members, I say we have -- if you are going to be milking -- if you are not going to be milking cows five years from now, you want a co-op that's going to be here to return the equity that you put in over the last 20 years. If you want to be milking cows ten years from now, you want a co-op that's going to be picking up your milk every day and putting milk checks in the mailbox.

So when I view the current market structure versus -- or the current market pricing versus building the infrastructure that's necessary to maintain the future of the industry, our producers understand that -- that -- that we just have to make it work, right? In regards to how that pricing flows through, which is why we have had to do some deductions. We have done some retains. We have done certain things to take the right steps to make the investments for the future of the industry in our area.

But to go back and simply answer your question. It gets us closer. The other steps that we're taking, like I said, is we're making additional investments in those facilities to try to create more value-added products. We are also making investments in other fluid -- fluid products that will help us generate increased revenue to try to create profitable returns for our producers.

Q. All of a sudden I hesitate on questions I want to ask. I'm not sure, you might not want to answer. But I find it -- you mentioned how, you know, you guys have had to be creative, right, to figure out how to manage through Make Allowances, and some of that is deciding on investment decisions and creating more value-added products. So we often hear how Federal Orders inhibit innovation. But when you talk about that, I think it's kind of forced you to innovate in a way. Maybe not in the way you wanted to.

A. I don't know if it is -- Federal Orders have forced us to innovate. I think with us we're in a -- we're in a -- I'll call it a unique spot in the United States relative to the Midwest, East Coast markets that most others sell products into.

But the fact that we are near a major port, we do export quite a bit of products. The innovation is more forced on the fact that we can drop products into the shores of the Pacific Rim cheaper than we can drop products into Chicago. And so the innovation of the markets that we're accessing is more driven by the export forces.

And so we do take those risks of inconsistent -- not inconsistencies but those risks of domestic pricing versus international pricing, and we have to manage those. But -- but that more -- that drives innovation more in our world, I think, on the manufacturing side than it does -- than Federal Orders do.

Q. Okay. Thank you.

You talk about -- and Mr. Miltner touched on this a bit -- sometimes it makes more economic sense selling milk -- or keeping milk in your manufacturing plants rather than servicing the pool distributing plants, which of course is of interest to us at USDA since the Federal Order program is here to make sure there's an adequate supply for fluid milk plants.

So I'm curious, and maybe you don't want to -- maybe you don't have a position yet on that, but we do have another proposal later on for discussion about increasing Class I differentials. And I'm wondering if you might speak to, because I don't know if you will be here later, how that --

A. I will.

Q. -- might assist in your decision-making.

A. Yeah. And I think to me this is an important point, and I really thought on both sides of including this comment because I understand what I'm saying.

And I also want to signal what I'm seeing in -- in regards to the fact that we're making big investments in manufacturing facilities. We are struggling to keep balancing plants operational, and in order to do that we have had to go back and pull money off producer checks, which, you know, I will say that there's a cost involved to dealing with producers when they see negatives on their checks. Those are real costs.

But the -- you know, like I said before, the facility that we're building in Pasco and what we had built in Sunnyside is really where the future direction of our co-op is going. And when we are looking at the needed increase in Make Allowances, when we are looking at the distance from those facilities to pool distributing plants in urban areas, and when somebody -- when we need to service a Class I market, and we are taking a pound of milk or a load of milk out of that facility, there are true opportunity costs that we have to look at and consider.

And the market will always adjust, but there will also be, I think, learnings and disruptions along the way. Like, for example -- and it's a free market, so producers can leave the co-op and they can go direct, but that comes at a cost and a risk to them. And pool distributing plants that are not cooperative plants can also recruit and bring that milk in. So I believe that those checks and balances are in place in the marketplace, but I also think that there's going to be disruption along the way as we discover what this new price in the marketplace looks

like.
Q. On the page 3 of your statement, the bottom of that first paragraph, you are discussing why you don't want to see a dramatic change to the Make Allowances and you are supporting the National Milk numbers.
A. Yeah.
Q. And you say that "a dramatic change immediately would have an unnecessary negative impact on the producer community."
I guess my first -- I guess my first question is, one, are you talking about delaying that, or are you -- or how would you define a dramatic change? And on top of that, could you kind of elaborate on the negative impact it would have to the producer community?
A. Yeah. Absolutely. And I referenced this earlier when in January of 2019 -- or sorry -- December of 2019, we announced a retain. I will call it a significant retain. I won't give the number, but it was somewhere between zero and a dollar. And -- and it was in order to help fund the Pasco project.
And the economic analysis that we did, we estimated that we would lose -- in a certain part of our -- of our area, we estimated that we would lose 15 to 20% of our milk in a 12-month time period. And we were wrong. We were too low.
And so when we saw that type of a change hit our co-op, and we had producers look down and try to understand what they wanted to do with their businesses,

we underestimated the people that said that they would exit the industry.

And now, granted, that was an area where it's -- it's an area that has been declining over years. There's been urban pressures. There's been various things. But I use that as an example, a real-life example of one thing that we did that -- that had a big impact.

Now, what happens when those farms leave is those cows, at least in our system, they didn't go away, they relocated. They relocated east. And we immediately had -- I wouldn't call them stranded assets, but we had assets where we had to relocate milk. We had to move milk from one area to another. And it was a -- it's a real transportation cost.

So when I think about, you know, managing change, managing expectations, if we had -- and we did this within about a four-month window, announcement to implementation. And probably one of the most stressful times in my life because we went from being workers of the co-op to being counselors and educators of policies and -- and then also having people talk through how this impacted their family and their farms. And there's a real cost to that. There was a cost to my well-being. There's a cost to everyone else's well-being. And so these are real things that we lived through.

And I wouldn't say I don't want to ever go through that again, but that was a really -- that was a really tough part -- really tough part of life as being a part of the co-op. So, big change.

And let me -- let me also preface it with -- and I always find this fascinating, that when the market goes from let's say $25 down to $18, and you can see that on the futures market, producers can understand that and they can accept the fact that those are market dynamics.

When you make changes to something that is steady over a period of time, such as a pricing formula, that is a shock, that is a surprise, that is something that when they go out and they acquire debt to build their -- their businesses, those are things that can impact their relationships with their banks. And those are real things that we have to -- that we have to consider.

Q. And so -- so those -- I guess that impact to the co-op, those farms didn't necessarily go and be a direct shipper somewhere, you are just saying they mostly exited the industry altogether, but their cows -- you didn't necessarily see a change in your milk production?

A. Yeah. The cows moved. We have seen a drop. We are on a -- I think the mark -- Order 124 information would also show this, but we are -- in the last six years we have just run through the lowest year of six years in milk production in our area. So there has been some impacts on overall milk production. Cows have shifted, and I wouldn't say it is a lot lower, but it is a little bit lower.

Q. Okay.

A. Yeah.

One thing I will add, Erin, I wanted to touch on. And I think I said it earlier, but I'll restate it. That when we made this abrupt change, and we did it in a short window, we changed people's retirement plans. We changed their succession plans. Farms that I thought were going to be around three and five years from now made a decision to get out today, or at least in the next couple months.

And maybe that's the reality of the marketplace, but those are -- and we expected some of that, but it was a little bit more than I expected.

And I also feel that with the pressures that are on the farm right now, that producers are more likely to tip into the leave-the-industry situation right now, just with deductions, low milk prices, low margins. It is a tough stop right now out in the farm.

MS. TAYLOR: That's it. Thank you so much.

THE COURT: Redirect.

MS. HANCOCK: Thank you, your Honor. I have nothing further.

Appreciate your time, Mr. Schilter.

We would offer Exhibit 159 into evidence.

THE COURT: Objections?

Seeing no objections, Exhibit 159 is entered into the record.

(Thereafter, Exhibit Number 159 was received into evidence.)

THE COURT: You are dismissed. Thank you.

THE WITNESS: Thank you.

MS. HANCOCK: Your Honor, at this time we would call Mike John to the stand.
THE COURT: Welcome. Raise your right hand.
MIKE JOHN,
Being first duly sworn, was examined and testified as follows:
THE COURT: Your witness.
DIRECT EXAMINATION
BY MS. HANCOCK:
Q. Good morning, Mr. John. Would you mind stating and spelling your name for the record?
A. I have one of the easiest names. Michael John, M-I-C-H-A-E-L, J-O-H-N.
Q. So I'm married to a Jon without an H, so it is a little more complicated sometimes.
Would you mind providing your business mailing address, please?
A. Sure. 13921 Park Center Road, Suite 200, Herndon, Virginia, 20171.
Q. And where are you currently employed?
A. I'm employed with Maryland and Virginia Milk Producers.
Q. Did you prepare a statement on behalf of National Milk in support of the Make Allowance proposal?
A. Yes, I did.
Q. And is that what's been identified as Exhibit NMPF-23?
A. Yes.

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

THE COURT: Yes. NMPF-23 is marked for identification as Exhibit 160.

(Thereafter, Exhibit Number 160 was marked for identification.)

MS. HANCOCK: Thank you, your Honor.

BY MS. HANCOCK:

Q. Mr. John, would you proceed with providing your testimony in Exhibit 160?

A. Sure. And I'll skip kind of the first part there because I already said that.

I'm executive vice president of milk marketing and ingredients for Maryland and Virginia Milk Producers. I have -- and I'll refer to Maryland and Virginia Milk Producers as MDVA.

I serve as member of the National Milk's economic policy -- economic committee and member of the Make Allowance working group and -- which was chaired by Christian Edmiston.

The Make Allowance group had the responsibility of reviewing and developing recommended updates to the Federal Order Make Allowances. These recommendations became the foundation for National Milk's Proposal Number 7. Of the products currently surveyed for Federal Order pricing, two pertain to MDVA's operations, butter and nonfat dry milk.

MDVA fully supports the increases in the

Make Allowances for butter and nonfat dry milk as outlined in NMPF's Proposal Number 7. And they're listed there, the two bullet points.

MDVA is a cooperative located and operating in the Midatlantic and Southeast geographies of the United States. MDVA is a cooperative made up of around 920 dairy farmer members would produce 2.3 billion pounds of milk each year. The overwhelming majority of MDVA's member milk stretches between two Federal Orders, Federal Order 1 and Federal Order 5. MDVA's members own and operate three pool distributing plants, two in Federal Order 5 and one in Federal Order 1. In addition, Maryland Virginia owns and operates two pool supply plants, one in Federal Order 5 and one in Federal Order 1.

And the pool supply plants are listed there. One is located in Laurel, Maryland, and one is in Strasburg, Virginia.

Throughout its history, the majority of MDVA's milk is received and processed by milk plants serving the Class I market, including the three plants owned by our members. With the majority of our milk serving the Class I market, the remaining percentage serves our two member-owned pool supply plants. One of these manufacturing plants is capable of manufacturing bulk butter along with nonfat dry milk. The other facility only has the capability to manufacture bulk butter.

While MDVA has the ability to manufacture a sufficient amount of butter, MDVA's annual butter production is highly seasonal, which has the direct impact on our cost of converting raw milk to butter depending on the season. Therefore, my focus will center around converting raw milk to nonfat dry milk, which is a more stable component for our cost discussions.

Additionally, MDVA does not operate cheese plants, so I will not be addressing the Make Allowances for cheese and whey.

MDVA's nonfat dry milk and butter manufacturing provides a needed service to our geographical marketplace. Our term for that service is called a "balancing service." By making sure our Class I customers have a sufficient supply available to meet their monthly, weekly, and daily demands, we maintain a reserve supply for raw milk year round. Our two pool supply plants give the market the capacity, allowing us to maintain this reserve supply.

The historical Class I market process is a very -- start over.

The historical Class I market processes a very perishable product. It requires just-in-time processing to meet customers' needs. Customers' needs fluctuate based on changes like school demand, holiday specials, retail promotions, weather events and more recently based on the pandemic shutdowns and impacts related to COVID-19.

This balancing service does affect our costs of converting raw milk into nonfat dry milk and butter. Those of us in the industry with fluctuating market factors will have a higher cost of conversion compared to those who have a more straight-line production because we have to make shorter-term decisions to respond to these fluctuations in need and because we have to make these just-in-time manufacturing decisions to meet consumer needs. For these reasons, we urge USDA to approve the increase in Make Allowances outlined in NMPF's proposal in a manner that will preserve producers' ability to absorb the increase until such time that an audited cost survey can be approved and deployed.

And I have a subtitle, the request for increase in Make Allowances:

For butter and nonfat dry milk, MDVA supports the following Make Allowance increases, and these are the increases already in the National Milk proposal.

The Make Allowances have not been increased since 2008 using data from as early as 2006. Quoting from NMPF's request for a national hearing: "From discussions with members, a review of input price data and the output from the University of Wisconsin cost to manufacturing survey, it is clear that dairy product pricing costs have increased, and therefore, average manufacturing costs for butter, nonfat dry milk, cheddar cheese, and dry whey are considered higher than the Federal Order Make Allowances."

MDVA has experienced the same cost increases to converting raw milk to nonfat dry milk and butter. For example, MDVA has seen a 64% increase in our standard cost to convert raw milk into nonfat dry milk, compared to our previous cost standard set approximately 12 years ago.

Because this increased cost cannot be captured in the sale of a commodity product to the marketplace, the only option we have is to place that cost recapture burden as a market adjustment on our members' monthly milk statements, which requires our members absorb the impact of this cost increase rather than allowing it to be passed through to consumers on a much smaller pro rata scale.

MDVA supports NMPF's phased implementation for Make Allowance increases. While costs have increased dramatically since 2006, to immediately make up the full scope of that needed increase, not just in butter and nonfat dry milk but in all commodities, would be very disruptive to dairy farmers' monthly milk pay prices.

We agree that an interim step is needed to give full initial relief in two ways. First, it provides release to -- relief to the true cost of converting raw milk to the four basic commodities. This much needed relief will help to ensure that MDVA can continue to operate our two manufacturing facilities to continue to provide a valuable service to our marketplace.

Second, we believe cooperatives like ours, who made the necessary investments in manufacturing plants, and who provide a valuable balancing service to the marketplace, are overburdened when the Federal Order Make Allowances don't properly reflect the cost of converting raw milk to storable commodities. Consequently, we believe that cooperatives like ours won't continue to make further investments in manufacturing, either to upgrade current facilities or invest in new technologies without some cost adjustment. As a result, the whole marketplace will suffer without an increase.

Future mandatory cost reporting:

Having no cost increase in Make Allowances for over 15 years has caused a financial burden to our members' cooperative. As I have already stated, we have seen a dramatic increase in conversion costs to make both nonfat dry milk and butter. For MDVA, this has resulted in a lack of needed investment in our two pool supply plants. This lack of needed reinvestment in itself causes a higher cost of conversion, which in turn causes a higher burden on our members' monthly milk checks while we provide a necessary service to our marketplace.

It is imperative that there is a process in place for manufacturing plants to report a conversion cost on a periodic basis. MDVA fully supports NMPF's proposal that USDA be given the authority to conduct mandatory cost studies, giving the industry more timely and accurate cost conversion information. With that information in hand, the industry stakeholders can then seek to make more timely requests for future hearings to address needed Make Allowance changes. We believe a mandatory process will provide the necessary opportunity for the industry to remain current to the current cost of conversion, resulting in a more stable market for our dairy farmer members.

I want to thank the USDA for having this hearing and thank you for the opportunity to speak on behalf of MDVA's dairy farmer members.

MS. HANCOCK: Your Honor, we would make Mr. John available for cross-examination at this time.

THE COURT: Any examination for this witness?

CROSS-EXAMINATION

BY MR. ROSENBAUM:

Q. Steve Rosenbaum for the International Dairy Foods Association. Good morning.

Did Maryland and Virginia Milk Producers Cooperative participate in Dr. Stephenson's surveys?

A. Which -- which ones?

Q. So did they participate back in 2006 or 2007?

A. That, I do not know. I don't know on that one.

Q. Did they participate in the survey that more recently was conducted under the auspices of USDA that resulted in what some people have referred to as the 2021 Stephenson report?

A. No, we did not.

Q. Did you participate in the most recent survey, which resulted in a new report --

A. Yes.

Q. -- by Dr. Stephenson in 2023?

A. Yes.

Q. Okay. And did you submit information with respect both to nonfat dry milk and butter?

A. Yes.

Q. So I note that on page 4 of your report, you state that your cooperative "has seen a 64% increase in our standard cost to convert raw milk into nonfat dry milk compared to our previous cost standard set approximately 12 years ago."

Do you see that?

A. Yes.

Q. Can you just give me exact dates as possible as to what period you are covering?

A. Sure. So, first of all, the standard costs would be, we look at the -- and I'm not one of the accountants, but we look at the previous year costs and -- and then decide what the next year, what that cost should be. We don't always update those. So we would have update -- we would have had that information -- 12 years would have been from 2022, so that -- that cost would have been 2010 --

Q. Okay.

A. -- I believe would be the last time.

Q. All right. So you have had then a 64% increase -- and let me just -- let me start the question again.

Do I understand basically every year you try to predict what your costs are going to be the next year? Is that what you are saying you did?

A. Well, so you are going to get a little past my accounting experience here, but we use a system -- an SAP system where we put in the standard costs, and then we look at variances on those costs each month, and then the accounting team decides at the beginning of budget year

whether they need to change those standard costs. So they decided that at the end of 2022 that we needed to change those costs for the start of 2023 year.
Q. Okay. And so this was -- strike that.
I take it that in deciding whether to increase your cost standard, you obviously look at the actual costs that you are incurring at that point in time, correct?
A. That's correct.
Q. So by -- at some time toward the end of 2022, looking at what your costs have been to date and some kind of predictions of the future, that's how you come up with -- came up with a new cost standard; is that fair?
A. Yes. Uh-huh.
Q. Okay. And -- and you were, for purposes of your testimony, comparing that 2022 number to what that cost standard had been as of January 1, 2010; is that right?
A. Yes.
Q. Okay. Now, as I'm sure you have heard others testify, I assume you were not around in 2008 when the last hearings were held on this subject, or maybe you were?
A. I was around. I wasn't involved in the hearings.
Q. Okay.
A. I'm older than I look.
Q. Aren't we all?
So do you know whether the cost standard that had been in effect, let's say, in 2006 was lower than the cost standard in 2010?

A. No, I wouldn't know that. I was in a different role at that time, so I just don't know.
Q. Okay. So it's -- it's possible that if you -- the -- let me strike that.
The reason I'm saying 2006 is because the 2008 Make Allowances, which we're now operating under, were based upon cost data from 2006 and 2007. That's the reason I'm asking that specific date. And -- but you don't know whether the cost standards as of 2006 and 2007 were lower than 2010?
A. No, I do not.
Q. To the extent that they were lower -- and I recognize that's at this point conjecture -- but if they were lower, then obviously your 64% figure here would be higher if you were comparing what it had been in 2006 to what it now is, correct?
A. Yeah. And I -- I'll say that I think what I guess Chip had brought up in the previous cross-examination with Monty is that what I have noticed is that the last several years, there's been that -- that -- the slope of the curve has been a lot greater. So I don't know that there would have been near that kind of a cost increase between 2006 and 2010. That's just an educated guess on my part.
Q. How long have you been involved in work that required you to pay attention to the cost standard?
A. Actually, I -- probably the last two years I would say.
Q. I mean, do you know whether the cost standard has

ever -- has declined at any point?
A. Not that I'm aware of.
Q. Okay.
A. Now, I will say that the variance to the cost standard has changed based on -- you know, for example, one of your biggest costs in -- in drying milk powder is natural gas, and you can see natural gas prices -- I mean, during COVID, they were outrageous. They have come back today to, you know, hopefully more normal rates, although I'm not sure we know what normal is anymore, so --
Q. All right. And I'll ask you the same question I asked the last witness.
Have you compared the 64% increase in your standard cost to the increase in Make Allowance that IDFA is seeking?
A. Now, I -- the -- I guess I'll put it this way: We understand from our standpoint because of -- in my testimony I talk about the balancing service that we provide the marketplace, that we're going to have a different cost standard, you know, to convert powder because we don't run full all -- you know, we don't run our plant full-time, because we look at that balancing service as an opportunity for us in serving the Class I market in the East Coast. So the -- now I forget what your question was. See, that's what happens when you get to be 62, so -- if you can ask it again, I --
Q. I was asking whether you had examined what percentage increase IDFA was seeking in its -- in the

Make Allowances.
A. We -- we feel that that's a reasonable increase. And we all -- we know for a fact, as the size of operation that we have, we're going to have probably higher costs than -- than others. But we look at that as a reasonable increase.
Q. And the -- IDFA's proposed increase?
A. Oh, IDFA. I thought you said National Milk.
Q. I didn't.
A. Okay. I'm sorry.
Q. I wasn't sure whether you heard me properly.
A. Yeah. Yeah. So National Milk, I mean, we look at that as a reasonable increase, yeah.
Q. It is -- but it is -- I mean, you -- you have a 64% increase. I mean, National Milk is proposing a 20 -- roughly 20, 22% increase. You are aware of that difference?
A. Yes. Yes. And, you know, I guess here's how I'd like to explain that is, you know, we're owned by our dairy farmer members. And there are three returns, basically, that we look at -- and this is how I explain it to our members. Is that the first return is the minimum Federal Order pricing, so -- which makes up the majority of their monthly milk check.
The second return is what we can bargain, collectively bargain, out in the marketplace to get in over-order premiums or, you know, there's other pieces to that, maybe like fuel surcharges or uniform receiving

credits, things like that. So we do our best to bargain to get additional dollars over that. Both of those dollars will get paid out monthly.

The third piece is what we call returns from operations or from the physical assets. In the corporate world people would call it dividends; in the cooperative world we call it patronage. And so the patronage returns are based on what happens after the end of the year is over with and you have -- and you -- you know, whether you make a profit or loss, whether you can return some patronage back to your members.

And so that's -- that's a delayed cash out to your members. And we have to balance with our members, okay, do you get a quick return on assets or do you get -- you know, how much do you pay out on the -- on the month milk check and then against, you know, the cash that they have to wait for later on in patronage. And so if we take too much off their monthly milk check and delay it to the future, well, then that affects their -- you know, that affects their -- their operations, their work with their financial community, and folks that they have to work with. So we have to -- we have to work that tightrope.

And so that's why we -- you know, we support National Milk. It's an -- it's an increase, yes. It's -- it's -- in your math, using your math, a 20-some percent increase, but we have to -- we have to manage that balance.

Q.   I take it -- are you operating your plants at a

loss?
A. I'm not -- I'm not at privilege to share that.
MR. ROSENBAUM: That's all I have. Thank you.
THE COURT: Further cross?
CROSS-EXAMINATION
BY MR. MILTNER:
Q. Ryan Miltner representing Select Milk Producers.
Good morning, Mr. John.
A. Good morning.
Q. You have been here for a few days?
A. Since Monday.
Q. Yeah. Well, then, unsurprisingly I wanted to ask you a few questions about your plants.
A. Oh, sure.
Q. Your plants in Laurel, Maryland?
A. Uh-huh.
Q. What are the products that are produced at that plant?
A. Just bulk butter and -- and nonfat dry milk.
Q. Pretty simple.
Does it produce any skim milk powder?
A. No.
Q. Whole milk powder?
A. No.
Q. Buttermilk powder?
A. No.
Q. What do you do with the buttermilk that comes off of that plant?

A. That's a great question. So we don't make a lot of butter, you know. Since we live in an area where there's a lot of people, and we're blessed from that standpoint. Being kind of where there is a lot of people, there's a lot of opportunity to do other things with fat, and so butter is kind of our last resort. And so it's very seasonal. And so when we do make buttermilk, we make basically, you know, decisions at that time, you know, when we have to dump it, we could condense it and try to sell it that way. But it's -- really that's the two options we have.
Q. You're just making the best economic decision for your members at that time?
A. Yes.
Q. Does the nonfat operation at Laurel operate pretty continually?
A. No, it is seasonal.
Q. So the whole plant is seasonal, the nonfat production and the butter production both seasonal at that plant?
A. Yes. It's -- there's -- you know, there's more opportunity, I'll just say, with the fat side to do other things with the fat. And we do -- so we do have skim -- the skim stream all year round and -- but our powder production -- we'll still make powder, for example, this time of year, but generally like on the weekends and -- and -- but our powder production in the spring of the year and spring flush, holiday seasons, we'll be full.

Q. Would I be wrong to infer that you're producing on weekends because bottling plants are not taking as much milk on weekends as they do throughout the week?
A. That's correct.
Q. And so would you skim off the cream and sell it then and then do whatever with your skim?
A. Yes. Uh-huh. Yeah, Tuesdays, Wednesdays, and Thursdays this time of year are -- can be pretty stressful.
Q. When Maryland and Virginia reported to Dr. Stephenson for his 2002 study, did you provide manufacturing costs for the Laurel plants?
A. Yes.
Q. For both butter and nonfat?
A. Yes.
Q. For the plant in Strasburg, does it produce butter and nonfat?
A. No. Just butter.
Q. Just butter.
And what kinds of butter products are produced at that plant?
A. Just bulk butter, either salted or unsalted. We basically make to order.
Q. It's made to order you said?
A. Yes.
Q. What happens with the skim that is taken in at that plant?
A. We condense it. We have different condensed sales

that we have.
Q. Is the condensing done on site?
A. Yes.
Q. Do you ever take that condensed up to your plants in Laurel for conversion to nonfat dry milk?
A. Unfortunately, yes, sometimes we do that. Yeah.
Q. Okay. I'm familiar with the geography in the area. But how far is it from Strasburg to Laurel?
A. Well, it's probably -- I got to think now a minute. Probably no more than 70 miles.
Q. Okay?
A. And -- but the, you know, traffic in that area is -- it could take you an hour, it could take you three hours, you know.
Q. It's not the mile-per-minute conversion I like to do in my head when I'm thinking about driving around my part of the world, is it?
A. That's right.
Q. Does the Laurel plant report sales to the NDPSR?
A. Yes.
Q. Would it report for both butter and for nonfat dry milk?
A. That's correct.
Q. Does the plant in Strasburg report its butter sales to NDPSR?
A. Yes.
Q. When you factor in the seasonality of production at Laurel, does -- does that plant then have a higher

manufacturing cost for the same butter products compared to Strasburg?

A. No, they would -- they would be similar because they are both seasonal.

Q. They are both seasonal?

A. Yeah, they are both seasonal butter production, yeah.

Q. Is butter production happening at those plants say more than half of the weeks in a year?

A. So you are saying 26 weeks?

Q. Yeah.

A. No. Less than that.

Q. Less than that?

A. Yes.

Q. If you consider the maximum capacity for butter production at those two plants, would it be operating at, say, less than 25% total capacity over the course of a year?

A. Yes.

Q. And so the fixed cost of those plants are spread out over a much smaller volume than would be if you were operating as a full-time butter plant, correct?

A. That's correct. And it is not that we don't run volume through those plants. Like I said, we have other uses --

Q. Right.

A. -- you know. So we do run volume through the plants.

Q. You mentioned over-order premiums in your question and answer with Mr. Rosenbaum.
A. Uh-huh.
Q. And within those over-order premiums you specifically mentioned fuel surcharges.
A. Yes.
Q. And you also mentioned uniform receiving credits.
A. Yes.
Q. When Maryland Virginia charges an over-order premium, is there a separate balancing component of that over-order premium?
A. Give me some more information. I'm not sure I know what you mean by "separate balancing."
Q. Well, if I -- if I characterize this correctly, I read your statement as saying that there's a balancing cost affiliated with servicing a Class I plant, correct?
A. Yes.
Q. And that part of that balancing cost is taking milk through your cooperative-owned Class IV plants, correct?
A. Uh-huh.
Q. Okay. Over-order premiums, on the other hand, include a number of elements, and a couple of which you have talked about, correct?
A. Right.
Q. Does your over-order premium also include a charge to your Class I handler to offset the expense of balancing the supplies to their Class I facility?

A. The only -- the only charge that would help to do that would be the uniform receiving credits. And that's not -- no pun intended, that's not uniform across all plants.

For example, you know, our milk shed goes from New York to the Carolinas, and so we may have a customer in, say, South -- or North Carolina where it's uneconomical to -- to -- to bring that milk necessary -- that particular milk, if it's in North Carolina, the whole way back up to -- to, you know, one of our balancing supply plants, so we'll -- we'll stair-step that milk maybe back up into Virginia and then put some Virginia milk into one of the balancing plants.

So in that, we do have those uniform receiving credits -- they're mostly in the South -- to help us when we have to -- if they don't take milk uniformly, where they -- you know, they will have to pay a little extra for that. Although they are performance driven, so if they do perform, then they get the credit.

Q. And those credits are such that they agree to take milk at the plant seven days a week or six days a week or some regular uniform --

A. Yes.

Q. -- amount throughout the week --

A. Yes.

Q. -- which then minimizes the amount of milk the cooperative has to balance on weekends or a day that the plant --

A. It helps.
Q. -- is not taking milk?
A. It helps to minimize it. It doesn't cover the full cost of it, but it does help to minimize it.
Q. So -- so we could also then from your answer and your statement, I think, conclude that the over-order premiums you are able to obtain from the market are not sufficient to offset the balancing expenses incurred from servicing the Class I market?
A. That's correct.
Q. Okay.
A. Yeah.
MR. MILTNER: Thanks. I don't have anything further.
THE WITNESS: Okay.
THE COURT: Okay. Further cross from anyone but AMS?
All right. Let's go off the record.
(Off-the-record.)
THE COURT: Back on the record.
Off the record we discussed what we're going to do the rest of the day, and we will take an hour lunch now, come back at 12:00, put on the virtual witnesses who are producers, and hope that there will be some time left before the 3 o'clock hard stop for today to finish this witness. Thank you. So we'll break for lunch. Be back at noon.
(Whereupon, a luncheon break was taken.)

FRIDAY, SEPTEMBER 8, 2023 - - AFTERNOON SESSION

THE COURT: On the record.

Mr. English.

MR. ENGLISH: This is Chip English for the Milk Innovation Group. It is my understanding that the first witness up is LeAnna Companga. And we had uploaded MIG Exhibit 8, and then realized we uploaded the wrong document. So we have uploaded MIG Exhibit 8 Corrected, and that is what I have handed out. I provided the 15 copies to USDA, a copy to the court reporter, a copy to your Honor. I have tried to hand out copies. If someone doesn't have one, we will make it available.

But I would have MIG Exhibit 8 Corrected, marked as the next exhibit, your Honor, please.

THE COURT: Yes. I have that would be Exhibit 161. So MIG Exhibit 8 is marked for identification as Exhibit 161.

(Thereafter, Exhibit Number 161 was marked for identification.)

MR. ENGLISH: And then I guess once Ms. Companga is on, we could have you swear the witness.

THE COURT: Yes. Okay. She's not on our screen.

Oh, hi.

Please raise your right hand.

LEANNA COMPANGA,

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

THE COURT: Thank you.

Your witness.

DIRECT EXAMINATION

BY MR. ENGLISH:

Q. Good afternoon. I'm Chip English for the Milk Innovation Group. We really appreciate your appearing today, and I would ask that you provide your statement. Thank you again.

A. Yes. Hello, everyone. My name is LeAnna Companga, and I want to start off with thanking you for providing me the opportunity to testify today via Zoom. I would have been willing to testify in person, but this time of the year is busy on the dairy farm, and this year has been exceptionally busy due to flooding and massive amounts of rainfall. We are working on finishing up our hay harvesting, while also beginning the 2023-2024 school year, home schooling our children ages 10, 7, 5, and 3.

I farm with my husband Mike and our four children in Addison County, Vermont. We are a Grade A licensed dairy, and currently produce USDA certified organic milk, with a herd of 230 mature cows in the town of Whiting. We ship our milk with Organic Valley and are active members of the cooperative.

We manage around 1300 certified organic acres of hay and pasture, owning about half of the acreage and leasing the rest. Those 1300 acres include the hay land we harvest for my parents.

My parents manage a second 50 cows, certified grass-fed organic dairy, that also ships to Organic

Valley. We have two full-time employees on the farm, along with three family members who work part-time. Additionally, my brother-in-law runs his custom harvesting business from our farm.

By definition established by the Small Business Administration, we are a Small Business.

My parents certified the original home farm where I grew up and began shipping certified organic milk to Organic Valley in 2007, the year I left for college. I graduated from the University of Vermont in 2011 with a Bachelor's degree in animal science, and my husband and I joined my parents on their farm in 2012. Mike and I were able to join the family farm business thanks to the stable milk price provided by Organic Valley. Milk price stability provided financial security for my parents.

Shortly after that, in 2016, we made the leap to establish a second dairy, the farm my husband and I now manage in Whiting. It was a vacant dairy operation for roughly ten years, previously having been a conventional dairy farm. We saw an opportunity to establish our own dairy and know our success was only possible because of the organic milk market we are part of. I believe the organic dairy market can offer the same promise for farmers like us.

Our milk market, Organic Valley, has around 600 farm members in the ten-state Northeast region and about 100 farm members in the state of Vermont.

Within the cooperative governance, I serve on the

Gen O Executive Committee, which is focused on supporting the next generation in organic farming, as well as the co-op committee which makes recommendations on bylaw changes, equity and membership policies, and other issues facing the co-op. Our cooperative not only has farmers intimately leading co-op governance, but also has its farmers involved in marketing efforts of our brand and in educating policymakers.

Additionally, I am a board member of the Champlain Valley Farmers Coalition, and our family is involved in 4-H, meaning for part of the summer, our county fair is a big part of our life when our daughter and sons show their dairy calves.

I have been involved in farming my entire life, and like many farmers, we are focused on caring for the animals and the land that sustains us. We are farming for the future and are conscious about farming decisions that will impact generations to come. We hope that our dairy can offer our children the option to consider a farming career and lifestyle if it's something they choose for themselves.

As an organic dairy farmer, I do not track or work intimately with the Federal Orders. I'm dairy farming and raising my family day in and day out. I rely on my marketing cooperative to monitor and to comply with the FMMO regulations.

But I struggle to see any benefit these federal pricing regulations have for an organic dairy farm like ours. In fact, the opposite seems true. It seems that the orders, as they function, and some changes being considered in this hearing, would only undermine my dairy and create larger pool obligations for my marketing cooperative, Organic Valley. Those pool obligations are resources, financial resources, that leave the co-op and owners like me. The logic is hard for me to understand.

We became organic because it fit how we wanted to farm and it meant better premiums for our milk. Our cooperative has always paid us above the minimum prices, and still we are forced to pay tens of million of dollars each year into the FMMO system that ships those resources to other non-organic farmers for some minimum pricing requirement.

For a cooperative that manages our supply with a quota system, balances our own organic product inventories, and pays some of the strongest dairy prices to farmers in the nation, why are we paying into this system? It is fundamentally wrong, and USDA needs to convene an honest discussion about organic dairy and its position in federal pricing regulations.

Much of the milk Organic Valley sources from its members is processed for table milk. That's true in Vermont as well, but some of our milk from the farm is also used in organic yogurt production.

I am worried that some proposals offered in this hearing will increase my cooperative's FMMO pool obligation. This will compete with my co-op's ability to maintain a high stable pay price and, therefore, our ability to invest in our farms.

Organic Valley has been one of the last markets for many small family farms. They are willing to take on challenging routes to pick up farms and deal with inherent logistical and financial inefficiencies. Greater pooling costs would be one more squeeze on a cooperative's profit margins and could potentially undermine the ability to take on smaller farms.

We have seen a shrinking number of organic milk buyers in the Northeast, and anything that financially cuts against my cooperative will potentially mean less success and resiliency for a farm that was like mine seven years ago when we started. I'm encouraged that one proposal is asking the industry to evaluate the basis for the FMMO pool obligation.

I believe it is wrong to go the other direction and increase FMMO pool obligations for a co-op processor like mine. It will lead to increased milk prices in the grocery stores, and we are already seeing enough pressures on fluid milk. Some segment of consumers will either buy down in their dairy purchases or leave milk drinking altogether.

As a mom of four kids, I believe milk is a super food and it provides great nutrition and supports healthy eating patterns. Of course, I'm biased to organic milk, but we should not be risking price increases at retail due to government policy.

At a time of high inflation and a category facing all kinds of nut juices and oat slurries that call themselves milk (which they are not), any cost increases will not be well received.

I believe people love dairy and we can do more through our cooperatives or brands to connect with more consumers about the taste and value of dairy in a good diet. We can also bring more innovation to market, like grass-fed milk, lactose-free, ultra-filter, or additional fortifications and packaging designs that appeal to more people. But if pool obligations increase, it will undermine those type of investments.

Thank you for the opportunity to testify, and I am open to any questions from USDA.

MR. ENGLISH: I, on behalf of the Milk Innovation Group, thank you very much for your testimony.

And the witness is now available for cross-examination, your Honor.

THE COURT: Cross-examination for this witness?

Mr. Miltner.

CROSS-EXAMINATION

BY MR. MILTNER

Q. Ms. Companga, my name is Ryan Miltner. I represent Select Milk Producers. Thank you for testifying today.

A. You're welcome.

Q. I had a couple of questions about -- about your statement.

A. Sure.
Q. Organic Valley is a member of a group here called the Milk Innovation Group.
You are aware of that?
A. Yeah.
Q. Okay. So you have a statement in here that says, "We can bring more innovation to the market," and then you list a bunch of different milks. One of these is additional fortifications to appeal to more people.
Can you explain what you mean by "additional fortifications"?
A. Sure. So first off, if there's any more products that are going to be introduced to the market, that is something that Organic Valley would want to speak for on my behalf. But also, as far as fortifications go, you can see products on the market that have higher protein levels, for example, versus the baseline protein. So I would use that as an example. But I'm sure there's other -- there is other ideas on the board that I can't speak of.
Q. And I imagine you have been focusing your time the last three weeks on running your farm and not listening to this hearing; is that right?
A. Correct.
Q. Okay. So I think there were other people, other members of MIG who testified earlier in the hearing that the consumers don't necessarily see a value in additional fortifications of milk.

Would you disagree with their statements?
A. Hmm. Well, I'm not sure.
Q. Okay. And since you didn't hear, perhaps that wasn't the fairest question to ask, but I did want to know if you had an opinion.
So, again, you focus on farming, and that takes up a lot of time. You said you are not an expert on the Federal Orders, which I appreciate. I have got another client who is an OV member who, same thing, does a great job farming, doesn't follow the order language.
But my question for you is, are you aware that the Federal Orders don't regulate dairy farmers, they only regulate the handlers of milk?
A. Correct.
Q. And so when Organic Valley has to make a pool payment, it's not Organic Valley as a producer that's making that payment, it is Organic Valley, the bottler, that's making the payment?
A. Correct.
Q. Okay. And my understanding is that most organic farmers have a contract that pays them pretty well a fixed price for a set period of time.
Is that -- is that how you get paid by Organic Valley as well? And I don't need to know the number. I don't want to know the number.
A. Yes. Yes, we have a stable price.
Q. Okay. Great.
MR. MILTNER: Thank you very much for your

answers.
THE WITNESS: You're welcome.
THE COURT: Further questions for this witness?
AMS.

CROSS-EXAMINATION

BY MS. TAYLOR:
Q. Good morning. This is Erin Taylor with USDA. Thank you for joining us --
A. Good morning.
Q. -- and testifying today.
A. You're welcome.
Q. Just a couple questions. You answered a lot of the ones I typically ask producers.
In response to Mr. Miltner you did talk about how you have a fixed price contract with Organic Valley.
How often do you all go through that contract renewal process?
A. That is a good question. So my husband and I, we farm jointly with my parents at two locations, and that is something that my parents were the last ones to sign on -- off of. So that is not something I can answer for my parents.
Q. Okay. Thank you.
In regards to your farm, you said I think most of your milk goes to fluid and also organic yogurt production, I believe.
A. Yes.
Q. About how far do you -- does your milk go to find

a home, find a plant?
A. Not far. There's a plant that's located in Vermont on the eastern side of New York, and then there's the Stonyfield plant in Londonderry, New Hampshire.
Q. Okay. You spoke in your statement about other OV members in the area, around 600 in the ten-state Northeast region. Around you in your area, you have I think you said two hundred -- a head of 250 -- 230, excuse me.
Can you just talk about if the -- your fellow organic farmers in that area are of similar size or are you larger for the region or smaller for the region?
A. Sure. So we're milking, yes, we have 230 mature head. And I would say for our region, for organic producers, we're on the larger side. With that being said, for a cooperative, we are -- we're still on the larger side. Our average farm, I believe, is around 75 cows.
Q. Okay. And then can you speak to what you have seen in your region, maybe in the past five years? Have you seen the organic market increase, you know, the number of organic farms increase or remain the same --
A. Sure.
Q. -- or decline?
A. Our membership has stayed about the same.
Q. Stayed about the same.
Have you seen numbers -- maybe your average herd size grow, or no, that's pretty stable too?
A. Also stable. It has not grown much. And that's

very much due to the fact that we have a higher premium price for our milk. It allows us to stay at a smaller herd size and still be financially stable.

Q. Okay. I don't know if you can answer this question, but I'll -- so if you can't, that's totally understandable. But for your co-op, can you indicate maybe if Organic Valley has been able to make any investments in helping to market your milk or things like that to -- for its organic producer members?

A. Can you clarify that question a little bit? Like you want to know if we're investing into marketing our product or --

Q. Well, does Organic Valley have its own plants?

A. Yes. Yes, we do.

Q. Okay. And so I'm just curious, as a producer member, I would imagine you would be familiar, you know, if they had to make plant investments or open up new plants, and if you could just speak to -- has any of that gone on for your cooperative? And I ask because we have had other co-op producers testify about investments that their cooperative has kind of made in the past, and I just wondered if you could kind of cover that for Organic Valley here on the record.

A. Yes. We have had to make investments into our plants as well in order to stay efficient but also because of other things.

Q. Okay.

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

THE WITNESS: You're welcome.

THE COURT: Redirect?

MR. ENGLISH: Good afternoon, again. Thank you for your testimony.

Your Honor, at this time, I would move admission of Exhibit 161.

THE COURT: Seeing no objection, Exhibit 161 is made a part of this hearing record.

(Thereafter, Exhibit Number 161 was received into evidence.)

THE COURT: Thank you, Ms. Companga.

MS. HANCOCK: Your Honor, I think our next farmer witness is Sean Cornelius.

THE COURT: I'll swear you in. Raise your right hand.

SEAN CORNELIUS,

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

THE COURT: Your witness.

MS. HANCOCK: I thought first I should note the judge has an open carton of local fresh fat free milk in front of him.

DIRECT EXAMINATION

BY MS. HANCOCK:

Q. Good afternoon, Mr. Cornelius. Thank you for being here with us today. Did you prepare a testimony that's been identified as DFA Exhibit 4?

A. Yes.
MS. HANCOCK: Your Honor, I believe that we're up to 162, if we could mark this exhibit?
THE COURT: DFA-4 is marked for identification as Exhibit 162.
(Thereafter, Exhibit Number 162 was marked for identification.)
MS. HANCOCK: Thank you, Mr. Cornelius.
I don't remember, your Honor, are we having them spell their name and address as well? I don't know that we did that with the last one. Okay.
BY MS. HANCOCK:
Q. Mr. Cornelius, could you state and spell your name and provide your business mailing address for the record?
A. Certainly. My name is Sean Cornelius. That is S-E-A-N, C-O-R-N-E-L-I-U-S. And it's representing Dairy Farmers of America. My address is 1405 North 98th Street, Kansas City, Kansas 66111.
Q. Thank you.
And would you proceed with providing us your testimony as we have identified it as Exhibit 162?
A. Certainly. Thank you.
Good morning from Kansas City. My name is Sean Cornelius. I am a dairy farmer from Hamilton, Missouri and farm in partnership with one of my brothers and my parents. Together, we typically milk 100 cows and farm around 1200 acres. We currently have four generations living on the farm and are proud to be farmer-owners of

Dairy Farmers of America.

I currently have the opportunity to serve on the Central Area Council of DFA, preside as Secretary of Missouri Dairy, and am President of Caldwell County Farm Bureau. I also am a partner in Best Axis dairy consulting and provide dairy nutrition services in the United States and Australia.

I am here today on behalf of DFA to support National Milk Producers Federation proposals to amend Federal Milk Marketing Orders, including reverting to Class I mover back to the "higher-of" Class III and Class IV, a moderate update to Make Allowances, improving the Class I differentials, and update the component factors.

In regards to returning to the higher-of:

During the 2018 Farm Bill, the dairy industry came together in an attempt to support Class I processors to back the change to the Class I skim formula from the higher-of Class III and Class IV to an average-of Class III and Class IV, plus $0.74 per hundredweight. At the time, the market projected the impact to milk prices would either be net neutral or net positive to milk prices. However, over four years later, we know that unfortunately that is not the case.

According to NMPF, from July through December of 2020, dairy farmers Federal Milk Marketing Order revenue was reduced by $753.8 million due to the "average-of-plus" instead of "higher-of." We are thankful to the Secretary for the two pandemic market volatility assistance program payments to help compensate for that loss. However, this support came much delayed and woefully undervalued for the total revenue losses from the marketplace, and certainly did not make dairy farmers whole.

The disparity between the higher-of and average-of is often blamed on the COVID-19 pandemic. However, since January '21 and through July of '23, the average-of-plus was less than its higher-of counterpart in 18 of 31 months. This resulted in a revenue loss of $226.5 million. About $222 million of the loss occurred since August of 2022, or over the last 12 months.

Charts 1 and 2 below will help show the estimated market loss, and most importantly, the disparity between the two Class I mover scenarios over the past several years.

The simple average-of differences over the last 12 months is $0.56 per hundredweight. At 30% utilization, it has reduced blend price by about $0.17 per hundredweight. Dairy farmers have always operated on extremely tight margins but are currently facing especially struggling times. This is real money in dairy farmer pockets.

For my farm, our market averages between 80 and 85% Class I utilization. This means our contribution to pay price through this timeframe was very negatively impacted by this change.

Dairy producers originally supported the change to the average-of in light of supporting Class I processors' ability to hedge. However, it is my understanding that the significant majority of Class I milk is not hedged. I don't know the amount that actually is hedged, but I believe it to be a low volume.

The Agriculture Marketing Act of 1937 set up the class system to ensure an adequate supply of fresh milk for our country, and in my opinion, it clearly contends Class I milk to be the highest price of the four classes. The pandemic created the situation where Class III milk greatly outpaced Class IV and skewed the outcome of the current formula to bring Class I pay prices that were outstripped by Class III milk. As we saw from the charts above, Class III and Class IV continually fail to meet expectations of moving together, even as COVID-19 is behind us.

As it is the intention of enabling legislation that Class I milk be the highest return to the farm and it has been made clear that there is a major flaw in the current formula, it is time to return to the higher-of Class III and IV for determining the Class I mover.

In regards to a moderate increase in Make Allowances and updating Class I differentials:

For the Class I differential, I believe that this requested change and the Make Allowance change are actually very closely related. We all know that costs have greatly increased across all facets of goods and services. Labor costs on our farm has increased by 20%

since 2020. The cost of raising our heifers has increased nearly 30% in the same timeframe. Transportation costs, we all know, seem to be a moving target.

As I fueled up my car today on the way here, gas prices had increased $0.20 in the last 48 hours.

Like the Make Allowance, the differential has not been changed for too long and needs a system in place to make timely adjustments. It is obvious that waiting 20 years and needing a hearing to tune up the influence of everyday costs is an outdated way of thinking. The National Milk proposal on changing the differential will more closely reflect the reality of moving milk to deficit markets today. Currently, dairy farmers are left covering these increased costs to market.

As a dairy farmer, I really struggle with any increase to Make Allowance as I know it's a direct cost to my pay price. I also understand that all facets of the dairy industry must work together to get our products to the consumers. The National Milk package of proposals aims to create balance and address multiple needed updates to class pricing. Any small change in the Make Allowance greatly impacts my pay price. I support allowing USDA the authority and funding to conduct audited plant surveys and get accurate costs for making those estimations.

Knowing those two costs -- true costs are integral to making adequate adjustments to the Make Allowance. Also, the true final cost to dairy farmers must be taken into account. Processors need to be fairly adjusted for the cost of manufacturing, but not solely at the cost of dairy farmer milk checks.

Lastly, in regards to updating component factors for skim milk:

For this discussion on updating component factors, I take off my dairy farmer hat and speak as a dairy nutritionist. When I started balancing diets in the late 1980s, we simply balanced for the amount of protein in the diet. Many changes have taken place since then, as we look at fiber, amino acids, carbohydrates, fatty-acids, vitamins, and minerals. These changes to ration balancing, along with continued advances in management practice, will result in ever-improving cow comfort and propel dairy cow performance.

As cows become more productive and efficient, it seems that solids content in milk and, more importantly, total solids production will continue to increase. Not long ago, six pounds of solids per cow per day was an admirable goal. There are herds today that are routinely producing much higher solids amounts. They are likely an excellent predictor of where cow output is headed. Simply stated, a hundredweight of milk today isn't the same hundredweight that it used to be. Unlike the Make Allowance request, updating component factors is straightforward.

I wish to thank the Secretary for the opportunity to testify today in support of the National Milk Producers package of proposals. The success of my family farm today and for generations to come is dependent on the outcome of this hearing.

I am happy to answer any questions.

MS. HANCOCK: Your Honor, at this time we would make Mr. Cornelius available for cross-examination.

THE COURT: Yes. Any questions for this witness? Other than AMS?

Seeing none, you are up AMS.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good afternoon.

A. Hello.

Q. This is Erin Taylor with USDA. Thank you so much for joining us virtually to testify today.

A. I appreciate the opportunity to be here, and I thank you.

Q. You mentioned that on your farm you typically milk a hundred cows and farm around 1200 acres. Part of our job, our duty to get on to the record is information on small businesses so we can look at the impact that any decisions make on them, and for dairy farmers that definition from the Small Business Administration is farms that make $3.75 million in gross revenue per year.

Would your farm qualify as a Small Business under that definition?

A. We do qualify as a Small Business, yes.

Q. Okay. And you mentioned you are in Missouri.

Is your milk pooled on the Central order?

A. Yes, it is.

Q. When it -- generally -- well, there's a lot of talk -- you have some talk in here on the Make Allowances and moderate increases, and we have been talking about that particular item a lot this week. I was wondering if you could give us some information on how you have seen your cooperative dealing with the current Make Allowance levels that they contend are not -- are too low to reflect actual manufacturing costs and how has that impacted you as a cooperative member.

A. Well, I'm very proud to be a Dairy Farmers of America farmer owner. And my marketing arrangement with them, the milk truck comes every other day, and I get a good milk check twice a month, and I let them handle that piece of the puzzle. I don't believe I can speak intelligently to that question.

Q. Okay. Thank you.

You had a line in here on the back page, on page 4 of your statement, about the National Milk proposal -- and this is on the differential aspect -- and I assume when you say "differential," you mean the Class I differentials --

A. That is correct.

Q. -- "will more closely reflect the realities of moving milk to deficit markets today. Currently dairy farmers are left covering the increased costs to market."

Just wondering if you could talk about that a little bit and how that has impacted you.

A. In very broad understanding, I have got -- I know what my milk hauling costs are and understand that getting milk to those markets is something that comes off the top for milk -- dairy farmers' milk.

Q. And have those increased? Have you seen those increase?

A. Yes.

Q. And as I think you indicated in your statement, it looks like 80 to 85% of your milk you say does go to, I assume, a fluid bottling plant?

A. That's correct. And, yes, I requested that information from my cooperative staff, who give me that number.

Q. Okay. My last question, we have had a lot of discussion at this hearing so far on risk management and the impact that any changes to the regulated prices could have on risk management positions that dairy farmers have or their ability to use current risk management tools.

Do you use any risk management tools offered through USDA or through your cooperative?

A. Our farm does not use any hedging practices or risk management other than the Dairy Margin Coverage program.

Q. Okay. Thank you very much.

MS. TAYLOR: That's all we have.

THE WITNESS: Thank you, Erin.

THE COURT: Anyone else?

Redirect.

MS. HANCOCK: Thank you for your time today, Mr. Cornelius. We have nothing further for you.

Your Honor, I would move to admit Exhibit 162.

THE COURT: Yes. This witness' statement is made a part of the record, Exhibit 162.

(Thereafter, Exhibit Number 162 was received into evidence.)

THE COURT: Thank you, sir. Appreciate you coming in.

THE WITNESS: Thank you, all. Have a good day.

MS. HANCOCK: Your Honor, the next dairy farmer witness that we have is Evan Hillan.

MS. TAYLOR: Ms. Hancock, if I could for one second do a quick housekeeping item to our virtual listeners.

We are -- we do have staff reaching out to everyone who have signed up today to make sure they are ready to go, and we have been unable to get in touch with Matt Hoff. And I think he is online, but if you are listening, and you could check your e-mail, I think they have sent you an e-mail. I just wanted to deliver that message. Thank you.

THE COURT: Raise your right hand.

EVAN HILLAN,

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

THE COURT: Your witness, Ms. Hancock.

MS. HANCOCK: Thank you.

DIRECT EXAMINATION
BY MS. HANCOCK:
Q. Good afternoon, Mr. Hillan. Would you please state and spell your name for our record?
A. Evan Hillan, E-V-A-N, H-I-L-L-A-N.
Q. And what is your business mailing address?
A. I'm testifying on behalf of Land O'Lakes as a member. It's 4001 Lexington Avenue North, Arden Hills, Minnesota, zip code 55126.
Q. And, Mr. Hillan, did you prepare testimony that we have identified as Exhibit NMPF-67?
A. Correct.
MS. HANCOCK: And, your Honor, I believe that we're up to Exhibit 163, if we could mark this for identification?
THE COURT: Yes. Identified exhibit is marked 163.
(Thereafter, Exhibit Number 163 was marked for identification.)
MS. HANCOCK: Thank you.
BY MS. HANCOCK:
Q. Mr. Hillan, would you like to proceed with providing us with your testimony?
A. Thank you.
Thank you for the opportunity to testify before you today. My name is Evan Hillan, and I'm a fourth-generation dairy farmer who farms in partnership with my parents in Ladysmith, Wisconsin. We milk 500

Holsteins and raise all our youngstock onsite. We also farm 1600 acres of alfalfa, corn, winter rye, and winter wheat.

My milk is pooled on the Upper Midwest Federal Milk Marketing Order number 30.

I have served on several national boards including Dairy Management, Inc., the National Dairy Board, and am currently serving as a director of the Land O'Lakes board. Locally, I chair the county's dairy and beef promotions board and am vice chair of the farmer-led watershed group. As a member owner of Land O'Lakes I support all five proposals put forth by NMPF. Today, I am testifying today in support of Proposal 3: Surveyed Commodity Products (elimination of barrel prices from the Class III protein price formula).

As a producer, I support the National Milk Producers Federation's proposal to eliminate barrel cheddar cheese from the Class III protein price formula listed in the notice of hearing as Proposal Number 3. As Christian Edmiston, vice president of Procurement at Land O'Lakes stated in his testimony, barrel cheddar is overrepresented in the National Dairy Products Sales Report compared to how most cheese is sold in the U.S. Block cheddar is produced more than barrel cheddar, and most mozzarella is priced off of the block cheddar market as well.

Additionally, the original intent of including the barrel cheddar cheese in the Class III protein formula and adjusting the barrel cheddar price higher by $0.03 was to increase the volume represented in NDPSR. However, when the block cheddar price exceeds the barrel cheddar price by more than $0.03, there are unintended consequences.

One unintended consequence is a lower milk price to producers. As stated by Darin Hanson, senior vice president of supply chain and milk management at Foremost Farms, this has cost producers well over a billion dollars in lost revenue since 2017. When barrel cheddar prices fall well below block cheddar prices, it reduces the Class III price, which decreases the milk checks that farms like mine rely on to run our businesses.

Another unintended consequence is compressed margins for barrel cheddar manufacturers. Often, producers feel the financial impact of these tighter margins either in the form of cooperative-owned barrel cheddar plants that do not provide adequate returns or lower milk prices paid by manufacturers outside the FMMOs. As a member-owner of Land O'Lakes, I have invested in plants through my cooperative over time, and I understand the need for those investments to provide returns.

Neither of these unintended consequences was apparent until the last several years, when market conditions changed. Removal of barrel cheddar from the Class III protein price calculation would resolve these issues, and for that reason, I am supportive of the National Milk Producers Federation Proposal Number 3.

Producer margins have become significantly compressed in the first half of 2023 and may be more compressed in the second half of 2023, into 2024. Class III and Class IV prices have averaged $5.47 and $6.08 per hundredweight lower through June compared to same six-month period in 2022. That have translated into major decreases in the Federal Milk Marketing Order uniform prices.

On my farm, our milk price has decreased significantly since June 2022. For example, the Federal Order 30 blend price in June 2022 was $24.63 compared to the blend price in June of 2023 of $15.27. This represents a decrease of $9.36 per hundredweight in 12 months and represents a decrease of over 38% over 12 months.

USDA projects the 2024 U.S. All-Milk price will drop to $19.10 per hundredweight. That represents a decrease of $6.24 from the 2022 All-Milk price of $25.34 representing a decrease of 25%. (USDA World Agricultural Supply and Demand Estimates, July 12, 2023) This drastic drop in milk price, without a similar decrease in other milk production costs, has narrowed margins on many dairy farms to the point of being below their cost of production.

For the reasons I have outlined in my testimony, I strongly urge the USDA to accept and implement the five proposals put forth by NMPF.

Thank you again for the opportunity to testify today.

MS. HANCOCK: Thank you, Mr. Hillan. I appreciate that. I also wanted to let you know that Christian Edmiston has a talking fast moment as well, and so I think that there might be something in the Land O'Lakes milk.

At this time, your Honor, we would offer Mr. Hillan up for cross-examination.

THE COURT: Yes. Questions for this witness?

Dr. Cryan.

CROSS-EXAMINATION

BY DR. CRYAN:

Q. Good afternoon. I'm Roger Cryan with the American Farm Bureau Federation.

Hello, Mr. Hillan. How are you?

A. Hello. Good. How are you?

Q. Very well.

I understand your family is very active in the Farm Bureau.

A. Yes. We have been.

Q. I appreciate that.

A. Actually I think my father a couple Federal Order hearings ago actually was part of it.

Q. That's what I understand. And he was county president --

A. Correct.

Q. -- and on the state dairy committee?

A. Yes.

Q. Would you agree that negative PPDs and depooling are kind of the biggest problem we have right now in

Federal Orders? I think that follows from your testimony, but I just wanted to make sure I understood that correctly.
A. So if the question is, is do you believe that negative PPDs is --
Q. Yeah, and the result --
A. -- unexpected consequences and depooling.
Q. Yes. And the depooling resulting from the price misalignments, not necessarily that there's a problem when co-ops make that choice to depool. They are responding to the system as it is.
A. Correct.
Q. But the negative PPDs and the price misalignments that lead to depooling, is that -- are those pretty fundamental problems in the system right now?
A. You know, I'm not -- I haven't studied that part of the issue as well, so I can't give you a very detailed answer to that. I can give you part of my opinion, which is to say, you know, I think that is part of a -- it's part of the problem, of not having the Federal Milk Marketing Orders revamped for the last, you know, was it 2006, 2008. I think it's just a causal of what happens -- what's happened for the last, you know, almost 20 years now.
Q. Very good.
DR. CRYAN: All right. Well, thank you.
THE COURT: Questions from anyone besides AMS?
Seeing none, USDA AMS' turn.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good afternoon.

A. Good afternoon.

Q. Oh, you dropped from the screen -- there we go. Okay. Now we can see you here.

This is Erin Taylor with USDA. Thank you so much for joining us virtually to testify today.

A. Well, thank you for the opportunity.

Q. You mention your farm, you milk 500 Holsteins. And I will ask you the same question I have asked of many producers, if that would meet the Small Business Administration -- or if your farm would meet that definition of a Small Business, which is $3.75 million in gross revenue a year on a whole farm basis?

A. No, we would not make that requirement.

Q. Okay. You talked, you know, in your statement about the impact that -- well, you talked about the barrel impact that that's had on the Class III price and consequently on the prices that you have received in your milk check, and also feature kind of price forecasts and how that could impact you.

I was wondering if you could let us know if you, because of these risks, you utilize any risk management tools, either through your cooperative or through USDA, to help you manage these risks.

A. Yes, we do use Dairy Margin Coverage and Dairy Revenue Protection as well.

Q. And when you use DRP, I'm curious to know if you're willing to elaborate a little bit just on when you look out to do contracts, about how far out do you like to lock in prices?

A. Currently we've kind of switched our strategy. We usually now just do the next quarter. It gives us -- it minimizes the amount of investment we have to make as well as getting a pretty close approximation of what our revenue is going to be. And so we have actually had -- that strategy has helped us the most. We used to do about five quarters out, but that did not seem to provide us with -- with the same amount of protection as doing -- buying it the last day before the next quarter.

Q. Okay. Thank you so much.

In your farm in Wisconsin, I was wondering if you could speak to other farms in your region and kind of maybe what you have observed out there, if you have -- because of the lower prices and lower margins you spoke of, if you have seen consolidation or farms exiting the business, and just kind of talk about what you see out there in Wisconsin.

A. Yes. It's definitely starting to take an effect. You know, you are hearing anecdotal evidence from feed mills that people are starting to get behind on their pay -- on their bills. I have seen, you know, a lot of our producers -- you know, as a board member, you know, you are watching the numbers overall in the U.S., and it's been a steady -- a pretty steady decline, and farm members, not just here in Wisconsin, but nationally as well. But the milk is still there, so, you know, given that anecdotal evidence, just continuing consolidation overall.

And kind of backing this up, you know, when my parents first started farming, our township, we used to have 25 dairy farms. Now we're the only one. And, you know, we're probably producing just as much milk as those 25 dairy farms did about 30 years ago. And so I have been seeing, you know, definitely in the last year or two, you're hearing a lot more people putting more, going deeper into their credit lines. And you know, some of them, you know, there's a good chunk of people out here in their 60s and looking at beef prices and, you know, they -- everything is paid for, and prices aren't really good if you are a dairy farmer. And, you know, they are probably making a decision right now of soon to maybe exit the business.

Q. Okay. Thank you.

It looks like -- well, you -- you're a Land O'Lakes member up there in Wisconsin, and you talked a little bit about you have invested through your co-op in plants, and you know that there's a need for other investments in the future to provide returns.

I was wondering if you could kind of speak as a producer member about the investment decisions your cooperative has made and how that's impacted you and how maybe their -- they have -- the co-op is dealing with lower manufacturing allowances, specifically, and how you have seen that impacting you as a producer member.

A. Uh-huh. You know, it's starting to -- at Land O'Lakes we try to provide value for all our members' milk and manufacture -- we have made several investments. Here in Wisconsin we have just invested -- finished investing into our Kiel facility. But now with the lower Make Allowances, it has been -- we can do routine maintenance, but I feel that, you know, just speaking as a member, that, you know, the ability for co-ops in general to make those major investments to provide value to their members' milk is being hampered by not having the Make Allowance adjusted overall.

Q. Okay. Thank you so much for your testimony today.

MS. TAYLOR: That's it from AMS.

THE COURT: Anything further? Questions other than redirect?

Seeing none, redirect.

MS. HANCOCK: Thank you, your Honor. We would move to admit Exhibit 163.

THE COURT: Yes. Mr. Hillan's testimony, Exhibit 163, is entered into the record of this proceeding.

(Thereafter, Exhibit Number 163 was received into evidence.)

THE COURT: Thank you for being here.

MS. HANCOCK: Thank you for your time, Mr. Hillan.

THE WITNESS: Thank you.

MS. HANCOCK: Your Honor, at this time I believe our next witness, dairy farmer witness, is Blake Gendebien.
THE COURT: Raise your right hand.
BLAKE GENDEBIEN,
Being first duly sworn, was examined and testified as follows:
THE COURT: Your witness.
MS. HANCOCK: Thank you.
DIRECT EXAMINATION
BY MS. HANCOCK:
Q. Would you mind stating and spelling your name for the record, please?
A. Yes. Blake Gendebien, B-L-A-K-E, G-E-N-D-E-B-I-E-N.
Q. And can you tell us your business mailing address for our record as well?
A. Yes. It is 40 Shattuck Road, S-H-A-T-T-U-C-K, Andover, Massachusetts, 01810.
Q. Thank you.
Mr. Gendebien, did you prepare Exhibit NMPF-82 as your testimony for today?
A. Yes.
MS. HANCOCK: Your Honor, if we could mark for identification purposes, Exhibit 164?
THE COURT: Yes. So marked.
(Thereafter, Exhibit Number 164 was marked for identification.)

MS. HANCOCK: Thank you.
BY MS. HANCOCK:
Q. Mr. Gendebien, would you mind proceeding with your testimony?
A. Yes, thank you.

Thank you for the opportunity to testify. My name is Blake Gendebien. My family and I own and operate Twin Mill Farms in Northern New York. We are a second-generation dairy that started in 1972 in Lisbon, New York, in the beautiful St. Lawrence Valley. My wife and I milk about 500 cows and farm about 1200 acres with my mother and father and my three boys that are 16, 17, and 19. We employ up to 13 people.

I am a graduate of Penn State with a degree in Ag-Systems Management and a minor in Business. After college, I worked for AGCO Corporation, an agricultural machinery company, and had the wonderful opportunity to work in Germany, the Midwest, the Southeast, and Northeastern Canada.

In 2003, I returned to my family's farm and started expanding the operation from 50 to 500 cows. That expansion took 15 years of grueling hard work. I currently serve as Vice Chair of Agri-Mark Dairy Cooperative. I have been on the cooperative's Board of Directors for more than ten years and have held a variety of leadership positions.

Agri-Mark, a dairy cooperative in the Northeast, is owned and operated by over 550 dairy farm families across New England and New York. Our members are pooled in Federal Order 1. The cooperative has been marketing milk for dairy farmers since 1916 and has headquarters in Andover, Massachusetts, and Waitsfield, Vermont. Those farm families supply more than 3.2 billion pounds of farm-fresh milk that we use to make our award-winning Cabot branded cheeses, dairy products, and ingredients.

Agri-Mark operates three cheese manufacturing facilities located in Cabot, Vermont; Middlebury, Vermont; and Chateaugay, New York. These are pooled supply plants. The Cooperative manufactures and markets valuable whey proteins around the world produced at the Middlebury, Vermont facility. Agri-Mark also operates a butter powder facility in West Springfield, Massachusetts that is a non-pooled supply plant. Additionally, Agri-Mark supplies fresh fluid into the region's largest dairy processors.

I'm testifying today on behalf of Agri-Mark and our 550 dairy farm families. Agri-Mark is in full support of the National Milk Producers Federation proposal for modernization of the Federal Milk Marketing Orders. Today I will speak specifically in support of NMPF Proposal 5, update the Class I differential pricing surface throughout the United States.

The FMMO Class I pricing surface map was last updated in the 2000 Federal Reform process 23 years ago. Since then the industry has evolved significantly. All aspects of FMMOs must be reflective of today's realities, and the pricing surface map is no exception. The current differentials are reminiscent of a dairy landscape far different in terms of number and location of farms, processors, and consumers. Additionally, the cost of transporting raw milk has increased significantly. The pricing surface map must be updated to reflect the changes of the last two decades and today's marketplace.

As expert NMPF witnesses have testified, NMPF's Proposal 5 is based on an extensive analysis that utilized a combination of science and art. Modeling results published by the University of Wisconsin were used as the science and were the basis of the recommended values. The art came in with the use of cooperative experts in the field of milk movement.

These experts and their experience were asked to determine if the model results were consistent with actual milk movements and historical relationships. The model results were adopted as recommendations if the adoption would help to promote orderly milk marketing given today's and future plant locations. On limited occasions, the experts identified locations where adoption of the model output would not promote orderly marketing. In these instances, alternative differentials were proposed that differed from the model, but better incentivized milk movement.

In the Northeast region, the model resulted in much higher values at nearly all locations, compared to current Class I differentials. And as an Agri-Mark director with knowledge of our cooperative milk movements and cost of milk movement, these results don't surprise me at all. I am also not surprised by some of the locations where National Milk proposals differ from the model, specifically where I'm from in the state of New York.

Since 2000, in the states that Agri-Mark operates in, New England and New York, there's been a shift in milk production out of New England and into New York, notably, St. Lawrence County, where I'm from, and the neighboring Jefferson County. We have witnessed a significant increase in milk product -- milk supply since 2000.

This milk must move east to find a home. However, the existing Class I pricing surface map is not conducive to this movement. The Adirondack Mountains create a physical barrier that cannot be overcome by milk haulers. Haulers must travel extensive miles along the northern New York border, all within the same zone, practically from Plattsburgh to Syracuse, before they can move east, coming at a significant cost that must be dealt with and is dealt with by the farmers.

NMPF's Proposal 5 acknowledges this cost by setting the differentials at these sources -- at these source counties lower than the model results. In doing so, the adoption of the proposals will incentivize appropriate milk movements to Northeastern New York and Northern and Central Vermont.

In summary, we value the critical role of the FMMOs, but also recognize that the dairy industry has evolved significantly over the more than two decades since

Federal Order Reform. Amendments, including updating the Class I pricing surface, are needed to modernize FMMOs and resolve the challenges faced by today's dairy industry experts -- participants, excuse me. The time and effort that National Milk and its cooperatives have devoted over the last two years, and USDA's granting of this hearing, are both an acknowledgement of this need.

Thank you so much for the opportunity to testify, and thank you for all of your hard work.

MS. HANCOCK: Thank you, Mr. Gendebien.

Your Honor, we would make him available for cross-examination at this time.

THE COURT: Who has questions for this witness beside USDA AMS?

Seeing none, AMS, your witness.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good afternoon.

A. Good afternoon.

Q. Thank you for joining us virtually to testify today. This is Erin Taylor with USDA.

A. Hi, Erin.

Q. You have a farm, you talk about your farm, you milk 500 cows. I don't know if you have listened earlier. I'm asking other producers if their farm meets that Small Business definition. Would yours?

A. We -- last year, we exceeded that because of commodity prices. This year, it looks like we'll fall

back into it.
Q. Okay.
A. Milk prices was -- has an influence, obviously.
Q. Got it.
I was curious since you are on the board of Agri-Mark if you could give us just an overview of the profile of producer -- you know, Agri-Mark producers. Are they -- you know, average -- you know, where is the range of size, etcetera.
A. Okay. So when I started on the board, I believe it was 13 years ago, there were 1200 members, and we have -- we are now down to 550, and about 50 of those are Amish that milk about ten cows. So we have a segment of producers that milks around ten cows. We have our largest producers that are in the 3,000-cow range. And then we have about, I would say, 250 producers that make under 2 million pounds of milk, so they are in that 75-cow range. So we really do cover -- uniquely cover a pretty diverse group of farm sizes.
Q. Okay. Thank you.
In your statement you talk about -- and I'm going to stick to at least the first -- the differentials, which you are here to testify on --
A. Yeah.
Q. -- about how the current differentials are "reminiscent of a dairy landscape far different than now." And I was wondering if you could speak to the change.
A. Yeah. I'd really like to. So we have this big

zone from Plattsburgh down to approximately Syracuse. And it's -- it's unusual in the map. It's one -- it is one -- it's all the same. It kind of sticks out. It's on the western side of the Adirondack Park.

And in 2000, we had several Kraft manufacturing plants in the area. So I believe that zone was made to disincentivize milk to leave the area to keep those Kraft plants full. And when we had processing facilities in the area, it wasn't a problem.

But we do know that Kraft is not manufacturing as much as they used to. They co-pack a lot of their products. So those facilities left. And when they left, they gutted those facilities, and it was very difficult for anyone to come in and use them in order to force milk to their nonmilk plant. So it -- to disincentivize milk from bypassing milk to allow them for cheese for the Philadelphia cheese plant.

So we have -- things have completely changed. It's just -- it's kind of like the gentleman before that said nutrition has changed. In 23 years, the landscape has really changed.

And on top of that, St. Lawrence County, Jefferson County, we are wonderful places to make milk. Our -- our economy in these two counties is nearly driven by milk production. We still have great supply chain in the area. So the milk's not going to go anywhere. But we need to fix this Class I pricing surface. It is outdated.

Q. Okay. Thank you. I appreciate that.

I had a question about why you all saw that shift into those counties you mentioned?
A. Why there was a shift into those counties?
Q. Yeah, you talk about -- and you just mentioned that now, that production has shifted notably into St. Lawrence County and neighboring Jefferson County, and I was curious as to why. But I think you just spoke to that a little bit. I don't know if there's anything else you wanted to add.
A. I would say that -- I guess I'll double down on the fact that there is a lot of support for agriculture here. And the land is flat and healthy, and the weather is good for growing crops and supporting dairy. So you combine those things, and -- and the milk volume has grown.
Q. And on your farm, about how far does your milk have to travel then to find a plant?
A. Oh. It has to travel as far as our plant in Massachusetts, our balancing plant in Massachusetts, which is -- gosh, I don't know how many miles it is. Maybe 400 miles.
Q. Oh, wow. Okay.
Another question, just on your farm, is -- is do you all use any type of risk management tools to help you manage all this risk?
A. Yes, I do. We have used DMC since it was MILC, and we have never not used it. And as soon as DRP was created for us as a risk management tool, I did start

using it. And it's very hard to avoid speculating. You just have to stay in.

And last year my premiums were very expensive, but since I booked out -- since I traditionally, unlike the previous testimony, I go -- I book out 12 months. And so thankfully -- I consistently book out 12 months or more. And thankfully, I did that last year, because it has been a real help to our business this year.

But that being said, this is a difficult topic for many dairy farmers who operate with their guts, and to use a risk management tool on milk has been a tough ask. They are busy working on their farms trying to figure out if they should harvest for silos today or harvest hay today, and that may be the day that the best opportunity to pull the trigger on a DRP insurance trend happens.

And so we're struggling to get many -- the majority of our co-op members to participate. We really are. So I would say I'm in the minority.

Q. Okay. Thank you I appreciate all that information.

And I know you are talking specifically in your written testimony about the Class I differential proposal. But I take it Agri-Mark supports the entire National Milk package of five proposals; is that correct?

A. Yes. That is correct.

Q. I did want to ask a couple questions. This week we have been talking about manufacturing allowances. And since you are on the board of Agri-Mark, maybe you can

speak a little bit about how the current manufacturing costs, as National Milk contends, are too low and how that's impacted your cooperative, what have you had to do to deal with that, and how that impacts you as the producer in your milk check.
A. Okay. I do not want to steal the thunder from another member from our -- of our cooperative that will be speaking about this. But, in general, this has reduced the lack -- the inability to update the Make Allowance has significantly reduced our milk checks on our farms. We have to -- we are the co-op. The farmers are the co-op. The co-op is owned by the farmers. We are in this together. So when there's a cost to bear, the farmers bear it.
Q. And does that extend to any investment decisions that the co-op makes?
A. Yes. We are continually investing to -- to reduce our make costs. We're trying. But it's -- it's been -- like the previous speaker, it's been very difficult, because the margins on farms are so tight, and it is tough to reinvest.
Q. I think we just had one last question. I'll go back to differentials. I apologize for the jumping around.
A. That's okay.
Q. You talk about how the Agri-Mark proposal has set the differentials in your source counties a little bit lower than the model results, but doing that will

incentivize milk movements to Northeastern New York and Northern and Central Vermont.
And for those of us not steeped in Northeast geography, I just wanted to expand on that a little bit.
A. Okay. So there is one ninety -- I hope I answer your question correctly. I'm sure there are little examples like this all around the country, but I can only speak to the one that I am kind of found uniquely in.
And there is a $0.95 zone that goes from all the way across the rooftop of New York. And I tried to explain a little while earlier kind of how that was created. It was -- it was done intentionally to disincentivize milk flow out of the area. And it cost our cooperative a lot of money.
So the farmers in that area, we have to -- we have to cover that cost. And it is -- we don't get it back out in our Boston plant. So it doesn't come back to us in the end. Where if the Class I surface was updated, we would be able to get that back in -- back out of the blend price, and it would incentivize milk to flow east to where more people are.
Q. Okay. Thank you. And I think that goes back to your discussion of those Kraft plants you said that were there at the time, and so --
A. Yeah.
Q. -- there was incentives --
A. That's correct.
Q. -- to keep the milk there.

A. That's right. And Agri-Mark was not -- we did not have a presence in Northern New York back in 2000, so that's another change. Agri-Mark -- many of the farmers in Northern New York are now Agri-Mark members, so that's a -- that's another shift in the dairy demographics of the Northeast.

Q. Okay. Thank you.

MS. TAYLOR: That's it from AMS. Appreciate your time.

THE WITNESS: Thank you very much.

THE COURT: Time for redirect?

I'm not seeing any other questions.

MS. HANCOCK: Your Honor, at this time we would move to admit Exhibit 164.

THE COURT: Yes. This witness' statement is made a part of the record as Exhibit 164.

(Thereafter, Exhibit Number 164 was received into evidence.)

THE COURT: Thank you, sir.

THE WITNESS: Thank you.

MS. HANCOCK: Thank you for your time today.

Our next witness is Matt Hoff.

It sounds like we're having a little connection issue. Do you want to try that one more time?

THE WITNESS: Good afternoon. Wish I could have been there --

MS. HANCOCK: Mr. Hoff, we're having a little bit of a connection issue. Do you want to call in instead of having your video on?

(Off-the-record.)

MS. TAYLOR: So given that, I think we're going to move to our next producer, which is Mr. Contente. So let's get him on the screen.

So we don't have a paper statement in front of you, but his testimony has been loaded online. His is under dairy farmer testimony down a ways, if everyone just wants to go on to the website where the exhibits are.

And we can -- there we go -- we will, on Monday, your Honor, have printed copies, so that you can get a printed copy, and we can enter that in the record. But I would ask if we could mark his statement or hold that number for him, the next exhibit number for his statement.

THE COURT: Yes. Does it have an identifier in the top right-hand corner?

MS. TAYLOR: Let's see.

It's marked as Contente DF online. It is not on the actual copy, but we will add it. If we can just hold the next number, and we'll get that piece cleared up.

THE COURT: Yes. We'll hold Exhibit 165 for this witness' statement, and we'll go on the record on Monday to make sure it's clear.

MS. TAYLOR: That will work.

So, Mr. Contente, do you have a phone on somewhere that you might also need to mute?

THE WITNESS: I don't think so.

THE COURT: Let's swear in the witness.

Please raise your right hand.

JOAQUIN CONTENTE,

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

THE COURT: Ready for your statement.

THE WITNESS: Thank you for having me here. My name is Joaquin Contente. I am the second generation son of Portuguese immigrants and a lifelong dairy producer from Hanford, California.

My daughter, Claudine, is actively involved in handling all the paperwork required to run a dairy in the state of California, as well as herd health and our calf operation. My son, J.T., oversees all the equipment and maintenance on the dairy, including ongoing irrigation duties.

Over the last decade, we have lost over 25 dairies within a five-mile radius of our dairy. These multigenerational dairies, many of them award-winning with high production, are gone forever. The number one cause that led to the closure of these dairies and so many others is the tremendous volatility in milk prices paid.

I serve on the board of the California Dairy Campaign, which was founded over 25 years ago and is a grassroots organization representing dairy farmers throughout California. CDC is a member organization of the California Farmers Union, a state chapter of the National Farmers Union, a farm organization representing more than 230,000 farmers and ranchers nationwide.

On March 1st, I was part of an effort in San Francisco at the National Farmers Union Annual Convention to pass a special order of business in support of adding high-moisture cheese like mozzarella to the pricing formulas. The NFU special order included opposition to an increase in the Make Allowance.

In addition, I serve as a board member of the Organization for Competitive Markets, which also supports the dairy priorities outlined in the NFU special order, including opposition to a Make Allowance increase and adding mozzarella in the Class III formula.

I and other dairy producers opposed the call for this hearing because it could lead to an increase in the Make Allowance. I am here representing not only myself but also many other producers who are reluctant to step up and speak out in this hearing in opposition to what is being said by milk handlers out of fear of retribution. As the industry consolidates and the number of milk handlers diminishes, this fear of speaking out has become more intense.

Now that a hearing is underway, we support changing the Class III pricing formula to reflect the value of the cheese market today more accurately. The Federal Orders calculate milk prices based on end product prices, and it is essential to include the largest cheese category, mozzarella, in the end product price calculation. The volume of mozzarella has now significantly exceeded that of cheddar, and the Class III price should be modified to reflect these market conditions.

According to the USDA Dairy Products 2022 Summary published in April this year, mozzarella production totaled 4,497,175,000 pounds, while cheddar totaled 3,963,741,000 pounds.

Total cheese production in 2022 totaled 14.1 billion pounds last year. Mozzarella has surpassed cheddar in total cheese production and should no longer be ignored in the Federal Order pricing formulas.

During the Federal Milk Marketing Order hearing in Virginia in 2000, I raised the issue of the importance of mozzarella to calculate the Class III price. During my testimony, I questioned a nationally recognized cheese expert about mozzarella, who confirmed then that mozzarella was being ignored in the Federal Order pricing system.

Although mozzarella now exceeds cheddar cheese production, no change has been made in Class III to reflect the higher value and higher volume mozzarella market. Since 2000, the demand for mozzarella cheese has grown dramatically.

Despite the higher production of mozzarella cheese and the growth in this cheese category that is expected to continue, Class III prices ignore this important and growing segment of the cheese market.

In July, the Statistical Uniform Price in California totaled $15.53 per hundredweight while the average cost of production in our state totals more than $23 per hundredweight, according to the latest USDA Economic Research Service Milk Cost of Production Estimates.

This past winter, it was extremely challenging to maintain reasonable costs for feeding the dairy herd, making it difficult to cover our costs. It was worse than the crisis of 2009 because all our costs were going up while the milk prices paid were going down dramatically, dropping more than 30%.

It is a classic example of the volatility that the dairy producers constantly face. Our milk check deductions are higher than ever, and the average mailbox or net price in July was in the $14 per hundredweight range based on standard component levels.

Multigenerational dairies are going out of business all around me due to chronically depressed milk prices that fail to cover costs. Dairy farmers want to get off the roller coaster of volatile and chronically depressed milk prices.

An increase in the Make Allowance, as called for in multiple proposals before this hearing, will worsen the crisis dairy farmers face. Many dairy farmers agree with our proposal to add mozzarella to the Class III and oppose increasing the Make Allowance.

As I have said before, with so few milk handlers, most dairy producers are not interested in speaking out publicly against a position taken by their milk handler, be it their cooperative or a propriety plant.

Milk handlers need to look further up the food chain to cover their costs, not carve out higher Make Allowances from dairy producers' milk checks. A proposal to update the Make Allowance more frequently is even more concerning.

The current voluntary unaudited manufacturing cost surveys relied on to determine Make Allowances represent a small fraction of the manufacturing plants nationwide. We oppose any attempt to increase the Make Allowance based on these unreliable cost studies.

In addition, the current make allowances include a return on investment. Dairy farmers have no similar guaranteed return on investment enjoyed by processing plants, and the ROI should be removed from the Make Allowance calculation.

Growing concentration affects all aspects of dairy pricing. It has undermined price discovery because fewer buyers and sellers are in the market today. California Dairy Campaign’s proposal to add mozzarella to the Class III pricing formula aims to improve overall dairy price transparency by expanding the USDA's mandatory price reporting system to add additional products like mozzarella.

Given the concentration and consolidation that exists, minimum prices paid by the Federal Milk Marketing Order system are critical to ensure dairy farmers are paid prices based on current market conditions. Retail prices follow commodity prices upward rapidly but fall back slowly and particularly when commodity prices decline. There is profitability further up the food chain, and dairy producers should not be required to pay more in Make Allowances to cover plant costs.

In conclusion, the Federal Milk Marketing Order system exists to protect dairy farmers from dairy processors. As changes to Federal Order pricing are considered during this hearing, it is essential to recognize the fundamental importance of Federal Order regulations to establish minimum prices paid to dairy producers.

We oppose any increase in the Make Allowance because it will further reduce milk prices paid to dairy farmers already being paid milk prices well below production costs. USDA must add mozzarella to the Class III pricing formula so that our end product pricing system reflects dairy prices sold today.

If we are going to use this system for price discovery, the largest category, mozzarella, should no longer be excluded. The end-product pricing formulas should reflect end-product prices in today’s market. Mozzarella is the largest segment of the cheese market, so it must be incorporated into the Class III end-product pricing formula.

I thank you for the opportunity to testify today.

THE COURT: Thank you, Mr. Contente.

Do we have questions for this witness?

DR. CRYAN: The folks here at USDA have asked if you would spell your name for the record, Mr. Contente.
THE WITNESS: No problem. J-O-A-Q-U-I-N, C-O-N-T-E-N-T-E.
THE COURT: I'm the judge, Mr. Contente. I fell down on the job here a little bit. We ask that you give us an address on the record, but not a personal residence, if you have a business address or a mailing address.
THE WITNESS: No problem. It's 7900 -- that would be 7-9-0-0 -- 15th -- that's 1-5 -- Avenue, and that is Hanford, H-A-N-F-O-R-D, California, 93230.
THE COURT: Very well.
And Dr. Cryan has some questions for you.

CROSS-EXAMINATION

BY DR. CRYAN:
Q. Yes. I'm Roger Cryan with the American Farm Bureau Federation.
Mr. Contente, thank you for participating in this process. I understand from your testimony -- I'm going to clarify this so I can ask you another question -- you -- you -- you oppose an increase in the Make Allowance partly on the basis of the fact that the data available is unaudited and voluntary; is that correct?
A. That's the way we understand it, correct.
Q. Yes, sir. Yes, sir. Thank you.
And does that reflect the sense of California Farmers Union and its members?
A. Oh, definitely.

Q. Very good.
And does that also reflect the sense of the National Farmers Union and its members?
A. Correct.
Q. Very good.
DR. CRYAN: That's it. Thank you very much.
THE WITNESS: You're welcome.

CROSS-EXAMINATION

BY MR. MILTNER:
Q. Good morning to you, Mr. Contente. I'm Ryan Miltner. I represent Select Milk Producers. It's been a while since we have talked. How are you doing?
A. Good. How are you?
Q. Good. Thank you.
Can we jump in the way-back machine for a little bit?
A. Let's do it.
Q. Okay. So back around 2000, plus or minus a year, you and CDC were part of a group called the Western States Dairy Producers Trade Association, correct?
A. Correct. Yes.
Q. Okay. And that Western States group, they put forth a bunch of proposals about Class III and IV milk pricing for a hearing similar to this, didn't they?
A. You know, that's been a while back. I know when I was there in Arlington in 2000 and testifying, I was there on behalf of the National Farmers Union. So I'm not exactly sure where this is taking us.

Q. Okay. I -- I was trying to get to the question, which maybe you have answered, I wasn't sure if when that Western States group developed its testimony and its proposals, if you worked with Jeff Vandenheuvel or Ben Yale or any of the others in that group on those proposals?

A. I believe that was predominantly done through California Dairy Campaign with the California Farmers Union and the National Farmers Union organization primarily. If there was some feedback to those other organizations, which there could have been, I'm not exactly sure if there was a lot of it at that time.

Q. Okay. Well, let me jump ahead then in my questions, and there's really just one area I wanted to ask you about. As far as the question of whether mozzarella should be added to the survey, I see that there are two parts to it, and I want to ask if you agree with me.

The first is there's a policy decision that has to be made as to whether that's a good idea or not, and then the second part is, how do we do it? Would you agree that those are at least two of the questions we need to answer?

A. No, you're totally right. But let me bring up another issue here, is, you know, there is some comments about the higher-of and how much that cost dairies products across the country, and I believe there's a figure out there that's close to a billion dollars or a little over 700 million or something like that.

For over a period of time of greater than a year, this mozzarella issue, if you understand the mozzarella formulas and the yield factors, it is costing dairy producers annually well over a billion dollars in my view and -- well over a billion. And that's a conservative number that I'm using.

So if you have situations where your milk price drops dramatically -- there was one of the participants earlier today said 38%, and I think I might have mentioned close to 30%, and that was a rounded number. Here we have this discrepancy that's been going on for a couple decades, and nobody's pointing the finger at it, nobody's talking about it, nobody wants to look at it.

In fact, when you start talking about mozzarella, everybody says, well, they don't really say anything because people would like to be a little bit quiet about mozzarella because they don't want to upset the mozzarella people. But that's too bad. We're in a system that requires for us to have price discovery based off of the uses of the milk. The highest use of milk for cheese is mozzarella. And we just turn the other way. Why?

Q. Well, let's assume that -- that we agree for right now that the policy decision is, yes, we should put mozzarella in there.

A. Okay.

Q. And now we have to tackle the how-do-we-do-it part.

A. Well, you know -- you know what my answer to that

is?
Q. I'd love to hear it.
A. It's really simple. We made it to the moon back in the late '60s, '69, I believe, July. And if you tell me that we can't figure this little equation out, we got something wrong.
Q. I'm not suggesting that we can't. I'm asking -- I would like to ask if you or CDC had a suggestion from which we can start. When Ms. McBride was here a couple weeks ago, she did not.
A. I believe she did have some reference to the protein pricing of mozzarella. But there was a lot more information that need to be collected, and I think that's kind of the roadblock that we have right now is we need to have that information collected by USDA.
Q. Great.
A. But go back -- go back to the necessity of this. Largest category, don't forget that, the largest category, probably close to 12% larger than cheddar, and yet no reference to it. And the yields are so high that these cheese makers are making product and they are not getting charged for that product. It is for free, off our backs.
MR. MILTNER: Thank you, Mr. Contente. I don't have any other questions for you.
THE WITNESS: Thank you.
THE COURT: Questions for this witness other than from AMS?
Seeing none, USDA AMS has some questions for you,

Mr. Contente.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good morning, I think on your side of the world. So good morning still.

A. You bet it is. Thank you.

Q. Thank you for joining us virtually to testify. I only just have a couple quick questions about your farm.

We've been asking producers if they meet the Small Business definition, because part of our mandate is to gather some of that information so we can determine how any change would impact small businesses. For a dairy farm, that is --

A. Yeah.

Q. -- $3.75 million in gross revenue a year.

A. Yeah. We're right on that borderline, one side or the other, you know, depending on price of milk as it goes.

Q. Okay.

A. It's right there on the borderline.

Q. And do you use utilize any risk management tools available to dairy producers?

A. Yeah, we -- we use the one that's been there for several years, the Dairy Margin Protection Program. And we have dabbled a little bit in some other insurance. But it takes a lot money to do all that, and the dairy picture in my world over here doesn't give us a lot of room to wiggle in that to category.

Q. Okay. Thank you very much.

MS. TAYLOR: That's the only questions from AMS.

THE WITNESS: You bet. Thank you.

THE COURT: Mr. Hill.

MR. HILL: Yes. I think this is a good time to take a quick ten-minute break, and then we can finish with the remaining two witnesses, producer witnesses, and finish with the cross-examination of Mr. John after that.

THE COURT: Okay. I think -- I think we will need a break. But no other questions for this witness, right?

Okay. Is there anything further you would like to say, Mr. Contente, in the nature of --

THE WITNESS: No, I just appreciate the opportunity to discuss this issue that we have been discussing. Thank you again.

THE COURT: We're grateful to have you here. Glad you made time for us.

Okay. With that, let's take a ten-minute break. Come back at 2:00.

MS. TAYLOR: And we have two producers still waiting to testify, Mr. Hoff and Mr. Peterson. If you just hang on, and we'll get back and get right to you, but we're going to give our court reporter a much needed break.

(Whereupon, a break was taken.)

THE COURT: Let's come to order. Ms. Taylor, I think you have a preliminary -- you have a roadmap of where we're going, unless you want to say something first, Ms. Hancock.

MS. HANCOCK: No.

MS. TAYLOR: Yes. Thank you, your Honor. The roadmap for the next hour. We do have a hard stop at 3 o'clock. We're going to finish with our final producers, Mr. Hoff and then Mr. Peterson, and then we'll bring Mr. John back up and finish his cross-examination. And that will probably be it for today. And then we will end for the week and start this back up again on Monday.

In the new room, thank you very much. We will not be in this room next week. We will be in the Eller Room, which is around the corner.

MS. HANCOCK: And I will tell what our witnesses are so that when we're done with Mr. John, we're done.

We will -- Mr. John is not going to be back next week, so we are hopefully going to finish him today. And it might not be in this order, we'll have to figure out some schedules. But we'll have Paul Bauer, but we know he's not going to be here until after 1 o'clock. Chris Wolf, Ed Gallagher, we have Karl Rasche, Catherine de Ronde, and then Travis Campsey. And then we also have one farmer, James, last name J-A-C-Q-U-I-E-R, goes by Cricket he.

THE COURT: Thank you, both of you.

MS. TAYLOR: To the USDA team -- oh, sorry, I didn't see you there.

MR. ROSENBAUM: I just want to point out, Dr. Stephenson is flying in to testify. He's the one who did the cost study, one for USDA, one for IDFA. And he needs to be done by Tuesday. So I just want to lay down that marker.

THE COURT: Okay. Is he flying in just for Tuesday or he's here Monday and Tuesday?

MR. ROSENBAUM: No, he would be here Monday, but I don't think we're going to get to him on Monday. But we have to make accommodations for him to be able to testify on Tuesday.

THE COURT: Folks. Let's take Dr. Stephenson into account.

MS. HANCOCK: Okay. I mean, some of our witnesses have actually still been waiting here this entire week and we've promised to get them on and off on Monday. And then we have some that we had plans for Monday that we need to get off on Tuesday. So it's going to be really tight, but we have had people waiting around for a week already that we need to get out.

MS. TAYLOR: And if I can, since Mr. -- Dr. Stephenson will be testifying some on a USDA-funded study, maybe I will try to reach out with him this weekend, just to try to figure out definite times and if that flight time can be adjusted. But I'll be glad, if that's okay, to reach out to him as well. We'll have a better roadmap Monday morning I think.

THE COURT: I appreciate the cooperation. This is hardship duty for all of us, and we certainly don't want to make it harder for the witnesses. They shouldn't have to suffer as much as others of us.

MS. HANCOCK: I think we're ready this time with Mr. Hoff if his audio is working. We can move to him.

MS. TAYLOR: Mr. Hoff, can you turn your video on for us, see if it works.

THE COURT: Hello, Mr. Hoff.

THE WITNESS: Can you hear me this time.

THE COURT: Sounds great, sir.

THE WITNESS: Sorry about that. Too much technology.

THE COURT: It is -- I'm surprised there haven't been more problems, but we're all doing our best with it. And thank you for your patience on this.

Please raise your right hand.

MATT HOFF,

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

THE COURT: Your witness.

MS. HANCOCK: Thank you.

DIRECT EXAMINATION

BY MS. HANCOCK:

Q. Good afternoon, Mr. Hoff. Would you mind stating and spelling your name for the record, please?

A. My name is Matt, M-A-T-T, Hoff, H-O-F-F.

Q. And what is your business mailing address?

A. 3901B Hawks Hill Road, New Windsor, Maryland, 21776.

Q. Thank you.

MS. HANCOCK: Your Honor, I believe that we're on Exhibit 157?
THE COURT: No. 166 is the next one I have.
MS. HANCOCK: Oh, 166. Did I -- I might have missed one.
THE COURT: Yeah, we're holding 165 for that last witness. Per my notes, we're up to 166.
BY MS. HANCOCK:
Q. Mr. Hoff, did you prepare Exhibit NMPF-71 for your testimony today?
A. Yes. Along with stamp I did, yes.
Q. Okay.
MS. HANCOCK: And, your Honor, I believe that's what we have marked for identification as Exhibit 166.
THE COURT: Yes.
BY MS. HANCOCK:
Q. And, Mr. Hoff, would you proceed with your testimony?
THE COURT: Just to make it -- NMPF-71 is now Exhibit 166.
(Thereafter, Exhibit Number 166 was marked for identification.)
THE COURT: Thank you. You may proceed, Mr. Hoff.
THE WITNESS: All right.
Good afternoon.
My name is Matt Hoff, and my farm address is 3901B Hawks Hill Road, New Windsor, Maryland, 21776, where my wife, Debra, and I are fifth generation dairy farmers at

Coldsprings Farms in Carroll County, Maryland. Our herd consists of 1100 milking cows, 200 dry cows, and 1000 head of replacement heifers. We farm approximately 2400 acres of ground where we grow corn, small grain, soybeans, and alfalfa.

Our farm markets our milk through Maryland and Virginia Milk Producers Cooperative Association, Incorporated. In addition to farming, I currently serve on the cooperative's Board of Directors and have since before 2010, along with several other boards.

Maryland and Virginia Milk Producers is a milk marketing cooperative that operates up and down the East Coast, primarily in the Atlantic Ocean bordering states from New York to South Carolina. In addition to owning three predominantly fluid bottling plants, which we call our consumer products plants. One is located in North Carolina, one is in Virginia, and one is in Maryland.

Maryland and Virginia also owns and operates two manufacturing facilities, one in Virginia and one in Maryland, that have historically provided balancing for the overall marketplace in the same geography.

I am here today to testify in support of the National Milk Producers Federation proposal to increase the outdated Make Allowances in the component pricing formulas that have been in place since 2008 and are based on manufacturing cost data from 2006 and 2007.

While it may seem a bit counter-intuitive for a dairy farmer to testify in a Federal Order hearing in support of a change in regulation that will ultimately lower the price of the regulated milk price, I firmly believe this change is necessary.

As a member-owner of two of the southernmost butter powder manufacturing plants along the eastern seaboard where a lot of our milk goes through during the spring flush, I am reminded throughout the spring when each of my monthly settlement checks comes with something that just doesn't seem quite right with our current regulated pricing system.

For the past several years, as members, we have experienced deductions from our statements showing a market adjustment charge in some shape or form. I often challenge our cooperative management and question if this is necessary, and if so, why.

The explanation is straightforward: If you purchase a perishable raw material such as milk at some regulated price, let's call that X, and then you convert that milk into a storable finished product such as nonfat dry milk powder at some cost, let’s call that Y, you must sell that converted product for the sum of X plus Y to break even. If the sales price of that product is anything less than X plus Y, you lose money.

It seems like the simplest solution to the dilemma would be to just raise the selling price. I've come to learn throughout my career of selling commodity products that we are more so market takers and less so market makers. Fundamentals of supply and demand have more influence on what you can sell your product for, and the market doesn't necessarily care about your Xs or Ys.

To stay viable, my cooperative must do one of two things: Reduce X, the cost in which they purchase their raw materials, or reduce Y, the cost in which they convert the milk into nonfat powder. I would prefer they did the latter. However, I also understand the immediate and lasting effects of the COVID-19 pandemic on the supply chain which have increased costs across the board, including equipment, energy, and especially labor. It has happened on my farm, and I know it has also happened across manufacturing sectors, food and non-food alike.

In addition, and more recently, the financial markets have also taken a turn for the worst, and interest rates for operating credit have went way up. The cooperative had no choice but to do the former, reduce X, hence market adjustments on my milk statements.

But is there yet another option? Our cooperative operates mostly within Federal Order regulated markets, primarily Federal Order 1 and Federal Order 5. Our current Federal Order pricing system has a mechanism in place that is supposed to recognize the cost of manufacturing butter, nonfat dry milk, cheddar cheese, and dry whey. These are called Make Allowances, which are used in the product price formulas that are used to determine the value of butterfat, protein, and nonfat milk solids in the milk that I ship off my farm. Make Allowances in these formulas haven't been updated since

2008.

I know that costs to operate my farm have gone up since then. I know the costs for our cooperative to operate its plants have gone up since then also. I know the current outdated Make Allowances are already having an impact on my milk check from my cooperative in the form of a market adjustment.

I know that my farm is not unique in being assessed a market adjustment as I speak with fellow dairy farmers up and down the East Coast as well dairymen in the Midwest and the West that are not members of our cooperative but are members of their own.

Our cooperative owners have invested millions -- ten of millions -- of dollars in plants that provide a valuable balancing service to the entire marketplace. We help all market participants keep their costs down and give them greater predictability because they have known throughout the years our plant is there to help balance the market, including producer excess production and plant demand fluctuations.

Our member farms end up absorbing costs that other market participants who benefit from an otherwise orderly marketing system do not. This inherently and unfairly penalizes my farm and my fellow cooperative members for investing in market balancing plants.

I know that the cost to manufacture butter and powder, and I must assume cheese as well, have increased exponentially since 2008. However, since the

Make Allowances have not been updated for so many years, it would likely be disruptive to bring them up to date in one fell swoop.

Providing an interim modest increase to each as proposed by the National Milk Producers Federation should help alleviate the acute problems while not creating unintended negative consequences.

I do support the concept of manufacturers being mandated to provide auditable cost and product yield data so that Make Allowances can be updated in a more timely fashion with more accurate data, but that will take some time and require additional authority to be given to the Department to implement this kind of change.

It is for all these reasons that I ask you to support the proposal to update the outdated Make Allowances for butter, nonfat dry milk, cheddar cheese, and whey as submitted by the National Milk Producers Federation. Thank you.

MS. HANCOCK: Thank you, Mr. Hoff.

Your Honor, we would make him available for cross-examination.

THE COURT: Yes.

Questions other than AMS for this witness?

CROSS-EXAMINATION

BY DR. CRYAN:

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

Hello, Mr. Hoff. How are you today?

A. Good.
Q. I understand that you are a Farm Bureau member?
A. Yes, I am.
Q. Thank you very much for your participation.
And I also understand that the Northeast market has had a good bit of trouble in the last few years as a result of negative PPDs and depooling; is that correct?
A. Depooling, not as much in the Northeast I think as other markets. But, yes, it is a problem.
Q. Have you had impacts yourself? Can you talk about the impacts that negative PPDs and sort of the uncertainties have had on you and your neighbors?
A. I watch the markets pretty close. I'm normally pretty prepared for what my milk price is going to be, so it's -- you know, it's very difficult. Milk prices have fluctuated quite a bit in the last, what, eight, nine years since 2014. Prices have -- were really bad and got really good after COVID, and then we're kind of right back to break even or less.
DR. CRYAN: Well, thank you very much. Thanks for your participation. Thanks.
THE WITNESS: Thank you.
THE COURT: Anyone else other than AMS?
Seeing none, AMS's turn.

CROSS-EXAMINATION

BY MS. TAYLOR:
Q. Good afternoon.
A. Good afternoon.

Q. Thank you for joining us to testify today. I have to say I'm always happy to see a Maryland dairy farmer because you are not too far from where I grew up in Damascus, so just down the interstate from me.

Just a couple of questions on your farm. I don't know if you listened earlier when I discussed the Small Business definition and asking whether your farm would meet that definition.

A. No, I would not.

Q. Okay. And does your -- do you use any risk management tools available to dairy farmers today?

A. Yes. I use the DMC, and I have used the DRP quite extensively. Before that I actually used the futures market some.

Q. Okay. And -- and there's been discussion over the past few weeks about risk management and how any changes to regulated prices could impact positions that dairy farmers have, and so kind of trying to figure out what would be a best implementation schedule should we change anything.

And so in that long explanation, you know, how far out in the future do you all look to lock in positions when you are making these decisions?

A. I have been as far as four and five quarters out. Currently I'm -- I'm four quarters out, not completely, but some. I think it should be a process that farmers would know at least six to nine months ahead of time.

Q. Okay.

A. So --
Q. All right. Thank you very much for that.
A. Uh-huh.
Q. And you talked a bit about your farm and the impacts that you have seen as a co-op member on your farm. And I was wondering if you could talk a little bit just about other farms in your area, in your neck of the woods, and how the prices that they receive have impacted them.
A. Well, you know, Maryland doesn't have a lot of large farms. Maryland also has a very high rate of DMC, which is really good because our former governor paid for it for the first couple of years. And so it's still been very negative, the milk prices and market adjusts. As a board member I hear about -- every time I see a member anywhere, I get questioned on the market adjustment. And so it still definitely impacts them. But as a large farm, it impacts me a little bit more because of DMC, without paying up the extreme cost to cover all my milk would be counterproductive.
Q. Okay. And from the co-op perspective, since you are on the board, can you talk a little bit about the investment decisions that the co-op board has made over time and how maybe the manufacturing allowances in the formulas have impacted those decisions?
A. Well, we're different in a lot of areas. I mean, we balance milk heavily in the spring and over the holidays, you know, the Christmas, New Year's holidays. You know, this time of year, you know, our powder plant

doesn't do a whole lot besides skim condensed and sell cream and make some butter. So our cost is very high just, you know, because of maintenance and, you know, capital investment that just sits there. And we have -- haven't invested as heavily in that side because we have the capacity to take all of our member milk.

But, yeah, I mean, we have invested millions over the last ten years or so.

Q. Okay. All right. Thank you.

MS. TAYLOR: I don't have any other questions from AMS.

THE COURT: Okay. Redirect?

REDIRECT EXAMINATION

BY MS. HANCOCK:

Q. Thank you, Mr. Hoff. And I appreciate that your testimony in Exhibit 166 clarified the support for National Milk's proposal for Make Allowance.

I just wanted to confirm that, do you support all five of National Milk's proposals in the totality of how they have been proposed by National Milk?

A. Yes. Definitely.

Q. Okay. Thank you for that.

MS. HANCOCK: Your Honor, we would move to admit Exhibit 166.

THE COURT: Seeing -- hearing no objections, Exhibit 166, this witness' statement, is entered into the record of this proceeding.

(Thereafter, Exhibit Number 166 was received into evidence.)

THE COURT: Thank you, Mr. Hoff.

MS. HANCOCK: Thank you, Mr. Hoff.

THE WITNESS: Thank you. Have a good day.

MS. TAYLOR: Thank you so much.

I think our last producer from today is Mr. Justin Peterson. For those listening and here in the room, his statement is posted online as Edge-5. And we will again bring copies, paper copies, on Monday to have them entered in the record. So if we could hold the next number, 167.

THE COURT: Yes, we'll hold 167, yes, for Edge-5.

Mr. Peterson, I'm Judge Strother. I preside over this hearing. I need to swear you in. Please raise your right hand.

JUSTIN PETERSON,

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

THE COURT: Your witness.

DIRECT EXAMINATION

BY MS. TAYLOR:

Q. Mr. Peterson, can you state and spell your name for the record?

A. Yes. My name is Justin Peterson, J-U-S-T-I-N, Peterson, P-E-T-E-R-S-O-N.

Q. Thank you.

And do you have a business address that you could give for the record?

A. Sure. It is 2763 Manitowoc Road, number B --

letter B, excuse me, Green Bay, Wisconsin, 54311.

Q. Thank you.

And if you want to go ahead and read your statement.

A. Perfect.

My name is Justin Peterson, and I own Creamery Creek Holsteins in Bangor, Wisconsin, with my wife and family. Our farm began in 2010 when my wife and I merged our 100-cow herd into another existing 150-cow herd belonging to the Hanson family.

An internship had brought us to Wisconsin from Michigan, where both my wife and I grew up and attended Michigan State University. The Hanson family met us through a classified ad we had posted: "WANTED: Dairy Farm to Rent."

In 2010, we moved onto the farmstead with our children. Creamery Creek continues to be a joint venture between the two families, as the fourth generation of the Hanson family carries on the partnership with my family.

Currently, we milk about 700 cows and farm 2500 acres. All our milk is shipped to a manufacturer where it is processed into butter. We have also adopted several modern technologies into our herd, including computerized neck collars to monitor activity and an extensive genomic testing program. We also practice sustainable farming practices through various cropping and nutrient management practices.

In addition to our dairy, we also sell

pasture-raised dry-aged beef and heritage pork within our community as a way of diversifying our business. The meat includes start-to-finish traceability and an increased focus on sustainable farming and high-quality animal care.

In addition to supplying beef for the La Crosse School District, every purchase made from our meat business helps us make donations to our local food pantry.

We are involved in many organizations, including the Dairy Business Association, Farmers for Sustainable Food, various breed organizations, the National Cattlemen's Association, Ducks Unlimited, Wisconsin Farm Bureau, our town boards, and many more local businesses.

I also serve on the Board of Directors for Edge Dairy Farmer Co-op. Edge, based in Green Bay, Wisconsin, is the third-largest dairy cooperative in the country based on milk volume.

In addition to milk verification services, Edge provides dairy farmers throughout the Midwest with a voice in Congress, with customers, and within our communities. Our over 800 member farms are located in Illinois, Indiana, Iowa, Kansas, Minnesota, Nebraska, Ohio, South Dakota, and Wisconsin.

Dairy farming has been a rewarding career for us. We love working with family. It can be challenging, but there is really nothing else like it. The profession also offers quite a bit of freedom and flexibility. No two days are the same.

I truly do enjoy the challenges. I thrive on dealing with the daily challenges and finding what problems need to be solved every day. Above all else, the people in the industry are amazing. They are what make dairying a true pleasure.

However, there is an old saying about farming: The farmer is the only one who buys at retail, sells at wholesale, and pays the freight both ways. Obviously, the market variables at play can make the job challenging at times. You really must work smarter, not harder these days.

Utilizing risk management when you can is paramount. We utilize risk management tools when we can on our farm, including DRP, DMC, futures contracts, and options. If any of our risk management tools were to be suspended for any amount of time, we would risk significant financial exposure for our business.

I agree with Edge’s stance that over five quarters is the best option to ensure our entire dairy supply chain can continue effectively managing their risk exposure.

I am also supportive of Proposals 16 and 17, submitted by Edge, that further enhance a dairy farmer's ability to effectively manage their price risk. Negative PPDs, or producer price differentials, were one of the key forces driving farmers to urge for this hearing as they can adversely impact our ability to hedge revenue.

As Edge proposes in Proposal Number 16, Class III Plus allows us to use the dairy industry’s most traded commodity to set pricing. Cheese plants, like dairy farms, must always run at or near capacity under nearly all economic conditions, unlike most plants in Classes I, II, and IV. Edge doesn't advocate this because they are from a cheese area, but rather because cheese is an active market.

I want to finish today by thanking USDA for this opportunity for farmers like myself to provide comments today and throughout this hearing. This policy critically affects our livelihoods, so it is critical we have our voices heard. Getting time away from the farm, especially during harvest season, is not always feasible.

Thank you for this opportunity and the added flexibility given to accommodate our voices.

THE COURT: Yes, thank you, Mr. Peterson.

Do we have questions for this witness?

Did we get your -- I'm sorry, I faded out there for a second. Did we get your address in the record?

MS. TAYLOR: We did.

THE COURT: We did. Okay.

Any questions for Mr. Peterson? Other than AMS?

Seeing none, I think AMS has some questions for you, Mr. Peterson.

You have the witness.

MS. TAYLOR: Thank you, your Honor.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good afternoon, Mr. Peterson.

A. Hi.

Q. Thank you for joining us to testify virtually today. I think as we go along in these weeks, everyone anticipates our questions and their statements answer most of the stuff I would ask. So I kind of like -- people are listening, at least, so that's a good sign.

I do have just a few teeny questions. You mentioned you all milk 700 cows. Would your business qualify as a small business under the definition I am sure you have heard earlier today?

A. No, it does not.

Q. Okay. Thank you.

And I know you say you supported the five-quarters implementation delay that was entered into the record by Edge.

Curious, for you, on your risk management decisions, how far out do you normally go when making those decisions?

A. We have been out to five quarters. Typically more from a later standpoint, you know, not putting all our eggs in one basket, but kind of laying in risk management, bit by bit, piece by piece.

Q. Okay. So kind of ranges, but the furthest out you go is five quarters?

A. Correct.

Q. Okay. Thank you.

And then you mentioned your support for Edge's -- for Proposal 16 and 17 as well.

Do you have any positions on any of the other

proposals that we are hearing during this proceeding?
A. I guess not at the moment. I haven't briefed myself on the whole hearing to a full extent.
Q. Okay. Well, thank you.
MS. TAYLOR: That's it from AMS.
THE WITNESS: Thank you.
THE COURT: Okay. Anyone else?
Very well. We reserved Exhibit 167 for this witness, but I guess if we could ask, since this witness will not be here, whether anyone is going to have any objections when we get a hard copy to put in the record?
Seeing none. No? Okay.
MS. TAYLOR: We'll have hard copies on Monday.
THE COURT: Yes. We'll deal with that on Monday along with the other witness. All right. Well done.
Are we bringing Witness John back to the stand.
Thank you for waiting for us, sir. You're still under oath.
THE WITNESS: I'm just glad there's some time left.
THE COURT: You and me both.
Mr. English.
Anyway, you are still under oath, and welcome back.
MICHAEL JOHN,
Having been previously sworn, was examined
and testified as follows:
///

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Mr. John, as you know, I'm Chip English with the Milk Innovation Group, and I'll try to be as efficient as I can.

So in discussions with Mr. Miltner, I believe I heard you say that when you are not running butter in the Laurel, Maryland, facility you are nonetheless using it for other uses; that is correct?

A. Yes, that is correct.

Q. Okay. Without confidential information, what kind of products or what do you use it for when you are not producing better?

A. I would just say liquid products.

Q. Okay. So when you do any standard cost analysis, the fact that it is being used for other liquid products would then be impacting the overall cost per unit of the butter when you do run it, correct?

A. Well, I'm not the accountant -- or the controller at the plant. My understanding is that they allocate the cost to the products that are being made.

Q. And then similarly, the Strasburg, Virginia, plant, did I hear correctly that when you are not making nonfat dry milk, you are able to use it for other uses?

A. Well, we don't make nonfat dry milk at Strasburg.

Q. I'm sorry. I got it backwards.

Okay. So when you are not using the Strasburg plant for manufactured products that are reportable under

the NDPSR, you are making it -- you are using it for other purposes, correct?
A. Right. Yes.
Q. And similarly, as to the Laurel plant, that would mean that there is an allocation of cost, correct?
A. That's correct.
MR. ENGLISH: I have no further questions. Thank you.
THE COURT: Anyone else? Other than AMS?
Seeing none, AMS.
THE WITNESS: Hi, Erin.

CROSS-EXAMINATION

BY MS. TAYLOR:
Q. Good afternoon. How are you?
A. Good.
Q. I kind of chuckle. You all talk about that Laurel plant, and I live about five minutes from there, so I get to see when it runs and when it doesn't run on a frequent basis.
A. Hopefully it's all good.
Q. Yes. Okay. Let me see. Let get my list.
I think I heard you say, but I just wanted to be clear, on your two plants, your Laurel and your Strasburg plants, that the -- because they serve such a large balancing need for the area, that those plants -- you know, your ranges could run from running at 25% to 100%. Would that be accurate, of capacity, or did I mishear?
A. I think that was specific on -- specifically on

the one product.

As far as the fluid receipts that come into the plant, let's go that way --

Q. Yes, that's what I was looking for.

A. -- yeah, that -- they would go from about half. From the spring of the year to the fall of the year, it would go down about half.

Q. Okay.

A. In volume.

Q. Okay. Thank you.

And I think -- you know, your plants are on the Eastern seaboard, more towards the Southeast region, which is highly fluid.

A. Yes.

Q. So I think that's -- that is different than most other areas of the country. So can you kind of speak to the -- maybe the -- if that puts your Maryland Virginia supply plants particularly in a unique position of serving those balancing needs for that area?

A. Yeah. And I'll say that the Laurel plant, it's a pooled Federal Order 1 plant, and most of the milk that goes into Laurel is out of the Federal Order 1 market area. And if you take a look at Pennsylvania and take a look at Interstate 80 that goes east and west, most of the milk below 80 is going to be -- there's only a few manufacturing plants south of 80. So most of that milk is going to class -- or fluid plants or some Class II plants. So from that standpoint, that Laurel plant helps to --

to -- to balance.
And while we're -- our name is Maryland Virginia, I'll just say most of our milk volume is in Pennsylvania and in that Southeast side of Pennsylvania, so it's balancing most all that milk in that area.
And so we deal with -- a lot of the customers that what we call third-party customers we deal with have schools, and so we're -- we're -- when schools let out in the spring of the year -- or, say, at the end of May, beginning of June, they start back up in September, it's -- we call it filling the school pipeline in September, and it takes a big draw out of the plant.
We -- we're also -- a lot of the independent processors in Pennsylvania, several of those, we are the co-op supply to them, so we get -- we get the fluctuations when their supply fluctuates and then when their demand -- you know, when their processing production fluctuates.
Q. Okay. Thank you.
A. Uh-huh.
Q. Can you talk a little bit more, you mentioned some things in your testimony about, you know, you have had market adjustments on your member statements and such. But if you just elaborate some on how your cooperative has had to work to respond to what you see as inadequate Make Allowance levels and other decisions you have had to make.
A. Well, a couple things. I think it's been mentioned already today, we have had some repairs and

maintenance that we need to do that, you know, our engineers continue to figure out, I'll call it Band-Aid solutions. So, you know, we have put some of those off. In fact, we have a -- a high pressure pump that we would like to get going right now, and we're just running off of one in the plant. So -- so we -- we do some of that. We postpone some of the maintenance. We also, as far as -- we try to -- to -- ask your question again. I'm losing the --

Q. Yeah, sure. I'm just -- I was just kind of wondering if you could elaborate more on kind of the decisions the co-op has had to make because of what you see as inadequate Make Allowances. And you talked some about deducts.

A. Uh-huh.

Q. And you mentioned something about putting off investment decisions. And I didn't know if maybe those, as time has moved on and we've gone 15 years, you know, maybe the deducts have gotten greater over time or, you know, there's been other discussions about trying to work the other side of the equation and produce more value-added products to generate some revenue there. I don't know if pooling decisions help compensate for some of that, etcetera.

A. Yeah. So -- yes, so we have done several of those. I mean, one of the things that we did strategically as a cooperative back in 2014 was decide to start investing in more value-added processing. And, you know, it takes a lot of capital, and it takes a lot of preparation to start that process.

And so we have been working with our members to -- to put more capital into the cooperative to do more investment downstream. That is a longer-term investment. It always seems that some of those investments take longer, even though you put out a pro forma, that it always seems like it takes maybe a year or two longer than what you had thought. So we have done that. We're going to continue -- that is our goal to continue to do that and move in that direction.

I think one of the things that we specifically have noticed this year, you know, obviously, since July of last year, the powder markets have just continued to decline. And when I thought that they were going to stop, I think at one point earlier that they were going to stop declining, they keep declining some more. And we recognize that we're not a big player in the powder market, so we're more of a price taker. And we do try to make some added value powders at times. I mean, all still nonfat, just anything that we can do along that lines.

We're also looking at -- we talk about our liquid products that we do in our ingredient plants. We have -- we have worked on a couple new projects to do more liquid products and even move away from making powder as much as we have in the past.

So that's some of the things we have done in addition to, like you said, the market adjustments.

Q. Okay. Thank you. I appreciate that detail.

And your discussion of your support of the Make Allowances proposed by National Milk, and I think there's been talk about how the allocation procedures in some of the surveys, you know, there was just questions about that, not understanding that process. And that's -- you guys wanted to take a look at that, and that's one of the reasons you support an audited survey.

I was curious, for Maryland Virginia, on your plants, if you look at your own costs, what allocation methodology do you use in your butter powder plant?

A. That, I would not know because the controllers -- the controllers handle that piece of it. So I -- I wouldn't be able to answer that, yeah, how they allocate.

Q. And a previous witness we had on talked about the opportunity cost of supplying the fluid plant rather than keeping milk through their own plants. And I'm not sure if -- I think -- as I ask this question out loud, you know, your co-op situation seems a lot different from that one, but I'll still ask the question, I guess, is if you find that same problem.

A. Well, we -- we have invested in fluid capacity and in a fluid plant just recently. So, obviously, our goal is to fill those facilities, that's number one.

I don't -- I don't think it's quite to the degree, but the other thing that we deal with is a couple state orders. We're in the Virginia Milk Commission. We're also in the Pennsylvania -- we have to deal with the

Pennsylvania Milk Marketing Board, and they create some unique challenges as well. So, yeah. That's about the best I can answer on that.
Q. Okay. And do you balance with any -- serve to balance any non-member milk, or is it just Maryland Virginia milk?
A. We do, when we have capacity, we will help -- like I said, there's -- there's several independent processors still around in Maryland and in Pennsylvania, and then there's other co-op supplies that have not invested into assets that -- you know, when we have availability. We have actually at times, just with market conditions, it wouldn't have mattered what the price was, we just -- it -- you know, we -- we -- we couldn't -- we just couldn't take their milk.
Q. Uh-huh. But when you -- so a non-member for you and balancing is both other cooperatives and direct shippers to independent --
A. Yes.
Q. -- plants?
A. Yes.
Q. Okay.
MS. TAYLOR: I think that's it from AMS. Thank you very much.
THE WITNESS: Thank you.

REDIRECT EXAMINATION

BY MS. HANCOCK:
Q. Thank you, Mr. John, for staying and putting your

testimony on in a couple of different parts.
A. Sure.
Q. You had some questions about balancing. I just want to make sure it is clear. You're not asking for an increase in Make Allowance to assist in absorbing the cost of balancing your Class I milk, are you?
A. No. No.
Q. Okay.
MS. HANCOCK: Your Honor, we would move for the admission of Exhibit 160.
THE COURT: 160 is admitted into the record.
(Thereafter, Exhibit Number 160 was received into evidence.)
MS. HANCOCK: Thank you. That's all I have. And I think that's all we have to put on for the day.
THE COURT: Let's go off the record.
(Off-the-record.)
THE COURT: Back on the record.
We're adjourned for the day. We'll see everyone on Monday at 8:00 a.m.
(Whereupon, the proceeding concluded.)
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STATE OF CALIFORNIA)
) ss
COUNTY OF FRESNO)

I, MYRA A. PISH, Certified Shorthand Reporter, do hereby certify that the foregoing pages comprise a full, true and correct transcript of my shorthand notes, and a full, true and correct statement of the proceedings held at the time and place heretofore stated.

DATED: October 1, 2023
FRESNO, CALIFORNIA

MYRA A. PISH, RPR CSR
Certificate No. 11613