

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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Certificate No. 11613

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FOR SELECT MILK PRODUCERS, INC.:

Ryan Miltner

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

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1 FRIDAY, SEPTEMBER 8, 2023 - - MORNING SESSION

2 THE COURT: On the record.

3 We have a witness on the stand. I remind you, you
4 are still under oath. Welcome back.

5 Who is up?

6 Mr. Miltner, good morning, sir.

7 CROSS-EXAMINATION

8 BY MR. MILTNER:

9 Q. Ryan Miltner representing Select Milk Producers.

10 Good morning, Mr. Vandenheuvel.

11 A. Good morning.

12 Q. I wanted to start by going over CDI's plant
13 information like I have done with other witnesses, if we
14 could start there.

15 How many plants does CDI operate today?

16 A. Six facilities in California. Those are our only
17 six.

18 Q. And of the six, how many are -- well, tell me what
19 kind of plants they are?

20 A. We have -- all six facilities make powder, milk
21 powder products. Four of those facilities also make
22 butter.

23 Q. Of those that make powder, do they make nonfat dry
24 milk?

25 A. Yes.

26 Q. Do they make skim milk powder?

27 A. Some of them do.

28 Q. Whole milk powder?



1 A. No.

2 THE COURT: Yes, Mr. English.

3 MR. ENGLISH: Excuse me, your Honor. I got a text
4 message that they can't get the audio right now.

5 THE COURT: Off the record.

6 (Off-the-record.)

7 THE COURT: Back on the record.

8 We're back on the record after some technical
9 difficulties with the virtual feed we have here, but it
10 seems to be in good shape now.

11 You may continue, Mr. Miltner, your witness.

12 BY MR. MILTNER:

13 Q. Okay. And to recap for those that couldn't hear
14 on audio, we had asked and you had answered, I'll see if I
15 have my notes right, CDI has six processing facilities,
16 all of which produce some type of powder, four of which
17 produce butter, correct?

18 A. Correct.

19 Q. You said that the plants produce nonfat dry milk,
20 some produce skim milk powder. You do not produce whole
21 milk powder, correct?

22 A. Correct.

23 Q. Do any of them produce buttermilk powder?

24 A. Yes.

25 Q. Are there any other powders that are regularly
26 produced at any of your facilities.

27 A. We produce some milk protein concentrates and milk
28 protein isolates.



1 Q. Do you dry any whey at those facilities?

2 A. No.

3 Q. The plants that produce butter, do they produce
4 bulk salted butter?

5 A. Yes. We have some facilities that produce bulk
6 salted butter, not all.

7 Q. How about bulk unsalted butter?

8 A. Same answer: Some, not all.

9 Q. Do all of the plants produce quarters?

10 A. Produce, I'm sorry?

11 Q. Packaged butter in quarter-pound sticks?

12 A. All but one produces cut butter in a retail or
13 foodservice variety.

14 Q. Do any of the plants produce butter in the smaller
15 foodservice packages, like single-serving pats or cups?

16 A. We do have some limited continental chip
17 production. That would be like the only of those
18 single-use products that we make.

19 Q. Are there any other butter products of any
20 substantial volume produced at those facilities?

21 A. Butter, we make a variety of retail butter:
22 Spreadable, whipped, cut. And then we do -- it is not a
23 butter product, but we do make anhydrous milk fat at one
24 of our facilities.

25 Q. All right. Turning to page of Exhibit 155. You
26 have you have four bulleted items under the heading "Risk
27 of Overcorrection."

28 The first bullet point you identify has a



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

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

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

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

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

26 A. Correct.

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



1 A. Correct. And for the record you're referencing
2 the numbers on page 4 of that report.

3 Q. I was. Thank you.

4 And then on page 5 of your statement, where you
5 are discussing some of the findings in Dr. Stephenson's
6 working paper, you go through and you describe his
7 findings for butter processing costs and nonfat dry milk
8 and then how you tried to reconcile what you perceive to
9 be divergent findings on those two points.

10 And I want to suggest that -- well, let me express
11 my understanding of what you did. You averaged those two
12 results and achieved a weighted number that aligned with
13 your professional experiences to manufacturing costs on
14 those products, correct?

15 A. Correct.

16 Q. And so the methodology got you to a number that
17 you thought was rational. But you really can't say that
18 the result you achieved, the fact that it makes sense
19 doesn't mean that that's necessarily representative of
20 costs, right?

21 A. I -- I would agree. The basic premise of that
22 calculation is that you are looking at a whole bucket of
23 milk that makes butter and powder, and so coming up with a
24 weighted average gives you a cost per pound of all the
25 products in that representative bucket.

26 I do not believe that should be interpreted to say
27 that costs are always exactly the same for all those
28 products and that this study found that. That was an



1 interpretation of the data with those assumptions.

2 Q. Is it possible that although the methodology you
3 laid out makes some logical sense, the fact that the
4 result seems to line up with your experience could be as
5 much coincidence as it is reality?

6 A. Well, I do think that there is -- when you are
7 looking at -- at costs, and as I noted in the -- in the
8 testimony, you know, I also looked at CDFA data. The
9 limiting factor with that data being that it's aged at
10 this point. It is 2016, perhaps, based on data from as
11 early others 2015. The numbers fit in the realm of the
12 possible. And so it fits that experience, and as a butter
13 and powder manufacturer, these are not numbers that are
14 significantly out of balance with what I would see in our
15 own profit and loss statements.

16 Q. Where in your statement you write, "We questioned
17 the method used to calculate costs among the various
18 products being produced in a single facility," is that a
19 reference to the degree of transformation methodology
20 that's in the -- in Dr. Stephenson's working paper?

21 A. That appeared to be the one significant difference
22 in methodology in that particular survey of plant costs
23 that seemed to generate some results that were confusing.

24 Q. Did you -- knowing that CDI makes predominantly
25 powder and butter, did you do any looking into the other
26 findings from the white paper to see if the costs for
27 cheese and whey might have been skewed by that degree of
28 transformation factor?



1 A. We did -- we did not.

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

7 You were here all day yesterday?

8 A. Yes.

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

12 A. Yes.

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

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

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



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

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

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

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

14 A. Yes.

15 Q. -- correct?

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

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

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

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

25 Q. Do you know if CDI participated in
26 Dr. Stephenson's studies that he published in 2006 and
27 2007?

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



1 Q. Thanks.

2 MR. MILTNER: I don't think I have anything else.

3 THE COURT: Further cross?

4 AMS.

5 CROSS-EXAMINATION

6 BY MS. TAYLOR:

7 Q. Good morning.

8 A. Good morning.

9 Q. Thanks for coming back and testifying again today.

10 A. Of course.

11 Q. Can you talk a little bit about how CDI has had to
12 manage through this time of what you consider inadequate
13 Make Allowances in the formulas and how has that impacted
14 your producers?

15 A. Yeah. It's definitely been a financial stress on
16 the organization and, therefore, on the member-owners
17 who -- who are the 100% full owners of the organization.
18 We have had opportunities during some of that time to not
19 pool milk, and -- and that has allowed us to avoid some
20 pool contributions that were then used to offset losses on
21 the purchase of milk, turning it into these products that,
22 you know, just are not -- you are not able to generate a
23 margin. And so that's -- that's created a lot of
24 financial stress on the farm, where -- where we have had
25 challenges being competitive in the marketplace at times.

26 CDI has had times of not being able to pay the
27 full blend price, if you define paying the full blend
28 price as -- as, you know, all milk checks are the blend



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

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

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

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

27 A. Well, cooperatives are not your typical business
28 entity or organization. And so we -- we do have the



1 opportunity to invest when our members are willing to put
2 more money into the cooperative, and that's what they have
3 done. We have had to raise our investment level for
4 members that are owners of CDI in order to make these
5 investments. It's not easy. Nobody can -- nobody has
6 extra dollars to just spend. But in terms of the
7 long-term sustainability of CDI, it is critical. And so
8 we have asked our members to put more money into the co-op
9 so that we can make these necessary investments, so that
10 in the long-term we can be a more competitive purchaser
11 and handler of their milk.

12 Q. Thank you.

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

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

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



1 multiple assets within a plant, there's an attempt to
2 allocate those based on the pounds of production in each
3 of those -- each of those categories. But it's possible
4 it might be more complicated and I'm simplifying it.

5 Q. Okay. Thank you.

6 So I think it's sort of in your statement, but I
7 wanted to make sure it's clear for the record, if you
8 could explain why you chose to combine butter and powder
9 together to come up with a weighted average number for
10 those products combined.

11 A. Well, being an organization and a co-op that --
12 that predominantly makes our products exclusively off our
13 member milk, we're making both products. So whether it is
14 a weighted average cost per pound of product that you are
15 making or one is way higher and one is way lower, the net
16 impact on us would be the same.

17 And so -- and for us, it made logical sense to
18 say, okay, let's look at an entire Class IV bucket and
19 what would that adjustment to the Class IV price be. I
20 know we talk about it as a, you know, per pound of product
21 on a Make Allowance basis, but really it's a change in the
22 Class IV butterfat and solids nonfat calculations, and
23 so -- and ultimately, a Class IV price.

24 So that's why we looked at it that way. It's --
25 it's -- it's admittedly an imperfect calculation because
26 you don't end up with a cost -- I would argue that butter
27 and powder do have slightly different costs. I mean, you
28 have got different energy uses. One has a dryer; one does



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

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

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

12 A. Correct.

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

15 A. I believe that calculation is based on the kind of
16 built-in assumption that a hundred pounds of milk has
17 8.685 pounds of solids nonfat in it, that's built into the
18 Class IV formula, which I think is nine pounds of solids
19 nonfat and skim times .965.

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

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

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

25 Let's see.

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



1 kind of understand.

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

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

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

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

27 But the reality is we have shut down two plants in
28 the past five years. We opened one back up to run a



1 little bit differently, to help us clear milk and to
2 hopefully do it at a lower cost when we reopened it in a
3 different -- to operate in a different way. But it's just
4 getting tougher and tougher to justify running assets that
5 -- operating assets that lose money.

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

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

14 A. Yes.

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

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

26 We shut down temporarily another facility in the
27 Central Valley. That was certainly caused by just an
28 inability to capture our costs. We ended up bringing it



1 back and tried to run the nonfat dry milk dryers as little
2 as possible, just for minimal balancing. It's
3 predominantly used as a process fluid, making different
4 mixes, different cream, condensed, and ice cream mixes out
5 of that plant.

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

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

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



1 conditions, etcetera.

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

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

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

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



1 isolating it on those that have invested in facilities.

2 Q. Thank you.

3 One final question. If CDI -- I know you did this
4 calculation using the Stephenson study, but if CDI has
5 looked at your own internal costs to see if, yes, you
6 know, as you look at the costs put out that you are
7 supporting through the National Milk proposal, it is
8 representative somewhat of the cost you guys experience?

9 A. It is generally representative. Without getting
10 too much into the details --

11 Q. Sure.

12 A. -- for proprietary reasons, it is -- it is closer
13 to our current cost than the current Make Allowance, I can
14 say that.

15 Q. Okay. Thank you.

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

17 THE COURT: Mr. English.

18 CROSS-EXAMINATION

19 BY MR. ENGLISH:

20 Q. Good morning again, Mr. Vandenheuvel. My name is
21 Chip English with the Milk Innovation Group. I have one
22 or two questions as direct follow-up on AMS.

23 Just for clarity for the record, you used the term
24 operating cooperatives and non -- cooperatives with --
25 operating like plants, correct?

26 A. Yes.

27 Q. And then there's co-ops that don't, correct?

28 A. That's right.



1 Q. So let's just see if we can categorize. In the
2 simplest form, there are cooperatives who own no
3 facilities of any kind that process milk, either to fluid
4 milk, or ice cream, yogurt, cheese, or nonfat dry milk,
5 correct?

6 A. Correct.

7 Q. And then in the other extreme there's co-ops who
8 own significant assets in nonfat dry milk, butter, and
9 cheese, correct?

10 A. Correct.

11 Q. And that latter is primarily what you mean by
12 operating cooperatives in this case, correct?

13 A. Yes.

14 Q. Because to the extent cooperatives may own fluid
15 milk plants, they aren't balancing plants, correct, in
16 your view?

17 A. I think that's a fair assessment.

18 Q. And is it also the case that the -- they are
19 aren't the ones who are bearing the burden, as you have
20 described, in terms of the Make Allowances, correct?

21 A. I think the Class I model is just fundamentally
22 different from the Class III, Class IV models.

23 Q. So to the extent you have been using the term
24 "operating cooperative" in response to AMS questions, you
25 are referring to cooperatives with ownership in the nonfat
26 dry milk, butter, and cheese category, correct?

27 A. I'm speaking from the position I'm familiar with,
28 which would be CDI, and that's certainly the category we



1 would fit in.

2 MR. ENGLISH: Thank you.

3 THE COURT: Anything further in the nature of
4 re-cross?

5 Redirect?

6 MS. HANCOCK: Your Honor, we have no further
7 questions at this time. We would move to admit
8 Exhibits 155, 156, 157, and 158.

9 THE COURT: Those exhibits are admitted into the
10 record.

11 (Thereafter, Exhibit Numbers 155, 156, 157,
12 and 158 were received into evidence.)

13 THE COURT: Thank you.

14 MS. HANCOCK: We are going to call Monty Schilter
15 next, please.

16 THE COURT: Very good.

17 Raise your right hand.

18 MONTY SCHILTER,

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

21 THE COURT: Your witness.

22 MS. HANCOCK: Thank you.

23 DIRECT EXAMINATION

24 BY MS. HANCOCK:

25 Q. Would you mind stating and spelling your name for
26 the record, please?

27 A. Yes. It is Monty, M-O-N-T-Y, Schilter,
28 S-C-H-I-L-T-E-R.



1 Q. And what is your mailing address?

2 A. It is 5601 6th Avenue South, Suite 300, Seattle,
3 Washington, 98108.

4 Q. Where are you currently employed?

5 A. Northwest Dairy Association.

6 Q. Okay. And is that affiliated with Darigold?

7 A. Yes.

8 Q. And did you prepare a written statement in support
9 of National Milk's Make Allowance proposal?

10 A. Yes.

11 Q. Is that what we have identified as Exhibit
12 NMPF-19?

13 A. Yes.

14 MS. HANCOCK: Your Honor, if we could mark this as
15 the next exhibit number for identification?

16 THE COURT: Yes. I have the next exhibit number
17 as 159. And that Exhibit NMPF-19 shall be marked 159 for
18 identification.

19 (Thereafter, Exhibit Number 159 was marked
20 for identification.)

21 MS. HANCOCK: Thank you, Mr. Schilter.

22 BY MS. HANCOCK:

23 Q. Would you --

24 MS. HANCOCK: Or thank you, your Honor.

25 BY MS. HANCOCK:

26 Q. And, Mr. Schilter, would you please proceed with
27 your testimony?

28 A. Thanks.



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

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

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

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

26 Darigold operates fully regulated pool
27 manufacturing plants that dries milk products located in
28 Lynden, Chehalis, and Sunnyside, Washington, and one



1 unregulated plant in Jerome, Idaho, that dries milk
2 products.

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

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

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

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

28 It is widely known that manufacturing costs have



1 increased since 2008. In looking at our 2002 cost data,
2 we have seen notable increases in energy, fuel, labor, and
3 packaging. From 2008 to 2022, manufacturing costs
4 increased by over 80%.

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

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

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

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



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

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

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

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

26 We clearly expect a lower cost of production due
27 to the efficiency of the new operation and its size and
28 scale, but combined with our other manufacturing plants,



1 we don't expect the manufacturing products -- we don't
2 expect to be manufacturing products that cost less than
3 the current Make Allowances.

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

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

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

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

27 However, extreme changes will have extreme impacts
28 on milk production in our region and the investment our



1 members have in our existing manufacturing plant
2 footprint.

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

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

18 Thank you for the opportunity to present my
19 testimony.

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

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

28 Can you talk about what you mean by that?



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

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

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

16 A. Yes.

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

19 A. Yes.

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

24 A. Correct.

25 Q. Okay.

26 A. Yeah.

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



1 you support a change in Make Allowance, you said it would
2 be devastating to have too great of an increase. And you
3 are talking about for producers absorbing the impact of
4 too great of an increase; is that right?

5 A. Yes.

6 Q. Is another risk of increasing too much or
7 automatically over a phased in number of years, such as
8 what's proposed by IDFA for Make Allowance increases, is
9 it true that an additional risk would be that with those
10 increases in Make Allowance, that it could be set too high
11 and not capture some of the efficiencies that could be
12 revealed as processors were building new plants?

13 A. Yeah, I would agree with that statement.

14 I will add the dramatic increases in cost as we
15 have seen, at least internally. In 2000, April of 2000,
16 we instituted a retain for processors in order to invest
17 into the Pasco facility. What we experienced going
18 through that was what I would describe as an increased
19 consolidation within our membership. We expected our
20 membership over time to continue to consolidate. We sped
21 up the process, and it created some shifts of milk from,
22 like I said, Western Washington and Western Oregon over to
23 Eastern Washington and dramatically increased
24 transportation costs. And it was an unforeseen impact of
25 those changes.

26 And so when I reference the fact that it can be
27 disruptive to our farms, that is a clear example of how --
28 of what happens.



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

6 A. Yes. And I will say that the -- even though the
7 retain was implemented in April of 2000, we messaged to
8 our members in December of -- of two -- I'm sorry -- of
9 2019, and it took effect in April of 2020. Got my year
10 wrong there. But even before the pandemic, we recognized
11 the impact that it immediately had on our membership and
12 how they had to make decisions on what to do with their
13 businesses in a short period of time.

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

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

26 Q. Okay. And then I think under National Milk's
27 proposal, it's recommending the changes that were outlined
28 in the proposal. But then having a mandatory cost survey



1 that would allow the USDA and the industry to see what the
2 actual costs are, and that would be able to be the basis
3 for any kind of forward-looking changes; is that right?

4 A. Absolutely.

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

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

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

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

21 THE COURT: Cross?

22 Yes, Mr. Rosenbaum.

23 CROSS-EXAMINATION

24 BY MR. ROSENBAUM:

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

27 Good morning, Mr. Schilter.

28 A. Good morning.



1 Q. I want to focus on your statement on the bottom of
2 page 1 carrying over to page 2 where you recite what
3 increases in costs NDA has, in fact, experienced during
4 the period from 2008 to 2022. Okay?

5 First of all, can you tell me what work was done
6 to calculate the numbers that led you to state in that
7 paragraph, quote, "From 2008 to 2022, manufacturing costs
8 increased by over 80%"?

9 A. Yep. The detail in that dealt with our
10 manufacturing plants, what we refer to as our ingredients
11 plants, so those are the butter, nonfat dry milk, cheese,
12 and whey. For proprietary purposes, we -- we group those
13 numbers together. And those are the numbers that came out
14 of our accounting department, our cost accounting
15 department, that I referenced to get to that percentage.

16 Q. So the 80% is the increase experienced if you
17 combine your butter, nonfat dry milk, cheese, and whey
18 operations, basically?

19 A. Correct.

20 Q. And so if you totaled the cost of operating those
21 facilities in 2008, and totaled them in 2022, the 2022
22 number is 80% higher than the 2008 number?

23 A. Correct.

24 Q. Okay. Now -- so if one were to base
25 Make Allowance increases solely upon the experience of
26 your cooperative, which obviously is not how it's done,
27 but if that were how it's done, your figures would support
28 an 80% increase in the Make Allowances, recognizing you



1 don't want to do that immediately, etcetera, etcetera.

2 But, I mean, that's what the numbers would justify; is

3 that fair?

4 A. I would disagree with that statement. The
5 starting point of what we used to get to the 80% is not
6 the same starting point as where the Make Allowances are
7 right now. So those percentages could be misleading in
8 the way that you are interpreting them.

9 Q. Okay. To the extent that Make Allowances
10 accurately reflected what the average cost of manufacture
11 was in 2006 and 2007, assuming the industry as a whole has
12 experienced the kind of cost increases you have, that
13 would support an 80% increase in the Make Allowances; is
14 that fair?

15 A. Can you restate that question?

16 Q. Yes. Assuming that, as was the effort, the
17 Make Allowances now in effect reflected the average
18 weighted cost of manufacture in the years 2006 and 2007,
19 and assuming that the industry as a whole having
20 participated in the surveys that led to those
21 Make Allowances has experienced the kind of cost increases
22 that NDA has, that would support an 80% increase in the
23 Make Allowances, correct?

24 A. I -- I can't connect that logic to answer that as
25 correct.

26 Q. Because you don't --

27 A. I'm sorry.

28 Q. -- you don't know what their costs were precisely?



1 A. Yeah. I -- my view of the surveys that have been
2 used and the surveys that recently have been used, you
3 know, the -- not the integrity of the data or the
4 completeness of the data, I feel like that it would be
5 much better if we had audited and non-voluntary
6 information to help make those determinations.

7 Q. Is it fair to say that your numbers do provide a
8 useful benchmark to assess what kinds of cost increases
9 have been experienced in the manufacturing world for
10 dairy?

11 A. I would say that it represents the directional
12 movement of costs. Our information -- and understanding
13 that we run -- in comparison to the rest of the U.S., we
14 run more nonfat drying plants, that we may experience a
15 different set of costs than cheese manufacturing plants.

16 Q. Were you here when the Land O'Lakes witness
17 testified? It was yesterday.

18 A. Yes.

19 Q. And do you recall that, in my questioning, I
20 suggested that the data he put in as to the
21 Land O'Lakes -- Land O'Lakes' cost increases between 2008
22 and 2022, that that appeared to reflect 74% increase in
23 cost?

24 A. I don't recall that exact number.

25 Q. If that is what his data supports, that would
26 indicate that your experience does not appear to be an
27 outlier, correct?

28 A. I think that's a fair comparison.



1 Q. Do you, in general, feel that the kind of
2 experience that your cooperative has gone through in terms
3 of increased costs of production are typical?

4 A. Typical of the industry, I don't know -- I don't
5 know the rest of the industry.

6 Q. Okay. I mean, do you try to benchmark in some
7 way? Many companies do that, not just in the dairy
8 industry, but try to get some sense as to how they stack
9 up against their competition. Does your company do that?

10 A. If we do, I'm not involved. I would say that a
11 more appropriate benchmark is how you win business in the
12 marketplace and stay competitive in that -- in that
13 aspect.

14 Q. Okay. So you -- you did express some concern,
15 especially in the examination by your counsel, that you
16 didn't want to end up with Make Allowances adopted that
17 overshot the mark, correct?

18 A. Correct.

19 Q. A fair way to characterize what you were saying?

20 A. Sure.

21 Q. Okay. And you are familiar with -- at some level,
22 I take it -- with the International Dairy Foods
23 Association proposal for what to do with the
24 Make Allowances?

25 A. Yes.

26 Q. Okay. And have you -- okay. And so -- and you
27 are aware that IDFA's proposing a phase-in of -- of
28 Make Allowances that would ultimately reach more or less



1 January 1, 2028, what IDFA asserts this most recent survey
2 data indicates to be the current cost of manufacture.

3 Do you understand that?

4 A. I understand that.

5 Q. I'm not asking you to accept the veracity of
6 that -- those surveys. We'll have -- the people doing the
7 surveys are going to testify next week, so we'll listen to
8 them.

9 But have you examined -- in connection with
10 your -- let me start that question again.

11 In connection with your concern that the
12 Make Allowance increase does not overshoot the mark, and
13 indeed that they fail to recognize the potential for
14 further innovation, have you compared what percentage
15 increase the IDFA proposals would impose with respect to
16 the current Make Allowances as compared to let's say your
17 80% increase?

18 A. I have not.

19 Q. Okay. So let me just ask you to assume with me,
20 it's simple math, that the IDFA proposals, once they are
21 fully implemented at the end of the phase-in, would
22 represent a 62% increase in the current Make Allowance for
23 butter, a 62% increase in the current Make Allowance for
24 nonfat dry milk, a 42% increase in the current
25 Make Allowance for cheese, and a 59% increase in the
26 current Make Allowance for dry whey. Okay?

27 Those numbers are all materially lower than the
28 80% cost increase that you have experienced, "you" being



1 NDA, correct?

2 A. Agree.

3 Q. So I mean --

4 A. Yeah. Yeah.

5 Q. You could bring your costs down quite a bit
6 through innovation, etcetera, and still not be as low as
7 the Make Allowances that IDFA is proposing; is that fair?

8 A. Maybe. Did we know what the 2022 costs were in
9 2020?

10 Q. Well, I presume we didn't.

11 A. We did not.

12 Q. They are higher.

13 A. Right. And for -- for me to say that we can
14 predict what the 2028 costs are today, and that we can
15 build a business case around that, I would hesitate to
16 stand in front of producers and tell them that, which is
17 why I support the audited regular surveys of the plants as
18 we move forward.

19 Q. Just so we're clear. You do understand that the
20 IDFA proposal with respect to what the 2028
21 Make Allowances would be is not based upon a projection of
22 trends in costs, they are based upon what we say the
23 survey data says are that -- were the costs as of 2022.

24 Do you understand that?

25 A. I understand that.

26 Q. Okay.

27 A. And as I stated before, we are building a facility
28 to help remove costs out of our system, and that



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

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

4 THE COURT: Anyone else have cross?

5 CROSS-EXAMINATION

6 BY MR. ENGLISH:

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

9 A. Good morning.

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

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

15 A. Correct.

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

19 A. Yes.

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

22 A. That's a fair point.

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

26 A. That's a fair point, yes.

27 Q. And believe me, I respect --

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



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

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

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

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

17 A. Correct.

18 Q. But nonetheless, it's directionally --

19 A. Yes.

20 Q. -- correct?

21 A. Costs went up.

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

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

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

28 A. Again, I will take your calculation.



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

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

15 Q. I assume your manufacturing cost increases of over
16 80% are carefully studied and audited, correct?

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

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

25 A. Yes.

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

27 THE COURT: Further cross?

28 ///



1 CROSS-EXAMINATION

2 BY MR. MILTNER:

3 Q. Good morning, Mr. Schilter.

4 A. Good morning.

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

8 A. Sure.

9 Q. Your drying plants in Lynden, Chehalis, and
10 Sunnyside, what type of dry products do they produce?11 A. With those plants, aggregated as one -- and I do
12 want to protect some proprietary information -- we dry
13 skim products. So nonfat dry milk, and as we have stated
14 publicly, skim milk powder.

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

16 A. We do not.

17 Q. Do you dry any buttermilk powder there?

18 A. We do, yes.

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

20 A. We do in Sunnyside, which is also a cheese
21 facility.22 Q. Are there any other dry products of any
23 consequence that you produce at those plants?

24 A. No.

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

27 A. Yes.

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



1 block cheddar?

2 A. Issaquah is not a cheese facility.

3 Q. Did I misread that statement then? I'm sorry,
4 Sunnyside.

5 A. Sunnyside, per information available with USDA and
6 FDA, manufactures cheddar cheese.

7 Q. Does it produce 40-pound cheddar?

8 A. Yes.

9 Q. Does it produce 640-pound cheddar?

10 A. No.

11 Q. Does it produce barrels?

12 A. No.

13 Q. Any other cheeses other than cheddar?

14 A. There are other cheeses that we produce. I -- I
15 know we have changed different varieties over the years,
16 but nothing of significance that -- that -- that I'm aware
17 of. But it is mostly cheddar.

18 Q. The whey that is dried there, is it -- do you
19 produce only dry whey?

20 A. Yes. Dry whey that is eligible for price
21 reporting through the NDPSR. That is all.

22 Q. Does the Lynden plant report sales to the NDPSR?

23 A. Yes.

24 Q. For powders?

25 A. For the products that are available. For milk
26 powders, for the products that --

27 Q. For nonfat dry milk?

28 A. Correct.



1 Q. Does the Chehalis plant report to the NDPSR?

2 A. Yes.

3 Q. And Sunnyside, I think you said it does. Does it
4 report cheese?

5 A. Yes.

6 Q. Does it report its whey?

7 A. Yes.

8 Q. Okay. The drying plant at Jerome, does it report
9 to the NDPSR?

10 A. Yes.

11 Q. Just nonfat dry milk?

12 A. Yes.

13 Q. Okay. So Issaquah and Caldwell, those are the
14 butter plants, correct?

15 A. Correct.

16 Q. Do they produce -- well, do they report to the
17 NDPSR?

18 A. Yes.

19 Q. So they produce bulk salted butter?

20 A. Correct.

21 Q. Do they also produce bulk unsalted butter?

22 A. They have the capability of producing bulk
23 unsalted butter. I currently do not know which ones
24 are -- which plants are producing the unsalted, but it is
25 a product that we do produce, market, and sell.

26 Q. Do those two plants produce consumer butter in
27 one-pound packages?

28 A. Yes.



1 Q. Do they produce single-serving butter for
2 foodservice or other uses?

3 A. Define "single-serve" for foodservice.

4 Q. Well, like the little butter cups or the butter
5 chips --

6 A. Oh.

7 Q. -- that you would get at a restaurant?

8 A. Yes.

9 Q. The buttermilk from those plants, what does
10 Darigold do with that buttermilk?

11 A. We -- we dry the buttermilk, when we have drying
12 capacity available. There was a period, unfortunately,
13 when we had a dryer fire in Caldwell and went through a
14 time period where buttermilk was disposed of because there
15 was no market for that.

16 Q. In the absence of that loss, you would have dried
17 it, though?

18 A. Yes.

19 Q. I had a few questions on your statement, if I
20 could ask those as well.

21 On page 1, the paragraph second from the bottom,
22 you testified that the "lack of investment in
23 manufacturing and balancing plants has driven up
24 transportation costs in which producers bear all the
25 costs."

26 Can you elaborate on how -- how the transportation
27 costs have increased as a result of the inability to
28 invest in new plants?



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

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

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

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

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

26 A. Most of the growth.

27 Q. And those are decisions made because producers
28 have decided that for whatever reason, access to feed and



1 water, land availability, any number of factors, they have
2 made a decision to either relocate their operations or
3 construct new operations in the eastern part of the state
4 rather than over near Seattle?

5 A. Yes. The urban pressures, the environmental
6 pressures, the cost pressures, the scale has had a
7 dramatic impact on what our co-op looks like today versus
8 25 years ago and where our milk is being produced.

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

11 A. Yes.

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

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

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

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

23 A. Yes. Good catch.

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

26 A. Yes. As written, I had directly quoted what was
27 in the 2008 interim final, in the 2013 final decision.

28 And as I re-read it after submission, to put it into my



1 point and position, I added the word "should."

2 Q. Okay. So put aside what USDA may have said in
3 that decision, I'd like to ask a question about what you
4 think should -- should happen with Make Allowances.

5 Let's assume that there is a survey done and that
6 it is audited and mandatory as you have advocated for.
7 And it says that the cost to produce butter is a weighted
8 average of \$0.20, but that the range is \$0.15 to \$0.25.

9 Do you think that the Make Allowance should be
10 that weighted average or should it be somewhere else in
11 that range of 15 to 25?

12 A. I think from a -- number one, as I have said
13 before, sending appropriate signals to the marketplace I
14 think is important; number two, taking into consideration
15 of the impact that it has on producers; three, the impact
16 that it would have on what producers decisions would be to
17 impact plant footprints, industry structure, industry
18 stability. I think those are all considerations that
19 would need to be considered in that -- in that decision.

20 So I have not thought through that. I cannot
21 offer an opinion other than the guidance that I would
22 advise.

23 Q. Thank you.

24 Did NDA participate in Dr. Stephenson's study from
25 2018, 2019?

26 A. I don't know.

27 Q. Do you know if Darigold participated in the update
28 to that study in 2022?



1 A. We did.

2 Q. Did NDA provide information to National Milk's
3 committee when they were trying to survey manufacturing
4 costs?

5 A. I was not part of the process at that point. My
6 understanding is that we did not.

7 Q. NDA is a member of National Milk, correct?

8 A. Yes.

9 Q. Okay.

10 A. I will go back and comment on the National Milk.
11 We did not -- to my understanding, did not submit
12 information. However, I will not object that the
13 information is too different than what we would have
14 provided.

15 Q. Okay. It was in the range of reasonableness?

16 A. Yes.

17 Q. Thank you.

18 At the top of page 2 of your statement, this was
19 another one that I think I heard you read something, and I
20 think this was just a mistake, but I want to make sure
21 it's correct.

22 Third line, the written statement says, "Our 2022
23 cost data."

24 You may have read "2002," but it should be "2022,"
25 correct?

26 A. As written, 2022. I may have misspoke. My intent
27 was 2022.

28 Q. Great.



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

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

13 What has come to light as we are in the process of
14 building what has publicly been written as a \$600 million,
15 8-million-pound-a-day butter and powder facility, we are
16 going to run that facility full, and we have the milk
17 and -- or will need the milk to run that facility full.

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

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

28 Q. As a co-op, you are making an analysis as to the



1 value of a sale to a customer, whether that's a Class I
2 plant or a Class III or IV plant, correct?

3 A. Correct.

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

8 A. Yes.

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

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

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



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

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

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

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

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

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

26 Most recently, we had a fellow cooperative
27 experience a fire and lose dryer capacity for a period of
28 time. As of right now, they are not -- that capacity that



1 was used for conventional balancing is not being used for
2 conventional balancing today. So we have seen a small
3 increase of capacity, but we have seen a continued
4 significant increase in milk production that puts pressure
5 on those facilities.

6 Q. Does Northwest Dairy Association have a base
7 program?

8 A. Yes.

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

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

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

16 A. Yes.

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

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

21 Q. Coming from members of NDA?

22 A. Yes.

23 Q. Okay.

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

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



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

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

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

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

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

20 A. Agree. Yes.

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

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



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

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

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

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

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

28 THE COURT: Further cross?



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

4 (Whereupon, a break was taken.)

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

7 Did I get that right?

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

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

12 So AMS is up.

13 CROSS-EXAMINATION

14 BY MS. TAYLOR:

15 Q. Ms. Taylor. Good afternoon -- oh, morning.

16 A. Good morning.

17 Q. Thank you for coming to testify today.

18 First question, on your cooperative, could you
19 just give us a little bit more information on your
20 members, their size, kind of how they are structured. I
21 have asked other producers and some cooperative witnesses
22 if their members would fit the Small Business definition,
23 which, in case you weren't here, was \$3.75 million or less
24 than gross revenue per year?

25 A. Yeah. I would like to translate that into, I
26 don't know -- a number of cows. That's where I'm at. So
27 I will give you a number of cows size scale.

28 295 farms, we range from operations that have



1 8,000 cows down to probably 40 or 50 cows.

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

7 The -- over half of our membership right now is
8 still milking under we'll say 250 cows, and I -- if we
9 made the assumption that 3.7 million is -- was that maybe
10 400 cows?

11 Q. It is around the 400 range.

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

15 Q. Thank you.

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

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

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



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

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

15 Q. Okay. Thank you.

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

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

25 Q. Separately?

26 A. We do.

27 Q. Okay.

28 A. Yeah. We currently balance the Washington and



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

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

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

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

23 A. When available. But it depends. So when we look
24 at the PNW, we will have two ways of balancing. We
25 will -- when it's possible, we will balance in the
26 Chehalis plant, but when that complex is full, we will
27 send milk to Idaho and balance into the Idaho market.
28 When both the PNW and the -- when Washington and Oregon



1 are full and Idaho are full, we're mostly on an island at
2 that point, and our form of balancing is dumping milk
3 or -- or others dumping milk.

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

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

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

14 In Jerome, it is a different story because I think
15 the Idaho market -- the Idaho market is much bigger, has
16 much wilder swings, has much -- much more different ways
17 to move milk out of the marketplace. Per the NASS milk
18 production report, if I remember right, that's a 40-, 42-,
19 44-million-pound-a-day market.

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

25 Q. Thank you.

26 You talk about how your plants under current
27 Make Allowances don't expect your -- at least your new
28 plant to be profitable. Without, of course, revealing



1 proprietary information, how would the -- either the --
2 how would, since you support the National Milk
3 Make Allowances, impact under that statement?

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

8 The -- our producers continue to want to grow and
9 expand their operations. That desire is there. But we
10 also have to recognize that, in simple terms, we have two
11 types of producers in our co-op. And when I talk to
12 members, I say we have -- if you are going to be
13 milking -- if you are not going to be milking cows five
14 years from now, you want a co-op that's going to be here
15 to return the equity that you put in over the last
16 20 years. If you want to be milking cows ten years from
17 now, you want a co-op that's going to be picking up your
18 milk every day and putting milk checks in the mailbox.

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



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

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

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

24 But the fact that we are near a major port, we do
25 export quite a bit of products. The innovation is more
26 forced on the fact that we can drop products into the
27 shores of the Pacific Rim cheaper than we can drop
28 products into Chicago. And so the innovation of the



1 markets that we're accessing is more driven by the export
2 forces.

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

9 Q. Okay. Thank you.

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

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

23 A. I will.

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

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

28 And I also want to signal what I'm seeing in -- in



1 regards to the fact that we're making big investments in
2 manufacturing facilities. We are struggling to keep
3 balancing plants operational, and in order to do that we
4 have had to go back and pull money off producer checks,
5 which, you know, I will say that there's a cost involved
6 to dealing with producers when they see negatives on their
7 checks. Those are real costs.

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

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



1 like.

2 Q. On the page 3 of your statement, the bottom of
3 that first paragraph, you are discussing why you don't
4 want to see a dramatic change to the Make Allowances and
5 you are supporting the National Milk numbers.

6 A. Yeah.

7 Q. And you say that "a dramatic change immediately
8 would have an unnecessary negative impact on the producer
9 community."

10 I guess my first -- I guess my first question is,
11 one, are you talking about delaying that, or are you -- or
12 how would you define a dramatic change? And on top of
13 that, could you kind of elaborate on the negative impact
14 it would have to the producer community?

15 A. Yeah. Absolutely. And I referenced this earlier
16 when in January of 2019 -- or sorry -- December of 2019,
17 we announced a retain. I will call it a significant
18 retain. I won't give the number, but it was somewhere
19 between zero and a dollar. And -- and it was in order to
20 help fund the Pasco project.

21 And the economic analysis that we did, we
22 estimated that we would lose -- in a certain part of
23 our -- of our area, we estimated that we would lose 15 to
24 20% of our milk in a 12-month time period. And we were
25 wrong. We were too low.

26 And so when we saw that type of a change hit our
27 co-op, and we had producers look down and try to
28 understand what they wanted to do with their businesses,



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

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

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

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

26 And I wouldn't say I don't want to ever go through
27 that again, but that was a really -- that was a really
28 tough part -- really tough part of life as being a part of



1 the co-op. So, big change.

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

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

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

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

27 Q. Okay.

28 A. Yeah.



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

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

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

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

17 THE COURT: Redirect.

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

20 Appreciate your time, Mr. Schilter.

21 We would offer Exhibit 159 into evidence.

22 THE COURT: Objections?

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

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

27 THE COURT: You are dismissed. Thank you.

28 THE WITNESS: Thank you.



1 MS. HANCOCK: Your Honor, at this time we would
2 call Mike John to the stand.

3 THE COURT: Welcome. Raise your right hand.

4 MIKE JOHN,
5 Being first duly sworn, was examined and
6 testified as follows:

7 THE COURT: Your witness.

8 DIRECT EXAMINATION

9 BY MS. HANCOCK:

10 Q. Good morning, Mr. John. Would you mind stating
11 and spelling your name for the record?

12 A. I have one of the easiest names. Michael John,
13 M-I-C-H-A-E-L, J-O-H-N.

14 Q. So I'm married to a Jon without an H, so it is a
15 little more complicated sometimes.

16 Would you mind providing your business mailing
17 address, please?

18 A. Sure. 13921 Park Center Road, Suite 200, Herndon,
19 Virginia, 20171.

20 Q. And where are you currently employed?

21 A. I'm employed with Maryland and Virginia Milk
22 Producers.

23 Q. Did you prepare a statement on behalf of National
24 Milk in support of the Make Allowance proposal?

25 A. Yes, I did.

26 Q. And is that what's been identified as Exhibit
27 NMPF-23?

28 A. Yes.



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

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

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

7 MS. HANCOCK: Thank you, your Honor.

8 BY MS. HANCOCK:

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

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

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

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

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

28 MDVA fully supports the increases in the



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

4 MDVA is a cooperative located and operating in the
5 Midatlantic and Southeast geographies of the United
6 States. MDVA is a cooperative made up of around 920 dairy
7 farmer members would produce 2.3 billion pounds of milk
8 each year. The overwhelming majority of MDVA's member
9 milk stretches between two Federal Orders, Federal Order 1
10 and Federal Order 5. MDVA's members own and operate three
11 pool distributing plants, two in Federal Order 5 and one
12 in Federal Order 1. In addition, Maryland Virginia owns
13 and operates two pool supply plants, one in Federal Order
14 5 and one in Federal Order 1.

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

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

27 While MDVA has the ability to manufacture a
28 sufficient amount of butter, MDVA's annual butter



1 production is highly seasonal, which has the direct impact
2 on our cost of converting raw milk to butter depending on
3 the season. Therefore, my focus will center around
4 converting raw milk to nonfat dry milk, which is a more
5 stable component for our cost discussions.

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

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

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

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

25 This balancing service does affect our costs of
26 converting raw milk into nonfat dry milk and butter.
27 Those of us in the industry with fluctuating market
28 factors will have a higher cost of conversion compared to



1 those who have a more straight-line production because we
2 have to make shorter-term decisions to respond to these
3 fluctuations in need and because we have to make these
4 just-in-time manufacturing decisions to meet consumer
5 needs. For these reasons, we urge USDA to approve the
6 increase in Make Allowances outlined in NMPF's proposal in
7 a manner that will preserve producers' ability to absorb
8 the increase until such time that an audited cost survey
9 can be approved and deployed.

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

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

15 The Make Allowances have not been increased since
16 2008 using data from as early as 2006. Quoting from
17 NMPF's request for a national hearing: "From discussions
18 with members, a review of input price data and the output
19 from the University of Wisconsin cost to manufacturing
20 survey, it is clear that dairy product pricing costs have
21 increased, and therefore, average manufacturing costs for
22 butter, nonfat dry milk, cheddar cheese, and dry whey are
23 considered higher than the Federal Order Make Allowances."

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



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

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

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

21 Second, we believe cooperatives like ours, who
22 made the necessary investments in manufacturing plants,
23 and who provide a valuable balancing service to the
24 marketplace, are overburdened when the Federal Order
25 Make Allowances don't properly reflect the cost of
26 converting raw milk to storable commodities.

27 Consequently, we believe that cooperatives like ours won't
28 continue to make further investments in manufacturing,



1 either to upgrade current facilities or invest in new
2 technologies without some cost adjustment. As a result,
3 the whole marketplace will suffer without an increase.

4 Future mandatory cost reporting:

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

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

28 I want to thank the USDA for having this hearing



1 and thank you for the opportunity to speak on behalf of
2 MDVA's dairy farmer members.

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

5 THE COURT: Any examination for this witness?

6 CROSS-EXAMINATION

7 BY MR. ROSENBAUM:

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

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

12 A. Which -- which ones?

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

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

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

19 A. No, we did not.

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

22 A. Yes.

23 Q. -- by Dr. Stephenson in 2023?

24 A. Yes.

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

27 A. Yes.

28 Q. So I note that on page 4 of your report, you state



1 that your cooperative "has seen a 64% increase in our
2 standard cost to convert raw milk into nonfat dry milk
3 compared to our previous cost standard set approximately
4 12 years ago."

5 Do you see that?

6 A. Yes.

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

9 A. Sure. So, first of all, the standard costs would
10 be, we look at the -- and I'm not one of the accountants,
11 but we look at the previous year costs and -- and then
12 decide what the next year, what that cost should be. We
13 don't always update those. So we would have update -- we
14 would have had that information -- 12 years would have
15 been from 2022, so that -- that cost would have been
16 2010 --

17 Q. Okay.

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

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

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

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



1 whether they need to change those standard costs. So they
2 decided that at the end of 2022 that we needed to change
3 those costs for the start of 2023 year.

4 Q. Okay. And so this was -- strike that.

5 I take it that in deciding whether to increase
6 your cost standard, you obviously look at the actual costs
7 that you are incurring at that point in time, correct?

8 A. That's correct.

9 Q. So by -- at some time toward the end of 2022,
10 looking at what your costs have been to date and some kind
11 of predictions of the future, that's how you come up
12 with -- came up with a new cost standard; is that fair?

13 A. Yes. Uh-huh.

14 Q. Okay. And -- and you were, for purposes of your
15 testimony, comparing that 2022 number to what that cost
16 standard had been as of January 1, 2010; is that right?

17 A. Yes.

18 Q. Okay. Now, as I'm sure you have heard others
19 testify, I assume you were not around in 2008 when the
20 last hearings were held on this subject, or maybe you
21 were?

22 A. I was around. I wasn't involved in the hearings.

23 Q. Okay.

24 A. I'm older than I look.

25 Q. Aren't we all?

26 So do you know whether the cost standard that had
27 been in effect, let's say, in 2006 was lower than the cost
28 standard in 2010?



1 A. No, I wouldn't know that. I was in a different
2 role at that time, so I just don't know.

3 Q. Okay. So it's -- it's possible that if you --
4 the -- let me strike that.

5 The reason I'm saying 2006 is because the 2008
6 Make Allowances, which we're now operating under, were
7 based upon cost data from 2006 and 2007. That's the
8 reason I'm asking that specific date. And -- but you
9 don't know whether the cost standards as of 2006 and 2007
10 were lower than 2010?

11 A. No, I do not.

12 Q. To the extent that they were lower -- and I
13 recognize that's at this point conjecture -- but if they
14 were lower, then obviously your 64% figure here would be
15 higher if you were comparing what it had been in 2006 to
16 what it now is, correct?

17 A. Yeah. And I -- I'll say that I think what I guess
18 Chip had brought up in the previous cross-examination with
19 Monty is that what I have noticed is that the last several
20 years, there's been that -- that -- the slope of the curve
21 has been a lot greater. So I don't know that there would
22 have been near that kind of a cost increase between 2006
23 and 2010. That's just an educated guess on my part.

24 Q. How long have you been involved in work that
25 required you to pay attention to the cost standard?

26 A. Actually, I -- probably the last two years I would
27 say.

28 Q. I mean, do you know whether the cost standard has



1 ever -- has declined at any point?

2 A. Not that I'm aware of.

3 Q. Okay.

4 A. Now, I will say that the variance to the cost
5 standard has changed based on -- you know, for example,
6 one of your biggest costs in -- in drying milk powder is
7 natural gas, and you can see natural gas prices -- I mean,
8 during COVID, they were outrageous. They have come back
9 today to, you know, hopefully more normal rates, although
10 I'm not sure we know what normal is anymore, so --

11 Q. All right. And I'll ask you the same question I
12 asked the last witness.

13 Have you compared the 64% increase in your
14 standard cost to the increase in Make Allowance that IDFA
15 is seeking?

16 A. Now, I -- the -- I guess I'll put it this way:
17 We understand from our standpoint because of -- in my
18 testimony I talk about the balancing service that we
19 provide the marketplace, that we're going to have a
20 different cost standard, you know, to convert powder
21 because we don't run full all -- you know, we don't run
22 our plant full-time, because we look at that balancing
23 service as an opportunity for us in serving the Class I
24 market in the East Coast. So the -- now I forget what
25 your question was. See, that's what happens when you get
26 to be 62, so -- if you can ask it again, I --

27 Q. I was asking whether you had examined what
28 percentage increase IDFA was seeking in its -- in the



1 Make Allowances.

2 A. We -- we feel that that's a reasonable increase.
3 And we all -- we know for a fact, as the size of operation
4 that we have, we're going to have probably higher costs
5 than -- than others. But we look at that as a reasonable
6 increase.

7 Q. And the -- IDFA's proposed increase?

8 A. Oh, IDFA. I thought you said National Milk.

9 Q. I didn't.

10 A. Okay. I'm sorry.

11 Q. I wasn't sure whether you heard me properly.

12 A. Yeah. Yeah. So National Milk, I mean, we look at
13 that as a reasonable increase, yeah.

14 Q. It is -- but it is -- I mean, you -- you have a
15 64% increase. I mean, National Milk is proposing a 20 --
16 roughly 20, 22% increase. You are aware of that
17 difference?

18 A. Yes. Yes. And, you know, I guess here's how I'd
19 like to explain that is, you know, we're owned by our
20 dairy farmer members. And there are three returns,
21 basically, that we look at -- and this is how I explain it
22 to our members. Is that the first return is the minimum
23 Federal Order pricing, so -- which makes up the majority
24 of their monthly milk check.

25 The second return is what we can bargain,
26 collectively bargain, out in the marketplace to get in
27 over-order premiums or, you know, there's other pieces to
28 that, maybe like fuel surcharges or uniform receiving



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

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

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

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

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



1 loss?

2 A. I'm not -- I'm not at privilege to share that.

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

4 THE COURT: Further cross?

5 CROSS-EXAMINATION

6 BY MR. MILTNER:

7 Q. Ryan Miltner representing Select Milk Producers.

8 Good morning, Mr. John.

9 A. Good morning.

10 Q. You have been here for a few days?

11 A. Since Monday.

12 Q. Yeah. Well, then, unsurprisingly I wanted to ask
13 you a few questions about your plants.

14 A. Oh, sure.

15 Q. Your plants in Laurel, Maryland?

16 A. Uh-huh.

17 Q. What are the products that are produced at that
18 plant?

19 A. Just bulk butter and -- and nonfat dry milk.

20 Q. Pretty simple.

21 Does it produce any skim milk powder?

22 A. No.

23 Q. Whole milk powder?

24 A. No.

25 Q. Buttermilk powder?

26 A. No.

27 Q. What do you do with the buttermilk that comes off
28 of that plant?



1 A. That's a great question. So we don't make a lot
2 of butter, you know. Since we live in an area where
3 there's a lot of people, and we're blessed from that
4 standpoint. Being kind of where there is a lot of people,
5 there's a lot of opportunity to do other things with fat,
6 and so butter is kind of our last resort. And so it's
7 very seasonal. And so when we do make buttermilk, we make
8 basically, you know, decisions at that time, you know,
9 when we have to dump it, we could condense it and try to
10 sell it that way. But it's -- really that's the two
11 options we have.

12 Q. You're just making the best economic decision for
13 your members at that time?

14 A. Yes.

15 Q. Does the nonfat operation at Laurel operate pretty
16 continually?

17 A. No, it is seasonal.

18 Q. So the whole plant is seasonal, the nonfat
19 production and the butter production both seasonal at that
20 plant?

21 A. Yes. It's -- there's -- you know, there's more
22 opportunity, I'll just say, with the fat side to do other
23 things with the fat. And we do -- so we do have skim --
24 the skim stream all year round and -- but our powder
25 production -- we'll still make powder, for example, this
26 time of year, but generally like on the weekends and --
27 and -- but our powder production in the spring of the year
28 and spring flush, holiday seasons, we'll be full.



1 Q. Would I be wrong to infer that you're producing on
2 weekends because bottling plants are not taking as much
3 milk on weekends as they do throughout the week?

4 A. That's correct.

5 Q. And so would you skim off the cream and sell it
6 then and then do whatever with your skim?

7 A. Yes. Uh-huh. Yeah, Tuesdays, Wednesdays, and
8 Thursdays this time of year are -- can be pretty
9 stressful.

10 Q. When Maryland and Virginia reported to
11 Dr. Stephenson for his 2002 study, did you provide
12 manufacturing costs for the Laurel plants?

13 A. Yes.

14 Q. For both butter and nonfat?

15 A. Yes.

16 Q. For the plant in Strasburg, does it produce butter
17 and nonfat?

18 A. No. Just butter.

19 Q. Just butter.

20 And what kinds of butter products are produced at
21 that plant?

22 A. Just bulk butter, either salted or unsalted. We
23 basically make to order.

24 Q. It's made to order you said?

25 A. Yes.

26 Q. What happens with the skim that is taken in at
27 that plant?

28 A. We condense it. We have different condensed sales



1 that we have.

2 Q. Is the condensing done on site?

3 A. Yes.

4 Q. Do you ever take that condensed up to your plants
5 in Laurel for conversion to nonfat dry milk?

6 A. Unfortunately, yes, sometimes we do that. Yeah.

7 Q. Okay. I'm familiar with the geography in the
8 area. But how far is it from Strasburg to Laurel?

9 A. Well, it's probably -- I got to think now a
10 minute. Probably no more than 70 miles.

11 Q. Okay?

12 A. And -- but the, you know, traffic in that area
13 is -- it could take you an hour, it could take you three
14 hours, you know.

15 Q. It's not the mile-per-minute conversion I like to
16 do in my head when I'm thinking about driving around my
17 part of the world, is it?

18 A. That's right.

19 Q. Does the Laurel plant report sales to the NDPSR?

20 A. Yes.

21 Q. Would it report for both butter and for nonfat dry
22 milk?

23 A. That's correct.

24 Q. Does the plant in Strasburg report its butter
25 sales to NDPSR?

26 A. Yes.

27 Q. When you factor in the seasonality of production
28 at Laurel, does -- does that plant then have a higher



1 manufacturing cost for the same butter products compared
2 to Strasburg?

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

5 Q. They are both seasonal?

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

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

10 A. So you are saying 26 weeks?

11 Q. Yeah.

12 A. No. Less than that.

13 Q. Less than that?

14 A. Yes.

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

19 A. Yes.

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

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

26 Q. Right.

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



1 Q. You mentioned over-order premiums in your question
2 and answer with Mr. Rosenbaum.

3 A. Uh-huh.

4 Q. And within those over-order premiums you
5 specifically mentioned fuel surcharges.

6 A. Yes.

7 Q. And you also mentioned uniform receiving credits.

8 A. Yes.

9 Q. When Maryland Virginia charges an over-order
10 premium, is there a separate balancing component of that
11 over-order premium?

12 A. Give me some more information. I'm not sure I
13 know what you mean by "separate balancing."

14 Q. Well, if I -- if I characterize this correctly, I
15 read your statement as saying that there's a balancing
16 cost affiliated with servicing a Class I plant, correct?

17 A. Yes.

18 Q. And that part of that balancing cost is taking
19 milk through your cooperative-owned Class IV plants,
20 correct?

21 A. Uh-huh.

22 Q. Okay. Over-order premiums, on the other hand,
23 include a number of elements, and a couple of which you
24 have talked about, correct?

25 A. Right.

26 Q. Does your over-order premium also include a charge
27 to your Class I handler to offset the expense of balancing
28 the supplies to their Class I facility?



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

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

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

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

23 A. Yes.

24 Q. -- amount throughout the week --

25 A. Yes.

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



1 A. It helps.

2 Q. -- is not taking milk?

3 A. It helps to minimize it. It doesn't cover the
4 full cost of it, but it does help to minimize it.

5 Q. So -- so we could also then from your answer and
6 your statement, I think, conclude that the over-order
7 premiums you are able to obtain from the market are not
8 sufficient to offset the balancing expenses incurred from
9 servicing the Class I market?

10 A. That's correct.

11 Q. Okay.

12 A. Yeah.

13 MR. MILTNER: Thanks. I don't have anything
14 further.

15 THE WITNESS: Okay.

16 THE COURT: Okay. Further cross from anyone but
17 AMS?

18 All right. Let's go off the record.

19 (Off-the-record.)

20 THE COURT: Back on the record.

21 Off the record we discussed what we're going to do
22 the rest of the day, and we will take an hour lunch now,
23 come back at 12:00, put on the virtual witnesses who are
24 producers, and hope that there will be some time left
25 before the 3 o'clock hard stop for today to finish this
26 witness. Thank you. So we'll break for lunch. Be back
27 at noon.

28 (Whereupon, a luncheon break was taken.)



1 FRIDAY, SEPTEMBER 8, 2023 - - AFTERNOON SESSION

2 THE COURT: On the record.

3 Mr. English.

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

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

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

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

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

22 THE COURT: Yes. Okay. She's not on our screen.
23 Oh, hi.

24 Please raise your right hand.

25 LEANNA COMPANGA,
26 Being first duly sworn, was examined and
27 testified as follows:

28 THE COURT: Thank you.



1 Your witness.

2 DIRECT EXAMINATION

3 BY MR. ENGLISH:

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

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

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

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

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



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

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

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

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

25 Our milk market, Organic Valley, has around 600
26 farm members in the ten-state Northeast region and about
27 100 farm members in the state of Vermont.

28 Within the cooperative governance, I serve on the



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

9 Additionally, I am a board member of the Champlain
10 Valley Farmers Coalition, and our family is involved in
11 4-H, meaning for part of the summer, our county fair is a
12 big part of our life when our daughter and sons show their
13 dairy calves.

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

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

27 But I struggle to see any benefit these federal
28 pricing regulations have for an organic dairy farm like



1 ours. In fact, the opposite seems true. It seems that
2 the orders, as they function, and some changes being
3 considered in this hearing, would only undermine my dairy
4 and create larger pool obligations for my marketing
5 cooperative, Organic Valley. Those pool obligations are
6 resources, financial resources, that leave the co-op and
7 owners like me. The logic is hard for me to understand.

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

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

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

26 I am worried that some proposals offered in this
27 hearing will increase my cooperative's FMMO pool
28 obligation. This will compete with my co-op's ability to



1 maintain a high stable pay price and, therefore, our
2 ability to invest in our farms.

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

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

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

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



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

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

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

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

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

19 THE COURT: Cross-examination for this witness?

20 Mr. Miltner.

21 CROSS-EXAMINATION

22 BY MR. MILTNER

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

26 A. You're welcome.

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



1 A. Sure.

2 Q. Organic Valley is a member of a group here called
3 the Milk Innovation Group.

4 You are aware of that?

5 A. Yeah.

6 Q. Okay. So you have a statement in here that says,
7 "We can bring more innovation to the market," and then you
8 list a bunch of different milks. One of these is
9 additional fortifications to appeal to more people.

10 Can you explain what you mean by "additional
11 fortifications"?

12 A. Sure. So first off, if there's any more products
13 that are going to be introduced to the market, that is
14 something that Organic Valley would want to speak for on
15 my behalf. But also, as far as fortifications go, you can
16 see products on the market that have higher protein
17 levels, for example, versus the baseline protein. So I
18 would use that as an example. But I'm sure there's
19 other -- there is other ideas on the board that I can't
20 speak of.

21 Q. And I imagine you have been focusing your time the
22 last three weeks on running your farm and not listening to
23 this hearing; is that right?

24 A. Correct.

25 Q. Okay. So I think there were other people, other
26 members of MIG who testified earlier in the hearing that
27 the consumers don't necessarily see a value in additional
28 fortifications of milk.



1 Would you disagree with their statements?

2 A. Hmm. Well, I'm not sure.

3 Q. Okay. And since you didn't hear, perhaps that
4 wasn't the fairest question to ask, but I did want to know
5 if you had an opinion.

6 So, again, you focus on farming, and that takes up
7 a lot of time. You said you are not an expert on the
8 Federal Orders, which I appreciate. I have got another
9 client who is an OV member who, same thing, does a great
10 job farming, doesn't follow the order language.

11 But my question for you is, are you aware that the
12 Federal Orders don't regulate dairy farmers, they only
13 regulate the handlers of milk?

14 A. Correct.

15 Q. And so when Organic Valley has to make a pool
16 payment, it's not Organic Valley as a producer that's
17 making that payment, it is Organic Valley, the bottler,
18 that's making the payment?

19 A. Correct.

20 Q. Okay. And my understanding is that most organic
21 farmers have a contract that pays them pretty well a fixed
22 price for a set period of time.

23 Is that -- is that how you get paid by Organic
24 Valley as well? And I don't need to know the number. I
25 don't want to know the number.

26 A. Yes. Yes, we have a stable price.

27 Q. Okay. Great.

28 MR. MILTNER: Thank you very much for your



1 answers.

2 THE WITNESS: You're welcome.

3 THE COURT: Further questions for this witness?

4 AMS.

5 CROSS-EXAMINATION

6 BY MS. TAYLOR:

7 Q. Good morning. This is Erin Taylor with USDA.

8 Thank you for joining us --

9 A. Good morning.

10 Q. -- and testifying today.

11 A. You're welcome.

12 Q. Just a couple questions. You answered a lot of
13 the ones I typically ask producers.

14 In response to Mr. Miltner you did talk about how
15 you have a fixed price contract with Organic Valley.

16 How often do you all go through that contract
17 renewal process?

18 A. That is a good question. So my husband and I, we
19 farm jointly with my parents at two locations, and that is
20 something that my parents were the last ones to sign on --
21 off of. So that is not something I can answer for my
22 parents.

23 Q. Okay. Thank you.

24 In regards to your farm, you said I think most of
25 your milk goes to fluid and also organic yogurt
26 production, I believe.

27 A. Yes.

28 Q. About how far do you -- does your milk go to find



1 a home, find a plant?

2 A. Not far. There's a plant that's located in
3 Vermont on the eastern side of New York, and then there's
4 the Stonyfield plant in Londonderry, New Hampshire.

5 Q. Okay. You spoke in your statement about other OV
6 members in the area, around 600 in the ten-state Northeast
7 region. Around you in your area, you have I think you
8 said two hundred -- a head of 250 -- 230, excuse me.

9 Can you just talk about if the -- your fellow
10 organic farmers in that area are of similar size or are
11 you larger for the region or smaller for the region?

12 A. Sure. So we're milking, yes, we have 230 mature
13 head. And I would say for our region, for organic
14 producers, we're on the larger side. With that being
15 said, for a cooperative, we are -- we're still on the
16 larger side. Our average farm, I believe, is around 75
17 cows.

18 Q. Okay. And then can you speak to what you have
19 seen in your region, maybe in the past five years? Have
20 you seen the organic market increase, you know, the number
21 of organic farms increase or remain the same --

22 A. Sure.

23 Q. -- or decline?

24 A. Our membership has stayed about the same.

25 Q. Stayed about the same.

26 Have you seen numbers -- maybe your average herd
27 size grow, or no, that's pretty stable too?

28 A. Also stable. It has not grown much. And that's



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

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

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

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

14 A. Yes. Yes, we do.

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

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

27 Q. Okay.

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



1 much.

2 THE WITNESS: You're welcome.

3 THE COURT: Redirect?

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

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

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

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

12 THE COURT: Thank you, Ms. Companga.

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

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

17 SEAN CORNELIUS,

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

20 THE COURT: Your witness.

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

24 DIRECT EXAMINATION

25 BY MS. HANCOCK:

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



1 A. Yes.

2 MS. HANCOCK: Your Honor, I believe that we're up
3 to 162, if we could mark this exhibit?

4 THE COURT: DFA-4 is marked for identification as
5 Exhibit 162.

6 (Thereafter, Exhibit Number 162 was marked
7 for identification.)

8 MS. HANCOCK: Thank you, Mr. Cornelius.

9 I don't remember, your Honor, are we having them
10 spell their name and address as well? I don't know that
11 we did that with the last one. Okay.

12 BY MS. HANCOCK:

13 Q. Mr. Cornelius, could you state and spell your name
14 and provide your business mailing address for the record?

15 A. Certainly. My name is Sean Cornelius. That is
16 S-E-A-N, C-O-R-N-E-L-I-U-S. And it's representing Dairy
17 Farmers of America. My address is 1405 North 98th Street,
18 Kansas City, Kansas 66111.

19 Q. Thank you.

20 And would you proceed with providing us your
21 testimony as we have identified it as Exhibit 162?

22 A. Certainly. Thank you.

23 Good morning from Kansas City. My name is Sean
24 Cornelius. I am a dairy farmer from Hamilton, Missouri
25 and farm in partnership with one of my brothers and my
26 parents. Together, we typically milk 100 cows and farm
27 around 1200 acres. We currently have four generations
28 living on the farm and are proud to be farmer-owners of



1 Dairy Farmers of America.

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

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

15 In regards to returning to the higher-of:

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

25 According to NMPF, from July through December of
26 2020, dairy farmers Federal Milk Marketing Order revenue
27 was reduced by \$753.8 million due to the "average-of-plus"
28 instead of "higher-of." We are thankful to the Secretary



1 for the two pandemic market volatility assistance program
2 payments to help compensate for that loss. However, this
3 support came much delayed and woefully undervalued for the
4 total revenue losses from the marketplace, and certainly
5 did not make dairy farmers whole.

6 The disparity between the higher-of and average-of
7 is often blamed on the COVID-19 pandemic. However, since
8 January '21 and through July of '23, the average-of-plus
9 was less than its higher-of counterpart in 18 of
10 31 months. This resulted in a revenue loss of
11 \$226.5 million. About \$222 million of the loss occurred
12 since August of 2022, or over the last 12 months.

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

17 The simple average-of differences over the last
18 12 months is \$0.56 per hundredweight. At 30% utilization,
19 it has reduced blend price by about \$0.17 per
20 hundredweight. Dairy farmers have always operated on
21 extremely tight margins but are currently facing
22 especially struggling times. This is real money in dairy
23 farmer pockets.

24 For my farm, our market averages between 80 and
25 85% Class I utilization. This means our contribution to
26 pay price through this timeframe was very negatively
27 impacted by this change.

28 Dairy producers originally supported the change to



1 the average-of in light of supporting Class I processors'
2 ability to hedge. However, it is my understanding that
3 the significant majority of Class I milk is not hedged. I
4 don't know the amount that actually is hedged, but I
5 believe it to be a low volume.

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

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

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

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



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

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

6 Like the Make Allowance, the differential has not
7 been changed for too long and needs a system in place to
8 make timely adjustments. It is obvious that waiting
9 20 years and needing a hearing to tune up the influence of
10 everyday costs is an outdated way of thinking. The
11 National Milk proposal on changing the differential will
12 more closely reflect the reality of moving milk to deficit
13 markets today. Currently, dairy farmers are left covering
14 these increased costs to market.

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

25 Knowing those two costs -- true costs are integral
26 to making adequate adjustments to the Make Allowance.
27 Also, the true final cost to dairy farmers must be taken
28 into account. Processors need to be fairly adjusted for



1 the cost of manufacturing, but not solely at the cost of
2 dairy farmer milk checks.

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

5 For this discussion on updating component factors,
6 I take off my dairy farmer hat and speak as a dairy
7 nutritionist. When I started balancing diets in the late
8 1980s, we simply balanced for the amount of protein in the
9 diet. Many changes have taken place since then, as we
10 look at fiber, amino acids, carbohydrates, fatty-acids,
11 vitamins, and minerals. These changes to ration
12 balancing, along with continued advances in management
13 practice, will result in ever-improving cow comfort and
14 propel dairy cow performance.

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

26 I wish to thank the Secretary for the opportunity
27 to testify today in support of the National Milk Producers
28 package of proposals. The success of my family farm today



1 and for generations to come is dependent on the outcome of
2 this hearing.

3 I am happy to answer any questions.

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

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

8 Seeing none, you are up AMS.

9 CROSS-EXAMINATION

10 BY MS. TAYLOR:

11 Q. Good afternoon.

12 A. Hello.

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

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

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

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

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

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

28 Is your milk pooled on the Central order?



1 A. Yes, it is.

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

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

17 Q. Okay. Thank you.

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

23 A. That is correct.

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

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



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

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

7 A. Yes.

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

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

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

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

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

24 Q. Okay. Thank you very much.

25 MS. TAYLOR: That's all we have.

26 THE WITNESS: Thank you, Erin.

27 THE COURT: Anyone else?

28 Redirect.



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

3 Your Honor, I would move to admit Exhibit 162.

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

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

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

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

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

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

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

23 THE COURT: Raise your right hand.

24 EVAN HILLAN,
25 Being first duly sworn, was examined and
26 testified as follows:

27 THE COURT: Your witness, Ms. Hancock.

28 MS. HANCOCK: Thank you.



1 DIRECT EXAMINATION

2 BY MS. HANCOCK:

3 Q. Good afternoon, Mr. Hillan. Would you please
4 state and spell your name for our record?

5 A. Evan Hillan, E-V-A-N, H-I-L-L-A-N.

6 Q. And what is your business mailing address?

7 A. I'm testifying on behalf of Land O'Lakes as a
8 member. It's 4001 Lexington Avenue North, Arden Hills,
9 Minnesota, zip code 55126.10 Q. And, Mr. Hillan, did you prepare testimony that we
11 have identified as Exhibit NMPF-67?

12 A. Correct.

13 MS. HANCOCK: And, your Honor, I believe that
14 we're up to Exhibit 163, if we could mark this for
15 identification?16 THE COURT: Yes. Identified exhibit is marked
17 163.18 (Thereafter, Exhibit Number 163 was marked
19 for identification.)

20 MS. HANCOCK: Thank you.

21 BY MS. HANCOCK:

22 Q. Mr. Hillan, would you like to proceed with
23 providing us with your testimony?

24 A. Thank you.

25 Thank you for the opportunity to testify before
26 you today. My name is Evan Hillan, and I'm a
27 fourth-generation dairy farmer who farms in partnership
28 with my parents in Ladysmith, Wisconsin. We milk 500

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

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

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

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

27 Additionally, the original intent of including the
28 barrel cheddar cheese in the Class III protein formula and



1 adjusting the barrel cheddar price higher by \$0.03 was to
2 increase the volume represented in NDPSR. However, when
3 the block cheddar price exceeds the barrel cheddar price
4 by more than \$0.03, there are unintended consequences.

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

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

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

28 Producer margins have become significantly



1 compressed in the first half of 2023 and may be more
2 compressed in the second half of 2023, into 2024.
3 Class III and Class IV prices have averaged \$5.47 and
4 \$6.08 per hundredweight lower through June compared to
5 same six-month period in 2022. That have translated into
6 major decreases in the Federal Milk Marketing Order
7 uniform prices.

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

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

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

27 Thank you again for the opportunity to testify
28 today.



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

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

7 THE COURT: Yes. Questions for this witness?
8 Dr. Cryan.

9 CROSS-EXAMINATION

10 BY DR. CRYAN:

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

13 Hello, Mr. Hillan. How are you?

14 A. Hello. Good. How are you?

15 Q. Very well.

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

18 A. Yes. We have been.

19 Q. I appreciate that.

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

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

24 A. Correct.

25 Q. -- and on the state dairy committee?

26 A. Yes.

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



1 Federal Orders? I think that follows from your testimony,
2 but I just wanted to make sure I understood that
3 correctly.

4 A. So if the question is, is do you believe that
5 negative PPDs is --

6 Q. Yeah, and the result --

7 A. -- unexpected consequences and depooling.

8 Q. Yes. And the depooling resulting from the price
9 misalignments, not necessarily that there's a problem when
10 co-ops make that choice to depool. They are responding to
11 the system as it is.

12 A. Correct.

13 Q. But the negative PPDs and the price misalignments
14 that lead to depooling, is that -- are those pretty
15 fundamental problems in the system right now?

16 A. You know, I'm not -- I haven't studied that part
17 of the issue as well, so I can't give you a very detailed
18 answer to that. I can give you part of my opinion, which
19 is to say, you know, I think that is part of a -- it's
20 part of the problem, of not having the Federal Milk
21 Marketing Orders revamped for the last, you know, was it
22 2006, 2008. I think it's just a causal of what happens --
23 what's happened for the last, you know, almost 20 years
24 now.

25 Q. Very good.

26 DR. CRYAN: All right. Well, thank you.

27 THE COURT: Questions from anyone besides AMS?

28 Seeing none, USDA AMS' turn.



1 CROSS-EXAMINATION

2 BY MS. TAYLOR:

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. Oh, you dropped from the screen -- there we go.
6 Okay. Now we can see you here.7 This is Erin Taylor with USDA. Thank you so much
8 for joining us virtually to testify today.

9 A. Well, thank you for the opportunity.

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

16 A. No, we would not make that requirement.

17 Q. Okay. You talked, you know, in your statement
18 about the impact that -- well, you talked about the barrel
19 impact that that's had on the Class III price and
20 consequently on the prices that you have received in your
21 milk check, and also feature kind of price forecasts and
22 how that could impact you.23 I was wondering if you could let us know if you,
24 because of these risks, you utilize any risk management
25 tools, either through your cooperative or through USDA, to
26 help you manage these risks.27 A. Yes, we do use Dairy Margin Coverage and Dairy
28 Revenue Protection as well.

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

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

14 Q. Okay. Thank you so much.

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

22 A. Yes. It's definitely starting to take an effect.
23 You know, you are hearing anecdotal evidence from feed
24 mills that people are starting to get behind on their
25 pay -- on their bills. I have seen, you know, a lot of
26 our producers -- you know, as a board member, you know,
27 you are watching the numbers overall in the U.S., and it's
28 been a steady -- a pretty steady decline, and farm



1 members, not just here in Wisconsin, but nationally as
2 well. But the milk is still there, so, you know, given
3 that anecdotal evidence, just continuing consolidation
4 overall.

5 And kind of backing this up, you know, when my
6 parents first started farming, our township, we used to
7 have 25 dairy farms. Now we're the only one. And, you
8 know, we're probably producing just as much milk as those
9 25 dairy farms did about 30 years ago. And so I have been
10 seeing, you know, definitely in the last year or two,
11 you're hearing a lot more people putting more, going
12 deeper into their credit lines. And you know, some of
13 them, you know, there's a good chunk of people out here in
14 their 60s and looking at beef prices and, you know,
15 they -- everything is paid for, and prices aren't really
16 good if you are a dairy farmer. And, you know, they are
17 probably making a decision right now of soon to maybe exit
18 the business.

19 Q. Okay. Thank you.

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

25 I was wondering if you could kind of speak as a
26 producer member about the investment decisions your
27 cooperative has made and how that's impacted you and how
28 maybe their -- they have -- the co-op is dealing with



1 lower manufacturing allowances, specifically, and how you
2 have seen that impacting you as a producer member.

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

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

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

16 THE COURT: Anything further? Questions other
17 than redirect?

18 Seeing none, redirect.

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

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

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

26 THE COURT: Thank you for being here.

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

28 THE WITNESS: Thank you.



1 MS. HANCOCK: Your Honor, at this time I believe
2 our next witness, dairy farmer witness, is Blake
3 Gendebien.

4 THE COURT: Raise your right hand.

5 BLAKE GENDEBIEN,
6 Being first duly sworn, was examined and
7 testified as follows:

8 THE COURT: Your witness.

9 MS. HANCOCK: Thank you.

10 DIRECT EXAMINATION

11 BY MS. HANCOCK:

12 Q. Would you mind stating and spelling your name for
13 the record, please?

14 A. Yes. Blake Gendebien, B-L-A-K-E,
15 G-E-N-D-E-B-I-E-N.

16 Q. And can you tell us your business mailing address
17 for our record as well?

18 A. Yes. It is 40 Shattuck Road, S-H-A-T-T-U-C-K,
19 Andover, Massachusetts, 01810.

20 Q. Thank you.

21 Mr. Gendebien, did you prepare Exhibit NMPF-82 as
22 your testimony for today?

23 A. Yes.

24 MS. HANCOCK: Your Honor, if we could mark for
25 identification purposes, Exhibit 164?

26 THE COURT: Yes. So marked.

27 (Thereafter, Exhibit Number 164 was marked
28 for identification.)



1 MS. HANCOCK: Thank you.

2 BY MS. HANCOCK:

3 Q. Mr. Gendebien, would you mind proceeding with your
4 testimony?

5 A. Yes, thank you.

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

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

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

27 Agri-Mark, a dairy cooperative in the Northeast,
28 is owned and operated by over 550 dairy farm families



1 across New England and New York. Our members are pooled
2 in Federal Order 1. The cooperative has been marketing
3 milk for dairy farmers since 1916 and has headquarters in
4 Andover, Massachusetts, and Waitsfield, Vermont. Those
5 farm families supply more than 3.2 billion pounds of
6 farm-fresh milk that we use to make our award-winning
7 Cabot branded cheeses, dairy products, and ingredients.

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

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

24 The FMMO Class I pricing surface map was last
25 updated in the 2000 Federal Reform process 23 years ago.
26 Since then the industry has evolved significantly. All
27 aspects of FMMOs must be reflective of today's realities,
28 and the pricing surface map is no exception. The current



1 differentials are reminiscent of a dairy landscape far
2 different in terms of number and location of farms,
3 processors, and consumers. Additionally, the cost of
4 transporting raw milk has increased significantly. The
5 pricing surface map must be updated to reflect the changes
6 of the last two decades and today's marketplace.

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

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

25 In the Northeast region, the model resulted in
26 much higher values at nearly all locations, compared to
27 current Class I differentials. And as an Agri-Mark
28 director with knowledge of our cooperative milk movements



1 and cost of milk movement, these results don't surprise me
2 at all. I am also not surprised by some of the locations
3 where National Milk proposals differ from the model,
4 specifically where I'm from in the state of New York.

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

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

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

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



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

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

10 MS. HANCOCK: Thank you, Mr. Gendebien.

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

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

15 Seeing none, AMS, your witness.

16 CROSS-EXAMINATION

17 BY MS. TAYLOR:

18 Q. Good afternoon.

19 A. Good afternoon.

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

22 A. Hi, Erin.

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

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



1 back into it.

2 Q. Okay.

3 A. Milk prices was -- has an influence, obviously.

4 Q. Got it.

5 I was curious since you are on the board of
6 Agri-Mark if you could give us just an overview of the
7 profile of producer -- you know, Agri-Mark producers. Are
8 they -- you know, average -- you know, where is the range
9 of size, etcetera.

10 A. Okay. So when I started on the board, I believe
11 it was 13 years ago, there were 1200 members, and we
12 have -- we are now down to 550, and about 50 of those are
13 Amish that milk about ten cows. So we have a segment of
14 producers that milks around ten cows. We have our largest
15 producers that are in the 3,000-cow range. And then we
16 have about, I would say, 250 producers that make under
17 2 million pounds of milk, so they are in that 75-cow
18 range. So we really do cover -- uniquely cover a pretty
19 diverse group of farm sizes.

20 Q. Okay. Thank you.

21 In your statement you talk about -- and I'm going
22 to stick to at least the first -- the differentials, which
23 you are here to testify on --

24 A. Yeah.

25 Q. -- about how the current differentials are
26 "reminiscent of a dairy landscape far different than now."
27 And I was wondering if you could speak to the change.

28 A. Yeah. I'd really like to. So we have this big



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

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

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

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

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

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



1 I had a question about why you all saw that shift
2 into those counties you mentioned?

3 A. Why there was a shift into those counties?

4 Q. Yeah, you talk about -- and you just mentioned
5 that now, that production has shifted notably into St.
6 Lawrence County and neighboring Jefferson County, and I
7 was curious as to why. But I think you just spoke to that
8 a little bit. I don't know if there's anything else you
9 wanted to add.

10 A. I would say that -- I guess I'll double down on
11 the fact that there is a lot of support for agriculture
12 here. And the land is flat and healthy, and the weather
13 is good for growing crops and supporting dairy. So you
14 combine those things, and -- and the milk volume has
15 grown.

16 Q. And on your farm, about how far does your milk
17 have to travel then to find a plant?

18 A. Oh. It has to travel as far as our plant in
19 Massachusetts, our balancing plant in Massachusetts, which
20 is -- gosh, I don't know how many miles it is. Maybe
21 400 miles.

22 Q. Oh, wow. Okay.

23 Another question, just on your farm, is -- is do
24 you all use any type of risk management tools to help you
25 manage all this risk?

26 A. Yes, I do. We have used DMC since it was MILC,
27 and we have never not used it. And as soon as DRP was
28 created for us as a risk management tool, I did start



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

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

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

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

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

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

25 A. Yes. That is correct.

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



1 speak a little bit about how the current manufacturing
2 costs, as National Milk contends, are too low and how
3 that's impacted your cooperative, what have you had to do
4 to deal with that, and how that impacts you as the
5 producer in your milk check.

6 A. Okay. I do not want to steal the thunder from
7 another member from our -- of our cooperative that will be
8 speaking about this. But, in general, this has reduced
9 the lack -- the inability to update the Make Allowance has
10 significantly reduced our milk checks on our farms. We
11 have to -- we are the co-op. The farmers are the co-op.
12 The co-op is owned by the farmers. We are in this
13 together. So when there's a cost to bear, the farmers
14 bear it.

15 Q. And does that extend to any investment decisions
16 that the co-op makes?

17 A. Yes. We are continually investing to -- to reduce
18 our make costs. We're trying. But it's -- it's been --
19 like the previous speaker, it's been very difficult,
20 because the margins on farms are so tight, and it is tough
21 to reinvest.

22 Q. I think we just had one last question. I'll go
23 back to differentials. I apologize for the jumping
24 around.

25 A. That's okay.

26 Q. You talk about how the Agri-Mark proposal has set
27 the differentials in your source counties a little bit
28 lower than the model results, but doing that will



1 incentivize milk movements to Northeastern New York and
2 Northern and Central Vermont.

3 And for those of us not steeped in Northeast
4 geography, I just wanted to expand on that a little bit.

5 A. Okay. So there is one ninety -- I hope I answer
6 your question correctly. I'm sure there are little
7 examples like this all around the country, but I can only
8 speak to the one that I am kind of found uniquely in.

9 And there is a \$0.95 zone that goes from all the
10 way across the rooftop of New York. And I tried to
11 explain a little while earlier kind of how that was
12 created. It was -- it was done intentionally to
13 disincentivize milk flow out of the area. And it cost our
14 cooperative a lot of money.

15 So the farmers in that area, we have to -- we have
16 to cover that cost. And it is -- we don't get it back out
17 in our Boston plant. So it doesn't come back to us in the
18 end. Where if the Class I surface was updated, we would
19 be able to get that back in -- back out of the blend
20 price, and it would incentivize milk to flow east to where
21 more people are.

22 Q. Okay. Thank you. And I think that goes back to
23 your discussion of those Kraft plants you said that were
24 there at the time, and so --

25 A. Yeah.

26 Q. -- there was incentives --

27 A. That's correct.

28 Q. -- to keep the milk there.



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

7 Q. Okay. Thank you.

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

10 THE WITNESS: Thank you very much.

11 THE COURT: Time for redirect?

12 I'm not seeing any other questions.

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

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

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

19 THE COURT: Thank you, sir.

20 THE WITNESS: Thank you.

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

22 Our next witness is Matt Hoff.

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

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

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



1 having your video on?

2 (Off-the-record.)

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

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

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

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

17 MS. TAYLOR: Let's see.

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

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

24 MS. TAYLOR: That will work.

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

27 THE WITNESS: I don't think so.

28 THE COURT: Let's swear in the witness.



1 Please raise your right hand.

2 JOAQUIN CONTENTE,

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

5 THE COURT: Ready for your statement.

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

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

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

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



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

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

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

21 Now that a hearing is underway, we support
22 changing the Class III pricing formula to reflect the
23 value of the cheese market today more accurately. The
24 Federal Orders calculate milk prices based on end product
25 prices, and it is essential to include the largest cheese
26 category, mozzarella, in the end product price
27 calculation. The volume of mozzarella has now
28 significantly exceeded that of cheddar, and the Class III



1 price should be modified to reflect these market
2 conditions.

3 According to the USDA Dairy Products 2022 Summary
4 published in April this year, mozzarella production
5 totaled 4,497,175,000 pounds, while cheddar totaled
6 3,963,741,000 pounds.

7 Total cheese production in 2022 totaled
8 14.1 billion pounds last year. Mozzarella has surpassed
9 cheddar in total cheese production and should no longer be
10 ignored in the Federal Order pricing formulas.

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

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

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

27 In July, the Statistical Uniform Price in
28 California totaled \$15.53 per hundredweight while the



1 average cost of production in our state totals more than
2 \$23 per hundredweight, according to the latest USDA
3 Economic Research Service Milk Cost of Production
4 Estimates.

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

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

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

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

26 As I have said before, with so few milk handlers,
27 most dairy producers are not interested in speaking out
28 publicly against a position taken by their milk handler,



1 be it their cooperative or a propriety plant.

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

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

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

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

25 Given the concentration and consolidation that
26 exists, minimum prices paid by the Federal Milk Marketing
27 Order system are critical to ensure dairy farmers are paid
28 prices based on current market conditions. Retail prices



1 follow commodity prices upward rapidly but fall back
2 slowly and particularly when commodity prices decline.
3 There is profitability further up the food chain, and
4 dairy producers should not be required to pay more in Make
5 Allowances to cover plant costs.

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

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

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

26 I thank you for the opportunity to testify today.

27 THE COURT: Thank you, Mr. Contente.

28 Do we have questions for this witness?



1 DR. CRYAN: The folks here at USDA have asked if
2 you would spell your name for the record, Mr. Contente.

3 THE WITNESS: No problem. J-O-A-Q-U-I-N,
4 C-O-N-T-E-N-T-E.

5 THE COURT: I'm the judge, Mr. Contente. I fell
6 down on the job here a little bit. We ask that you give
7 us an address on the record, but not a personal residence,
8 if you have a business address or a mailing address.

9 THE WITNESS: No problem. It's 7900 -- that would
10 be 7-9-0-0 -- 15th -- that's 1-5 -- Avenue, and that is
11 Hanford, H-A-N-F-O-R-D, California, 93230.

12 THE COURT: Very well.

13 And Dr. Cryan has some questions for you.

14 CROSS-EXAMINATION

15 BY DR. CRYAN:

16 Q. Yes. I'm Roger Cryan with the American Farm
17 Bureau Federation.

18 Mr. Contente, thank you for participating in this
19 process. I understand from your testimony -- I'm going to
20 clarify this so I can ask you another question -- you --
21 you -- you oppose an increase in the Make Allowance partly
22 on the basis of the fact that the data available is
23 unaudited and voluntary; is that correct?

24 A. That's the way we understand it, correct.

25 Q. Yes, sir. Yes, sir. Thank you.

26 And does that reflect the sense of California
27 Farmers Union and its members?

28 A. Oh, definitely.



1 Q. Very good.

2 And does that also reflect the sense of the
3 National Farmers Union and its members?

4 A. Correct.

5 Q. Very good.

6 DR. CRYAN: That's it. Thank you very much.

7 THE WITNESS: You're welcome.

8 CROSS-EXAMINATION

9 BY MR. MILTNER:

10 Q. Good morning to you, Mr. Contente. I'm Ryan
11 Miltner. I represent Select Milk Producers. It's been a
12 while since we have talked. How are you doing?

13 A. Good. How are you?

14 Q. Good. Thank you.

15 Can we jump in the way-back machine for a little
16 bit?

17 A. Let's do it.

18 Q. Okay. So back around 2000, plus or minus a year,
19 you and CDC were part of a group called the Western States
20 Dairy Producers Trade Association, correct?

21 A. Correct. Yes.

22 Q. Okay. And that Western States group, they put
23 forth a bunch of proposals about Class III and IV milk
24 pricing for a hearing similar to this, didn't they?

25 A. You know, that's been a while back. I know when I
26 was there in Arlington in 2000 and testifying, I was there
27 on behalf of the National Farmers Union. So I'm not
28 exactly sure where this is taking us.



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

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

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

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

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



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

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

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

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

25 A. Okay.

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

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



1 is?

2 Q. I'd love to hear it.

3 A. It's really simple. We made it to the moon back
4 in the late '60s, '69, I believe, July. And if you tell
5 me that we can't figure this little equation out, we got
6 something wrong.

7 Q. I'm not suggesting that we can't. I'm asking -- I
8 would like to ask if you or CDC had a suggestion from
9 which we can start. When Ms. McBride was here a couple
10 weeks ago, she did not.

11 A. I believe she did have some reference to the
12 protein pricing of mozzarella. But there was a lot more
13 information that need to be collected, and I think that's
14 kind of the roadblock that we have right now is we need to
15 have that information collected by USDA.

16 Q. Great.

17 A. But go back -- go back to the necessity of this.
18 Largest category, don't forget that, the largest category,
19 probably close to 12% larger than cheddar, and yet no
20 reference to it. And the yields are so high that these
21 cheese makers are making product and they are not getting
22 charged for that product. It is for free, off our backs.

23 MR. MILTNER: Thank you, Mr. Contente. I don't
24 have any other questions for you.

25 THE WITNESS: Thank you.

26 THE COURT: Questions for this witness other than
27 from AMS?

28 Seeing none, USDA AMS has some questions for you,



1 Mr. Contente.

2 CROSS-EXAMINATION

3 BY MS. TAYLOR:

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

6 A. You bet it is. Thank you.

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

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

14 A. Yeah.

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

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

19 Q. Okay.

20 A. It's right there on the borderline.

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

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



1 Q. Okay. Thank you very much.

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

3 THE WITNESS: You bet. Thank you.

4 THE COURT: Mr. Hill.

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

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

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

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

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

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

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

25 (Whereupon, a break was taken.)

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



1 Ms. Hancock.

2 MS. HANCOCK: No.

3 MS. TAYLOR: Yes. Thank you, your Honor. The
4 roadmap for the next hour. We do have a hard stop at
5 3 o'clock. We're going to finish with our final
6 producers, Mr. Hoff and then Mr. Peterson, and then we'll
7 bring Mr. John back up and finish his cross-examination.
8 And that will probably be it for today. And then we will
9 end for the week and start this back up again on Monday.

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

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

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

24 THE COURT: Thank you, both of you.

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

27 MR. ROSENBAUM: I just want to point out,
28 Dr. Stephenson is flying in to testify. He's the one who



1 did the cost study, one for USDA, one for IDFA. And he
2 needs to be done by Tuesday. So I just want to lay down
3 that marker.

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

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

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

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

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

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



1 to suffer as much as others of us.

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

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

6 THE COURT: Hello, Mr. Hoff.

7 THE WITNESS: Can you hear me this time.

8 THE COURT: Sounds great, sir.

9 THE WITNESS: Sorry about that. Too much
10 technology.

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

14 Please raise your right hand.

15 MATT HOFF,

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

18 THE COURT: Your witness.

19 MS. HANCOCK: Thank you.

20 DIRECT EXAMINATION

21 BY MS. HANCOCK:

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

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

25 Q. And what is your business mailing address?

26 A. 3901B Hawks Hill Road, New Windsor, Maryland,
27 21776.

28 Q. Thank you.



1 MS. HANCOCK: Your Honor, I believe that we're on
2 Exhibit 157?

3 THE COURT: No. 166 is the next one I have.

4 MS. HANCOCK: Oh, 166. Did I -- I might have
5 missed one.

6 THE COURT: Yeah, we're holding 165 for that last
7 witness. Per my notes, we're up to 166.

8 BY MS. HANCOCK:

9 Q. Mr. Hoff, did you prepare Exhibit NMPF-71 for your
10 testimony today?

11 A. Yes. Along with stamp I did, yes.

12 Q. Okay.

13 MS. HANCOCK: And, your Honor, I believe that's
14 what we have marked for identification as Exhibit 166.

15 THE COURT: Yes.

16 BY MS. HANCOCK:

17 Q. And, Mr. Hoff, would you proceed with your
18 testimony?

19 THE COURT: Just to make it -- NMPF-71 is now
20 Exhibit 166.

21 (Thereafter, Exhibit Number 166 was marked
22 for identification.)

23 THE COURT: Thank you. You may proceed, Mr. Hoff.

24 THE WITNESS: All right.

25 Good afternoon.

26 My name is Matt Hoff, and my farm address is 3901B
27 Hawks Hill Road, New Windsor, Maryland, 21776, where my
28 wife, Debra, and I are fifth generation dairy farmers at



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

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

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

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

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

27 While it may seem a bit counter-intuitive for a
28 dairy farmer to testify in a Federal Order hearing in



1 support of a change in regulation that will ultimately
2 lower the price of the regulated milk price, I firmly
3 believe this change is necessary.

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

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

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

24 It seems like the simplest solution to the dilemma
25 would be to just raise the selling price. I've come to
26 learn throughout my career of selling commodity products
27 that we are more so market takers and less so market
28 makers. Fundamentals of supply and demand have more



1 influence on what you can sell your product for, and the
2 market doesn't necessarily care about your Xs or Ys.

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

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

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



1 2008.

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

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

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

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

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



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

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

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

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

19 MS. HANCOCK: Thank you, Mr. Hoff.

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

22 THE COURT: Yes.

23 Questions other than AMS for this witness?

24 CROSS-EXAMINATION

25 BY DR. CRYAN:

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

28 Hello, Mr. Hoff. How are you today?



1 A. Good.

2 Q. I understand that you are a Farm Bureau member?

3 A. Yes, I am.

4 Q. Thank you very much for your participation.

5 And I also understand that the Northeast market
6 has had a good bit of trouble in the last few years as a
7 result of negative PPDs and depooling; is that correct?

8 A. Depooling, not as much in the Northeast I think as
9 other markets. But, yes, it is a problem.

10 Q. Have you had impacts yourself? Can you talk about
11 the impacts that negative PPDs and sort of the
12 uncertainties have had on you and your neighbors?

13 A. I watch the markets pretty close. I'm normally
14 pretty prepared for what my milk price is going to be, so
15 it's -- you know, it's very difficult. Milk prices have
16 fluctuated quite a bit in the last, what, eight, nine
17 years since 2014. Prices have -- were really bad and got
18 really good after COVID, and then we're kind of right back
19 to break even or less.

20 DR. CRYAN: Well, thank you very much. Thanks for
21 your participation. Thanks.

22 THE WITNESS: Thank you.

23 THE COURT: Anyone else other than AMS?

24 Seeing none, AMS's turn.

25 CROSS-EXAMINATION

26 BY MS. TAYLOR:

27 Q. Good afternoon.

28 A. Good afternoon.



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

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

9 A. No, I would not.

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

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

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

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

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

28 Q. Okay.



1 A. So --

2 Q. All right. Thank you very much for that.

3 A. Uh-huh.

4 Q. And you talked a bit about your farm and the
5 impacts that you have seen as a co-op member on your farm.
6 And I was wondering if you could talk a little bit just
7 about other farms in your area, in your neck of the woods,
8 and how the prices that they receive have impacted them.

9 A. Well, you know, Maryland doesn't have a lot of
10 large farms. Maryland also has a very high rate of DMC,
11 which is really good because our former governor paid for
12 it for the first couple of years. And so it's still been
13 very negative, the milk prices and market adjusts. As a
14 board member I hear about -- every time I see a member
15 anywhere, I get questioned on the market adjustment. And
16 so it still definitely impacts them. But as a large farm,
17 it impacts me a little bit more because of DMC, without
18 paying up the extreme cost to cover all my milk would be
19 counterproductive.

20 Q. Okay. And from the co-op perspective, since you
21 are on the board, can you talk a little bit about the
22 investment decisions that the co-op board has made over
23 time and how maybe the manufacturing allowances in the
24 formulas have impacted those decisions?

25 A. Well, we're different in a lot of areas. I mean,
26 we balance milk heavily in the spring and over the
27 holidays, you know, the Christmas, New Year's holidays.
28 You know, this time of year, you know, our powder plant



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

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

9 Q. Okay. All right. Thank you.

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

12 THE COURT: Okay. Redirect?

13 REDIRECT EXAMINATION

14 BY MS. HANCOCK:

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

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

21 A. Yes. Definitely.

22 Q. Okay. Thank you for that.

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

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

28 (Thereafter, Exhibit Number 166 was received



1 into evidence.)

2 THE COURT: Thank you, Mr. Hoff.

3 MS. HANCOCK: Thank you, Mr. Hoff.

4 THE WITNESS: Thank you. Have a good day.

5 MS. TAYLOR: Thank you so much.

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

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

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

15 JUSTIN PETERSON,

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

18 THE COURT: Your witness.

19 DIRECT EXAMINATION

20 BY MS. TAYLOR:

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

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

25 Q. Thank you.

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

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



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

2 Q. Thank you.

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

5 A. Perfect.

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

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

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

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

28 In addition to our dairy, we also sell



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

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

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

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

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

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

28 I truly do enjoy the challenges. I thrive on



1 dealing with the daily challenges and finding what
2 problems need to be solved every day. Above all else, the
3 people in the industry are amazing. They are what make
4 dairying a true pleasure.

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

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

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

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

26 As Edge proposes in Proposal Number 16, Class III
27 Plus allows us to use the dairy industry's most traded
28 commodity to set pricing. Cheese plants, like dairy



1 farms, must always run at or near capacity under nearly
2 all economic conditions, unlike most plants in Classes I,
3 II, and IV. Edge doesn't advocate this because they are
4 from a cheese area, but rather because cheese is an active
5 market.

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

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

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

15 Do we have questions for this witness?

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

18 MS. TAYLOR: We did.

19 THE COURT: We did. Okay.

20 Any questions for Mr. Peterson? Other than AMS?

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

23 You have the witness.

24 MS. TAYLOR: Thank you, your Honor.

25 CROSS-EXAMINATION

26 BY MS. TAYLOR:

27 Q. Good afternoon, Mr. Peterson.

28 A. Hi.



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

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

10 A. No, it does not.

11 Q. Okay. Thank you.

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

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

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

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

24 A. Correct.

25 Q. Okay. Thank you.

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

28 Do you have any positions on any of the other



1 proposals that we are hearing during this proceeding?

2 A. I guess not at the moment. I haven't briefed
3 myself on the whole hearing to a full extent.

4 Q. Okay. Well, thank you.

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

6 THE WITNESS: Thank you.

7 THE COURT: Okay. Anyone else?

8 Very well. We reserved Exhibit 167 for this
9 witness, but I guess if we could ask, since this witness
10 will not be here, whether anyone is going to have any
11 objections when we get a hard copy to put in the record?

12 Seeing none. No? Okay.

13 MS. TAYLOR: We'll have hard copies on Monday.

14 THE COURT: Yes. We'll deal with that on Monday
15 along with the other witness. All right. Well done.

16 Are we bringing Witness John back to the stand.

17 Thank you for waiting for us, sir. You're still
18 under oath.

19 THE WITNESS: I'm just glad there's some time
20 left.

21 THE COURT: You and me both.

22 Mr. English.

23 Anyway, you are still under oath, and welcome
24 back.

25 MICHAEL JOHN,

26 Having been previously sworn, was examined
27 and testified as follows:

28 ///



1 CROSS-EXAMINATION

2 BY MR. ENGLISH:

3 Q. Mr. John, as you know, I'm Chip English with the
4 Milk Innovation Group, and I'll try to be as efficient as
5 I can.6 So in discussions with Mr. Miltner, I believe I
7 heard you say that when you are not running butter in the
8 Laurel, Maryland, facility you are nonetheless using it
9 for other uses; that is correct?

10 A. Yes, that is correct.

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

14 A. I would just say liquid products.

15 Q. Okay. So when you do any standard cost analysis,
16 the fact that it is being used for other liquid products
17 would then be impacting the overall cost per unit of the
18 butter when you do run it, correct?19 A. Well, I'm not the accountant -- or the controller
20 at the plant. My understanding is that they allocate the
21 cost to the products that are being made.22 Q. And then similarly, the Strasburg, Virginia,
23 plant, did I hear correctly that when you are not making
24 nonfat dry milk, you are able to use it for other uses?

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

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

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

1 the NDPSR, you are making it -- you are using it for other
2 purposes, correct?

3 A. Right. Yes.

4 Q. And similarly, as to the Laurel plant, that would
5 mean that there is an allocation of cost, correct?

6 A. That's correct.

7 MR. ENGLISH: I have no further questions. Thank
8 you.

9 THE COURT: Anyone else? Other than AMS?
10 Seeing none, AMS.

11 THE WITNESS: Hi, Erin.

12 CROSS-EXAMINATION

13 BY MS. TAYLOR:

14 Q. Good afternoon. How are you?

15 A. Good.

16 Q. I kind of chuckle. You all talk about that Laurel
17 plant, and I live about five minutes from there, so I get
18 to see when it runs and when it doesn't run on a frequent
19 basis.

20 A. Hopefully it's all good.

21 Q. Yes. Okay. Let me see. Let get my list.

22 I think I heard you say, but I just wanted to be
23 clear, on your two plants, your Laurel and your Strasburg
24 plants, that the -- because they serve such a large
25 balancing need for the area, that those plants -- you
26 know, your ranges could run from running at 25% to 100%.
27 Would that be accurate, of capacity, or did I mishear?

28 A. I think that was specific on -- specifically on



1 the one product.

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

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

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

8 Q. Okay.

9 A. In volume.

10 Q. Okay. Thank you.

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

14 A. Yes.

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

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



1 to -- to balance.

2 And while we're -- our name is Maryland Virginia,
3 I'll just say most of our milk volume is in Pennsylvania
4 and in that Southeast side of Pennsylvania, so it's
5 balancing most all that milk in that area.

6 And so we deal with -- a lot of the customers that
7 what we call third-party customers we deal with have
8 schools, and so we're -- we're -- when schools let out in
9 the spring of the year -- or, say, at the end of May,
10 beginning of June, they start back up in September,
11 it's -- we call it filling the school pipeline in
12 September, and it takes a big draw out of the plant.

13 We -- we're also -- a lot of the independent
14 processors in Pennsylvania, several of those, we are the
15 co-op supply to them, so we get -- we get the fluctuations
16 when their supply fluctuates and then when their demand --
17 you know, when their processing production fluctuates.

18 Q. Okay. Thank you.

19 A. Uh-huh.

20 Q. Can you talk a little bit more, you mentioned some
21 things in your testimony about, you know, you have had
22 market adjustments on your member statements and such.
23 But if you just elaborate some on how your cooperative has
24 had to work to respond to what you see as inadequate
25 Make Allowance levels and other decisions you have had to
26 make.

27 A. Well, a couple things. I think it's been
28 mentioned already today, we have had some repairs and



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

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

15 A. Uh-huh.

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

25 A. Yeah. So -- yes, so we have done several of
26 those. I mean, one of the things that we did
27 strategically as a cooperative back in 2014 was decide to
28 start investing in more value-added processing. And, you



1 know, it takes a lot of capital, and it takes a lot of
2 preparation to start that process.

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

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

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

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



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

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

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

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

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

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

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



1 Pennsylvania Milk Marketing Board, and they create some
2 unique challenges as well. So, yeah. That's about the
3 best I can answer on that.

4 Q. Okay. And do you balance with any -- serve to
5 balance any non-member milk, or is it just Maryland
6 Virginia milk?

7 A. We do, when we have capacity, we will help -- like
8 I said, there's -- there's several independent processors
9 still around in Maryland and in Pennsylvania, and then
10 there's other co-op supplies that have not invested into
11 assets that -- you know, when we have availability. We
12 have actually at times, just with market conditions, it
13 wouldn't have mattered what the price was, we just --
14 it -- you know, we -- we -- we couldn't -- we just
15 couldn't take their milk.

16 Q. Uh-huh. But when you -- so a non-member for you
17 and balancing is both other cooperatives and direct
18 shippers to independent --

19 A. Yes.

20 Q. -- plants?

21 A. Yes.

22 Q. Okay.

23 MS. TAYLOR: I think that's it from AMS. Thank
24 you very much.

25 THE WITNESS: Thank you.

26 REDIRECT EXAMINATION

27 BY MS. HANCOCK:

28 Q. Thank you, Mr. John, for staying and putting your



1 testimony on in a couple of different parts.

2 A. Sure.

3 Q. You had some questions about balancing. I just
4 want to make sure it is clear. You're not asking for an
5 increase in Make Allowance to assist in absorbing the cost
6 of balancing your Class I milk, are you?

7 A. No. No.

8 Q. Okay.

9 MS. HANCOCK: Your Honor, we would move for the
10 admission of Exhibit 160.

11 THE COURT: 160 is admitted into the record.
12 (Thereafter, Exhibit Number 160 was received
13 into evidence.)

14 MS. HANCOCK: Thank you. That's all I have. And
15 I think that's all we have to put on for the day.

16 THE COURT: Let's go off the record.

17 (Off-the-record.)

18 THE COURT: Back on the record.

19 We're adjourned for the day. We'll see everyone
20 on Monday at 8:00 a.m.

21 (Whereupon, the proceeding concluded.)

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1 STATE OF CALIFORNIA)
) SS
 2 COUNTY OF FRESNO)

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

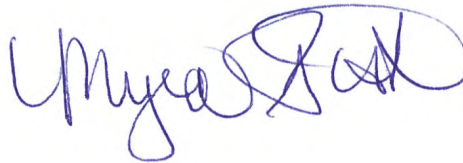
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10 DATED: October 1, 2023

11 FRESNO, CALIFORNIA

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16 MYRA A. PISH, RPR CSR
 17 Certificate No. 11613

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