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 14, 2023

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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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M A S T E R I N D E X

SESSIONS

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M A S T E R I N D E X

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M A S T E R I N D E X

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THURSDAY, SEPTEMBER 14, 2023 - - MORNING SESSION
THE COURT: Mr. Rosenbaum.
(CONTINUED) DIRECT EXAMINATION
BY MR. ROSENBAUM:
Q. Steve Rosenbaum for the International Dairy Foods Association.
Mr. DeJong, I believe you describe your company in your testimony as being the largest manufacturer of American cheese in the United States; is that correct?
A. Correct, including our joint venture plants. That includes our joint venture plants.
Q. And American cheese includes cheddar cheese; is that correct?
A. Yes.
Q. Now, and I believe your testimony was you have five plants; is that correct?
A. Five cheese plants.
Q. And did all of those five cheese plants participate in Dr. Stephenson's survey of 2022 cost of manufacturer?
A. Yes. They did.
Q. And was there any effort by your company to manipulate the submission in a way that would have made the numbers different than reality?
A. Absolutely not.
Q. And how long did it take to compile the numbers to provide to Dr. Stephenson?
A. I think it took well over a month. Our accounting

team and our plant controllers were tasked with the process of collecting the information. Given that they have other jobs that are very busy, they couldn't obviously do it all in one shot. So over the course of over a month, they collected the information, compiled it. We reviewed it, looked for -- looked for anything that could be wrong. And once we felt comfortable that the numbers -- the numbers looked right, we submitted it to Dr. Stephenson.

Q. Now, two of those plants on which you submitted data actually are joint ventures between your company, Dairy Farmers of America, and Select Milk; is that correct?

A. That's correct.

Q. And you did submit data for those plants as part of your participation in Dr. Stephenson's survey, correct?

A. Yeah. Those were two of the five plants we submitted.

Q. Okay. Now, I would like to just -- which of your plants is the largest plant in terms of, you know, poundage?

A. The Southwest Cheese plant, which is a joint venture plant, as far as I'm aware, is the largest cheese manufacturing facility in the world as far we know.

Q. Do you have a plant in Idaho that makes barrel cheese?

A. Yes, we do.

Q. Did that plant participate in the Stephenson

survey?
A. Yes, it did.
Q. And what's the size of that plant compared to other barrel plants?
A. As far as we know that's the largest barrel processing facility in the world.
Q. And what's your newest plant in terms of most recently built plant that's actually operational?
A. So that would be our joint venture plant in St. Johns, Michigan, and that thing was fully commissioned around 2020.
Q. And did that plant participate in the Stephenson survey?
A. It did.
Q. And to the extent you have older plants than that, have you invested money in their modernization over time?
A. Yes, we have.
Q. Now, you provided -- in your testimony, you said that you really only had one plant, the Twin Falls plant, that was operational in 2006 and that had operations that really today are still comparable to what was being done in 2006?
A. Correct.
Q. And you put in some information about various specific costs of production increases that that plant has experienced in various, if you will, line items of expense; is that correct?
A. Yes.

Q. And you didn't, in your testimony, set forth what the total increase in costs of production have been on a -- on a percentage basis since 2006.
But do you have that number?
A. Yes. When I took our total costs for 2008 and divided them by the cheese pounds that were produced, versus doing the same thing for 2022, where I took the total cost allocated to that plant, divided by the cheese pounds produced, I came to just slightly over 50% increase.
Q. Is it literally something between 50 and 51%?
A. Yes.
Q. And that's the total increase on a percentage basis, in the cost of production, in the Twin Falls plant, from 2008 to 2022; is that correct?
A. Correct. That's how we have it in our books.
Q. Okay. And is that a number that relates to cheese production?
A. Yes. This plant only makes cheese. It sends its whey to another facility.
Q. Now, you have testified that the current Make Allowances are substantially lower than what you believe to be the actual current cost of manufacture; is that fair?
A. Yes.
Q. So why is it under those conditions that companies have still provided some level of investment in their plants?

A. In my experience in the industry, and doing financial analysis for plants, analyzing the return on investment on Greenfield plants, I think a lot of what is happening is companies are looking for escape valves outside of the regulated system, that can include not pooling, only partially pooling, and it can also include, direct contracts with milk handlers that are not necessarily in line with the Federal Order pricing.

How I understand it, that milk processors and handlers can agree to any -- any milk pricing, it could be $0.05 a hundredweight, it could be a hundred dollars a hundredweight. The milk handler is still obligated to the pool if they are pooling, but they can agree to any supply contract they see fit.

Q. And that would in particular be a cooperative that's permitted to reblend in terms of how much they actually pay their farmers, correct?

A. Cooperatives, from my understanding, have the ability to reblend.

Q. Okay. And are people building facilities that are simply physically located outside the Federal Order system as well?

A. Yeah, that happens. There's -- in Idaho, for example, there's been plants built over the years there.

Q. Okay. So, you know, if those opportunities exist, why do you still care about having the Make Allowance made more realistic?

A. Well, I think in Idaho, even though we're not part of the Federal Order system, I think the Class III and IV prices are very much benchmarks, they are like the gospel. Everybody is looking at what the Class III/IV price is, what the Class IV price is, and they -- they look at that as one of the most critical ways to benchmark where their prices are. And also, our joint venture plants are in the Federal Order system, and we have a major stake in those as well.

Q.   And, you know, what are the -- if the benchmark is a bad benchmark because the Make Allowances are too low, you know, what's the effect of that?

A.   Well, I think one of the problems is it can create an incentive to just always live outside the pool. It gives I think farmers an unrealistic expectation for what their milk is worth in any milk sheds. And I think it's also unfair to any -- any company that is pooling their milk, and is on the hook for those prices when in some milk sheds it's just very, very difficult or impossible to use Class III as a real world benchmark.

MR. ROSENBAUM: Your Honor, the witness is available for cross-examination.

CROSS-EXAMINATION

BY MR. MILTNER:

Q.   Good morning, Mr. DeJong.

A.   Good morning.

Q.   I'm Ryan Miltner. I represent Select Milk Producers.

I wanted to ask some questions about Glanbia's

various plants and joint venture, if I could.
You mentioned that all of them participated in Dr. Stephenson's, what I guess we're calling the 2021 and 2023 reports; is that correct?
A. All of the ones that produce cheese.
Q. So let's go through what the plants produce if we could.
Southwest Cheese, do they produce cheese?
A. Yes, they do.
Q. Do they produce barrel cheese?
A. Our only barrel facility is at Gooding.
Q. Is in where?
A. Gooding, Idaho.
Q. Gooding, okay.
Does Southwest Cheese produce 640-pound blocks?
A. I don't want to get into proprietary information about our exact formats, but all of our plants are block plants except for the Gooding plant.
Q. Does it produce 40-pound blocks?
A. I'm not going to get into the exact mix, but they are all block format.
Q. Does Southwest Cheese produce dry whey powder?
A. No.
Q. Does it produce whey protein concentrate?
A. All of our plants only produce whey protein concentrate. We don't make any whey powder.
Q. Does Southwest Cheese report any sales to the National Dairy Product Sales Report?

A. I believe all of our cheese plants that make cheese that meet the technical requirements to be reported to the NDPSR, report into NDPSR.
Q. Would that include Southwest Cheese, does it produce products that meet the specifications necessary to report to the NDPSR?
A. I believe all of our plants meet those requirements in some way.
Q. When you say meet the requirements, they do report sales of some products?
A. Yes.
Q. That would include Midwest Cheese?
A. Yes, by default.
Q. In Idaho, you mentioned a plant in Gooding and a plant in Twin Falls.
Is there one more cheese plant or two?
A. There's one more. It's in Blackfoot, Idaho.
Q. You said that only Gooding produces barrels.
So does that mean that Blackfoot produces blocks?
A. Yes.
Q. And Twin Falls produces blocks?
A. Correct.
Q. Do those plants report to NDPSR?
A. I believe so, that they do make products that would be reported.
Q. So Glanbia Nutritionals is a member of IDFA, correct?
A. Correct.

Q. And your testimony today is just for Glanbia Nutritionals, it's not IDFA testimony, right?
A. I am representing Glanbia here.
Q. Some witnesses have -- in the hearing have shared quite a bit about their actual manufacturing costs and some have given percentages and ranges similar to what you have done thus far.
Is Glanbia willing to discuss its manufacturing costs on the record, at least as to those plants that are subject to FMMO regulation?
A. Not to the one I have described. And also, I am very sensitive to our joint venture partners, for our Michigan and the Southwest Cheese plants especially, to not divulge any proprietary information.
Q. Did you ask the joint venture partners if they would be in agreement to share any information about the plants that USDA might find relevant?
A. No, we did not, to my knowledge.
Q. On page 4 of your first statement, you testified -- this is at the end of the first paragraph, "When these Make Allowances are not maintained, as they haven't been in 15 years, we can expect to see market distortions and further real world variances versus the USDA announced class prices."
Can you -- I know you have talked about some issues you have seen. But what exactly would you categorize as a market distortion or a real world variance that is of concern to Glanbia?

A. So my figures starting on page 15, I calculate the difference between mailbox prices and the uniform prices at test in four orders/milk sheds. And these weren't cherry-picked. I just picked three multiple component pricing orders I was familiar with and put those in my analysis. And they all show a clear trend of actual mailbox prices decreasing versus the Federal Order prices at the uniform price at test, and I picked specific PPD zones that I thought were representative where there were large concentrations of dairies. And you can see that the premiums versus -- the milk premiums versus the uniform prices at test have been collapsing in every -- every area I analyzed.
Q. So a decrease in the mailbox price relative to the uniform price you characterize as a market distortion?
A. Yes. Because it is showing that in many milk sheds, the Federal Order prices are not reflective of how much money can be generated through the sale of dairy products. And in that case, when there is not enough revenue being generated by the milk processor, the milk price has to go lower and eventually go lower than the Federal Order prices to clear the market.
Q. So certainly the milk price itself plays a major role in the mailbox price, but there are a number of other factors involved with the mailbox price, correct?
A. Yes.
Q. It would include hauling costs the producer pays, correct?

A. Yeah. So hauling cost is an interesting one. We have seen hauling costs go up substantially. Before I came to this hearing I did some calculations looking at the Producer Price Index for truck hauling. I estimate that between 2008 and current, that there has been about 50% in inflation in hauling costs.

So just doing some -- doing some reverse math, let's say that a typical hauling cost was $0.60 per hundredweight today. That would imply in 2008 the hauling costs would have been about $0.40. So just roughly speaking about $0.20 of that could easily be hauling, you know, plus/minus. So I think that's definitely part of the picture, why we see declining mailbox prices versus the uniform price at test. But it doesn't get anywhere close to explaining the full collapse in what these graphs are showing.

Q. When you talk about a $0.60 hauling cost, is that -- is that just a hypothetical cost you used for illustration, or is that a loaded cost per hundred miles per hundredweight, or what is that?

A. Yeah. So I got to that number before I left for the hearing. I asked our director of milk procurement, just ballpark, what he thought a typical haul cost was in Idaho for a direct shippers, and he ballparked and thought it was around $0.60 per hundredweight.

Q. Did you ballpark that for Southwest Cheese?

A. No, I have not. We are not in charge of the milk procurement for that plant.

Q. And you have no visibility to that at all? Glanbia has no visibility to those costs?
A. I have not seen that information.
Q. If the hauling costs in the Southwest were substantially higher than what is -- what you found in Idaho, would that surprise you?
A. It is my understanding that some of the dairies can be far away in the Southwest. But that's also true in Idaho, too, so I'm not sure how big of a difference there would be.
Q. How far is the average producer from one of Glanbia's plants in Idaho?
A. I couldn't tell you that information. I know that there are some relatively close and some very, very far away.
Q. And am I correct that most of the suppliers to Glanbia's plants in Idaho supply all of their milk to a Glanbia plant?
A. Ask that question one more time to make sure I understand it.
Q. Sure. The farms that supply Glanbia's plants in Idaho, are those producers generally shipping all of their milk to one Glanbia plant?
A. I'm not sure that's necessarily the case. I think we have some producers who might ship to some additional processors, like non-Glanbia, and we can move milk around between our plants, where dairies can go between plants depending on how our procurement team directs those loads.

Q. Okay. So does the producer have a contract with Glanbia to supply milk directly?
A. I'm not going to get into proprietary information about the contracts we have with our patron milk suppliers.
Q. I'm just -- I'm more interested at this point in whether your producers essentially agree to contract their full supply to Glanbia.
A. I would say in most cases that's true, but I can't say in every case that's true.
Q. And that's different than what generally happens for a cooperative producer, correct?
A. I'm not sure how a cooperative would handle that.
Q. Do you know that -- do you understand that in a cooperative, the hauling costs incurred by all of the members are generally shared in some manner across the entire cooperative?
A. I have heard that said before.
Q. And that those hauling costs are deducted then from milk income revenue for that producer? You understand that?
A. Yes. Those costs have to be paid somehow.
Q. So you understand that for a cooperative producer supplying Southwest Cheese, even if that were a short haul, that producers in the cooperative that may have to move their milk longer distances could pay a longer a higher hauling cost. You understand that?
A. Yes. And the reverse would also be true. The

farms who are very, very far away would have a subsidized haul rate, if I'm reading your logic right.
Q. Well, not quite.
That affects the mailbox price for all of the producers in that region, correct?
A. Yes.
Q. And so to compare the hauling cost for a Glanbia producer in Idaho is not exactly an apples-to-apples comparison for a producer in West Texas who is a cooperative producer, correct?
A. Our weighted average hauling cost, I wouldn't know how that compares to a Southwest producer. Maybe it's more, maybe it's less, I'm not sure.
Q. I know you have -- you came in I think this week for the hearing, correct?
A. Correct.
Q. Did you happen to hear Mr. Gallagher's testimony last week at all?
A. Unfortunately not.
Q. I don't know, if you are not here and you are not having to listen to us, I don't know if I would call that fortunate or unfortunate, but I'd like to ask you a couple questions about the Figure 5 on page 17 where you have the West Texas mailbox price.
Now, was West Texas selected because producers in that region are in proximity to Southwest Cheese?
A. I selected large milk sheds that had a long history where I could analyze back to 2008. It wasn't

specifically selected because I was trying to make a point with that particular order.
Q. Is there a reason why you chose, for instance, West Texas versus New Mexico?
A. No, but I could do the New Mexico analysis. I would not have a problem doing that. I did not cherry-pick one versus the other.
Q. Well, let's look at the figure you did include.
You are supporting the Make Allowance adjustment proposed by IDFA, correct?
A. Correct.
Q. And when fully implemented, do you have an estimate as to what the impact on the blend price or uniform price would be?
A. Well, two points on that. I wish we had the USDA econometric analysis in hand because I think that would really be helpful for this discussion for all parties.
And I think my second thought on that is I would not expect 100% passthrough of any change in the regulated price for Class III or IV.
Q. Okay. Do you want to answer the question I asked?
A. Could you ask it one more time then?
MR. MILTNER: Ms. Pish, could you read that back, please?
(The question was read back as requested.)
THE WITNESS: I do not have my own estimate.
BY MR. MILTNER:
Q. If the total cost impact were estimated at about

$1.50 per hundredweight, would that sound reasonable to you?
A. As -- to clarify, as the net impact to mailbox prices?
Q. Yes.
A. That would be very surprising because I believe the IDFA proposal for the initial year 2025 is well below that number.
Q. I'm sorry. Did you say for the initial year?
A. Yes. So IDFA's Make Allowance proposal starts in 2025 and then phases up to the full amount over the course of four years I believe.
Q. All right. I was asking about when it's fully phased in.
A. When it is fully phased in, I would be -- again, I would be surprised if it was a full passthrough, and I could explain why I would be surprised if it was a full passthrough.
Q. Please do.
A. Well, for example, for a producer shipping milk to a manufacturing cooperative who, let's say, makes Class III or IV products, just because the regulated price drops, that does not mean that the revenue coming in from the sales of those products drops. So on paper, a manufacturer who is -- who has the -- who is benchmarking against the Class III/IV price, the -- if the Class III and IV price drop, but the revenue stays the same, then that means on paper that cooperative has become much more

profitable versus the Class III and IV price are relatively more profitable. And since cooperatives' main objective, how I understand it, is to return value to their members, in that case, that the producer would end up in exactly the same position they were before, other things equal.

Q. And that doesn't show up in the mailbox the price though, does it?

A. How I understand the mailbox price, it is real world prices that are being paid by milk handlers and processors to producers. So my understanding would be that if the revenue hasn't changed, only the regulated prices change, that that would be reflected in mailbox prices.

Q. So are you suggesting that the profits from a cooperative-owned manufacturing plant are paid on a monthly basis to the members of that cooperative?

A. Not necessarily monthly. How I understand it, they can be paid in yearly dividends. But I would doubt most of these cooperatives would take those extra profits and send it to a Swiss bank account or something. I imagine that any extra profits generated from a lower regulated manufacturing class price, that those profits would hopefully end up back in the dairy's hands or end up in new investments or something to that effect.

Q. And if they end up in new investments, again, that doesn't show up in the mailbox price, does it?

A. If it went into new investments, that would not show up in the mailbox price, but in theory, that would offer a future benefit to the producers, assuming that the cooperative was making a smart investment decision.

Q. Okay. Let's ask just a much more straightforward, less esoteric question.

If the West Texas mailbox price dropped by an additional dollar over what you show here, what do you think that means for Glanbia's ability to acquire milk from a local milk supply?

A. If I accepted your premise that there would be a full passthrough, which I do not agree with, but just accepting the premise of your question -- and it also depends on the market prices as well -- if the cheese price and butter prices and etcetera were high, the dairies, in theory, could still be more profitable. So a huge variable in this is, of course, the market prices that are driving the milk prices. But in general, anytime that the dairies are getting paid less, again, assuming your premise, the farmers are under more financial stress.

Q. Are you suggesting that the farmers in West Texas and New Mexico who supply Southwest Cheese are going to be more profitable if IDFA's Make Allowance proposals are adopted?

A. I would not suggest they would be more profitable.

Q. On page 6 of your primary statement, in the middle the paragraph that begins with "additionally," you say that "sustainability-related costs have also skyrocketed. We have invested in more sustainable" -- is that packaging

or packing?
A. I believe its packaging, but I'm not 100% sure.
Q. Okay.
A. I got some help on some of these internally.
Q. And I restart that since I cut us off.
"Sustainability-related costs have also skyrocketed. We have invested in more sustainable packaging, plant upgrades that reduce carbon output and waste, $2.5 million per unit water polishers that allow plant water to be reused many times over, often multiple polishers are required per plant, and investment in personnel who monitor dairies and enforce on-farm sustainability requirements."
For those costs there, how many of those were required investments by Glanbia Nutritionals?
A. Oh, boy, I wish John Dardis, our sustainability vice president, was here. But, in general, I could say that sustainability is becoming more and more critical for our industry. Our -- our customers are requiring us to comply with more sustainability requirements, and as those sustainability requirements increase, it necessitates more investment on our behalf to meet those requirements.
Q. Is there additional financial return to Glanbia from those sustainability investments?
A. My understanding is most of the time, no.
Q. So they are just spending money, not required to, but spending money without an investment return?
A. That is usually the case. I know that there is a

lot of discussion in the industry where we would like to see our efforts and all of the resources we spend get some kind of a return in the marketplace for our -- for our sustainability efforts. And that's just not Glanbia. I think that's an industry-wide thing where we would like to see a better return on those investments and the consumers are aware of the lengths we go to and are hopefully willing to pay for that.
Q. So you are expecting a return from additional sales?
A. We would like to, but those returns are not promised, I understand, in most cases.
Q. Nor are the returns from selling milk apparently.
Does Glanbia track its reduction in carbon output?
A. Some of these questions would probably be better suited to our vice president of sustainability. I do know that we have done analysis on our carbon output in our plants, but I'm not intimately familiar with those analysis.
Q. Does Glanbia sell carbon credits?
A. I wouldn't know that. I don't think so, but I could be wrong.
Q. The water polishers that are installed that allow Glanbia to reuse water many times over, that reduces the amount of water you need to purchase, correct?
A. Correct.
Q. Is there a payback or return analysis done on your water polishers to determine whether there was a net

savings in installing those devices?
A. I'm sure there was a financial analysis done. I'm not sure what the net return is. But I know sustainability was a major consideration in those investments.
Q. Further down on that page you describe the investment in Midwest Cheese. And you -- I think you're testifying that the cost to construct that facility was $470 million; is that right?
A. That is what is published online and publicly available.
Q. So it might not be the actual cost to install it or to construct it?
A. It was my understanding that the final cost was close. That could -- it could be a bit over or under that. I am not sure. But that was what the press release announced price was.
Q. Okay. That plant is located in Federal Order 33, correct?
A. Correct. Mideast.
Q. And the milk that supplies that plant, do you know if it's producer milk on Order 33?
A. The milk handlers in our case have pooling decision. So we would not be aware of how that milk is pooled.
Q. Well, it seems like an awfully lot -- an awful lot of money to invest in a plant regulated by a system with insufficient Make Allowances.

A. Well, I cannot get into the proprietary milk supply agreements given that Select is also a partner. Your -- I don't know if they have authorization to talk about that. But I have not been given authorization to talk about our milk supply agreement.
Q. Further down on page 7 you talk about Glanbia's efforts to keep costs low. The second sentence reads, "This includes negotiating the vendors and various suppliers to get the most competitive pricing, while also investing heavily in plant equipment and technology to control costs."
Dr. Stephenson's study, I think, referenced the ability of operators with multiple plants to gain efficiencies in the acquisition of supplies.
Has Glanbia been able to gain additional cost savings by purchasing in bulk for all of its facilities?
A. That could be the case. I am not intimately familiar with our non-milk procurement systems, but I can't answer that definitively. I would hope so.
Q. Further in that paragraph you reference "recovering biogas from lost milk components, heat exchange systems that take cold water from the milk and use it to cool other systems in the plant, automation product" -- "projects that reduce labor costs, and right sizing equipment."
And you describe those as investments in technology, correct?
A. Yeah, investments to keep our processing costs as

low as possible.
Q. So the investment was made to reduce the operating costs within those plants, correct?
A. Yes. There was an expected payback for those investments through lower operating costs.
Q. At the bottom of page 7 you start describing why cheese manufacturers cannot raise their prices to recover losses, and you give an example about cheese manufacturers raising their overage versus the CME cheese price and that gets fed back into the Class III protein price, increasing milk, correct?
A. Correct.
Q. Now, Glanbia doesn't produce any dry whey you said, correct?
A. Correct.
Q. So whatever it prices its whey products for, that -- this argument, this would not apply to any of Glanbia's whey, correct?
A. Yes, because it's not part of the NDPSR pricing system. But I would asterisk that in that for whey protein, we are competing in national and global markets, and we cannot, absolutely cannot, raise our whey protein prices above national clearing prices to recover any increase in manufacturing costs. We can try, but we're competing globally and -- and within the U.S., and we have limited ability to just jack up our prices because our costs are higher.
Q. That has nothing do with the Make Allowance for

dry whey, though, does it?
A. Whey protein has different -- different manufacturing costs than dry whey.
Q. So it doesn't have anything to do with the cost of dry whey -- or the Make Allowance for dry whey?
A. Well, if you are regulated -- if you are pooling your milk and you are paying the regulated Class III price, and by default you would be paying the Class III other solids price for milk, but you are making whey protein, you would still have the whey factor in the Class III formula determining your milk cost even though you are making whey protein. So the whey factor, in that case, and the dry whey Make Allowance is extremely important even if you are making whey protein concentrates.
Q. Does Glanbia pay its producers based off of the announced other solids price?
A. I'm not going to get into the details of our pay formulas for our various plants.
Q. Okay. Do Midwest Cheese and Southwest Cheese produce predominantly 640-pound blocks or predominantly 40-pound blocks?
A. I'm not going to get into the exact product mix, but it's all in block format.
Q. So for a 640-pound block, your -- your example about circularity of pricing would not apply, would it?
A. 640-pound blocks are not reported. But I would say that if you were to tell your customer that you are

going to increase the price of your 640s in order to recover your costs and not have that reported into the NDPSR system -- so, for example, trying to work around the NDPSR system -- the customers would not go for that, because many of our customers, from my understanding, can use 40s or 640s, and if the 640s became too expensive, we were only raising the price on those, they would demand that they get the cheaper 40s again. So I don't think that applies.
Q. Does Glanbia sell at 640-pound blocks for generally higher than the announced NDPSR price for 40-pound block cheddar?
A. I can't answer specifics on that question, but in my time in the industry, I have not noticed a large price difference between 640s and 40s.
Q. Okay. I'm now looking at page 9 where you are talking about Glanbia's opposition to eliminating 500-pound barrels from the protein price calculation.
You acknowledge that Glanbia doesn't produce any barrels in Federal Order areas, correct?
A. Correct.
Q. For the milk that is brought into the Gooding, Idaho facility, does Glanbia pay the federal Class III price?
A. We have our own proprietary pay formula for Idaho.
Q. What's that formula look like?
A. I -- it's proprietary information. I cannot say what it is, but it is meant to do a couple things. It's

meant to track our real world plant revenue as best as we can, and secondly, it's meant to pay a competitive price for our dairies because if we are not paying a competitive price for our dairies in Idaho, our milk supply will go away.
Q. Do most of the plants in Idaho have similar contractual arrangements to pay a competitive price?
A. Yes, we kind of look at all of our plants as one wholistic system, and they are all under -- or I'd say most of the milk is under the same -- the same pricing regime.
Q. And -- and do you know if your competitors in the region use similar contractual arrangements to pay off of the -- an arrangement similar to what Glanbia utilizes?
A. I am not familiar with the details of our competitor's proprietary milk prices, but I would say, in general, milk handlers, processors try to pay their dairies a competitive price as best they can.
Q. Okay. So now on page 12, and you are talking about Proposals 10 and 11, if we simplify the end product pricing formulas, we start with a product price, we subtract a Make Allowance, we multiply that result times a yield, and we get a price, correct?
A. That is the basic structure of a formulaic milk price.
Q. So Glanbia supports updating the Make Allowance part of that formula, correct?
A. Correct.

Q. And you also have opinions upon the products that are surveyed in that formula, correct?
A. Correct.
Q. But you don't think we should look at the yield part of that formula, correct?
A. I wouldn't characterize that statement as accurate. I believe in my testimony we support when USDA -- hopefully we can get that legislation in place to get audited cost studies done, and we can look at the real world yields fat recovery and the entire yield formula.
Q. And in the interim, from now until when that occurs, or if that occurs, if yields are currently lower in the formulas than reality, that's a financial benefit to Glanbia, isn't it?
A. If I accepted the premise of your question, that would be correct, but I don't accept the premise of your question. Each plant has different characteristics: Some have would have lower fat recoveries; some very high fat recoveries. And it -- it really varies by plant.
Q. So I didn't talk about recoveries in my question. Which premise did you not accept?
A. Well, could you repeat your question one more time?
Q. I believe it was if the yields assumed in the current formulas are lower than the actual realities today, that's a financial benefit to Glanbia, correct?
A. Yes. Again, I deny your premise because it is possible that, for example, if the cheese yield was

actually higher with more fat going into cheese, that would mean that the fat yield going back to the dairies is lower.
Q. So I think you said in your answer that some of Glanbia's plants have higher than 93% butterfat recovery; did I hear that right?
A. I don't think I talked specifically about any of our of our plants, but to my knowledge, some plants can recover 93% or higher. I don't know how many, but I know some can.
Q. Do any of Glanbia's?
A. I'm not going to talk about the specific fat recoveries across our five plants.
Q. Are any of their recoveries at Glanbia's plants lower than 93%?
A. I -- I don't think so, but I'm not 100% sure. Glanbia's an extremely, extremely efficient operator.
Q. I agree.
Does Glanbia utilize whey cream in its cheese vats?
A. I don't want to get into specifics of Glanbia's operations on exactly how we utilize all of the fat, but I will say in my experience in the industry, some plants are able to recycle their whey cream, other plants are not. I know it can cause major quality problems if not done very carefully. I believe phage, bacteriophage, is one major problem where the whey cream coming out of the vat, if it is reused again, it can keep reintroducing bacteria into

the vat until the cheese make is destroyed. So it's some can do it and some can't.

Q. There are serious constraints about how often it can be done and the parameters under which it can be done successfully, correct?

A. I'm not a cheese making expert, but that's what I understand.

Q. Now, the paragraph on page 12 beginning "for example," where you talk about -- where you are talking about the incorrect assumption, as you characterize it, about getting fat from cheese.

If a plant is getting higher than 90% butterfat recovery, the impact that you describe here is minimized, right?

A. Okay. Let me quick read that paragraph again.

So if, for example, you were -- as I think your petition contends -- you -- you raised the fat retention to 93%, that would mean the cream yield would have to go down because you cannot create new milk solids. If more fat is going into cheese, less fat is coming out on the other side of the system.

Q. Correct. And so then further on on page 13 where you describe the issue with valuation of whey cream, a plant that is capturing more butterfat than 90% has less whey cream at the end of the day, correct?

A. That would be correct.

Q. And so to the extent that the price issue you describe in that paragraph occurs, it's mitigated by

higher butterfat recoveries, correct?
A. If your fat recovery was higher, you would have less fat revenue and -- which would be less whey cream revenue also.
Q. In the previous paragraph to that where you describe the butterfat losses and solids losses, are you speaking about the industry in general or Glanbia specific?
A. I did not want to put in Glanbia specific fat solids losses. Again, Glanbia is extremely efficient. We fight to be extremely efficient. Those numbers came from our director of engineering on what he thought was achievable for an efficient to very efficient plant.
Q. And, again, this is not farm-to-plant shrink you are talking about, this is total solids lost within your processing chain, correct?
A. Yes. So from the point where you measure the farm test to the end process, how much is lost in wastewater.
Q. And I know you testified that you don't specifically track farm-to-plant loss, but do you -- do you compare components of farmer milk coming in in silos?
A. That is a technical question. I don't have an answer for that. I'm sorry.
Q. That's okay.
Now, part of the solids loss you attribute to milk ultrafiltration processes prior to entering the vat.
Why would Glanbia utilize an ultrafiltration process?

A. Well, the ultrafiltration process, it basically concentrates the milk going into the cheese vat. That is like -- almost like Fairlife milk, you are concentrating it, you are making it really dense, and it allows you to get a higher, more pounds of cheese per vat, which lowers your cost of production. So it's an efficiency thing, and that gets picked up in the manufacturing costs surveys.
Q. Does that end up being reflected in a higher product yield?
A. You don't create any new milk solids in the ultrafiltration process, so you're basically taking a hundred pounds of milk, condensing it to 80 pounds. So you could say, oh, yeah, that 80 pounds has a higher yield, but it really took a hundred pounds of milk to make that.
Q. You are not creating milk solids, but it would improve the efficiencies of the process, correct?
A. Yes. It improves efficiencies, and that would be picked up in the cost studies, as any efficiencies would be picked up in the cost studies.
Q. Okay. You have a second statement, Exhibit 197. And my question with that is, are there any proposals for which Glanbia believes there should be a delay in implementation?
A. If you are referring to anything relating to Class I, Glanbia is not taking a position on any Class I issues.
Q. Okay. And I wasn't trying to be specific to any

proposal at all, but I just wondered if there were any that Glanbia thought there was a justification for delaying?

A. None that I can think of.

Q. Okay.

MR. MILTNER: Thanks. I don't have anything else right now.

THE COURT: Further cross-examination?

Ms. Hancock?

I'm back to try and say less on the record, so saying, "Welcome, Ms. Hancock," or things like that, just save a few lines.

MS. HANCOCK: Oh, thank you.

THE COURT: And not -- no disrespect. I don't want to recognize some and not others, but I just thought I would say that. Everybody's been real good about introducing themselves, and I think people viewing in the virtual facilities are made aware of everything, so I'm -- that's what I'm doing. May change my mind tomorrow.

MS. HANCOCK: Fair enough.

CROSS-EXAMINATION

BY MS. HANCOCK:

Q. Good morning, Mr. DeJong.

A. Good morning.

Q. I think I have tried to capture all of the responses that answer my questions, so if I repeat myself or repeat what somebody else asked, I apologize.

I think that you said there are six plants total

for Glanbia; is that right?
A. There are six, yes.
Q. And you said that five of them produce cheese?
A. Correct.
Q. And what does the sixth one produce?
A. It is whey proteins.
Q. Where is that one located?
A. Richfield, Idaho.
Q. Where is that?
A. It is, I would say, an hour drive northeast of Twin Falls. So it's kind of South Central to Southeastern Idaho area.
Q. Okay. It's nice to here Idaho geography, because all the other places we're talking about, I'm nowhere near as familiar with.
Are all of your plants in Idaho supplied by Idaho dairy farmers?
A. I think most of the milk is coming from Idaho, from my understanding.
Q. And so I think that you said, when you were talking with Mr. Miltner, that some of them come from quite a ways away, and I'm wondering if you can quantify what "quite a ways away" means.
A. If somebody from our procurement department was here, they could give you some -- some more precise answers. But I know talking with our field team, that they can be driving for quite some time, and they burn through a lot of gas on our trucks going to visit dairies.

Q. What does "quite some time" mean?
A. Oh, the hour-plus drives.
Q. Okay. So 60, 70 miles?
A. I think that's possible.
Q. Okay. Do you know what the farthest away producer is from any of your plants?
A. I -- if I knew, I would tell you.
Q. Okay. I was just trying to get a sense of it because I know when we say that you drive a long ways, it really just depends on which part of the country you are in.
A. Well, Idaho, usually the roads are pretty generous with speed limits, so you can make time getting places.
Q. Oh, man, I know. Brad keeps telling me I'm speeding here because they are so low.
Okay. Let's see. I know that you provided a little bit of information about your background.
And what is your title now?
A. Senior director of dairy economics, risk management and sales planning.
Q. Okay. What does that mean?
A. Yeah. So I have a lot of jobs, and sometimes I'm not even sure what my job is. So I -- I do what I'm told to do, and that includes just -- it's -- the regular parts of my job are market analysis, any risk management that needs to be done. And then the sales planning is basically working with our commercial team for whey proteins and matching our internal supply and demand and

also monitoring our pricing for those products.
Q. So when you were engaged in your risk management activities, that's on behalf of Glanbia as the processing entity; is that right?
A. Yes. I do not do dairy hedges directly. Our procurement, milk procurement team, we have a risk management program that is managed by milk procurement team, and I typically only get involved in that if there are questions or something out of the ordinary has happened but. That team has that program dialed in pretty well.
Q. Okay. When you say "team," how many people are in that risk management team?
A. Well, this would be primarily our field team. They are not directly risk management people, but they are -- they work with our dairies on a variety of issues, and one of the things they are able to do is also help them on risk management.
Q. Okay. I don't know if I heard you answer. Did you say how many people are on your risk management team?
A. It's just -- I'm the only person who is officially the risk manager. So I handle all of the risk management for our plants, not for the dairies.
Q. Okay. And then you have fieldmen that will engage in dialogues with your dairy producers, but not that are specifically assigned to do the risk management for Glanbia?
A. Yeah, they are not dedicated risk management

consultants. If the dairies want advice on how to do risk management, there are other people they can talk to. We don't like to give them advice to tell them when to hedge and not hedge.
Q. And how often are you tracking the futures market? Is it something you do on a monthly basis, daily basis?
A. Almost daily.
Q. Okay. And so you're pretty in tune with what the futures market is doing if there's a shift?
A. For the products that impact us, yes.
Q. Okay. And so what product would that be that you are tracking?
A. Primarily -- primarily cheese, dry whey, butterfat, and to a more limited degree, nonfat dry milk just because it is an internationally-traded product and it can be sometimes a barometer for the rest of the Dairy Complex. But primarily cheese, dry whey, and butter.
Q. Do you have any other alert set up that you get notified if there's a change over a certain amount?
A. I probably get 10 to 20 e-mails a day from various subscriptions we get about what's happening in the market, and I usually only have time to read a fraction of those. But when something happens, I'm usually aware of it.
Q. Okay. You have a good finger on the pulse, it is fair to say?
A. Better than most, but I'm sure there's people better than me.
Q. Okay. Fair enough.

And in your Exhibit 197, is Exhibit 197 designed to be rebuttal testimony against any kind of delayed implementation of any of the proposed changes that we're at this hearing to discuss?
A. It was mostly meant as a rebuttal to -- to anyone who wants to delay the Make Allowances for Class III and IV. And as I stated before, I don't have a position on Class I.
Q. Okay. So when you say you don't have a position on Class I, does that include National Milk's Proposal Number 1 to update the milk components?
A. Are you talking about the milk components in the skim factor?
Q. In the skim -- yeah. I'm just asking for clarification when you say that you don't have a position on it.
A. Yeah. I don't have a position on Class I issues. It is not core to Glanbia's business. My directive is to only talk to -- only talk to issues that impact us.
Q. And you're only speaking on behalf of Glanbia, not on behalf of IDFA?
A. I'm speaking for myself here.
Q. Okay. I want to now talk about a couple of the items that are in your Exhibit 196. And this is in your primary testimony related to Make Allowances, and then you have some additional responses to some of the other proposals included.
Is that a fair characterization?

A. Sure.
Q. Okay. I want to just take a step back and maybe at the 30,000-foot level and talk about Make Allowances in general.
Can you tell me how Make Allowances are preventing you from getting the milk that you need to any of your plants?
A. How Make Allowances are preventing us from getting the milk we need into our plants? So are you asking how the Make Allowances affect the supply of milk?
Q. Yeah. I'm just -- maybe I should back up and say the first question, lay the right foundation: Are the current Make Allowances preventing Glanbia from getting any milk supply?
A. Well, if the Make Allowances are artificially low, if anything, you would expect that to create extra supply of milk.
Q. Okay. So does that mean that Glanbia doesn't have any trouble right now of getting milk?
A. To my knowledge, our plants are getting the milk they need as of now as far as I know.
Q. Do the Glanbia plants operate at capacity?
A. To keep our cost of production as absolutely low as possible we try to keep our plants as full as possible.
Q. And are you mostly able to do that?
A. That is our goal.
Q. Are you mostly able to do that?
A. Mostly, not always.

Q. Okay. Because sometimes you have plant shutdowns or breakdowns or updates that will interrupt your processing?
A. Yes, that's correct.
Q. Okay. So other than normal either breakdowns or improvements that you are doing, are you able to keep an uninterrupted supply that keeps your plants at capacity?
A. Most of the time.
Q. Okay. And I think that in one of the responses that you were talking about with Mr. Miltner, you had said that if Make Allowances go up as IDFA has proposed, and in turn the Class III prices go down a corresponding amount, whatever that might be, that a plant would make more profits. And for cooperatives, that would be able to be passed through to its cooperative dairy farmer members; is that right?
A. If they were a processing cooperative, assuming -- and I'm -- I don't see why their revenue would change, that they, in theory, should be able to pass that revenue back to their -- back to their dairies regardless of the regulated price.
Q. Okay. And so then for a plant like Glanbia, if you don't have a cooperative, that would just be pure profits that the plant would be able to keep; is that fair?
A. Well, I would say, in our case, we pay competitive prices for milk in Idaho that's outside the regulated system.

Q. So do you pay an excess already? Is that what you are saying?

A. Pay in excess of?

Q. The Class III prices?

A. We do not pay in excess of the Class III prices, typically. I would say that the competitive milk pricing for Idaho is typically -- for cheese plants, is typically below Class III, sometimes well below Class III.

Q. Okay. And your expectation is that if the Make Allowance is increased, that would allow Glanbia to pay a lower amount because you're priced off of what the Federal Order system would be, even if you are in an unregulated market?

A. Potentially, again, we have to pay a competitive price. If we do not pay a competitive price to our dairies, they will leave us and go to other processors. So regardless of what that adjustment is, it is possible we may have some ability to lower our milk price in this, but at the end of the day we have to pay a competitive milk price.

Q. And so if -- if you're having to pay a competitive milk price, your expectation is, is if the Make Allowances increase, that would decrease the price that Glanbia would pay for its Class III price; is that right?

A. We think that there could be some level of passthrough. We don't know exactly what that will be. Again, I'm very interested in seeing the USDA econometric analysis on what that passthrough rate will be. I think when that happens, we will monitor the milk shed and see how it responds. But, if for example, there was zero impact in Idaho, we have to -- we're going to continue paying the price we need to to get the milk supply to run our plants.

Q. If there was zero impact to the prices that you would pay in Idaho, would it change the position that you have taken in Exhibit 196?

A. No.

Q. Why not?

A. If there was zero impacts? I still think it's the right thing for the industry. Even if there was no financial benefit for Glanbia, it's still the right thing for the industry, because we need Make Allowances that reflect reality and not ones that are 15 years old.

Q. Okay. If you look at page 4 of your testimony. The last paragraph there, you say, "While other factors like higher milk hauling costs, changes in the checkoff program amounts, or variances in milk components, will cause noise in the analysis, the trend line is unmistakable."

What's the checkoff program you are referring to there?

A. Oh, nothing specific. My understanding is that many dairies pay into checkoff programs, whether that be National Milk or cooperatives working together, and I am not sure how much those programs have changed over time, if those checkoff -- checkoff dollar amounts per hundredweight have increased or decreased. So my point is it could create some noise in this analysis because I'm just not sure how much checkoff program amounts have changed.

Q. Does Glanbia use the Make Allowances that currently exist as a watermark line in your own financial analysis for the efficiencies that your plant produces at?

A. I can't get into our specific formulas for Idaho or our joint ventures. I will say that the Class III price in particular is very important to us and a critical benchmark for all of our plants.

Q. Okay. And is it fair to say that as a business, you would strive to try and do better than what the Make Allowance is that's set with the Class III price?

A. Glanbia is deadly efficient, and we try to be absolutely as efficient as possible and keep our costs absolutely as low as possible, which, again, would be reflected in the Stephenson study.

Q. Okay. And I'm -- I missed the first word. You said Glanbia is what?

A. Deadly efficient.

Q. Oh, deadly efficient.

And so deadly efficient means that as one of the largest cheese producers -- did you say in the country or the world?

A. We -- well, we -- I think we're the largest American-style cheese manufacturer in the U.S. I'm not sure in the world. Possibly.

Q. Okay. So as the largest American cheese manufacturer in the U.S., you say that you are deadly efficient, meaning you strive for the lowest possible cost of production possible; is that right?
A. We absolutely do.
Q. Does that mean that you implement and deploy the most innovative and modern techniques for processing and making American cheese as well as all of the other products that Glanbia makes?
A. We try to do that. If there is an efficiency project that has a positive payback, we will generally try to look at that investment, because one of the ways you can become more profitable is becoming more efficient. Glanbia is a publicly-traded company. We are very sensitive to get a return for our owners. And if keeping our manufacturing costs as low as possible creates a more positive return for our shareholders, we will do that.
Q. Okay. And, in fact, you have an obligation to do that for your shareholders; is that right?
A. Yes.
Q. Okay. And do you know how many employees Glanbia has?
A. That's a good question. It probably says in our website. It's in the thousands.
Q. Okay. Do you know how many are in your financial department?
A. A lot. I couldn't tell you off the top of my head.

Q. Okay. It's fair to say that you have a full administrative staff that can slice and dice the numbers to ensure that Glanbia's capturing any efficiencies that it can possibly capture in its plant operations?
A. We try -- we try to do that. I don't know if -- you know, there's no analyst that's perfect, but that's our goal.
Q. Okay. And I think that you had articulated in your Exhibit 196 a list of things that Glanbia had done in order to build in some efficiencies. And some of those you covered with Mr. Miltner; is that right?
A. Yes.
Q. And I think you talked about this $2.5 million per unit water polisher?
A. Yes.
Q. And it says in your testimony, I'm on page 6, that oftentimes there's multiple polishers that are required per plant?
A. For big plants there's multiple polishers. That's my understanding.
Q. How many do you have in each one of your plants, do you know?
A. I'm trying to remember. I think -- I think our the largest plant has at least three, if I recall.
Q. Okay. And then do you have any plants that just have one?
A. The smaller plants might have one.
Q. And then in that same paragraph you also talk

about investing in personnel who monitor the dairies and enforce the on-farm sustainability requirements.
A. Yes. We have a person on payroll, who -- whose main job it is to monitor sustainability, animal welfare, all of those sorts of things, to make sure our -- our plants are in compliance.
Q. Okay. And -- and it's true that Glanbia prides itself on its stewardship and responsibilities, that it's giving back to the community; is that fair?
A. Yeah. We would like to think that way, yes.
Q. It's part of the brand that Glanbia has built up and developed over time?
A. Yeah. Sure.
Q. And that's part of why Glanbia has these sustainability programs, is to let -- let your customers know that Glanbia is a good steward of the -- our community and of our resources?
A. Yeah. I would say it's dual purpose for that reason, and also it's becoming a requirement to doing business by our customers. So it's two things.
Q. Right. And -- and sometimes in your contracts with your customers they require that you implement some sustainability implementations in order to make your processes the most efficient as possible?
A. Yeah. Reduce carbon output and those sorts of things.
Q. Okay. And -- and then this is on top of the steps that Glanbia takes in order to make your plants deadly

efficient; is that right?
A. Sure.
Q. I'm just going to grab on to it because I like it now. Okay.
And when you have implemented these sustainability and personnel improvements at your plant, those are some of the costs that were also included in your responses to the Stephenson survey?
A. Yes. So any -- any additional efficiencies we have gained would have been picked up in the Stephenson survey.
Q. So if it allowed you to be more efficient in -- in -- if you have made plant improvements that allowed you to be more efficient in producing a product, meaning either increase the yields or lower the costs with which you are producing those products, or for which you are producing those products, those would be captured in the Stephenson survey as well?
A. Again, any efficiency investments we have made would be captured in the Stephenson study.
Q. Do you know what the market valuation was that Glanbia used when it input its data into the Stephenson survey?
A. Do you mean the valuation of our plants?
Q. Yes.
A. So it was my understanding from our accounting controller people that the values they used came from the values we report for insurance purposes to ensure our

plants.
Q. Okay. Well, you would have also included land values on top of that as well, wouldn't you?
A. I'm not sure how they included the land value. The finance team did not break out to me what was included as land versus what was included as equipment.
Q. Because when you just insure a plant, for example, if a plant burns down, you don't have to rebuild the land, right?
A. Correct. The land will still be there.
Q. Your total market value for your plant operations that you insure is different than what your total valuation would be for both the plant and the land; would you agree?
A. I'm not sure how they broke that -- how they broke that out.
Q. Do you know what the total amount was that Glanbia reported to Stephenson survey?
A. If I did, I couldn't tell you. But plants, large dairy plants, are very, very expensive.
Q. Even the old ones; is that fair?
A. Even an old one would be, yes.
Q. Okay. And when I say "even an old one would be," you understand what I'm asking is that even an old plant that maybe has been either fully or mostly depreciated would still have a market value, asset value that could be significant?
A. Yeah. A lot of the equipment would be upgraded

over time, so even though the shell of the plant may be older, a lot of the equipment maybe newer.
Q. Okay. If you look at page 7 of your testimony in Exhibit 196, there's a title there "GN fights to keep manufacturing costs low."
Do you see that?
A. Yes.
Q. And you talk about things like going to extreme cost to keep costs as low as possible, including negotiating with vendors and various suppliers to get the most competitive pricing, while also investing heavily in plant equipment and technology to control costs.
Do you see that?
A. Yes.
Q. Are you referring there to the modernizing and updating of your plant in order to find those efficiencies?
A. Yes. We -- you can do -- you can make an investment to directly keep your costs low, or sometimes a piece of equipment can be old and you're upgrading it with more -- a more efficient -- more efficient design.
Q. And then the next sentence you go on to say, "For example, since the last Make Allowance adjustment in 2008, we have spent countless millions of dollars on projects such as recovering biogas from lost milk components in wastewater heat exchange systems that could take cold water from the milk and use it to cool other systems in the plant," and then you go on further.

Can you quantity that "countless millions"?

A. I couldn't. I actually was trying to get more specifics ahead of this, but it's kind of like herding cats in Glanbia, talking, trying to find all the right people. So I had a few minutes with one of our engineers prior -- or actually when I was writing this testimony, and he gave me some high-level notes, but I don't have exact specifics. But it's substantial amounts.

Q. Hundreds of millions of dollars?

A. I don't know if I would say hundreds of millions. I'm not sure. That seems like a lot, but I don't know the exact amount.

Q. And I think that you said that at least as what was reported in the -- in the press, Glanbia spent above or below $470 million on its most recently constructed plant?

A. Yeah. That was our joint venture plant.

Q. And then -- so would it be an amount equal to the amount that you spent on that plant that has been used to update your plants since 2008?

A. I don't know the exact amount. But over 15 years, I'm sure all of the efficiency investments would probably add up to be quite substantial, but I don't know what that number is, or even if our finance team calculates that. And if they did, it would probably take them a while going through old records to compile the exact figure.

Q. Do you know if Glanbia's reported a profit every year since 2008?

A. I've been with Glanbia for five years, so I'm not intimately familiar with every profit statement.
Q. In the five years that you have been there, has Glanbia been able to report a profit every year?
A. Glanbia PLC, as far as I am aware, yes.
Q. And that is not withstanding the investment that Glanbia has made of those countless millions and the joint venture plant that it constructed that cost $470 million?
A. Yes. I mean, if we're going to go into the road of Glanbia's publicly reported financials, I would asterisk -- put an asterisk on some of this.
I went to some length at the beginning of my testimony breaking down the different parts of Glanbia's business. I specifically broke down our branded products, Glanbia Performance Nutrition. Their profitability would be rolled up into Glanbia PLC. Also, our joint ventures, and also Glanbia Nutritionals, which is the main entity I'm representing now, and the joint ventures.
But for Glanbia Nutritionals, specifically, we are extremely diversified. I have here listed we do custom premix solutions, bioactive ingredients, edible films, Flavors by Foodarom, micronutrients, plant-based nutrition, Watson Bakery ingredients. And I would say that a substantial part of our profitability is not necessarily directly tied to the products reported into the NDPSR. And specifically, if you looked at our financial statement, we actually have line items. One is GN cheese. So we have an EBITA number for GN cheese. So

if you take the EBITA number and you divide it by the revenue for cheese, it comes out to something like a little over 1% margin.
Q. Okay. And so I want to back up for a second.
When you were referring to the breakdown in the entities, that was what is noted on the diagram on page 2 of your testimony?
A. Yes.
Q. And so I think you are saying that Glanbia Nutritionals, which is in the center there under Glanbia PLC, is the entity that you are here to speak on behalf of; is that right?
A. Yes. And GN also -- also runs the joint venture plants, the operations of the joint venture plants.
Q. Okay. And that one is the one that's listed on the right-hand side of that diagram?
A. Yes.
Q. And Glanbia PLC at the top is the parent company for both?
A. It's the parent company.
Q. And that Glanbia PLC is the entity that is publicly traded company?
A. Yes.
Q. And then Glanbia Performance Nutrition is a separate legal entity; is that right?
A. It's the separate business unit, yes.
Q. Is it a separate business unit that is its own standalone entity?

A. I believe it's Glanbia PLC's reporting include all three of the -- of the parts of the business.
Q. So while all three of those are their own separate legal entities, they all roll up into Glanbia PLC?
A. Glanbia PLC is the parent company.
Q. So is that a yes?
A. I am not -- I'm not an expert on Glanbia's legal structures, so I'm trying to nuance my answer in how I understand it.
Q. Okay. Fair to say that you don't know if they are all separate legal entities, you just know that Glanbia PLC is the parent company?
A. Correct.
Q. And the Glanbia Nutritionals is the business unit that operates your processing plants?
A. Yes.
Q. And then the joint ventures operate the joint venture processing plants?
A. Yes. But Glanbia Nutritionals also handles the joint ventures.
Q. Okay. Is Glanbia Nutritionals, as its own separate business unit, a profitable entity?
A. Yes, it is. And, again, I would say that even within Glanbia Nutritionals, we have a very large piece of our business that is either, one, not directly related to dairy or, two, the piece that is related to dairy is extremely invested in value-add dairy products, like higher proteins, premixes, custom nutrition solutions for

all sorts of uses.
Q. And those are the products that are sold under Glanbia Performance Nutrition under your own brand --
A. No. We make those -- we make products that are for business-to-business sales for Glanbia Nutritionals. Glanbia Performance Nutrition is a business to consumer.
Q. Okay. And so does Glanbia Nutritionals sell some of it's B2B products to Glanbia Performance Nutrition?
A. I can't get into the details of who our customers are.
Q. Okay. Glanbia Nutritionals, though, as a standalone business unit, has a diversified portfolio, the totality of which end up being a profitable business, unit?
A. Yes. In total, we -- we strive to get the highest return for our shareholders.
Q. Okay. And, in fact, you have an obligation to do that; is that right?
A. Yes.
Q. And if you had a business unit that was not profitable, you would have an obligation to manage that business in a way that either made it more profitable or it no longer operated?
A. Yeah. We would try to get the highest return possible.
Q. And not just try to get a highest return possible, that is your obligation that you owe to your shareholders; is that right?

A. The shareholders would expect a return on their investment.
Q. Do you know -- sorry.
A. The shareholders would expect a return on their investment.
Q. Do you know if you have a legal obligation to provide that to them?
A. I am not sure if there's a legal obligation for every business to remain profitable.
Q. In -- on page 7 of your Exhibit 196.
THE COURT: 196, I think?
MS. HANCOCK: Yes. I'm still in the main testimony.
THE COURT: Yeah, you said 186, I think. If I misheard you, I'm sorry.
BY MS. HANCOCK:
Q. In page 7 of Exhibit 196 there's a heading there titled "new cheese plant investors working around a regulated system."
Do you see that?
A. Yes.
Q. And it -- it discusses that there are -- "cheese processing growth outside of the Federal Milk Marketing Order regulation is creating additional cheese capacity that competes directly with manufacturers regulated under the Federal Orders."
Do you see that?
A. Yes.

Q. Are you talking about -- well, hold on one second. The -- it goes on to say: "These plants have been able to attract milk needed at prices outside of the Federal Milk Marketing Order minimums, making it hard for many regulated plants to compete for cheese sales at the price that generate margins sufficient to pay the regulated price."

And then you go on to say, "This can contribute to disorderly marketing."

Can you tell me what you mean by "disorderly marketing" there?

A. Well, in this case, if the Class III price was too high and you were pooling all of your milk, you would be at a financial disadvantage to a plant that is either not pooling, partially pooling, or has some kind of milk supply agreement, for example, with a cooperative that is paying less than the Class III price in reblending. So there -- if you were a dairy processor pooling all of your milk, you would be at a financial disadvantage to somebody who was finding their way outside of the system.

Q. And so would that include a plant like the plants that you have in Idaho?

A. Glanbia operates outside the Federal Order system in Idaho.

Q. Okay. And does that give Glanbia a competitive advantage for the products that it manufactures out of those plants?

A. It -- it gives us more flexibility I would say.

Q. Does that flexibility give you a competitive advantage over -- over other plants that are making products that are within a Federal Order system?
A. In some ways I think it is an advantage to operate in Idaho.
Q. Does the size of Glanbia also give it a competitive advantage over its competitors?
A. In general, that there are certain cost efficiencies that could be gained with having a very large plant.
Q. Does Glanbia create disorderly marketing in the dairy industry?
A. I don't think so. It is -- even with our size, it is an extremely competitive industry, in my opinion.
Q. Okay. So even though you're able to operate the largest American cheese plant in the United States, if not the world, and part out of an unregulated area, you don't believe that that creates a disorderly market condition?
A. No, I don't -- I don't see how the size of an entity, especially if you are nowhere remotely near a monopoly position, could have -- could create disorderly marketing in and of itself.
Q. And that's fair. So let's take your size out of it. Let's just focus on the fact that you have plants in Idaho that are not in a regulated area.
A. Uh-huh.
Q. Does that mean that Glanbia creates disorderly marketing when it operates its plants in -- in an

unregulated area and competes against plants that operate in plants that are under a Federal Order system?
A. I think it's more difficult for some plants to compete with us in Idaho just because of the flexibility we have, but I don't know if I would call it disorderly marketing. It's may be evidence of markets working versus a regulated system.
Q. Can you think of any time since you have been at Glanbia where Glanbia has created disorderly marketing conditions by operating in an unregulated area?
A. Nothing strikes my mind.
Q. And prior to joining Glanbia, you were at Hilmar Cheese; is that right?
A. Yes.
Q. And how long were you at Hilmar?
A. About four and a half years.
Q. So, '95 to '99-ish?
A. No, I was there from 2014 through 2018, and then, 2018 to current I was with Glanbia.
Q. Okay. I can't do math apparently backwards.
So 2014 to 2018, how many new plants or plant improvement projects did Hilmar engage in?
A. I'm not here to testify on Hilmar Cheese's behalf. I think they have a witness coming in later.
Q. Do you know, though?
A. Even if I did, I wouldn't say. Again, I'm not going to testify for Hilmar Cheese.
Q. Okay. On page -- on page -- I'm at the top of

page 8 of Exhibit 196.
        And you state there, the last sentence on the top paragraph says, "Without Make Allowance increases, the only way for a manufacturer of NDPSR reported products to recover higher manufacturing costs is to pursue ruthless efficiency, look for opportunities outside of the NDPSR reported products, and look for escape valves out of the Class III price, invest outside the FMMO regulated dairy industry, or invest outside of dairy."
        Do you see that?
    A.   Yes, I see it.
    Q.   Would you consider those options that you have listed there to be ways in which a business can diversify its operations?
    A.   Yes. I mean, you would be potentially diversifying your sales of products and looking for ways to control your milk cost if the Class III price was no longer reflective of reality for your business.
    Q.   Okay. Would you agree with me that there's a corporate responsibility for every business to engage in those kinds of evaluative tasks to ensure the safety and security of their business?
    A.   Yeah, sure. If you want your business to be profitable.
    Q.   But you want your business to run as efficient as possible and maximize profits wherever you can; is that right?
    A.   Yes.

Q. And that includes diversifying a portfolio to include products that might garner premium pricing?

THE COURT: Yes, Mr. Rosenbaum.

MR. ROSENBAUM: We have been going for an hour and 40 minutes.

THE COURT: Yeah, I was waiting for a stopping point. I don't think -- after this question --

MR. ROSENBAUM: This particular line to finish, but I think we should take a break pretty soon.

THE COURT: Sorry to interrupt that question. Let's get a question and answer for that.

Do you have the question in mind?

THE WITNESS: What was the question one more time?

(The testimony was read back as requested.)

THE WITNESS: I would say any business will look for opportunities to create the highest return possible.

BY MS. HANCOCK:

Q. And that would include creating a diversified product portfolio with products that include premium pricing opportunities?

A. Some businesses would do that, yes.

Q. And that's what Glanbia has done; is that right?

A. Yes, we have a diversified portfolio.

Q. Okay.

MS. HANCOCK: Your Honor, this would be a fine time for a break.

THE COURT: Thank you.

We went for quite a while. Why don't we take

15 minutes. Let's come back at five of, 9:55.
(Whereupon, a break was taken.)
THE COURT: Back on the record.
BY MS. HANCOCK:
Q. Good morning, Mr. DeJong, again.
I'm on page 8 of Exhibit 196, and this is the section of your testimony that goes in to you specifically addressing each proposal; is that right?
A. Yes.
Q. And this one, Proposal 7, you understand is the Make Allowance proposal from National Milk Producers?
A. Yes.
Q. And you oppose National Milk Producers' Make Allowance proposal because you have concerns that it doesn't have numbers that it's put into the record sufficient for you; is that fair?
A. Yes. I couldn't identify any scientific approach to the numbers they created.
Q. Okay. Is it fair to say that for you it is important to have a scientific approach to providing any numbers to USDA for Make Allowances?
A. Yes. A scientific approach that gets as close to the real numbers as possible.
Q. And is it important to you that those numbers are accurate?
A. Yes. We want accurate Make Allowance numbers.
Q. And is it important to you that those numbers are audited?

A. Preferably I would like to see audited numbers.
Q. Is it important to you that the survey of the costs that are used to set Make Allowance would be based on a mandatory survey to get as many of the responders to respond to the survey as possible?
A. Mandatory will give you much more accurate information, in theory.
Q. Okay. And were you here when Dr. Stephenson and Dr. Schiek both testified?
A. I was here all of yesterday, so I'm not sure when Dr. Stephenson started, but I heard him being cross-examined yesterday.
Q. Okay. And did you hear anything that either Dr. Stephenson said or Dr. Schiek said that you disagreed with?
A. No, I don't think so. I think that, you know, in the absence of audited studies, we are trying to find the next best solution, which is either, you know, Dr. Schiek's analysis trying to extrapolate costs out using a scientific approach from the CDFA studies or using a survey. So to me, those are the second best approaches to trying to find the correct Make Allowance number in absence of an audited survey.
And the third thing would just be the worst thing, would just be made-up numbers with no paper trail.
Q. Okay. And you are not suggesting that National Milk has made up numbers, are you?
A. I -- I don't know how they got their numbers

because they haven't provided a methodology.
Q. Did you listen to any of the National Milk witnesses' testimony?
A. No.
Q. Okay. So you don't know what National Milk has put into the record with respect to how it calculated its Make Allowances that it put in its proposal, do you?
A. I haven't -- I didn't -- I wasn't able to listen in. What I went off was their -- was their written petition which, in my opinion, if they had a methodology, should have been included in their petition.
Q. Okay. And you understand that the petition is not part of this record?
A. I am not -- I'm not intimately aware with how things are admitted into the record.
Q. And -- but you are aware that National Milk has a membership that's comprised of many cooperative members; is that fair?
A. That's my understanding, yes.
Q. And -- and has memberships that include people who process -- people and entities who process milk into finished products as well?
A. Yes, that's true. But I don't recall seeing any type of table where they said, these are our weighted average costs. I don't recall seeing that level of specificity.
Q. And if -- if you did see it, it would be important that -- to you, that if National Milk put those numbers

in, that they be precise, accurate, and reflective of the actual Make Allowances; is that right?
A. Yes, I would like to see them as accurate as possible.
Q. If they had numbers that they could put into the record, and they weren't confident that the numbers were going to be accurate and reflective of the totality of the industry, do you think it's fair that they didn't put in numbers that were potentially misrepresenting what the actual Make Allowance costs would be?
A. You want respondents to any type of survey for Make Allowances to be honest and accurate.
Q. And you don't want partial information to be the basis for setting those Make Allowances; is that fair?
A. You -- again, audited cost studies are the gold standard. Second would be surveys. And third would be numbers that don't have a clear methodology behind them.
Q. Is that the ranking priority that you would assign to them on what could be used for setting Make Allowances?
A. Yeah. I would say the more scientific the approach, the more transparent the approach, the better.
Q. Well, you would agree with me that you can have a scientific approach that still gives you inaccurate information, right?
A. It's possible. These -- the science of this is not perfect. Again, audited cost studies are preferable.
Q. And the science can be perfect, right, because it is math? Is that right?

A. I mean, you can use a mathematical equation that will give you a number. But, again, until you do audited cost studies, you don't know for sure. But we do know, for example, that there has been a lot of inflation, so -- especially recently, so I would expect that, for example, with Dr. Schiek's study, that they would be definitely directionally correct, given the mass amount of inflation we have seen.
Q. Uh-huh. And you can be directionally correct without being right on the number; is that fair?
A. You may not be -- you may not be exactly precise, but I think you're -- you're hopefully getting close to a number or relatively close in the ballpark.
Q. And you can exceed it if you are just using a directional methodology; is that right?
A. You can exceed it or go under it. Using a statistical approach in theory, if the statistical approach was correct, it would be roughly a 50/50 chance that you could exceed or go under the actual.
Q. Okay. And -- and we won't know for sure until we have an audited mandatory cost survey; is that right?
A. Yes. And if I understand, given the glacial speeds at which sometimes things move, that could be a while, which I think necessitates the need for something to not wait another however many years. So to get at least some scientific -- scientifically-based change in place before we wait -- while we're waiting for the audited numbers.

Q. And did you hear Dr. Stephenson say that the sample size matters?
A. Yes. The sample size matters in any statistical analysis.
Q. And did you hear him say that his response rate depending on the category ranged anywhere between 10% of the volumes produced in those categories up to about 50%?
A. I know there are ranges. I don't recall the exact percentages.
Q. Okay.
A. I will say that we did participate in the cheese study, and I am sure we had a substantial impact on that.
Q. When you provided your responses for the cheese that is produced by Glanbia, was it just the cheese that's -- cheese produced and reported for NDPSR?
A. We -- Dr. Stephenson's questions pertain to all of the cheese produced at the plant. So he asked for the product mixes, and all of the costs associated with producing all of the cheeses, which in our case were all hard cheeses, American-style, mostly cheddar and then, you know, Colby, Colby Jack, etcetera, hard cheeses.
Q. Okay. And so did Glanbia provide the responses for all of its cheeses, whether it was reported on NDPSR or not?
A. Yes. So Dr. Stephenson's questions pertained to all of the cheese produced at that plant.
Q. I just wanted to make sure that you answered the next part of that, which is whether or not Glanbia

responded with all of the cheese that was produced.
A. Yes. We responded with all of the cheese that was produced. We answered his questions as he -- as he directed us to.
Q. And you understand that IDFA's proposal takes Dr. Stephenson's numbers that he reached in 2023 from that survey that was sponsored by IDFA and -- and Dr. Schiek's numbers that he reached using his trend line methodology, and combined the two, created an average, and then used that as the number that would create Make Allowances; is that right?
A. That's how I understand it, yes.
Q. And you understand that that is based on Dr. Stephenson having the range of anywhere between 10 and 50% depending on the product lines that he was surveying; is that right?
A. Yes, that's how I understand it.
Q. And you understood that Dr. Schiek was using methodology that was based on CDFA studies that ended in 2016?
A. Yes.
Q. And that was surveying or doing a cost study on products that were specific to California and California's cost structure?
A. Yes. CDFA numbers are specific to California.
Q. And as you sit here today, do you believe that that's the right methodology to use when establishing Make Allowances for the entire United States?

A. Again, audited cost studies for the whole U.S. are the gold standard. In absence of that, we have to lean on the next best things that are available, which I would include as Stephenson's study and trying to extrapolate out the CDFA studies using econometric analysis. So not ideal but second best.
Q. Is it second best or is it second and third best averaged together?
A. I don't know if I -- in my opinion -- I'm not a statistician, but in general, I would probably give the survey a little bit more weight because it comes from actual plants. But I think looking at both approaches is also valid.
Q. And you understand that Dr. Stephenson also had a 2021 survey as well?
A. Yes.
Q. And you understood that those survey results came from actual plants as well?
A. Yes.
Q. And those numbers in some cases were pretty significantly different than what he came up with in 2023?
A. I believe that for Class IV products, there was some changes in the numbers.
Q. Do you have any concerns about the accuracy of the survey that he conducted in his 2021 results?
A. Well, Dr. Stephenson is -- I mean, he has an impressive background, so I would defer to him in regards to the quality of his survey.

Q. And did you hear him testify yesterday where he said he didn't believe that there was anything wrong with his 2021 survey results, just that it was affected by the sample size and that sample size matters?
A. I will let Dr. Stephenson speak to his own results.
Q. Did you hear him say that?
A. I believe I did. I don't recall word for word.
Q. Do you have any concerns with anything that he said in the way in which he characterized his 2021 study?
A. I will say that there is no study that is perfect, and if I claimed that it was perfect, I would not be speaking on an area that I could accurately talk about.
Q. And you don't have any reason to disagree with his characterization of the 2021 study's accuracy?
A. I will -- I will defer to Dr. Stephenson on the veracity of his own study.
Q. What year would you estimate was the year in which costs of making products exceeded the Make Allowance that is set under the Federal Order system?
A. Well, that's kind of a difficult question because I think each plant has its own cost structure.
Q. Okay.
A. You can't say this point I think it depends on which plant you are specifically talking about across the entire U.S.
Q. While you were at Hilmar, was there a time in which the cost of producing the products exceeded the

Make Allowance that was set by the Federal Order?
A. I am not going to speak on Hilmar Cheese's behalf. I'm not a witness for Hilmar Cheese.
Q. Since you have been at Glanbia has there been a time that the cost of making your cheese products has exceeded the Make Allowance that's set by the Federal Order?
A. I can't speak to Glanbia's specific cost of production. I'm not authorized to talk about proprietary information in that detail.
Q. In your experience as a dairy economist, can you estimate for me what year it was or around -- the date range within which Make Allowances were known to be exceeding the Make Allowances that are -- strike that. Let me say that better.
In your experience as a dairy economist, can you give me a date range which you believe that the cost of making cheese exceeds the Make Allowance that is set by Federal Order?
A. If I gave you a date, it would imply on that date that was our cost of production, and I am not going to do that.
I will say that since post-COVID, when inflation really took off, it became a much bigger problem for us, and our financial team -- it became very glaring on our radar that manufacturing costs were greatly accelerating.
Q. Okay. So that would be 2021 going forward to have realized that cost?

A. That's where the costs really started accelerating, I would say.

Q. And that would explain why you or anyone on your IDFA team has not requested a hearing prior to this last year?

A. I think prior to that there was discussions. I believe even prior to COVID we had had meetings with IDFA saying, hey, it's been, you know, well over ten years, 12 years, since we touched these things, the costs have gone up, these are no longer accurate, and then I think since COVID hit and inflation accelerated, I would say it's just become a much, much more glaring problem and that urgency has increased rapidly.

Q. Thank you.

MS. HANCOCK: I have no further questions, your Honor.

THE COURT: Further examination?

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Thank you. Ryan Miltner representing Select Milk. I just have a couple of things that I wanted to touch on.

On page 5 of your statement you state, "Given milk cooperatives control about 85% of all the milk in the U.S., this places them in an extremely strong position to bargain for premiums above the FMMO class prices, providing enough value is being generated from dairy products in that milk shed."

Are you suggesting that if Make Allowance changes

are adopted, cooperatives will therefore negotiate over-order premiums to recapture some of the loss in the minimum price?
A. I would imagine they would try.
Q. Within those areas regulated by the Federal Orders and where Glanbia has plants, are those supplied by cooperatives?
A. Yes.
Q. Does Glanbia intend to renegotiate any of those milk supply agreements if the Make Allowances are changed?
A. Yeah. Earlier in my testimony I noted that I wasn't going to get into any proprietary milk supply agreements, and I am extra sensitive to our joint ventures and not getting into any specifics there.
Q. You spoke to increases in the costs of operating your Idaho plant and that they had increased by 50% since 2008.
Did I get that correct?
A. Yes. That's what our -- our internal analysis showed.
Q. Do you recall when Southwest Cheese began operating?
A. That was well before my time at Glanbia, but I believe it was somewhere around the range of 2006-ish.
Q. I think that's probably correct.
Did you do a similar analysis for Southwest Cheese?
A. I did not. The plant was also smaller back then

too. It was a different business.
Q. But you have not done a comparison of the per pound manufacturing costs at Southwest cheese in 2006-ish and today?
A. No, I have not.
Q. Okay.
MR. MILTNER: I think that's all. Thank you again.
THE COURT: Further questions?
AMS?
CROSS-EXAMINATION
BY MS. TAYLOR:
Q. Good morning.
A. Good morning.
Q. Thank you for being here yesterday and today.
A. You're welcome.
Q. I think you talked about how big Glanbia is in regard to its employee numbers, and I ask because we're charged with getting information regarding small businesses on both the dairy farmer and the processor side.
So do you know about how many employees Glanbia has as a whole?
A. I would have to Google it on my phone. I don't know the precise number off the top of my head. Maybe I should know.
Q. More than 1200?
A. Yes, I would -- I would say so. And it depends on

what part of the business you are looking at, Glanbia PLC versus Glanbia Nutritionals.
Q. Okay. Thank you.
I want to start on page 3 of your statement, Exhibit 196. And you stated that Glanbia participated in the 2022 survey.
Does that mean you did not participate in the 2019 survey?
A. We participated in that survey as well.
Q. Okay. The same -- the same set of plants?
A. The Michigan St. Johns plant was not finished or completed at the time, so that plant was not in the survey.
Q. Okay. Thank you.
And on the costs that have come out of both the Stephenson 2022 survey and Dr. Schiek's methodology he used and the numbers he came up with, can you give us an idea of -- and how does that compare -- I don't want confidential information, but if you can speak to kind of how you see Glanbia's numbers represented in those averages.
A. We -- Glanbia's extremely efficient. I -- Nicole and I have a favorite word now, deadly efficient.
Q. Deadly, uh-huh.
A. So I would say, if anything, we probably help pull those numbers down.
Q. Thank you.
I want to talk for a second on the marketing

allowance of $0.0015 per pound, that you support continuing that inclusion.
Can you talk about what you think should be covered by the marketing costs? Like, what do you include in your head when you think marketing costs? What does that include?
A. Well, the process of selling our cheese for cheese specifically.
Q. And for this $0.0015 per pound, is that just the commodity side of things? Because you talked a lot about the value-added products that Glanbia also produces.
A. Yeah. I'm talking specifically to the products that would be in the NDPSR survey.
Q. Okay. But you don't have any -- well, let me ask this a different way.
How do Glanbia's marketing costs numbers compare to this kind of benchmark number that's been included for a while?
A. That's a good question. I didn't do that specific analysis and divide it out. I kind of used the rough assumption in my head that since these were introduced in the previous decision on one hand, labor costs in particular have continued to go up, while on the other hand, as our business has grown, it -- when you add more cheese volume, you don't necessarily have to add more sales people at the same rate. There is a certain level of efficiency that you can get at scale.
Q. Okay. On page 4 is where you start referencing

Figures 2 through 5, but I wanted to know in your statement -- and maybe I missed the reference to Figure 1.
A. Oh, where did I reference Figure 1?
Q. Yeah. I might have looked over that by accident.
A. Okay.
Q. Oh, now, I see it. That's on page 9 when you are talking about removing the barrels.
A. Okay. Did they -- did the numbers get out of order? That's possible.
Q. Yeah. Okay.
A. I think we moved some things around after I wrote it, and that's probably --
Q. I can sympathize.
A. -- that's what happened.
Q. Okay. All right. Then we'll come back to that in a second.
And I think you did state earlier, but just to make sure I'm clear why you picked those four states or regions to highlight for Figures 2 through 5?
A. Why I picked them? I just thought that they were substantial milk sheds with multiple component order pricing that had a long history. If California had had a longer history, I would have loved to include that in the analysis.
But I know -- I think it was last week we had some other questions, just we were talking about internally with IDFA, and I believe I did the same analysis that's not included in here for I think the New England states.

And if you were to run that same analysis for the New England states, it shows exactly the same decrease in mailbox prices versus the regulated price. So I would suspect if you do that to any of the orders, you would find a similar trend.

Q. Okay. And so if I understand, those figures are -- what you are inferring through looking at what that -- those figures show and the downward trendline, is that because Make Allowances are inadequate, in your mind, mailbox prices -- or what the producer received is steadily getting -- is steadily decreasing because there has to be some balance there, some rebalancing, and manufacturers have to account for that by paying less to their producers --

A. Yes. I think --

Q. -- is that accurate?

A. Sorry. Yeah, I think that's an accurate characterization because at the end of the day, the Class III and IV prices can be set to any level, but at -- they have to align with the actual revenue being generated and the real world costs for these plants. And if those don't align by necessity, the mailbox prices have to go down to -- to clear the market.

Q. Okay. On page 5 you start to discuss premiums.

Can you talk a little bit at all about Glanbia, and do you pay premiums to your suppliers, and you know, in a general sense that you can talk about?

A. Premiums versus Class III?

Q. Yeah.
A. I can't get into the specific supply agreements with our joint venture partners. Obviously we're partners with DFA and Select, and I want to be really careful around that.
But I would say in Idaho, that the market competitive milk prices in Idaho are -- are -- for cheese plants, are often, if not almost always, below Class III.
Q. Okay. But in federally-regulated areas?
A. That, I can't get into the details. What I can say is that cooperatives and proprietary handlers can lock into any milk agreement they see fit, below the class prices or above, and they will reblend those proceeds to their dairymen.
Q. There's been some discussion from other parties about the ability to renegotiate those premiums, and I'm just curious if you would share, how often does that discussion occur when it comes to Glanbia and your milk suppliers?
A. So how often does that discussion occur? So within Idaho, we are unregulated. So if we're on contract, we keep within our contract. If the producers are off contract, then it's up to us. Glanbia has discret- -- full discretion over their milk price. But, again, we don't abuse that because we have to pay a competitive price, and second, if our plants run out of milk, that is a huge problem for us.
For our joint venture plants, we have contractual

agreements in place that are set to renew at specific amount -- at specific intervals. And I'm sure if those weren't -- you know, were -- something wrong with them, the executive teams from all the different parties could talk about those agreements and if changes needed to be made.

Q. Okay. And when you say "intervals," is that annual or kind of just depends?

A. It can be multi-year intervals.

Q. Okay. On your bottom of page 5 when you talk about under the heading "importance of Make Allowances for pooling dollar distribution," and you give an example -- well, you're basically saying "a situation can be created where pool revenues are not distributed in a fair or economical justifiable manner." And then you have an example, is if the Class III make was too low, creating an artificially high Class III price, but the Class IV price was set too high by a -- Class IV make was set too high creating an artificially low Class IV price, then Class IV handlers would have an unfair advantage because pool dollars flow to the lowest class value of the milk.

And I had to read that sentence a few times to try to figure out what you are trying to tell us. So I think I know, but I would prefer you to maybe expand on that.

A. Okay. I know, some of these -- this pooling stuff is complicated, and it's -- sometimes it's hard to convert into proper English.

But I would describe it as you don't want

distortions to occur. You can talk about, you know, oh, the Make Allowances need to be -- need to be, you know, increased by such and such, but you also need to be cognizant of the relativity between each other, that they actually reflect -- you want to get to the truest cost of production as possible, because you don't want the situation -- I'll use the -- you know, a reverse example, where the Class IV Make Allowance was set -- was set incorrectly to the point where they -- the regulated price was way too high, and that they are losing lots of money versus the regulated price, and they are not getting any pool revenue to help compensate them for that.
Q. But the pool revenue doesn't flow to them --
A. It would typically --
Q. -- to the bottom --
A. -- flow to the lowest class price.
Q. But what I'm trying to distinguish is, the pool revenue doesn't flow to the manufacturer and their bottom line, that eventually flows to the producer through --
A. Yes, it would flow -- it would flow through --
(Court Reporter clarification.)
BY MS. TAYLOR:
Q. The pool revenue doesn't -- it flows to the producer, not the manufacturer?
A. Correct. That's an important distinction.
Q. Okay. And then -- thank you, Todd.
And in the next sentence you say, In this case, the Class IV handlers could be financially strong while

also pulling in extra pool revenue. The Class III handler could be struggling and not getting any pool revenue.

And then where there you are talking about the financially strong or not is in regards to the Make Allowance piece that does go back to the manufacturer; is that correct?

A. Ordinarily, the pool revenue would ultimately go back to the producer.

I guess what I meant there, I think it's -- in my world, it goes -- the milk handler handles the pool distribution, and then it flows back to the producer. So I think of it from a milk handler perspective.

Q. That's understandable. Thank you.

A. Yeah.

Q. The next page you talk about the impact of higher manufacturing costs on Glanbia, and you talk about your total costs. And I think you might have answered this earlier in the earlier question with someone, but I didn't catch it.

Are you -- you are talking about per unit cost there in your Idaho plant, not total cost?

A. Yeah, per unit cost. So you divide the total cost allocated to that plant divided by the cheese production, and you do that in both years 2008 and 2022.

Q. Okay. And I know you didn't do an analysis for your other plants. But given your knowledge of the company, can you speak to whether you might see similar costs in those other plants?

A. I expect you would. And part of -- part of the reason I didn't have those other plants is not necessarily out of nefarious intent. It's that in my office I -- my office was -- the previous -- one of our directors of finance office, and they had old binders from a long time ago of all of our old plants with dust on them. And I said, oh, wow, the 2008 costs. But, in there, I don't think they had the Southwest Cheese numbers. And our finance team is currently in budget season. They are preparing for next year and --

Q. Don't ask them.

A. -- and the tight turnaround in getting this. So I can look those numbers up, but that's -- part of the reason is, one, the Twin Falls plant hasn't changed much over time, and two, those numbers were literally right three feet next to me.

Q. And I know you talked about all the investments in making things more efficient.

Would you think that your other plants are more efficient than your Idaho plant that seems to be older or you wouldn't make that statement?

A. I would say, in general, there would be a correlation between plant size and cost per unit to produce, the largest plants I would say. In looking at Glanbia's plants are the most efficient per unit of product produced.

Q. And your Twin Falls plant is not the largest?

A. No. The Blackfoot, Idaho is very small. That

would have the highest costs.
Q. Okay. On page 7 you talk about new cheese plant investors working around the system, and you talk about cheese processing growth outside of the Federal Order regulation.
We have heard some discussion in the past few weeks about new investments and plants opening up. But where specifically are you talking about in that paragraph?
A. I could think of multiple plants that are being built right now. So I think a Panhandle Products plant in the Texas Panhandle. I think Leprino has a plant being built. I think Hilmar has a plant being built in Dodge, Dodge City. So those are a few that are on my mind.
Q. All outside of Federal Order areas?
A. No. Some of those are in Federal Order areas, but I think in -- especially for Western plants where you have high transportation costs to market, it's very expensive to move cheese from an area out west to where the demand centers are, you know, somewhere like Wisconsin or to the east, and that takes -- to be competitive, with a cheese maker more on The eastern side of the U.S., that transportation cost takes a lot out of your -- out of your ability to pay for milk.
So for example, if it costed, I don't know, $0.15 a pound to move cheese to -- you know, West Texas to New York or something like that, I'm just -- I don't know if those are the exact numbers, but, you know, you are

essentially at a $0.15 disadvantage per pound to someone else who was like really close to those demand centers.
So, in general, I would say Western plants have the hardest time paying the Class III price, and when -- when something doesn't work, you have to find ways around the system, escape valves, whether that be through not pooling, partially pooling, or making contracts directly with milk handlers that are not necessarily -- or below in this case -- the Class III price for cheese plant.
Q. Okay. On your elimination of the 500-pound barrels, Proposal 3 that's on page 9, I think that's what Figure 1 is, your Figure 1 is referenced.
A. Yes.
Q. You talk about barrels frequently use a basis to Class III to buy or sell milk for plant balancing purposes. And you -- your argument is you want to keep the barrel price in.
A. Uh-huh.
Q. So I guess my question is, if you are already selling barrels at some basis to Class III, and then we just got rid of barrels -- and this might be a naive question, but I don't sell barrels, so I'm going to ask it -- why can't you just sell barrels at Class III with a different basis?
A. So you mean change how we price barrels, like, for example, price our barrels off a different index?
Q. Well, yes. But right now, right, you price barrels, I guess, plus or minus the Class III price.

A. Oh. You would typically price barrels versus the CME spot market at an underage or overage versus the CME spot market, and then those get reported into the NDPSR price survey, which then ends up in Class III.

Q. Okay. Because you do talk about later on, it was on this one, if the CME barrels -- if the CME eliminated the barrel market, none of this would be a problem.

And am I interpreting that last paragraph correct?

A. Yes. So that just dovetails into what I just described. So currently how it works is barrels are priced, typically, in my experience, almost all the barrels or virtually all the barrels are priced off the CME spot average barrel market, and then that gets reported into the NDPSR. In fact, if you did a statistical analysis of the NDPSR barrel price versus the CME barrel price, and you lagged it by seven to ten days, so a little over a week, you would get something like a 99% correlation between those two markets.

So my reasoning there is that if barrels were removed from the CME, it would force the industry to, in my opinion, likely reprice the barrels off blocks. So if you priced your barrels off blocks, those get reported to the NDPSR, and then basically you have two -- two price series, both related to the CME block market. Your blocks are still related, and then your barrels, basically, are now tracking the block market, so you end up with a Class III price that tracks blocks only.

Q. Okay.

A. So it's a -- it's a way that you can address the problem outside the Federal Order system.
Q. Okay. And we heard testimony earlier in the hearing from a different barrel maker that was of the opinion that regardless if the CME barrel market is here or not, removing barrels from the formula will force barrel makers to price off of blocks is essentially I think what he said.
And I take it you don't agree with that statement?
A. It -- not necessarily. I think it's -- it's difficult. And one reason we support the status quo in leaving it in is that there are so many unknowns how it would all shake out. So if you removed barrels from the NDPSR, maybe the CME market goes away, maybe it doesn't. We make a lot of barrels, and it is a huge strategic risk for our business to disconnect it. So that's the view point I'm coming from.
Q. Okay. Thank you.
I want to move to page 12, and we're talking about butterfat recovery and farm-to-plant shrink. In the bottom of that first paragraph, under that heading, you talk about, I believe, the proposal is only focusing on the price enhancing aspect of Class III formula while ignoring the parts that overvalue -- excuse me, I should start the sentence below -- or above.
I think what you are saying is -- I read the sentence and it made sense to me before, but now I feel like I'm missing a word. But I think the general

sentiment is, we shouldn't focus on yields that would enhance prices unless we focused on all -- ignoring the parts -- other parts that overvalue milk in Class III.
        Would that be correct?
    A.   Yeah. My whole point in this section is not to cherry-pick the formula. If you find something that says, oh, well, maybe the fat recovery is higher, well, then, okay, you change that, but then what about the other parts of the formula? And I specifically mention the amount of fat shrink we see through our manufacturing plants and the fact that the whey cream coming off the plants is not -- the revenue is not commensurate with what you would see for Grade A sweet cream.
    Q.   Okay. Okay. So those are the parts that you think that are not being addressed in the current rulemaking?
    A.   Correct. I think the fat -- the fat section of Class III is overvalued. And that is my experience in my career, what is actually the case.
    Q.   Okay. We have heard a lot about plant investment over the last few weeks, and you have talked about it some yourself in Glanbia's case to improve efficiencies.
        So would you agree that there has at least in some -- for some pieces been improvement in yields over since whenever these yields were adopted in the current price formulas?
    A.   Well, I would be careful with that because you -- you can't create product out of thin air. Everything is

being created from milk solids. So if you increase the fat retention in cheese, that means more fat is going into cheese, which allows to you get a higher yield, but that means you have less fat coming out the other side of the process. So there's no new solids created. You boost cheese yield, and you lower the fat yield in the formula. So there's no -- not really a free ride.

Q. Okay. I understand that point. I -- okay. So one other question is, during cross-examination you stated that a decrease in the Class III and IV pricing formulas doesn't mean a loss of revenue. But you also state in your testimony that manufacturers of NDPSR products are limited to receiving the Make Allowance because the rest of the value is paid to producers.

So I'm just trying to square the statements, and I think it's because you are talking about in the first selection, doesn't mean it's a loss of revenue to co-ops that have manufacturing assets; would that be correct?

A. If you would state it one more time. I just want to make sure I answer your question precisely.

Q. Sure. So during cross you stated that a decrease in the Class III and IV prices does not mean a loss of revenue.

A. Correct.

Q. And in that statement are you just -- I thought I heard you elaborate that that -- you would apply that to cooperatives.

A. Yeah. In the case of a cooperative, if you lower the Class III and IV price, assuming that they are manufacturing their own products, that does not change the nonfat dry milk market. It does not change the butter market necessarily. It does not change the cheese market. So all other things equal, the revenue coming into the plant would be the same. And if your revenue -- if your milk price drops but your revenue stays the same, that would mean your profit margin has increased. And if your profit margin is increased, the cooperative could choose to give that money back to its dairies.

So in theory, for a co-op manufacturing its own products, only the -- only the class benchmark has changed, but the amount of money coming in is the same, so the producers, in theory, would get paid the same. They could choose to do something else with that extra money. They could reinvest it. They can, you know, do whatever legally they could do with that but --

Q. So then how would you extend that thought to say direct shippers or cooperatives that don't have manufacturing plants or cooperatives for the milk they supply to other manufacturing plants they don't own?

A. That's a really good question. So let's say -- let's take the other extreme where it is a cooperative who sells all of their milk. When the regulated price changes, it depends on how the contract was written. So if their supply contract was written that we are supplying you at flat Class III, and that is a deal we secured for, I'll just make up a number, to five years, then the revenue in that case would drop. Class III would drop with the new Make Allowance change, and it would be between the milk handler and the processor whether they wanted to renegotiate that agreement.

For example, the milk cooperative that is selling milk in this case could say, like -- like, hey, this is not a competitive price for milk, I think that we need to renegotiate this contract, or they could make the case that, hey, the dairies cannot withstand this level of decrease, we need to renegotiate this contract. But that would be a private agreement between the milk processor and the cooperative on how they want to handle that. That's how I would interpret that.

Q. Okay.

MS. TAYLOR: I think Mr. Wilson has a question.

MR. WILSON: Thank you.

CROSS-EXAMINATION

BY MR. WILSON:

Q. Todd Wilson, Dairy Programs. Good morning.

A. Good morning.

Q. In looking at your Figures 3 through 5, I think I understand in your testimony you're relating the trend, if you will, to basically the erosion of premiums, maybe, through the -- through the Make Allowance ability, right?

A. I think the Make Allowances are an important piece of it. Certainly there's other noise in there, like I mentioned. Transportation costs are another thing that could exacerbate this trend.

Q. Some of them seem to be a lot different trend. If you look at the Northwest, it's pretty flat throughout the years until 2021, and then it really drops. But the other ones, I don't know, it just seems like the trend line itself relates more with your differences between mailbox and uniform prices more than say the Pacific Northwest area.

Would you -- do you have any feeling on that?

A. Yeah, I don't have a perfect explanation for all this noise. There was a few things that I thought were happening. I think recently you really see it fall off in the last few years of this analysis. And I suspect a lot of that has to do with the rapid increase in inflation for processing, and that increase in processing costs is already finding its way into mailbox prices.

And also, I think 2020 is kind of an interesting year, where there's kind of like a little bit of a deviation or a substantial deviation in the trend. And what I suspect, but I don't know if I would be able to approve -- prove this -- maybe with your information you could -- that there was a lot of depooling happening in 2020 with the rapid changes in markets.

For example, if a Class III handler depooled their milk, that money would come out of the pool, and it would make the -- it would make the uniform price at test look relatively lower because that high value milk is coming out of the pool. But that money didn't disappear. That money is going to find its way back into producer paychecks. So that would almost give the mailbox price a boost in 2020 versus the regulated price. That's my -- that's what I suspect happened in 2020.

Q. Thank you.

One more question on Figure 2, just so I -- I think I know this. But the NDPSR block minus CME barrel part of the graph is the small little up and down, over and over under zero, right?

A. Yes.

Q. Is that simply the gap in the two other colored lines, above it?

A. Yes. That would be the gap. Well, let me --

Q. Sometimes it looks like it doesn't quite fit, but I think it's just kind of skewed, I don't know, left or right it seems like somehow.

A. Yeah. I think I would have to -- I'd have to double-check this. I put this graph together about six weeks ago. But it was meant to show the volatility between blocks and barrels.

Q. Relation -- taking into relationship between the NDPSR block and the CME barrel?

A. Uh-huh. Yeah. So that's -- that's kind of our -- I think the point there was if, in Idaho, that Class III became 100% weighted by NDPSR blocks, but our revenue was related to CME barrels, we would see a much more volatile relationship between the sales of our products and a Class III price that was 100% blocks.

Q. And the barrel -- the CME barrel would be the

weekending price to relate that to the week --
A. Yeah, I think I used the week average. I used the week average.
Q. All right.
MR. WILSON: Thank you very much.
MS. TAYLOR: That's it from AMS. Thank you.
THE COURT: Anyone else?
Redirect?

REDIRECT EXAMINATION

BY MR. ROSENBAUM:
Q. Steve Rosenbaum for International Dairy Foods Association.
If you -- I want to just follow up on a few of the other questions that have been asked of you.
If you look at your main testimony, which is here in Exhibit 196, and turn to page -- pages 12 and 13, this is where you address Proposals 10 and 11, correct?
A. Yes.
Q. And as AMS, I think, accurately drew out, your point here is that even if you assumed that butterfat recovery in Class III is 93%, and even if you assumed there was zero farm-to-plant shrink in milk being used for Class III, that there are other parts of that particular formula that would also need to be addressed if one were to make -- engage in an effort to make it more accurate, correct?
A. Yes. You don't want to cherry-pick the formula. You would want to have an overhaul of the entire formula

preferably based on accurate --
Q. And I want to confirm my understanding of what your bottom line is. That if you were to make the assumptions that Proposals 10 and 11 want to make, namely that butterfat recovery in Class III is 93% and there is zero farm-to-plant shrink, that if you also corrected for the fact that the formula currently doesn't reflect any shrinkage in the plant itself, correct?
A. It -- I believe the formula has a small -- currently a small amount of shrink built into it going into the cheese yield but not the fat section. Specifically the fat -- excess fat recovery, that's what I was honing in on.
Q. It doesn't have that, and it assumes that the 10% of the fat that is not going to cheese, which is whey cream, is worth the Grade AA butter price, which you think is too high, correct?
A. Correct.
Q. If you corrected for those two things, the net of all the corrections, both the ones being asked in Proposals 10 and 11 and the two corrections you think would also need to be made, the net of all that would probably be lower milk prices, right?
A. Yes, it would be.
Q. And by that I mean lower minimum regulated milk prices for Class III?
A. Yeah. The corrections to the fat value would outweigh what -- the changes the petitioner is asking for.

Q. Now, on page 9 of your testimony you address the question of whether barrels should be removed from -- make sure I have got the right page.
I was correct. On page 9 of your testimony, Hearing Exhibit 196, you address your opposition to removing 500-pound barrels from the price survey that is used to set the protein price, correct?
A. Correct.
Q. And obviously, AMS has no control over whether CME would continue to have a spot market for barrel cheese, even if 500-pound barrels were removed from the formula, correct?
A. My understanding is Dairy Programs has no control over the CME.
Q. So let's assume a scenario under which the CME continues to have a spot market for 500-pound barrels, correct?
A. Uh-huh.
Q. Now -- you need to say yes or no. Is that a "yes"?
A. Yes.
Q. All right. So -- and I think your testimony was that, in fact, that's how most barrels are actually priced, off of the CME announced barrel price; is that correct?
A. Correct.
Q. And so if -- if one removed the barrels from the formula for setting minimum milk prices and yet -- well,

if you did that, then the regulated Class III price would be set solely based upon blocks, correct?
A. That's how I understand it.
Q. Okay. And so what would be the practical impact of the fact that a barrel manufacturer would be selling his product based upon the CME's spot market, and yet his minimum milk price obligations would be established based upon blocks, not barrels?
A. Yeah. It would create a disconnect between your revenue and your milk cost, which is direct financial risk.
Q. And do you view that as a substantial issue?
A. Given how volatile the barrel market has become versus blocks, for barrel markets -- sorry -- for barrel manufacturers, it is extremely important.
Q. Extremely important, therefore that barrels stay in the formula for setting minimum milk prices?
A. Yes.
Q. Okay. And do I understand that your view is that even if CME would -- and it's in their decision -- were to remove -- eliminate, I should say, the spot market for barrels, that from your view, the practical effect would not be to increase payments to farmers?
A. Can you ask that one more time?
Q. Yeah. So let's assume there's no longer a barrel spot market and -- and the barrels have been removed from the formula, but obviously barrels are still being produced. And so what would the ultimate impact be of

that system?

A. Okay. I think I -- I think I understand your question. So the -- first the Class III price would be 100% blocks.

As far as the impact to the Class III price, though, the absolute price that's going to dairymen, that could get a little bit fuzzy to measure in an alternative universe because you can look at the back analysis and say, oh, well, if they were only getting paid blocks, you know, they would have got this many cents per hundredweight higher price.

But I think what that view is not looking at is if the manufacturers -- if you had excess cheese, and you had to clear that, and you were taking losses on clearing that excess cheese by selling it at a discount, and you weren't getting any relief from the Class III price, for example, selling the barrels -- excess barrels because there's too much cheese in the market, you would probably seriously look at selling blocks instead to clear the market. Because at least if you are selling blocks, those get reported into the NDPSR, and they would give you milk price relief whereas -- and it would be 100% impact. Right now, when the barrel price goes down, it's only 50% of the formula.

But if you go to 100% block weighted system, and you have too much cheese that needs to clear the market, and you start making blocks because that's the only format where you can get milk price relief from that excess

cheese, it's going to be virtually 100% impact on Class III. So there could be unintended consequences.
Q. Would that tend to drive down the Class III price because you're now including, in setting that price, this block cheese that's being sold under conditions that to clear the market?
A. Yeah. So if you were -- if you started making block cheese and sending it to the CME in order to clear the market, that would have almost a 1 to 100% passthrough to the Class III price, instead of a 50% that currently exists with barrels.
Q. Okay. Now, you -- you gave some sort of quick testimony relating to the question of the profitability of Glanbia. And I just want to make sure that's made clear on the record because you -- for example, you made reference to a phrase EBITA, and yet actually we haven't had anyone define that term so far in the hearings.
So let me start by having you tell us what that phrase means.
A. Estimated was the -- estimated --
Q. Is it earnings before interest --
A. Yeah, yeah, yeah. Earnings before interest, tax, and amortization.
Q. And E-B-I-T-A, right?
A. Yeah, yeah, yeah.
Q. Thank you.
And you made reference to Glanbia having that EBITA of a little over 1% with respect to something. Can

you just explain a little more what it was you were referencing there?
A. Oh, that was on our published financials, that is the margin on the U.S. cheese business.
And I should add that that is, you know, that of -- you know, being in Idaho, having our own proprietary milk formulas, and having our own milk supply agreements. Again, I'm not getting into that. So that's not even necessarily for all the cheese reflective of the current Make Allowances.
Q. Is that a pretty low number?
A. 1% seems low to me for an investment.
Q. Then, lastly, you were asked some questions about the sample size for Dr. Stephenson's survey.
Now, do you understand that IDFA's Make Allowance proposal is based upon the most recent survey conducted by Dr. Stephenson, namely the survey conducted -- published in 2023 of 2022 costs?
A. Yes. 2022 costs.
Q. Okay. And there were some questions asked that sort of asked you, assume relatively low percentage of sample size, like on the order of 10% for certain commodities.
Do you recall being asked that?
A. Yes, I remember that.
Q. We will have testimony by Mr. Brown when he retakes the stand on this subject, but let me ask you to assume that what the actual statistics are, are as

follows:
That 91.2% of all nonfat dry milk produced in 2022 was included in the survey. Okay? Assume with me, that 80.1% of all the butter produced in the United States in 2022 was included in the reported information to Dr. Stephenson for the 2022 survey; that 55.6% of all cheddar cheese produced in 2022 was included in the survey; and that 50.8% of all whey produced in 2022 was included in the survey.
Do you view those as robust sample sizes?
A. In my opinion, that would sound like a very large sample size.
MR. ROSENBAUM: That's all I have.
THE COURT: Anyone else?
MS. HANCOCK: I do.

RECROSS-EXAMINATION

BY MS. HANCOCK:
Q. Mr. DeJong, you were here when Dr. Stephenson testified, at least on cross-examination yesterday?
A. Yes. I -- I don't recall word for word everything he said.
Q. That's fair. That's why we have a transcript.
And you recall when I was asking him about his sample size?
A. I remember you asking him about it. I don't recall the specifics.
Q. Do you recall him ever saying that he had a sample size that matched up with the numbers that Mr. Rosenbaum

just gave you?
A. I don't recall him -- I don't recall any specific numbers he said.
Q. It makes sense that Dr. Stephenson would know his sample size better than Mr. Brown; is that right?
A. I would defer to Dr. Stephenson in regard to his samples.
Q. Okay.
Really quick. You just were answering some questions about barrels on Exhibit 196. And as I understand it, you're hoping to maintain the current status quo; is that right?
A. That's Glanbia's position, yes.
Q. Okay. And that means also not including 640s -- 640-pound cheddar cheese blocks to be added to the Class III price?
A. We are opposing the 640s.
Q. Okay. And one of the reasons that you are opposing the 640s is that you say, on page 10, it would not add any new information to the survey; is that right?
A. That's one of the reasons.
Q. Okay. Would it add volume to the survey?
A. By definition, adding a new format would add volume.
Q. Okay. Is it fair to say, though, that you are saying that's not enough of a reason to add 640s into the Class III price?
A. In my opinion, no, because there's no new

information being introduced, or I would say very minimal.
Q. And another reason that you give for not wanting 640s to be added to the Class III price is that 640s is a small -- has a smaller pool of buyers and sellers versus the more liquid 40-pound block on the CME; is that right?
A. Yes.
Q. Is it also true that barrels represent a smaller pool of buyers than the 40-pound block?
A. I would say generally that's true. There -- the blocks are a wider format.
Q. And when Glanbia produces barrels, does it generally have a customer on the other side of the transaction already at the time that it's produced those barrels?
A. We try to precontract as much volume as possible.
Q. Okay. So it's fair to say that the goal at least for Glanbia is that you have a buyer before you produce those barrels?
A. Ideally, yes.
Q. Okay. And is Glanbia able to achieve that goal most of the time?
A. Most of the time.
Q. And you are worried if 640-pound blocks were added to the Class III price, that at some point later in the future, somebody could be asking to pull those back out just like we're asking to pull barrels out right now to have it priced off of just one product?
A. That is a potential risk.

MS. HANCOCK: That's all I have. Thank you.
THE COURT: Anything else?

RECROSS-EXAMINATION

BY MR. MILTNER:
Q. Very quickly.
Did Glanbia consider submitting a proposal in this hearing to address any elements of the yield factors?
A. We did not. Our position was primarily defensive at this point.
Q. Are you aware that IDFA proposed to adjust the valuation of whey cream the last time that the formulas were examined?
A. I know in past hearings -- this is well before my time in the industry -- that these issues were discussed before.
Q. And your -- and are you aware that USDA said there was insufficient justification to make the requested change at that time?
A. I don't have the financial decision memorized. So if that is the case, I will take your word for it.
Q. I don't have it memorized either.
But there's nothing that would have prevented IDFA or Glanbia from submitting any proposal to update parts of the yield factors they believed were inaccurate or needed to be reviewed, right?
A. Technically true. Given the tight time constraints and the kind of how hectically everything came together and we didn't know what the scope of the hearing

would be, maybe as a practical matter I'm not sure that's true, but technically I can agree with your premise.

MR. MILTNER: Thank you.

MR. ROSENBAUM: Your Honor, I would ask that Hearing Exhibits 196 and 197 be admitted into evidence.

THE COURT: Any objections?

Seeing none, Exhibits 196 and 197 are admitted into the hearing record.

(Thereafter, Exhibit Numbers 196 and 197 were received into evidence.)

THE COURT: Let's -- we have been going for about an hour and 20 minutes. Ten-minute break. Let's come back at 11:25.

(Whereupon, a break was taken.)

THE COURT: On the record.

Mr. Rosenbaum.

MR. ROSENBAUM: Your Honor, Steve Rosenbaum for the International Dairy Foods Association. We call as our next witness, Mr. Wes Eveland.

THE COURT: Please raise your right hand.

WES EVELAND,

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

THE COURT: Your witness.

DIRECT EXAMINATION

BY MR. ROSENBAUM:

Q. Mr. Eveland, you have before you a document that's marked as IDFA Exhibit 26. Is this your written

testimony?
A. Yes.
MR. ROSENBAUM: Your Honor, I would ask that this document be marked with the next exhibit number.
THE COURT: I have 198. The exhibit is so marked.
(Thereafter, Exhibit Number 198 was marked for identification.)
BY MR. ROSENBAUM:
Q. Mr. Eveland, could you please read your written testimony into the record?
A. This testimony is submitted on behalf of Hilmar with respect to Proposals 7, 8, and 9, relating to Make Allowances.
My name is Wes Eveland, and I am the director of procurement for Hilmar, who I'm representing today. I've worked for Hilmar since February of 2023. My main responsibilities at Hilmar include leading the milk and non-milk buying teams, procurement strategy development, contract negotiations, market analysis, and risk management.
MR. ROSENBAUM: Slow down just a little.
THE WITNESS: Okay. I'll slow down.
Prior to working for Hilmar, I spent 13 years in progressive procurement leadership roles at Kerry Ingredients and Beyond Meat. Over my career, I have led the procurement of a variety of different agricultural commodities, ingredients, packaging, and indirect spend categories both within the U.S. and globally.

As for a company background, Hilmar is a cheese and whey manufacturer with processing locations in California, Texas, and soon to be Kansas. We work with dairymen in the California, Southwest and upon completion of the Kansas facility, the Central Federal Milk Marketing Orders.

Our primary product lines include natural hard American-style cheeses, such as cheddar, Colby, and Monterey Jack, while some of our main whey products include whey protein concentrate 80 (WPC-80), whey protein isolate (WPI), whey protein hydrolysate (WPH), and various grades of edible lactose.

We package our cheese in 40-pound block, barrels, and 640-pound block. We employ over 1,500 people across the country and sell finished products domestically and internationally to over 50 countries around the world.

Hilmar Cheese Company was started in 1984 by a group of innovative and market orientated dairymen who wanted to maximize their return on their high-quality milk. The company was founded on the idea that dairymen should receive a competitive price for their milk and one that is driven by actual market conditions. Dairymen continue to own the company and manage its business as active corporate board members.

Our Hilmar, California cheese and whey manufacturing site processes 12% of the state's milk. Our Dalhart, Texas cheese and whey manufacturing site processes 31% of the state's milk. The vast majority of milk we process is bought from independent dairymen who are not part of a co-op. This emphasis will continue with respect to the investment being made in the Dodge City, Kansas manufacturing location.

Hilmar is supportive of Proposals 8 and 9 as submitted by Wisconsin Cheese Makers Association and International Dairy Foods Association ("IDFA"), and against Proposal 7 as submitted by the National Milk Producers Federation ("NMPF").

Further to, we support the testimony of IDFA's Mike Brown as an expert in the field and a representative of the industry. Our testimony will speak to Hilmar's own experiences with cost of production, the alignment between our costs and the Stephenson Survey, and the importance that future Make Allowances are able to keep pace with changing costs of production. Due to the competitive environment and proprietary nature of our costs, we will not speak to their specifics in this testimony. Our testimony will begin with an overview of the markets that influence Hilmar's costs.

Akin to the inflation all Americans are experiencing day to day, dairy processing costs are up markedly. The FRED Producer Price Index data shows a 39.5% increase between when the current Make Allowance was created in 2008 and the prices in 2022. On top of general cost pressures interest rates have increased significantly, over 276% versus the 20-year average. Cost and rate pressures make the hurdle to borrow and invest much more challenging for processors. These increases have impacted processors' capacity and efficiency projects that provide dairymen the opportunity to expand their business, thereby increasing efficiencies on the farm.

Speaking to specific markets and components of cost, while Hilmar has seen significant increases in many areas, I will focus on the areas of utilities, packaging and labor.

Beginning with utilities, when compared to the 20-year average, the Henry Hub spot natural gas market is 45.1% above the average and the cost per kilowatt-hour is 26.3% above the average.

Between 2008 and 2022 corrugated shipping containers have increased by 76.3% and wood and lumber products (an input for crates and pallets) have increased by 109.6%.

Labor is a similar inflationary story. From 2000 to 2022, the FRED Private Industry Workers Cost Index reflects a 42.5% increase in wages and salaries. As with utilities and packaging, the labor market indicators align with what the Hilmar business has experienced and the Stephenson Survey found.

All of these data points show a consistent message that whether Hilmar, those who participated in the survey, or the market as a whole, there has been significant inflation that the industry has experienced that requires quick action to address on the part of USDA.

Hilmar's belief is that given the scale of the required change, a Make Allowance update needs to go through in full, albeit IDFA has proposed a phased approach to partially recognize and address concerns from NMPF.

While there needs to be action to catch processors up to a now past market, there also needs to be consideration for the creation of a market influenced and regularly updating Make Allowance formula. An updating and data driven Make Allowance formula ensures that inputs remain relevant to the then current cost scenario. If we want to keep FMMO pricing formulas relevant, we need to keep its functioning components current and relevant as well. This means whether costs go up or down, the formulas should reflect processors' actual cost dynamics.

The lack of consideration for future changes and the disconnect from available data are significant reasons why Proposal 7 as submitted by NMPF is flawed. In NMPF's proposal they readily admit that they don't believe that their proposal meets the true cost of inflation impacting processors. Their reasoning for not implementing the full change is a lack of confidence in IDFA's cost survey and hardships on dairymen due to the scale of the required change.

As a processor with dairymen owners, Hilmar are confident in the results of the cost survey. It aligns with our own experiences, has validation, and is correlated with the Schiek study. The lack of data and procedure with NMPF's own approach provides less comfort.

Finally, it needs to be recognized that we have representative data via the Stephenson survey. Relying on the timeliness of Congress to agree to a Make Allowance audit process via the Farm Bill is at best uncertain. While an update to the current Make Allowance is sensible, keeping it decoupled from available market and data inputs is not.

Simply put, there is an opportunity to solve an underlying problem with how the Make Allowance remains relevant to processor input costs, thereby ensuring that there continues to be strong and willing processing capacity for milk to find a home.

Q. Thank you very much. I have a few follow-up questions.

We heard testimony a few minutes ago from Glanbia, whose representative testified that they were the largest producer of American-style cheese in the United States.

Did you hear that?

A. I did.

Q. And who is number two?

A. That would be us. It's not a competition.

Q. But you are the second largest manufacturer of American-style cheese in the United States, correct?

A. Correct.

Q. And that includes cheddar?

A. Correct.

Q. And did your company participate in the Dr. Stephenson's survey of 2022, manufacturing costs?

A. We did.
Q. And was that with respect to both of your plants?
A. Sorry. Can you repeat that?
Q. Did you participate with respect to both of your plants?
A. Yes, we did.
Q. Now, one item of potentially particular interest is the fact that you are, as we speak, in the process of building a new plant in Kansas; is that correct?
A. That's correct.
Q. And I know you have told me that you are not willing to share the exact cost of the plant for competitive purposes.
Is it fair to say that that plant is costing hundreds of millions of dollars?
A. That. And I can share what's in the public record, which is $600 million, which is what it was estimated at at the beginning. Our true cost is far greater than that.
Q. Okay. Now -- now, just ask the basic question: Do you intend to pool that plant on the Federal Order?
A. Not at this time. We have had to make contractual arrangements with dairy processors to be able to justify the expansion at Dodge.
Q. If -- if -- if -- if you were in the Federal Order -- strike that.
If the plant were pooled today and you -- let me put it a little differently.

If at the time that a decision was being made whether to build the plant, would you have built it if the plant was subject to the current Make Allowances?
A. It would be a much harder justification. In looking at today's inflation rates and interest, it would have been difficult to impossible to move forward with.
Q. And of course by staying out of the pool, you don't have an ability to share in the Class I proceeds, correct?
A. Correct.
Q. And nonetheless, the economics are such that you have made the decision at this point, at least, you are not going to pool, correct?
A. Correct.
Q. Now, your company is actually owned by dairy farmers; is that correct?
A. Correct.
Q. I mean, when you -- just to be clear, when you use the term "dairymen," I want to make clear, you are not just talking about people who have some role in the dairy industry --
A. No --
Q. -- these are actual dairy farmers.
A. -- they are active farmers that provide milk to our facilities.
Q. Okay. Now, do you have other farmers who are not owners of Hilmar but who also provide milk to your facility?

A. Correct.
Q. And what -- and you've engaged in, I take it, discussions with some of them regarding their supplying milk to the Kansas plant once it opens, correct?
A. Correct.
Q. And are they aware that you are not intending to pool the plant?
A. Correct.
Q. And what is their reaction to the overall situation? I'm talking about your non-owner farmer suppliers.
A. Our non-owner suppliers, they are eager to grow. Expansions are critical to their businesses, just as it is to ours. So I think that they are willing to partner with us to help both businesses grow.
Q. And your new facility provides an opportunity for the sale of a lot of additional milk, I take it?
A. Correct.
Q. So why is it -- why does Hilmar still care about Make Allowances?
A. So accuracy in pricing signals is important. It it's a key input into vast amounts of milk in the U.S. Inaccuracy is going to lead to pricing signals that are distorted to processors, to producers, as well as end customers. So whether we are buying inside or outside isn't relevant. It is accuracy that's key.
Q. And tell us what -- what kind -- what -- what kind of cheese is made in your California facility, your

current facility?
A. We make American-style cheeses, inclusive of cheddar, Colby, Monterey Jack, etcetera.
Q. Okay. And for the cheddar, what size, if you will, cheese are you making?
A. So we do 40-pound block and 640s.
Q. And tell us about the Texas facility, same questions.
A. They do 40-pound block, 640s, and barrels.
Q. And -- and do the -- do you make some cheese other than cheddar cheese?
A. Correct. Yep.
Q. Is it the same varieties you mentioned a minute ago?
A. Same varieties.
Q. Okay. And what's the -- what's the plan for your Kansas facility?
A. They will be doing 640s, 40-pound block, similar cheese styles as the other facilities.
MR. ROSENBAUM: Your Honor, the witness is available for cross-examination.

CROSS-EXAMINATION

BY MR. MILTNER:
Q. Good morning, Mr. Eveland.
A. Good morning.
Q. My name is Ryan Miltner. I represent Select Milk Producers.
In your California plant, what's the rough

division between cheddar cheeses and Jack Colby cheeses?
A. I'm not going to be able to get into specifics of the business.
Q. What's the division between 640s and 40s?
A. Same answer, I won't be able to get into specifics.
Q. Does California's plant produce barrels?
A. They do not.
Q. Okay. That's a specific. Why that one and not the others I asked about?
A. So for that one, I think that that's less -- gets into less about some of the business than the other pieces.
Q. Okay. And at your Texas plant, are you able to switch production between blocks and barrels, depending on market conditions?
A. I believe so. I'm not sure.
Q. When asked by Mr. Rosenbaum about why Hilmar cares about Make Allowances, you said accuracy is key.
The accuracy of what?
A. So the accuracy of pricing information in the market. So if we are talking about Make Allowances, specifically, if they are predicated on a 15-year-old system, or pricing component, it's less relevant today than it was 15 years ago.
Q. How would Hilmar utilize an accurate Make Allowance figure as it would be contained in the Class III formulas?

A. We would probably look closer at -- at rejoining a pool. So we might -- might go back.
Q. So it's not the accuracy, it's about the economic decisions that Hilmar will make based on that data.
A. I think it's just as much about accuracy as -- the economics are, sure, a component, but I think the actual accuracy when we're talking about pricing discussions with customers, along with other things, if that's inaccurate, it's just not valuable.
Q. So I think we'd all like to get to a mandatory audited cost survey.
But in the absence of that, do you think that the reports from Dr. Stephenson and Dr. Schiek allow us to get to an accurate number?
A. I think given the available data, we participated in the survey, we found it to be representative of our costs, largely.
Q. If USDA were to adopt Make Allowances premised on those reports, would that -- would that be the type of accurate information you would like to see the Federal Order adopt?
A. Yeah, I think that the Stephenson survey -- again, speaking to our own specifics -- it's -- the methodology seems sound, the participation was a good striation of the market. Yeah, I think it was a good way to go.
Q. So really you have already got the data you are looking for, don't you?
A. Yeah, I think it's using that when we're talking

about redefining the Make Allowance.
Q. Okay. So you also talk about the whey products that Hilmar produces.
I notice you don't produce any dry whey; is that correct?
A. We do produce dry whey.
Q. Okay. I'm -- I may have -- I -- you said your main whey products include WPC-80, WPI, WPH, and various grades of edible lactose.
So dry whey is not a main whey product for Hilmar; is that correct?
A. Correct. Yeah. Just straight dry whey.
Q. Do you report information on dry whey sales to the NDPSR?
A. I'm not aware one way or the other.
Q. Generally speaking, would you agree that WPC-80 and WPI and WPH are value-added products as compared to dry whey?
A. Yes. I would consider value added.
Q. They come with an additional manufacturing cost to Hilmar, don't they?
A. Correct.
Q. And also additional revenue to Hilmar because they are value-added products, correct?
A. Presumably correct.
Q. Hilmar views those whey products as an important part of its business model, don't they?
A. I believe so. I'm not a part of the finance

community, but I believe so.
Q. So when Hilmar takes in raw milk, they convert that to products, they convert it to cheese, they convert it to whey, and/or whey products, and lactose, correct?
A. Correct.
Q. So the Class III formulas are premised on the production of 40-pound blocks or 500-pound barrels and dry whey.
Does the fact that Hilmar manufactures different whey products affect your view as to whether the Make Allowance for cheese is an accurate benchmark for your plants?
A. Sorry. Can you repeat the question?
Q. Yeah. I mean, since -- since Hilmar doesn't produce dry whey in significant quantities, and -- but your whey products are an important part of your business model, how accurate is the federal Make Allowance for cheese to Hilmar as a benchmark?
A. I can't really speak to that.
Q. Okay. On page 2 of your statement you stated that the vast majority of milk whey process is bought from independent dairymen who are not part of a co-op.
Does that statement apply both to your plant in California and your plants in Texas?
A. Correct.
Q. Do you pay your producers on a proprietary cheese yield formula?
A. Yes. We have a proprietary formula.

Q. How does that price compare to the federal Class III price?
A. I can't get into specifics about our business.
Q. Were you here this morning for Mr. DeJong's testimony?
A. I was.
Q. Did you see the graphs that he included in his statement?
A. I didn't look at them.
Q. Okay. If producers in West Texas, overall, are receiving a lower mailbox price than the Class III price, wouldn't there be an economic incentive for producers who wanted to expand to contract with a plant like Hilmar?
A. I think that dairy farmers are smart businessmen. If they want to grow their business, they will look for stainless to put the milk at.
(Court Reporter clarification.)
THE WITNESS: They will look for stainless to put the milk at.
BY MR. MILTNER:
Q. And by "stainless," you mean silos at a plant and not a truck, right?
A. Correct.
Q. If the mailbox price in Texas is lower than the uniform price, do you attribute that to inadequate Make Allowances?
A. Yeah, I think it's a good key indicator of that.
Q. Do you think there are any other factors that

might contribute to that occurring?
A. None that I would see.
Q. Hauling wouldn't be one?
A. No. I think that -- I think that's a key piece if terms of where -- where they are trying to grow the business. I think hauling is an input, but I don't know that much about it.
Q. So the relative distance from the farm to an available market is not -- doesn't bear on that relationship?
A. Sorry, I think it does. I think that's some of that in terms of where you would have to haul your milk, yes.
Q. You note that interest rates have increased 276% versus the 20-year average, and you cite the St. Louis Fed.
Are you familiar with the St. Louis Fed's five-year break-even analysis?
A. I'm not as familiar with that. I think the question was asked yesterday about that as well. I don't think that it's as familiar.
Q. Okay. You also talk about utilities.
How do the utility costs for Hilmar compare to your California plant versus your Texas plant?
A. I haven't looked at that specifically.
Q. If the industrial insurance rate per kilowatt hour for California was four to five times the rate in Texas, as reported by the U.S. government, would that surprise

you?
A. I suppose it wouldn't be a surprise.
Q. So when Glanbia's witness was testifying, they made a case that processor co-ops are indifferent to Make Allowances.
And I know Hilmar isn't a co-op, but is that -- it is a similar model, isn't it, where the farmer-owners that supply the plant also own the plant?
A. It's much more indirect than a traditional co-op.
Q. Are the contracts that Hilmar provides to its supplying farmers the same terms for all farmers delivering to a plant, the same plant?
A. We -- excuse me -- we try to be consistent with all the producers that we work with. Whether they are owners or whether they are non-owners, we treat everybody equally.
Q. On the milk supply end of things?
A. Correct.
Q. And then so the owners get a distribution of the profits of the plant, correct?
A. I believe so. I'm not -- I'm not privy to that, though.
Q. Okay.
MR. MILTNER: Thank you. I don't have any other questions.
THE WITNESS: Thanks.
THE COURT: Further questions, other than AMS?
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CROSS-EXAMINATION
BY MS. HANCOCK:
Q. Good afternoon. I'm Nicole Hancock representing National Milk.
A. Good afternoon.
Q. Was today the first day that you were here listening to testimony?
A. No, I have listened a few days.
Q. Were you here in person or listening online?
A. Yeah, just lurking in the back.
Q. Okay. A little creepy but --
A. Work doesn't stop while you're here.
Q. That's fair. So partially tuned in, partially working.
A. Yep.
Q. Did you hear Mr. DeJong talk about the deadly efficiency of his plant?
A. Yes. You two enjoyed that comment.
Q. You know, I'm going to keep it going.
Do you believe that your plant operates equally as efficiently?
A. I -- I think that we're very neck-in-neck. Both operations have to be efficient. That's key in the space.
Q. Okay. And do you have any plants that -- you said that you don't plan to operate your Kansas City plant as a pool plant; is that right?
A. Correct.
Q. And is that a decision that you will make based on

the market conditions that exist at the time when it opens, and then over the course of the duration of operation of that plant?
A. At this time we don't see any reason to pool based on the current Make Allowances and FMMO setup.
Q. And that's based on the financial analysis that the folks that you work with at Hilmar have conducted; is that accurate?
A. Correct. Yep.
Q. And does that take into account a potential increase in the Make Allowance as well?
A. At this time we have just considered the facts as they are available to us.
Q. Which means the proposals for the increase in the Make Allowance are included in that as well.
A. We haven't looked -- when we did our justification, we wouldn't have looked at proposals. We started looking at this -- this is a few years in the making.
Q. Okay. And I think that of the resources that I looked at, it sounds like you broke ground on that Kansas City plant somewhere in the fall of 2022?
A. Correct.
Q. And when do you anticipate that it's going to be completed and ready to be opened?
A. Q4 of 2025.
Q. Okay. So about a three-year construction period?
A. Yep.

Q. And what was -- you said, reported in the media that it would be about a $600 million capital investment. That's what was planned before it was started; is that right?
A. Correct.
Q. And then now, as we see with most construction projects, they always seem to go over the budget, don't they?
A. Yes. That's true.
Q. And I think you characterize it as it's gone far greater than what was originally estimated for this project.
A. Correct.
Q. And even at the time that the project was originally estimated, in addition to the 600 million that was estimated for construction of the plant, Hilmar was estimating another $500 million to be invested as soon as it was done being completed.
A. It was $500 million into the local communities. That's what they thought that the communities would generate.
Q. Okay. And so that's what was contemplated at the time that it was initially budgeted for before it has now far exceeded its original budget estimates.
A. Yeah. So 600 million, the local communities thought that they would be generating about $500 million locally with the businesses that were going to be supported by the plant expansion.

Q. And that 2022 break-even construction, that's about a little more than two years into the global pandemic that we all know too well.
A. Correct.
Q. And that's when inflation was reaching new growth heights and increasing even still at that point in time.
A. Correct.
Q. Does Hilmar produce its cheese products at a cost that is lower than the currently set Make Allowance?
A. Do we produce -- can you repeat that back, please?
Q. Yeah. Are your costs of production lower than the current Make Allowance?
A. That gets back to, we're not willing to share that information.
Q. Can you just tell me if it is below or above?
A. I'd prefer not.
Just to speak on that for a moment. This is obviously broadcast, as well as put into the public realm. As a former purchaser at a customer, I would use this information in pricing discussions. So I would prefer not to be talking about specifics for that reason.
Q. How long have you been at Hilmar?
A. Eight months.
Q. Okay. What did you do before Hilmar?
A. I worked for about 12 years at Kerry Ingredients, and then about a year at Beyond Meat, all in purchasing.
Q. Okay. And at what point in time over your career did you start to have concerns about whether Federal

Orders establish Make Allowance was sufficient?
A. I would say I'm a lot closer to it now in this role than I have been in past roles, obviously.
Q. So sometime in the last eight months?
A. Correct.
Q. Are you involved in any of the financial reporting at Hilmar?
A. I'm not.
Q. What -- in your role in procurement, do you have an established budget that you are in charge of managing each year?
A. I am, yes.
Q. Okay. When you are reporting your budget numbers to your management team or your leadership team, is it important that your numbers are accurate?
A. Correct.
Q. And do you have a responsibility in your role to manage costs the best that you can?
A. We do. I think just as any budgeting practice, that we understand there is going to be underage and overage versus those budgeted numbers, just for reasonable considerations.
Q. And similar to the construction of the plant, right? Sometimes you can't help but go over budget; is that fair?
A. Yeah, or under. I mean, you obviously seek to be below budget wherever possible, but sometimes that's outside of your control.

Q. In the last six years -- did you -- did you -- were you listening to the testimony online before you were here in person?
A. I popped in here and there. Who specifically?
Q. Paul Bauer. Did you hear him talk about barrel elimination?
A. I think I missed him.
Q. Okay. He testified that barrels have subsidized the lack of Make Allowances, or maybe the deficiencies in perceived Make Allowances, and I'm wondering if you agree with that statement.
A. I think the barrels are an important part of the market. They are traded. They provide a balancing aspect of 40-pound block. I think their removal takes away a significant portion of available market data.
Q. Does the inclusion of barrels provide a value to those who produce barrels, in having it priced in the Class III market?
A. I think it -- it provides a value insofar as there's available data and using the data is important.
Q. Does it provide a financial value as well?
A. I am not sure. I'm not sure exactly how our customer contracts are set up.
Q. Okay. So you don't know if it would -- if it could potentially be providing some kind of a subsidy to any deficiencies in Make Allowance?
A. I don't know.
Q. Okay.

MS. HANCOCK: That's all I have. Thank you for your time.
THE WITNESS: Thank you.

CROSS-EXAMINATION

BY MR. ENGLISH:
Q. I was going to say good morning, but looks like good afternoon, sir.
My name is Chip English for the Milk Innovation Group.
Does Hilmar receive any Grade B milk?
A. Not at this time.
Q. Was there a time that you stopped receiving Grade B milk?
A. About two years ago or so we -- we went all to Grade A. We no longer accept Grade B.
MR. ENGLISH: Thank you, sir.
THE WITNESS: Thanks.

CROSS-EXAMINATION

BY MR. MILTNER:
Q. In my previous attempt to be brief I neglected to ask one question.
Mr. DeJong offered some information about the butterfat recovery at his plants.
Does Hilmar achieve higher than 93% butterfat recovery at its Texas facility?
A. I don't know.
Q. Do you know if it achieves higher than 90% butterfat recovery at the facility?

A. It would be outside of my purview.
MR. MILTNER: Thank you.
THE WITNESS: Yep.
THE COURT: Further questions?
AMS?
CROSS-EXAMINATION
BY MS. TAYLOR:
Q. Good afternoon.
A. Good afternoon.
Q. Thank you for coming to testify today.
A. Thank you.
Q. I just have a few questions.
So Hilmar is owned by a group of dairymen. May I ask how many dairymen?
A. I'm not sure of the exact number, to be honest. I can get the number and get it to you because that's going to bother me as well. I don't know off --
Q. A rough estimate?
A. I want to say that it's in the 20 range, but I need -- I'll get you a specific number because that's going to drive me nuts.
Q. And for those dairymen, if you would know, we're collecting -- we're charged with also collecting information on small businesses. And so for dairy farmers, that is defined as farmers making $3.75 million in gross revenue annually on a whole farm basis.
Do you know about what percentage of your farms might meet that definition?

A. I don't. I don't.
Q. Okay. And then when it comes to the processor side of the business, for Hilmar, the cheese company, small businesses for cheese companies are defined by employees, and for cheese manufacturers that -- that are those with 1250 employees or less.
Would Hilmar, altogether, for the total company, would Hilmar meet that definition?
A. No. We have 1,500 employees.
Q. On page 2 you state that your California plant processes 12% of the state's milk, and your Texas plant processes 31% of the state's milk.
How did you calculate those numbers?
A. I worked with my finance team. We looked at total reported milk, and then we looked at what our consumption was.
Q. So NASS numbers or --
A. We used NASS numbers.
Q. And you talk about how a lot of your milk is -- that Hilmar buys is from independent dairymen.
Would you know the rough estimate of what you buy from your independent farms versus co-op supplied?
A. Co-op supply would be a very, very small percentage, maybe 1, 2%, something like that.
Q. And does Hilmar buy milk from dairymen who are not Hilmar owners then, that would be independent shippers to them?
A. Correct.

Q. Okay. On the bottom of page 2 into 3, you have a lot of different statistics that you reference for cost indices, and I made this request of other witnesses earlier in the hearing, if IDFA would provide those references on your official notice --
A. Yeah, I have the --
Q. -- web link?
A. I have the actual websites on the last page.
Q. Did I miss that? Oh, I missed those. Thank you. That's very helpful. Thank you.
A. No problem.
Q. On the top of page 3, the bottom -- or the last sentence in that kind of carryover paragraph, and you are talking about cost increases. And you say, "These increases have impacted processors' capacity and efficiency projects that provide dairymen the opportunity to expand their business, thereby increasing efficiencies on the farm."
And I wondered if you could expand on how the processor efficiency projects feed into dairymen's opportunities.
A. Certainly. I'll preface that when we're having conversations with -- with producers, we have more conversations about expansion than anything else, how can we -- what can we do to bring in more milk from the producers. Our Dodge City facility, that's part of its purpose, so we're actually going to be moving milk from our Dalhart facility up to Dodge, thereby giving

opportunity for growth.
So when we -- we're talking about this, the expansion is important because it allows dairy producers to expand their businesses. And that -- in our experience, that's a critical request from -- from all of the producers we work with.
Q. So just so I'm clear, since Hilmar seems to have a unique ownership structure, that's the dairymen owners of Hilmar?
A. No. Third party as well.
Q. Okay.
A. So I -- I won't go into the breakdown of that, but it's both.
Q. Okay.
A. And I suppose to that end I will just comment that the same as we treat our owners and our processors -- or our larger producers equally. When we are talking about growth, we -- we treat them all equally for that as well.
Q. Okay. We have had other discussion and earlier witnesses, and one was just on, the witness before you, talking about decreases in mailbox prices when compared to the uniform prices for Federal Orders, and he correlated that to decreases in premiums as a result of inadequate Make Allowances.
Could you speak to -- maybe speak to that point about, I don't know, any premiums you pay your dairy suppliers or your efforts as Hilmar as a business to deal with what you see as inadequate manufacturing allowances?

A. I won't be able to get into specifics. What I will say, though, is that we always endeavor to pay a fair amount to our producers. That's -- in the article that was brought up about the plant expansion at Dodge, our chairman actually even commented about that our -- that's our goal, is to be good stewards of the industry, treat producers fair. And I will just leave it at that.
Q. Okay. And we also had discussion about -- from -- from producers saying about the difficulties in negotiating -- or renegotiating over-order premiums, and then we have heard other discussion about how, well, if there's a change, then, you know, the other side has the ability to come to us to renegotiate those things. So there are kind of, not surprisingly, diverging viewpoints on that.
But I'm curious how often, without disclosing any confidential information, you know, how does that work for Hilmar? How often do you have those discussion with your suppliers? And I know you don't have very much co-op supply, but your direct shippers as well, on kind of negotiating those things.
A. We generally pre-agree on a formulaic setup, and then we follow that with our producers. I can't get into specifics about how often we do that. I'm just not aware of how often that comes up.
Q. Okay. You mention that Hilmar participated in the 2022 Stephenson survey.
A. Correct.

Q. Did Hilmar participate in the earlier one?
A. Correct.
Q. Both plants?
A. Uh-huh.
Q. And as you look at the results of the Stephenson survey, and as you look at the results of Dr. Schiek's study, I was wondering if you could expand on how you think those results pan out and compared to what Hilmar has experienced. And I know you discuss kind of like general cost increases, but those aren't specific to Hilmar in your testimony.
A. Yeah. We saw the Stephenson survey was very representative of what we experienced as a business.
The Schiek study, the correlation to the Stephenson study, we thought that that was -- it was very akin to what we experience as a business.
Q. I'm not sure if I saw it in your testimony about has Hilmar -- with the two plants that you do own, have you gone through any investment projects to try to gain in efficiencies, say, in the last 15 years since the current Make Allowances were established?
A. Yeah. I think I'll crib Mr. DeJong's statement, we have had to be ruthlessly efficient. So we do have to reinvest. I think with Make Allowances, the way that they are, we need to be very cost conscious.
Q. So that's a "yes"?
A. That's a yes.
Q. Okay. Then on page 4, the first sentence of the

full paragraph says there, "The lack of consideration for future changes and the disconnect from available data are significant reasons why Proposal 7 are submitted" -- "as submitted by National Milk is flawed."

If you could elaborate on what you want to -- on the lack of consideration for future changes. Are you talking about automatic updates in the future, or what do you mean by that?

A. Yeah. So we would -- we would like to make this a model that is continually relevant to the markets. I think we have obviously decoupled significantly from 2008, so I think we want to use available data to kind of inform those decisions. We -- from our perspective, the Stephenson survey does that, and I think that's where we would like to be able to use that continually as a way to keep things relevant.

Q. So you would echo other thoughts expressed during this hearing about a regular audited survey?

A. Correct.

Q. Okay.

MS. TAYLOR: I think Mr. Wilson has a few questions, and then I have one or two at the end.

THE WITNESS: Okay.

CROSS-EXAMINATION

BY MR. WILSON:

Q. Todd Wilson, Dairy Programs.

Good morning.

A. Good morning.

Q. Just to follow up a couple that Ms. Taylor asked about the percentage of milk that your facilities in California and Texas process as a comparison of state production.

You mentioned that you -- this is on page 2, top paragraph -- that you looked at NASS production for both California and Texas?

A. Correct.

Q. It seems like that the -- the 31%, are you pretty comfortable with that number?

A. Yes.

MR. WILSON: Okay.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. I wanted to take this opportunity, since Hilmar produces barrel cheese, and I don't believe your statement has anything in regards to the proposal we have in front of us on removing barrel cheese from the price formulas, do you have any thoughts on that?

A. I had written a statement on that. Could you -- maybe I missed it.

So we would -- I'll maybe summarize, and we can try to get that document. But -- so we would be opposed to the removal of barrel cheese from -- from the -- from the survey. It represents a significant part of the traded market. Having readily available data and then removing it, it just really starts to dilute what's -- what's available.

I'm not being nearly as articulate as my paper is, so I'm trying to go through this off memory.

Q. That's fair. I'm usually not as articulate either when I haven't written it down.

So there's been discussion about -- we have heard testimony about, well, if you remove barrels from the formulas, then eventually they will get priced off of blocks, and there will be a transition, but everybody will figure it out. I'm very much summarizing what the general sentiment has been.

And then there's been other testimony that says, we can't remove barrels because the CME would still have a barrel market, spot market, and that would --

A. Correct, it introduces a risk.

Yeah. Because there would -- it would certainly introduce a price risk, and there's a lot of -- there's a lot of unknowns to that in terms of what it would actually do pricing-wise to a processor in terms of the cost.

And I think in the previous two hearings on this point, USDA maintained that the barrels should remain in the survey. And we feel that was the right decision at the time, and it continues to be the right decision.

Q. Okay. So as a barrel manufacturer -- and you do pool milk; am I right about that?

A. From time to time.

Q. Okay. So if you are paying a Class III price that has blocks in it, and assuming that barrels are under blocks, we'll make this -- you can make that assumption for me now, I mean, how does that impact you as a barrel maker that you would have to pay a Class III price for which isn't reflective of what you get out of the market?

A. That would kind of get into some of the pricing specifics that we have. It's hard to get into detail on that with you.

Q. Okay. So I take that as Hilmar's figured out how to deal with that?

A. I would say it's -- yeah, we would -- we would -- we would have to look into it a little bit closer. I don't have a good answer for you.

Q. Okay. I think my last question is on risk management, because I have tried to ask that of many witnesses. We have some proposals, and not just one necessarily, to talk about the impacts to risk management positions if any of these proposals are immediately adopted versus delay in the adoption of those.

And I wondered if you could speak to -- I don't know if you could speak to the Hilmar producers' use of risk management tools and how any impact into the formulas would impact them. But you might not be here to speak necessarily on that side of the business, which I would respect.

A. Yeah. I wouldn't be able to speak to what our producers do. Yeah. That would be outside of my -- my core responsibilities.

Q. Okay. And does Hilmar, the business, use risk management tools to hedge inputs?

A. We would -- we would use hedging tools in some areas of the business.
MS. TAYLOR: I think that's it from AMS. Thank you.
THE WITNESS: Thank you.

RECROSS-EXAMINATION

BY MS. HANCOCK:
Q. I have a brief follow-up.
I think you were just talking with AMS about the fact that Hilmar provided data in response to both of the Stephenson surveys; is that right?
A. Correct.
Q. You have seen the results of both of those surveys?
A. Yes. I won't remember them off the top of my head, though.
Q. Okay. So in 2021 survey results, Stephenson concluded that the Make Allowance for cheese was $0.2476.
Does that sound right?
A. I am not sure.
Q. Okay. Well, if that's right, is that a number that you believe correlates well to Hilmar's cost of making cheese?
A. I -- I would have to defer to our finance people. Again, it gets into the proprietary nature of costs and some of the customer conversations on the competitive side of things.
Q. Yeah. And I don't want to know your number.

A. Sure.
Q. I just -- when you said that you had a comfort level when you compared Hilmar's cost of production to what Dr. Stephenson had come out with, I just wanted to ask you if you felt that confidence with his 2021 survey results?
A. Yeah. We feel that the survey was put together well, we participated in it, and we felt it was reflective of what our experience was. I'll leave it at that.
Q. You do have some concerns with National Milk's proposed number; is that right?
A. Correct.
Q. And are you aware that National Milk's proposal is $0.24?
A. Our bigger concern is the lack of data. We -- a significant amount of processors participated in the Stephenson survey. It's my understanding that the -- there was other processors that were asked to participate who would be part of National Milk that chose not to provide their data.
I think all the data is helpful to get to an accurate number, and that's really what we want is, data.
Q. Okay. And accuracy, right?
A. Correct.
Q. Yeah. Thank you. I appreciate that.
I'm just curious, if Stephenson's cheese cost is $0.2476, and you felt comfortable just by comparing that with whatever it is that Hilmar has for cost of producing

its cheese, how come you couldn't do the same by comparing the proposal from National Milk's $0.24 with the cost of production to see if it -- if it felt like it was in the right range?
A. Yeah. I think we would like to go back and look at the data a little closer. I won't be able to speak to it specifically. It gets back to our financial team.
Q. Did you go back and look at Stephenson's data any further when you saw his number?
A. We -- that was a separate team. I wasn't a part of the review.
Q. Okay.
MS. HANCOCK: Thank you. Nothing further.
THE COURT: Redirect?
MR. ROSENBAUM: Could I have five minutes to -- the witness made reference to a separate document. I need to see if I can talk to him about it. Could we have a five-minute break?
THE COURT: Or we could come back after lunch.
MR. ROSENBAUM: Fine. Why don't we come back after lunch.
THE COURT: Yeah. Absolutely, Mr. Rosenbaum.
MS. TAYLOR: Just for everyone's notification, we do have three dairy farmers with us today, and so we can talk about -- we would like them to go right after lunch because they are driving back this evening.
THE COURT: We'll probably let Mr. Rosenbaum finish up, I guess, unless he has a lot to talk about.

MR. ROSENBAUM: Yes. Before I do anything, though, I didn't ask for your business address. I'm supposed to get that on the record. So could you provide that?

THE COURT: I appreciate that. I don't seem to be able to remember it either.

THE WITNESS: 9001 North Lander Avenue, Hilmar, California, 95324.

MR. ROSENBAUM: Thank you.

THE COURT: Okay. Let's break for lunch. Come back at 1:25.

(Whereupon, a luncheon break was taken.)

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THURSDAY, SEPTEMBER 14, 2023 - - AFTERNOON SESSION

MR. ROSENBAUM: Your Honor, we went back and checked, and Mr. Eveland had written out something about barrel and block cheese, but we feel that the oral testimony he gave adequately covered that subject, so at this point we don't feel a need to have another exhibit introduced.

And so at this point we simply would ask that Hearing Exhibit 198 be entered into the record.

THE COURT: Any objection to Exhibit 198 coming in?

Seeing none, Exhibit 198 is deemed a part of the record. Thank you.

(Thereafter, Exhibit Number 198 was received into evidence.)

THE COURT: Thank you.

THE WITNESS: Thanks.

THE COURT: I understand we have some producers, dairy farmers.

MS. TAYLOR: Yes, we do, your Honor.

THE COURT: And this will be virtual?

MS. TAYLOR: No, they're here.

THE COURT: Okay. Welcome. Thank you for coming.

Raise your right hand when you get settled.

TIM HOOD,

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

THE COURT: Your witness.

MR. MUNCH: Thank you. My name is Danny Munch. I'm an economist with the American Farm Bureau Federation -- first time up here, stepping in for Dr. Roger Cryan this week.

We have three producers representing Michigan Farm Bureau that have volunteered today to come spend their time and testify on behalf of their operations. Those three will be Tim Hood, Brad Ritter, and Brian Preston. The first of which is Tim Hood.

So with that, I will let him introduce himself and explain some of his own testimony.

THE COURT: Is there a written statement?

MR. MUNCH: There's not a written statement. They will just be using notes and their own experience. That's about all they have is notes.

THE COURT: No requirement for that. I'm glad to have you all here.

And you're Mr. Hood?

DIRECT EXAMINATION

BY MR. MUNCH:

Q. And, Mr. Hood, if you would, state your first and last name and spell it, and then a good business address, they need for the record.

A. Tim Hood. H-O-O-D, just like it sounds.

41488 County Road 358, Paw Paw, Michigan, 49079.

So I'm Tim Hood. I have a farm -- dairy farm in southwestern Michigan. I have four children, me and my wife Debbie, and all four children are part of our farming operation, which I feel very lucky to have. I get to see them all everyday, and my grandchildren, and it's been -- it's been a real pleasure for me. And I feel things have been going well.

We have a 1200-acre operation. We milk 500 cows. And it's -- I also have a son-in-law that's involved. A daughter married a young fella that's been interested in the farm, and he helps, too.

I'm also a member of the Michigan Farm Bureau and serve on the dairy advisory committee. Our committee developed the original recommendations for American Farm Bureau Federation to establish a dairy working group and to host the Federal Milk Marketing Order forum, where many of the final recommendations for the Federal Order Reform were generated.

As you are aware, Farm Bureau is a grassroots organization. The policies we advocate for come directly from farmers which are voted on at the county and state level before making their way to the delegate session at AFBF's annual meeting to be supported nationally. We boast our role as the voice of agriculture, where a Farm Bureau of over 2,800 counties in every state and Puerto Rico, with nearly 6 million members, encompassing the diversity of agriculture operations in the nation.

An example of the strength of our grassroots is my participation in USDA's Federal Milk Marketing Order hearing here today. Dairy farmers in Michigan, like much of the country, have faced years of unworkable margins, rapid changes in prices, and market signals resulting competitive inequities within the industry.

Between 2018 and 2023, just five years, the nation has lost 9,546 licensed dairy herds, or 25% of its total dairy herds in Michigan. There -- the loss has been -- in Michigan the loss has been more extreme with 34%, or 510, fewer licensed dairy herds than in 2018.

I served 18 years on the Michigan Milk Producers Cooperative board, and I just retired here in -- in April this year. And during those years, I had one local that I was in charge of that was in Indiana, because that was part of my area, and up around the Middlebury, Shipshewana area.

And when I started being a director, on those local meetings, we would have 300 dairy farms represented at that meeting. When I retired here, and I had my last local meeting there, back in January of this year, there were 75. And there's something -- it makes me felt as a co-op director, why can't I, you know, keep these farmers in business? Why do they keep going out, you know? And it's -- it kind of -- it wears on you, you know. It seems like we have the same number of cows, but we have fewer farms. And so there's -- they are not spread over as wide an area, you know, and so I'd like -- I'd like here to change that.

We hope USDA considers the work farmers have put in to thoroughly considering what adjustments matter most to modernize the system. We speak strongly in support of the following proposals, being considered by USDA, during this hearing:

Proposal 1, from National Milk to increase skim milk component factors for nonfat solids, protein, and other solids;

We support Proposal 3 from National Milk to eliminate the cheddar cheese 500-pound barrel price series from the protein price formula;

Proposal 4 from AFBF to add 640-pound cheddar cheese blocks to the protein price formula;

Proposal 5 from AFBF, to add unsalted butter to the butterfat and protein price formula;

Proposal 13 from National Milk Producers, to switch back to the higher-of Class I mover;

In principle, Proposal 17, from Edge Dairy Farmer Cooperative, which would switch back to the higher-of using the advanced pricing instead of the announced;

Proposal 18, from AFBF, eliminating advanced pricing and using announced values;

And Proposal 19, from National Milk Producers, to increase Class I differentials in all locations in varying amounts;

And Proposal 21, from AFBF, to update the Class II differential.

The Federal Milk Marketing Order system directly impacts my bottom line. Even very small few cent changes here and there can mean a big difference in being able to put food on the table or paying my bills.

Having to give up the farm, as its origins -- as origins of milk market regulations were partially intended to prevent predatory behavior from milk handlers and ensure farmers were being compensated fairly for the value of the milk they produce. The above adjustments that I mentioned, when combined with our other legislative efforts, will help realign class prices, reduce incentives to depool, bing more transparency to milk pricing, and ensure the Federal Milk Marketing Order remains focused on promoting orderly marketing of milk.

At this end of this process, we will be dairy farms -- farmers who vote on whether or not to accept these changes.

I appreciate the opportunity to comment today, and I look forward to Federal Order Reform that offers positive change for the entire dairy industry, and most importantly, the dairy farmers. We need to keep them in business.

Thank you.

THE COURT: Are there questions?

You may come back up.

BY MR. MUNCH:

Q. Thank you, Tim.

Do you mind going over the impacts of depooling and negative PPDs in your region of the state and sort of your -- how your neighbors were impacted as well?

A. So the extreme on the depooling was -- was back during the COVID when we saw negative PPDs of $8-plus on our milk checks, and that was because the cheese -- cheese was higher. We've seen times when Wisconsin has sent milk into Michigan to capture some of the pool milk for the Class I sales that we had that they didn't have. I have seen -- and that would make our pool not -- not so much for our area but would raise theirs.

I have also seen our co-op depool milk trying, you know, to raise the income of their farmers, but that -- that seems like it's always -- it's -- you just -- it's like you are playing a game, you know. You play a game. You're pulling -- you pull the milk, you know, depool milk here this month, you -- you know, you pool the milk the next month and just trying to get the best you can.

And we were talking here earlier, you know, at dinner time, you know, the -- seems like there's a lot of plants -- there's new plants being built, a lot of money being put into plants, and we need that to -- to have a place to sell our milk. But there's -- you know, the money isn't coming back to the farmer like it should.

Q. Would you agree that when a plant depools, and as you mentioned, farmers in one place are receiving a different price than another place, that that means they are not receiving uniform prices?

A. Right. That's the reason they have -- they are doing that. They are trying to -- to raise their price, you know. And it lowers -- but you are lowering another -- in another pool, you are lowering their price when you do that, you know. So it kind pits one farm against another, you know. It creates -- that creates issues.

Q. Would you agree on the issue of Make Allowances that the most appropriate -- as AFBF has advocated for -- the most appropriate way to update Make Allowances is by using a mandatory audited survey of processor costs?

A. Yeah. When I look at Make Allowances, I think of co-ops having to balance their milk. When sitting on a co-op board, you would always go into -- you have your Thanksgiving weekend, which is four days, and then you would have -- here comes the Christmas holidays, and sometimes they start earlier. And you want to know if the holidays, you know, if they encompass two weekends and the Friday before, and sometimes it's ten days, sometimes it can get more than that.

And, you know, people want time off from their job, and so you have these processors that will just stop. You know, they just shut down for ten days. Well, the cows don't shut down for ten days, they have to keep producing milk, so somebody has to take that milk. And if you don't have co-ops that can take milk and make a product out of it, and so they have the capacity to do that, that creates a problem, because then you get into where you have heard dumping of milk, you know, because something happened in the system.

So you need -- you need that capacity there, but it's not being used when the other plants are open and there's not a holiday.

And so the plant -- your plants at the co-op level are running on weekends, so Saturdays and Sundays, that's when those people are working, and then -- and then the holidays, the times when nobody else wants to work. So you -- it's hard to keep people at those plants who want those jobs, you know.

So it's -- it's -- that's what I consider the Make Allowance and paying the extra money for the Make Allowance is so that the co-ops have the capacity to have -- to take the milk on those situations.

MR. MUNCH: Thank you. Further cross -- or cross?

THE COURT: Yes, thank you.

Anyone in the audience have questions for this witness?

Hearing none -- not quite yet -- we have AMS.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good afternoon, Mr. Hood.

A. Good afternoon.

Q. Thank you very much on behalf of the Department for coming to testify today.

Just a couple questions. You mentioned you all milk about 500 cows.

A. Yes.

Q. The questions we're asking of producers is if they would meet the Small Business definition, which for dairy farmers is $3.75 million or less in gross revenue on a whole farm basis for the year.

Would your farm meet that?
A. Oh, definitely.
Q. There's also been some discussion at this hearing on the impact of any changes to the price formulas, the impact it would have on risk management positions of dairy farmers.
Do you all use any risk management tools?
A. The Dairy Margin Coverage Program is what we use.
Q. Thank you.
You mentioned you were on the board of Michigan Milk.
A. Yes.
Q. And then, I'm just going to assume, hopefully correctly, that you are still a Michigan Milk member even though you are not on the board.
A. Oh, yes.
Q. Okay. In your time at -- on the board, how did you all, if you could characterize, kinda deal with what the co-op saw as inadequate Make Allowances? So can you talk a little bit about how they had to adjust or make decisions based on the fact that, as testified to here, the cooperative members of National Milk think that the Make Allowances need to be increased?
A. Well, if they didn't -- I'll tell you one thing, if they didn't have capacity or enough silo tanks to hold the milk, then the -- then we would take the milk, pull all the fat, you know, and the protein out of it, and you would dump skim, you know. You would try to make it --

downsize the volume as much as you could, condense the volume.

Q. And get as much out as you possibly could --

A. Right.

Q. -- before dumping --

A. Yes.

Q. -- what you couldn't? Uh-huh.

Can you speak about -- we have heard about -- and people have put on some exhibits showing the decline in mailbox prices to producers. Can you talk about whether you have seen that decline or decline in your mailbox price?

A. I think my mailbox price is -- is good if you put it five, six years ago. What has changed on our farm is the cost. Our costs have escalated in the last two years. We went first from not being able to get things, you know, that were readily available before, to now it's like five, six months, sometimes a year out you have to -- and you don't know what you are going to -- what's going to break on your farm or operation to know what to do on that. You have a tractor that goes down, and you have a three-month wait on a part, and so it can't be used for three months. It's hard to -- it makes it hard to deal, and you have to have backups and -- and all that stuff just increases your cost. But the cost of just doing business has really escalated to the point where we used to dream about $20 milk? $20 milk just doesn't cut it anymore. We're just trading dollars.

Q. Uh-huh. You talked a little bit about your support for the National Milk proposal on Class I differentials.
A. Yes.
Q. And we haven't gotten to that yet, but I did want to ask, how far does your milk travel to go to a plant?
A. So our milk right now is going about 35 miles.
Q. Okay. Have you seen your hauling costs increase in the recent years?
A. No. In my -- my situation, they have not.
Q. Okay. I think my last question is, you mentioned Farm Bureau has other legislative efforts in conjunction with the support it's showing here for various proposals. Could you elaborate on what those legislative efforts are? Is that the Make Allowance -- or the manufacturing cost survey? Is that what you are speaking to that people are seeking to have Congress authorize?
A. I think one of my colleagues will get into that --
Q. Okay. That's fair.
A. -- and answer that question.
MS. TAYLOR: Thank you. That's all I have. Thank you so much.
THE COURT: Anyone else?
With that, we don't have an exhibit for you, but thanks so much for coming out, and you may step down.
Please raise your right hand.
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BRAD RITTER,
Being first duly sworn, was examined and
testified as follows:
THE COURT: Your witness.
MR. MUNCH: This is our second witness from Michigan Farm Bureau, Brad Ritter.

DIRECT EXAMINATION

BY MR. MUNCH:
Q. Brad, if you would spell your first and last name and then give a business address.
A. Brad Ritter, B-R-A-D, R-I-T-T-E-R. I live in Byron, Michigan, B-Y-R-O-N. Address, 13542 New Lothrop Road -- I'll spell that as well, N-E-W, L-O-T-H-R-O-P -- zip code, 48418.
Q. And with that, I'll let you make any comments you want to make today.
A. Thanks for letting me sit up here.
And I operate a 300-cow dairy in Byron with my wife and my parents. I have three young kids. I say young, but my oldest went off to college a couple weeks ago. I have three boys who all tell me they want to come back to the farm, which would be a dad's dream. And the oldest is at MSU right now in the dairy science program, and so there's nothing more that I would like than to continue our legacy, and he would be the fourth generation.
I tell them all the time that this is not an easy industry, and you must love what you do, because it will

eat you up and spit you out. And that's part of the reason I'm here today is because it's hard enough, and you know, it sure would be nice if we could get some things settled and, you know -- we're not getting more dairy producers, that's the bottom line.

So I'd like to also echo what Tim said. I'm a proud member of Michigan Farm Bureau and the Dairy Advisory Committee. And I was proud to serve on that committee that helped initiate a lot of these hearings that they got started.

One of the things I would like to talk to you today about is the higher-of issue in terms of the Class I price.

So the Class I mover issue has been front and center in the Federal Milk Marketing Order modernization discussions. Prior to 2019, the formula to calculate base I -- or base Class I skim milk was the higher-of Advanced Class III and Class IV skim milk prices. The 2018 Farm Bill included a small provision that swapped the higher of formula for the -- for the simple average of Advanced Class III and Class IV milk price plus $0.74.

The change was made at the request of IDFA and National Milk Producers Federation and was intended as a revenue neutral way to improve risk management opportunities for beverage milk. Disruptive marketing conditions induced by the COVID-19 pandemic quickly revealed a lackluster performance from through the new formula.

Significant spreads between Class III and Class IV prices paired with the delay associated with advanced pricing resulted in more money being paid out in Class III component values than what was collected from the plants across all classes of milk. This combined with the tactic of depooling used by many manufacturing plants captured higher market prices, led to vast imbalances in pool value reflected on farmers' checks as negative producer price differentials --

THE COURT: Slow down a little.

THE WITNESS: Okay. Sorry.

At first this imbalance was linked to COVID-19 forces. However, the losses in pool value have continued through early 2023 as Class IV prices have become the driver of the dairy market.

Cumulative pool losses have reached nearly $920 million since the formula went into effect in May of 2019, a clear reason why many organizations, including Farm Bureau, support a swift return to the higher-of formula.

I mean, I guess I can add that, I mean, just for my perspective, I have several friends through being a dairy farmer and things, that I have friends in New York, Wisconsin, and Arizona, and through the pandemic, you know, we -- we're farmers, we like to talk. We get bored in tractors. Bluetooth is our friend.

So I remember for years talking to a couple people in Wisconsin and how the milk was priced with all the cheese plants over there, never thinking that our basis in Michigan would be totally reversed during that time. And the higher-of was part of that.

So the crazy thing is, is the co-op I ship to, I'm not sure if we're still at 30% Class I utilization or not, but there was such a spread between III and IV that with the new formula, that made huge dividends -- or lack of, you know.

So it got to the point where every month you would look at Class III and Class IV prices, you could do your own math, and it wasn't hard to figure out what we were losing, just simply on a -- you know, less than a third of our milk being Class I. So this one -- this one sticks home with me pretty good. I can't imagine in a marketing order that has much higher Class I utilization what that did. Thank you.

BY MR. MUNCH:

Q. Thank you, Brad.

Like Tim, can you speak to the impacts of depooling and negative PPDs to you and your neighbors?

A. So when those checks started arriving, I mean, we heard rumors of the massive depooling and what that was going to be -- what effect that was going to be on the milk check. And it doesn't hit home until you open that up or look at it online and say -- I mean, to see what you should have gotten or what, you know, could have been from all the -- you know, when they do pool that and -- I mean, when you see a negative eight there -- I mean, when we're

talking margins, you know, $0.50 make a pretty big dent. And then you swing that eight bucks? That's huge.
Q. There's been much discussion over picking the best methodology to set Make Allowances, and it has been clear, at least from AFBF's perspective, that a comprehensive mandatory survey of processing costs would be best to update Make Allowances.
Would you agree with that?
A. Absolutely.
Q. And can you speak to, you know -- actually, strike that.
There's been some proposals from groups in the room to use other methodologies to update Make Allowances, some of which, you know, averaging different numbers or utilizing other statistical methodologies to update Make Allowances.
If -- if a Make Allowance is set too high, even by $0.02, what kind of impact would that have on your farm?
A. A pretty good size one. I mean, I'm a 300-cow dairy, which is slightly above average anymore, which is crazy to say. But we still -- 300 cows will put a lot of -- I mean, you are talking, you know, 8 million pounds of milk a year. You start figuring pennies on 8 million, it adds up quick.
Q. Thank you.
And at the end of this whole process it will be farmers who vote in this system, correct?
A. Yes.

Q. And if they vote no, there's potential that the order gets removed, correct?
A. Yes.
Q. So if they believe that the Make Allowances set -- or decided on the final rule are too high, then basically the options are either to vote for Make Allowances they believe are too high or potentially lose the order, correct?
A. Yes. Correct.
Q. So would you say that there is an imperative to make sure those Make Allowance numbers are at the lowest levels possible so that farmers have a clear pathway, based on mandatory data, but pathway forward?
A. Yes.
Q. Thank you.
MR. MUNCH: No further questions.
THE COURT: Anyone else? Other than AMS?
AMS.

CROSS-EXAMINATION

BY MS. TAYLOR:
Q. Good afternoon.
A. Good afternoon.
Q. Thank you very much for coming down to testify today.
You mentioned you had 300 cows. I was -- I wanted to know if -- I asked Mr. Hood the same question about the small business definition. Would your farm meet that definition?

A. Yes.
Q. And could you talk about whether you use any risk management tools that are available these days?
A. Yes. We in the past, at different times, have done futures contracts. We have done revenue insurance.
Q. We have had some discussion over the past few weeks about how any changes in the price formulas could impact risk management positions of dairy farmers, and there's some talk of whether any changes should be delayed or not because they could impact those positions.
So when you look to make decisions on the risk management side, and you look out and do futures contracts, you know, how far out do you look to try to lock stuff in, generally?
A. Me personally, I tend to stay within the next 12 months.
Q. Thank you.
And I don't -- well, I -- I did.
One last question. As we've been talking and heard a lot of discussion over the past few weeks about the impact of what farmers see as -- or not farmers -- as the cooperatives are talking about on the Make Allowance portion, which is what we're talking about generally this week, and how they have had to kind of deal with that, and proprietary dairy plants, too, how they manage through what they see as inadequate Make Allowances. And what we've generally heard is the market is accounting for that because farmers are receiving -- ending up receiving a

lower pay price.
Could you say that you have seen the same types of things in the milk checks that you have received, just generally lower?
A. Yes. Yeah. I mean, it's -- it's definitely not what it -- what it was. And much more erratic.
Q. Okay. And can you speak to the same type of -- Mr. Hood talked about the costs that he has seen on the farm over the past few years.
Would you like to talk about how costs have -- how -- what -- what you have seen in costs that have impacted you on your farm?
A. Oh. I mean, fuel, electricity, the big one labor. And we're all dealing with that. I mean, I'm dealing with it no different than a processing plant is dealing with it. Our labor goes up, our utilities go up. But at the same time, we're always trying to strive to be the most efficient that we can be, you know. And this is my own personal feeling, but, you know, I don't think we're building plants that are less efficient, you know. They are always getting more efficient too. So we're all striving for the same thing here. But -- but, yeah. Interest rates, a big one right now, so --
Q. Have you seen your hauling costs increase or decrease, stay the same, over the past few years?
A. Mine have not. I have had -- I know that some on the same truck have, but it's because of their volumes/distance, where I'm one of the biggest stops on,

so I have been told that's why, you know. I -- but mine hasn't went up in probably the -- five years.
Q. Okay. And how far do you -- does your milk get shipped?
A. Ours is going about 30, 35 miles.
Q. Okay.
A. So we're not terrible in terms of distance.
MS. TAYLOR: That's it from AMS. Thank you so much.
THE COURT: Anyone else? Any follow-up?
You may step down. Thank you so much for being here, Mr. Ritter.
MR. MUNCH: And then last but -- oh, sorry.
THE COURT: Let me swear him in.
Please raise your right hand.
BRIAN PRESTON,
Being first duly sworn, was examined and testified as follows:
THE COURT: Your witness.
MR. MUNCH: Thank you. Lastly, but not least, we have Brian Preston.
DIRECT EXAMINATION
BY MR. MUNCH:
Q. Brian, could you spell your first and last name and give a business address?
A. Brian Preston, B-R-I-A-N, P-R-E-S-T-O-N. Our business address is 1097 Central Road, Quincy, Michigan, 49082.

Q. And with that, I'll let you make any comments that you would like to make.
A. Thank you, Danny.
My kids tell me I'm the slowest storyteller ever, so hopefully that's appreciated today, at least by one person.
I'm the fourth generation to farm on our farm. I came home to the farm in 2003, so this is 20 years that I have been home on our dairy farm. I do farm with my dad and uncle and cousin. So four of us there.
And we have -- my wife and I, we have three boys. The oldest is a senior, the middle one really wanted to stay home from school today to mow hay, but he got plenty of that last night. So a freshman and a fifth grader. And they all -- this summer has been really, really rewarding to see them all really take an interest in the business and the farm and start to be able to be helpful helpers instead of present helpers, I guess.
But we milk a thousand cows and farm 1500 acres. We also contract finish about 10,000 hogs a year.
So the -- when I came home to the dairy, we were milking about 120 cows, and my dad and uncle were ready to be done with that to a certain extent. But my cousin and I took off with that, and we grew that over the last 20 years from 120 cows to a thousand cows now.
And dairy is where our passion has been and is. We love this industry, and I hope that there's an opportunity for a fifth generation on our farm as well.

So full disclosure, I'm a Michigan Farm Bureau member, and I'm also a director at Michigan Milk Producers Association on their Board of Directors. I have been a director there for two years, so --

Brad and Tim did an excellent job outlining some of the proposals that we support. One of the opportunities I also had was to serve on AFBF's dairy working group. For two years we met as a working group, listened to industry experts, took a lot of different input into consideration, and then ultimately hosted the forum in Kansas City where we, as an industry, and then also as an organization, came up with proposals for this hearing. So we really appreciate the opportunity to be a part of this.

At the Kansas City forum there were three things that were really widely accepted, unanimously adopted. First and foremost, the return to the higher-of for Class I. I think that would be Proposal 19 from National Milk. Be increase the Class I differentials in all locations; that was the second one that was wide ly accepted. Then thirdly, understanding and advocating for a processing cost survey that would be mandatory and audited. We feel that that is vital to establishing what the Make Allowances should be.

One of the previous witnesses today talked about accuracy being important, and that's what we're asking for is we understand that there's a difference between a survey of finished products and a raw material input, and so there has to be an adjustment there. That's the Make Allowance. And that number needs to be accurate. So we accept that that's part of the minimum price that we're all trying to determine what should be established, but we would ask that there would be a survey, that would be mandatory and audited to establish those things.

I think I'll just enter into the record here too, Proposal 1 from National Milk, we support increasing the skim component factors for nonfat solids, proteins, and other solids.

We support Proposal 3 from National Milk to eliminate the cheddar cheese 500-pound barrel price series from the protein price formula.

AFBF has Proposal 4 to add the 640-pound cheddar cheese block to the protein price formula.

Another proposal from AFBF was to add salted butter and butterfat -- unsalted butter to the butterfat and protein price formula.

And then also Proposal 21 from AFBF to update the Class II differential.

So with those comments, I guess I would be happy to answer any questions.

Q. Thank you, Brian.

Can you confirm that the dairy working group that we held had members from all different parts of the country?

A. There were, yes. Members from every major production area of the country.

Q. And some of these members sold to independents and some of these members sold to cooperatives?
A. That's correct.
Q. And do you recall that the package of recommendations the dairy working group made to our delegates was unanimously approved by our dairy working group?
A. It was unanimously approved.
Q. So then you would agree that that package was unanimously approved by a group that represented all different regions of the country and all different types of structures of how they sold their milk?
A. It was.
Q. And at the Federal Milk Marketing Order forum that was held last year, you might not recall the specific number, but would you say there was close to 200 farmers in attendance? Does that seem --
A. Seems close.
Q. And at that forum there was farmers from all different parts of the country?
A. Yes.
Q. And there were representatives from cooperatives, from processors, and from government, or other aligned industries?
A. There were.
Q. And can you explain at all how the structure of the forum was, how was it sort of set up?
A. So each session would have a -- kind of a focus

area, whether it would be maybe the higher-of or the Make Allowance, or whatever the session was focused on, we would have a speaker that would address that, maybe two. And then following their presentation there was a considerable amount of time, I don't remember, a considerable amount of time for each table, and you were assigned a seat at your table, and so there was processors at each table and industry organizations and several producers at each table. There were more producers there than any other group. And they would discuss and brainstorm and come up with solutions -- potential solutions for the issue that we were talking about.

Q. And you would say, based on what you said earlier, the vast majority of the tables were in support of the three proposals or -- that you mentioned?

A. The tables, the people there, yes.

Q. Thank you.

Also as a -- we usually ask at Farm Bureau, can you talk about depooling and the impact of depooling on you and farmers in your area?

A. So our co-op has done a really good job of managing depooling. We have three different plants that make various products and -- but it is certainly a case where producers -- neighboring producers can receive a wide differential in what they would receive for the milk.

In our -- in our county, I think -- there's only three dairies left in our county, and we all ship to the same co-op. In the neighboring county I have a couple of

friends that ship to other co-ops, and -- and we compare milk checks from time to time, not every month, but we do. And there's -- when depooling happens is when you see the widest discrepancy between what producers -- what we have experienced as a discrepancy between our neighboring farms receiving for our milk.
Q. And you would consider those market effects a form of disorderly marketing?
A. Yeah. I think -- so from disorderly marketing or whatever you want to call it, we have a problem in our industry, and the problem is dairy farmers are not able to stay in business the way milk is being priced today. And maybe that's a -- maybe we're producing a product that people don't want to buy anymore, but I don't think that's the case. I think that there's a lot of demand for dairy products. And we have seen a dramatic drop in the number of dairy farmers, and that's concerning to me.
Q. And there was a number of legislative efforts that also were priorities out of the dairy working group you were a part of.
A. Uh-huh.
Q. Do you agree that one of them was AFBF pursuing language for a mandatory cost processing survey?
A. Yes. Yes. That was definitely one of them. So -- and we're talking about legislative priorities outside of this hearing is -- was your question. And one of the biggest vulnerabilities that I believe we have in this industry is -- and Tim was alluding to it -- is the

cost to balance the production across the industry. And widely the co-ops have accepted that, so that means the farmers do. So it is so expensive to balance milk, and I don't think that the way we handle things today adequately addresses that. I think the co-ops that -- I think the balancing plants need to be recognized somehow for doing the job that they are doing.

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

Other questions?

THE COURT: Any questions from anyone other than AMS?

Seeing none, AMS.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good afternoon.

A. Good afternoon.

Q. Thank you for coming down to testify with us today.

A. You're welcome.

Q. You mentioned your farm where you have a thousand cows, 1500 acres, and 10,000 hogs.

Would your farm meet the Small Business definition?

A. We would not.

Q. And can you talk on if whether, at least on the dairy side, you use any risk management tools?

A. We do. So we participate in DMC. That's been a big deal this summer for the first time ever. The Tier 2 milk has hit. I think that speaks to the tight margins that we have been under this summer. Has been by far the least profitable of my 20 years on the farm. But, yeah, we use DMC and DRP. We try to have some DRP -- at least a third to half of our milk covered with DRP. And in the past we have used futures and options both as well.

Q. And when you look to lock in things with DRP or on the futures market, how far out do you go?

A. Right now we have six months, we're six months out, but we're pretty consistently looking within a -- we have never gone more than a year.

Q. Can you talk a little bit about, since you are on the board of Michigan Milk, how you all have had to deal with, I'll use the phrase inadequate Make Allowances since that seems to be what everyone is contending at this hearing?

A. So on our milk checks we have a line that says "market adjustment." And if the -- that's where -- that's the catch-all. If -- if there's not -- the plants aren't making money, if they are making money, that's -- it goes in that market adjustment line.

Q. Have you seen those market adjustments become larger in recent times?

A. Well, we're doing our best to get them down. Transportation costs has been one of the major drivers of that. But certainly energy costs -- the -- not many years ago, the market adjustment was much smaller than it is now. It has gone up. In the last year we have been able

to whittle it down. But it is -- it's significantly larger than it was five years ago.
Q. Is Michigan for the milk that you sell able -- MMPA able to get premiums out of the market?
A. To the -- the co-op's goal is to market the milk to the greatest advantage possible. So they do everything they can. They do an excellent job of getting premiums. I believe that we need more Class I premiums than what we're currently getting. They do their best to negotiate those. So we -- we get whatever the market possibly will bear.
Q. Have you seen a decline in those?
A. There was a pretty drastic decline a few years ago, and then just in the last couple months, we have seen the Class I premium come back. But it's not where it was when we added another Class I bottler in the region.
Q. Okay. In regards to the transportation cost you mentioned, on your farm have you seen an increase in the transportation cost?
A. We have, yeah. We're now paying $0.65 per hundred. We were at $0.56 for years. About a year ago our hauler came to us -- our haulers, they are the other group in this industry too -- so when he started hauling our milk -- well, the same families have been hauling our milk for 40 years, and they had 25 trucks on the road, and they were stopping at about 200 farms. Now, they do one and a half loads per day, and they stop at four farms. So it just speaks to the industry as a whole. But, yeah,

that -- and we're a single-stop farm. They come to our farm, they pick up our milk, and they go right to the plant. But even with that efficiency of not having to make multiple stops, we're seeing our costs go up.

Q. And how far does your milk travel?

A. Just over 40 miles.

Q. And so the co-op, when you have to balance milk, does the co-op kind of spread that cost out on to all of its members?

A. Owners. Yes.

Q. Owners?

A. Yeah. Exactly. We get to -- we get to pay for that.

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

THE WITNESS: Thank you.

THE COURT: Yes.

MS. HANCOCK: I don't have any questions for you. I just wanted to, on behalf of National Milk, thank you, Mr. Hood and Mr. Ritter, not just for your time testifying today, but for the support for National Milk's proposal.

THE WITNESS: We thank National Milk for all of the work that they do on our co-op members' behalf too.

THE COURT: Very good, sir. Thank you too for coming. It's great that you were here. You may step down.

Anything else -- is it Mr. Munch?

MR. MUNCH: Nothing further. Thank you.

THE COURT: Very good. Thank you for being here too.

Okay. What's next?

Welcome. Please raise your right hand.

ALISON KREBS,

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

THE COURT: Your witness.

MR. NIELSEN: Good afternoon, your Honor. Erik Nielsen, counsel for Leprino Foods Company. I'm just going to pass out our exhibits.

THE COURT: Very good, sir.

MR. NIELSEN: We have just circulated a document I would like to mark for identification, I think we're on Exhibit 199?

THE COURT: Yes. Exhibit marked in the top right-hand IDFA Exhibit 23 is marked for identification as Exhibit 199.

(Thereafter, Exhibit Number 199 was marked for identification.)

MR. NIELSEN: Thank you, your Honor.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. NIELSEN:

Q. Please state your name for the record.

A. Alison Krebs.

Q. Ms. Krebs, you previously testified in this hearing and provided your background info, both professionally and academically.

Has anything changed since you last testified?
A. No, it has not.
Q. And you're still director of dairy and trade policy at Leprino Foods Company?
A. I am. It's been a while but not that long.
Q. So in front of you is a document marked Exhibit 199 for identification purposes.
Is Exhibit 199 an accurate representation of the testimony you are prepared to present today?
A. Yes.
Q. All right. Please proceed with your testimony.
A. Thank you.
I am Alison Krebs, Director of Dairy and Trade Policy for Leprino Foods Company (Leprino), headquartered in Denver, Colorado. As I have previously provided my full introduction in prior testimony during this hearing, that information has already been entered into the record so I will not repeat it here. In this tranche of testimony, I will address Proposals 7 through 9.
Opposition to Proposal 7, Support for Proposals 8 and 9 on Manufacturing (Make) Allowances.
On the proposals to update manufacturing allowances, hereinafter referred to as "Make Allowances," Leprino Foods strongly supports Wisconsin Cheese Makers Association ("WCMA") Proposal 8 and International Dairy Foods Association ("IDFA") Proposal 9. Related to this, Leprino Foods strongly opposes Proposal 7 from National Milk Producers Federation ("NMPF"); it is unsubstantiated

and insufficient.

As a reminder, all nine of the plants Leprino operates in the United States receive milk priced in reference to the Federal Milk Marketing Orders, therefore Leprino has a strong interest in the decision by USDA based on this hearing.

Across the industry it's widely agreed that Make Allowances are out of date. In fact, given the inflationary spiral of the past two years, one can safely say that Make Allowances are now disruptively out of date.

I want to first clarify, for the record, how USDA (the "Department") defines a Make Allowance. As published in the Federal Register on both November 22nd, 2006, and June 20th, 2008, "The Make Allowance factor represents the cost manufacturers incur in making raw milk into one pound of product." In other words, a Make Allowance is not a "cost credit" to cover a portion of these conversion costs, a Make Allowance is intended to represent the cost of converting milk into dairy products.

As noted in the February 7th, 2013, Final Decision from USDA: "The ability of a manufacturer to offset cost increases is limited by the level of Make Allowances in the Class III and Class IV price formulas."

Given the current system, if manufacturing costs are not covered in their entirety, over time, the math just doesn't work. Essentially, processing assets get run into the ground and the industry lacks financial incentive for the investment needed to maintain or build sufficient processing assets.

Let me give you a view into cost of processing changes at Leprino Foods. As a historically innovative dairy processor with relatively large plants, Leprino Foods is perceived to be an efficient dairy processor. And while Leprino Foods produces mozzarella as opposed to cheddar cheese, we do manufacture two products which are included in the milk pricing formulas. We manufacture sweet whey at two plants: Allendale, Michigan, and Waverly, New York. And due to the relative size of our footprint in Colorado, we manufacture nonfat dry milk ("NFDM") at our Greeley, Colorado plant to help balance the state's milk supply. 2022 data from all three of these plants was included in Dr. Stephenson's latest cost of processing study.

Leprino’s Allendale and Waverly plants have produced sweet whey since before 2006, when the Make Allowance was last updated. Our Greeley plant is newer, producing nonfat dry milk since only 2017, so the following examples on cost of processing increases will be compared to those respective years.

Across our two sweet whey plants, Leprino’s Processing Non-Labor costs increased 159% between 2006 and 2022, utilities increased 32%, and packaging grew 53%. Overall, our total cost, as defined in the 2022 Stephenson study, grew by 58%.

With respect to nonfat dry milk, since just 2017 our processing non-labor costs have skyrocketed 79%, with a 67% increase in utilities, and a 69% increase in packaging costs. These increases over just six years exceed those of the weighted industry average between the two Stephenson studies that bookend the current 17-year lag in updating Make Allowances.

As the industry is aware, despite the outdated Make Allowances and the recent inflationary spiral, Leprino Foods is building a new plant in Lubbock, TX. We have continued with this project because Leprino Foods believes in the long-term future of the U.S. dairy industry, and because we want to uphold longstanding commitments to our customers.

That said, this is a very difficult time to build a new plant. For example, when we run the cost of manufacturing estimate for sweet whey at this new plant, including depreciation, the cost is projected be over 80% higher than the cost of manufacturing sweet whey at the two plants where we already produce this product.

Because of numbers like this, many other processors have put expansion and greenfield plant plans on hold. It is now extremely difficult for almost any new investment to cash flow. In fact, Leprino's President has said: "If Make Allowances aren't updated, the Lubbock plant will have to be the last plant Leprino builds in the U.S." With this latest bout of inflation on top of the decades-plus-long delay in updating Make Allowances, the economics just do not work.

Why does this matter to producers? As noted in my earlier testimony, producers need a market for their milk. Without sufficient processing capacity within a reasonable distance, dairy farms cease to be economically viable. Further suffocating dairy processors will just cascade and suffocate dairy farms. Outdated Make Allowances have become an unhealthy chokepoint for America's dairy industry.

Producer members of manufacturing cooperatives may already be experiencing these consequences, and we heard testimony during this hearing to that effect. In addition to base/excess programs, which are currently needed because milk production is being overstimulated by the inflated regulated price, cooperative manufacturers of formula products are almost certainly incurring processing losses. This is apparent as the deficit between current Make Allowances and 2022 manufacturing costs for the average of low-cost processors ranges from a minimum of 10% up to 53%, depending on commodity.

As common banking practices require owners to absorb significant cash flow gaps, these losses are no doubt being passed on to producer milk checks, either directly or indirectly. Press announcements over the past year have noted this practice. Cooperative members may see a direct deduction for manufacturing losses on their checks, or these losses are being assessed via reblending by adjusting rates, which would indirectly allocate manufacturing losses across members.

So the concern within manufacturing cooperatives that raising Make Allowances will reduce milk checks is outdated; adjustments are already taking place. For the long-term, current Make Allowances are not sustainable for any entity that manufactures Class III or Class IV formula dairy products, regardless of ownership structure, and no reasonable banker would lend new money to a business which absolutely cannot cash flow.

National Milk Producers Federation's proposal states: Raising Make Allowances to levels above those proposed by NMPF will reduce producer prices to levels that would narrow margins and negatively impact the availability of adequate supplies of milk, and thereby create disorderly marketing.

There are multiple issues with this presumption. First, while farm level margins may initially decrease and contract milk supplies, economics 101 dictates market forces will subsequently pull farm-level prices higher to reach a new equilibrium between supply and demand. Further, margin protection programs such as Dairy Margin Coverage ("DMC") will insulate farms, particularly smaller ones, from lower margins as the market adjusts.

As to disorderly marketing, NMPF clearly misinterprets the term given today's realities. Whereas tighter supplies of milk relative to demand will drive prices higher, "disorderly marketing" instead refers to situations where there is an excess of milk relative to available processing capacity within a milk shed. This occurs when milk is overpriced relative to demand, not when milk is underpriced. Said another way, disorderly marketing occurs when the price does not clear the market of the available milk volume. Typical symptoms of disorderly marketing include milk dumping and/or unusually low spot milk prices. Again, the Upper Midwest has extensively experienced both phenomena in 2023.

More accurately, lower regulated milk prices that reflect current conversion costs and tighter milk supplies would instead enhance orderly marketing of milk as the market moves beyond the current overpricing of milk relative to available processing capacity. If the U.S. dairy industry wants to thrive, or even remain status quo, Make Allowances must be updated to competitive levels to maintain existing assets and encourage adequate investment to be made in its processing sector.

And NMPF's proposal clearly states: "Subsequent analyses by NMPF and other interested parties have estimated that unit costs of inputs have subsequently risen even further above these 2018 levels," and that "average manufacturing costs… are considerably higher than the current Federal Order Make Allowances." This speaks to the need for significant and adequate updates to Make Allowances.

The NMPF proposal then goes on to note that "when manufacturing costs of commodity products exceed the established Make Allowances, the calculated classified prices will essentially overvalue raw milk as an input."

NMPF next states that "negative impacts from outdated Make Allowances are unfairly borne by cooperative dairy farmers."

These statements are oversimplified. Manufacturing cooperatives and proprietary processors are incurring losses while marketing cooperatives and independent producers are benefiting from the current marketplace distortion. The industry is in essence robbing Peter to pay Paul by placing the financial burden of outdated Make Allowances on manufacturing cooperatives and proprietary processors.

The NMPF proposal suggests that Make Allowances based on updated weighted average costs would assure profitability to all processors, no matter how inefficient or high cost. Of course, this presumption doesn't make sense mathematically, as a weighted average takes plant size as well as production cost into account. So if anything, weighted averages encourage plants producing commodity products to be sized to achieve economies of scale or achieve other above-average efficiencies or get left behind.

Further, the NMPF Make Allowance proposal is conclusory and lacks supporting data. In prior decisions, USDA has clearly noted the need for publicly available data from reputable sources to drive changes to Federal Orders.

While the WCMA/IDFA proposals leverage such data from respected long-time industry economists, the NMPF proposal notes the need for "increasing Make Allowances from their current inadequate levels," but then states, without any evidence or data to support their position, that their proposed increases are "adequate, acceptable and reasonable."

Proposals 8 and 9 from Wisconsin Cheese Makers Association and International Dairy Foods Association, respectively, offer an economically sustainable approach. First, the phase-in approach is explicitly designed to help mitigate farm-level margin shock and therefore stabilize milk supplies as the industry adjusts to long overdue Make Allowance updates.

That said, even this phased-in approach only aims to cover 2022 costs by 2028. This is still a six-year lag to actual costs, which may continue to limit processing investment. While this may still constrain the industry, the WCMA and IDFA proposals seek to find a best and minimally disruptive path forward.

Another reason why the WCMA/IDFA Proposals 8 and 9 are valid and warranted is that previous Make Allowance updates have been based off a similar data approach. In fact, the Final Rule for the last national hearing, published February 7th of 2013, stated: "This decision finds that it is appropriate to rely on cost data from California (CDFA survey) and the rest of the country (CPDMP survey)."

As a reminder, the CPDMP survey was conducted by Dr. Mark Stephenson, author of the latest plant survey study, and Dr. Bill Schiek's estimate are built directly from CDFA data. The latest Stephenson data set is based off very robust participation, representing a majority of processing capacity and including many large manufacturers, while the Schiek estimations begin with the CDFA mandatory study data and leverage a highly accepted statistical modeling approach. Given these Make Allowance proposals are based on weighted average costs, the bar for remaining competitive is higher than overall average profitability.

Waiting on mandatory cost study data at this point is not a viable solution. USDA should update Make Allowances based on the data presented at this hearing. While various parties have suggested that Make Allowance updates should not be made until after mandatory cost of processing study data is available, USDA believes it does not yet have the authority to conduct such mandatory studies, and that this authority needs to be granted by Congress. This would most likely happen in the Farm Bill.

Even if a new Farm Bill (granting this authority and funding the studies) were to move through Congress and into law this year, which is not a given due to political realities, it is unlikely that implementation of updated Make Allowances from mandatory cost of processing study data would take place prior to 2028. To get to that point: Rulemaking, hiring and training staff, study design, study programming, training manufacturers, implementing surveys, auditing (as needed), analysis, communication of results, a hearing request, and a hearing, would all need to happen.

Despite the anticipated time lag on implementation, for the long-term health of the U.S. dairy industry it is essential that the Department be granted this authority and routinely produce updated cost study information going forward. Otherwise, the industry will remain at odds and focused inward as opposed to seeking market opportunities that await. While Europe and New Zealand are poised to implement costly environmental regulations on their respective industries, creating a greater opportunity for the U.S., outdated US milk pricing regulation controls our potential and ability to grow.

For these reasons Leprino Foods Company opposes Proposal 7 and supports Proposals 8 and 9.

Q. Thank you, Ms. Krebs.

Before we open you up for cross-examination, I'm just going to ask you a few follow-up questions.

First, you testified about the two specific products that Leprino Foods Company produces that are included in the formula. Given that much of what Leprino Foods Company produces is mozzarella cheese, why is the Make Allowance important to Leprino in that context?

A. Yeah. Thanks very much.

Yeah, we produce mozzarella cheese, and there's been talk during the hearing that cheese makers have -- just have flexibility to raise price. Obviously, we are in a competitive marketplace, but I think there's a couple of other things that are important to mention on how outdated Make Allowances specifically impact Leprino Foods Company.

Basically they are putting us at a competitive disadvantage. A couple of these have been brought up within the hearing, but specifically, competitors who depool and can pay below order prices for their milk puts us at a competitive disadvantage. Competitors in unregulated regions where they are not required to pay Federal Order minimum prices, that's a competitive disadvantage. And finally, where we have cooperative competitors who can then reblend the price they pay to the their farmers and therefore pay less for their milk also puts us at a disadvantage.

Q. Thank you.

Second, you testified about some of the inflation-related challenges associated with building new processing assets. In general terms, how has inflation impacted construction of Leprino's forthcoming Lubbock facility?

A. Yeah. Well, not surprising, costs continue to go up. You can say it's over budget, but I would suggest that it is more overall inflation relative to plant. When we announced the plant in late 2021, I believe the announced price was an $870 million investment, and we are now at a position at this time, given recent inflation, that that is estimated to be a $1 billion investment at this time.

Q. Thank you.
Finally, were you present for Dr. Stephenson's testimony on cross-examination with respect to Leprino's forthcoming Lubbock facility?
A. Yes.
Q. And relating to that testimony, do you know whether any costs associated with construction of that Lubbock facility were included in Dr. Stephenson's dataset?
A. No, they were not.
Q. Thank you.
MR. NIELSEN: The witness is open for cross-examination.
THE COURT: Questions.

CROSS-EXAMINATION

BY MS. HANCOCK:
Q. Good afternoon, Ms. Krebs.
I didn't hear the last question and answer.
A. The last question was about whether depreciation for our new plant was included in our cost of manufacturing data that we submitted, Dr. Stephenson's study. And, no, it was not. Those are two older plants where we have made sweet whey for an extended period of time.
Q. Okay. Thank you for that. I was trying to refine my questions and missed that one, and I didn't want to repeat it.
I wanted to start with, you have a Colorado plant,

or Leprino has a Colorado plant?
A. We have two.
Q. And what -- do either one of those perform any kind of balancing role in the market?
A. When you think of -- yes. I mean, to my testimony, our Greeley plant does manufacture some nonfat dry milk, and that is to help balance milk supply in Colorado because we take a large share of milk in Colorado.
Q. And do you use that for an internal use or for domestic sales or both?
A. Primarily, that would be used internally.
Q. And then is it fair to say that you have experienced seasonality impacts at that Greeley plant as well?
A. I think there's seasonality across the entire dairy industry. If you have tremendous heat waves or things like that, you can have some differences in production.
Q. Okay. So sometimes you are under capacity and sometimes you have times where you are at capacity?
A. We typically run our plants -- particularly the Greeley plant runs 24/7, 365 days a year. Our Greeley plant typically is not shut down.
Q. Okay. So even though you offer services as a balancing plant, you still -- does that mean that you reserve some capacity in case there's additional milk supplied there?

A. We also work with our supplier partners.
Q. And that gives you the leverage that you can control?
A. Yes. That's part of -- of our contracting.
Q. And were you here when Dr. Stephenson and Dr. Schiek testified?
A. Yes.
Q. Was there anything that they testified to that you can recall that you feel like you would like to disagree with?
A. I don't know that I would disagree with any of their testimony.
Q. Okay. And you heard both of them provide some characterizations about some of the inadequacies with respect to their studies; is that fair?
A. I would not call it inadequacy. I would say it's more limitations to the methodology. I think that the work that they have done is very solid work given the tools and information that was available.
Q. Okay. That's fair.
So if it's limits to the methodology, you heard both of them talk about, with respect to each one of their methodologies, that there were some limits on their ability to achieve an accurate result that they -- that they reached; is that fair?
A. Well, neither one was a full population survey, but I think that they are very representative of -- you know, from two different approaches, very representative

of what we have seen in the industry. And the output that we saw on the products that we manufacture and the relative increases in cost certainly looked realistic and sounds like it is very much in line with what many others have testified to as well during this hearing.
Q. Okay. And -- and did Leprino participate in both of Dr. Stephenson's surveys?
A. We participated in this latest one. My understanding is that the twenty -- whatever we're calling it, 2021, the prior survey, we provided data to Dr. Stephenson but apparently missed a deadline.
Q. Okay. So do you know if your -- if Leprino's data was included in the 2021 survey?
A. My understanding is it was not.
Q. But you were able to review that survey?
A. Yes.
Q. And even without Leprino's data being included in that, did you believe that that survey was reflective of Leprino's costs?
A. For the products that we manufacture, yes.
Q. And so cheese would be the category that you're primarily looking to?
A. Well, again, our cheese manufacturing, it's a -- there's a very different process to it, with different type of -- or style of cheese, so we don't manufacture cheddar cheese. So we don't -- it's not apples to apples on the cheese side. We felt that the whey data was representative.

Q. Okay. What about nonfat dry milk?
A. Yeah. We didn't see any issues or concerns there.
Q. Okay. And you don't do butter?
A. No.
Q. Okay. So with respect to Dr. Stephenson's 2021 results for cheese, whey, and nonfat dry milk, you felt like the results that he obtained were fairly reflective of the cost structure that Leprino is able to observe in its own plants?
A. Yeah. You know, I think, as what Dr. Stephenson testified to, he used a different methodology for cost allocation, and that seemed to have had some level of impact on the Class IV allocation. So, again, we don't have a lot of experience there, but we felt comfortable with what we saw for whey, for dry whey, on the Class III side.
Q. Okay. And -- and did you hear Dr. Stephenson's testimony where he believed that his allocation of costs using the transformational values didn't have an effect on the results for his survey, that his survey was more of just a reflection on the sample size and the sample data that he had included in that report?
A. Could you repeat that, please?
Q. Sure. Did you hear his testimony when I asked him about whether he believed that his allocation of costs using his transformative value ratings, whether that was impacting the results that he got in 2021?
A. Yes.

Q. And you recall that his answer was he did not believe that that methodology affected his results, he thought his results were more reflective of the sampling of the pool that he had in that survey?
A. I interpreted his testimony differently.
Q. You believed that he was testifying that he did have an effect on his results based on his methodology?
A. That there was some -- my understanding was that the transformation cost approach -- or transformation -- I can't remember exactly how he phrased it -- that methodology had some impact on the results as compared to the traditional methodology that he had used copying the prior historical CDFA studies and then the methodology which he, again, then invoked for his latest study.
Q. Okay. Are you sure that's what he said?
A. That's my recollection.
Q. Okay. Fair enough.
But nonetheless, when you looked at the categories that he was able to -- that came out of his 2021 results, you felt like they were at least in the ballpark of where Leprino was experiencing?
A. For the products which apply to us.
Q. And that's --
A. Again, on the Class IV piece, it seemed like there was some things there that was a question mark, but, again, I think some of that comes down to some methodology change on his part.
Q. Okay. And if you look at cheese, for example,

he -- his results in 2021 came out with $0.2476 cents. Does that sound right?

A. I would have to look to confirm that, but I can't dispute that.

Q. Okay. And do you know that National Milk's proposal is $0.24?

A. Correct. However, the data collected for Dr. Stephenson's 2021 study on average was collected in 2019, and so there's -- as we talked, there's been quite a bit of inflation that's happened since that time. So, again, that's part of why I think Dr. Stephenson repeated the study here more recently, was to try and capture some of the inflation that we have seen since.

Q. Do you think that the inflation cost numbers that we saw in 2022 are reflective of what we're seeing in 2023?

A. Well, I think it depends on what part of those costs. As I mentioned, the cost increases that were seen with our Lubbock plant certainly suggest that equipment and building costs are continuing to increase and escalate. Labor costs almost never goes down. We can gain some efficiencies, but in terms of your cost per unit of labor, that doesn't go down. You had some adjustments -- in 2022 you had the shock of the Russia/Ukraine conflict which pushed energy prices higher for a period of time, but they also have -- they have adjusted down somewhat. And the entire 2022 average was not extraordinarily high.

So I -- I think, on average, the 2022 data from Dr. Stephenson's study, remains valid and it's not something where we would see a huge change. But I think that also speaks to the opportunity for the industry to have regular cost of manufacturing studies in the future going forward so that we can capture any changes from a longer-term perspective.

Q. Do you agree it would be better for us to have mandatory audited cost surveys that capture the actual costs on a larger representative sampling?

A. The ideal world is mandatory studies. But I think in the meantime we have had a 17-year delay, and there's a lot of stress financially on the processing sector at this time, and you can't necessarily wait another four or five years to get to that point. The margin of error between, you know, a -- how far off could a sample study be or Dr. Schiek's work be relative to the deficits that we currently have in the changes in costs, there's a tremendous difference on that.

Q. Would you agree that the pressures that your business as a processor are experiencing, such as labor, and some of the supplies, and the energy, and the fuel costs, are also costs that dairy farmers are also experiencing?

A. Oh, I don't deny that at all. Everybody's seeing higher costs.

Q. And you would agree with me that in order to make sure that there are orderly market conditions, we have to make sure that we don't run dairy farmers out of business in the meantime?

A. And that I think is part of what International Dairy Foods Association and Wisconsin Cheese Makers are trying to do with that stepped-in approach, is to try and maintain a healthy dairy industry as we go forward, to move the Make Allowances higher so that processors can be healthier, but to help ensure that we have a steady supply of milk over that longer-term timeframe as the markets adjust to changes.

Q. Okay. Appreciate that.

I just want to make sure our record's clear. So is your answer yes, that you believe that it is important to avoid creating a disorderly market by running dairy farmers out of business and interrupting the supply of milk?

A. I don't agree that we are looking to run dairy farmers out of business and destroy our milk supply. Our business is dependent on a strong and steady supply of milk, and our customers' business is dependent on a supply of dairy products, supply of cheese, for pizzas, things like that. So it's -- we have a mutual interest here, and I think keeping the dairy industry healthy should be all of our interest.

Q. And I wasn't asking you if your position was that you were trying to run them out of business. I'm just asking the question of, do you agree that it would create disorderly market conditions if dairy farmers were run out

of business because of the inability to withstand increases in costs in a way that would interrupt supply? Is that an example of how disorderly market conditions can be created?
A. I don't believe that there are any proposals on the table that would create such a situation.
Q. That's not my question.
Do you agree that if supply were interrupted because dairy farmers are run out of business, that that would be in and of itself a situation in which disorderly market conditions would be created?
A. I think anytime you would have any extreme shift in supply, that would be disorderly.
Q. In your statement in Exhibit 199, you state that, "Given the inflationary spiral of the past two years, one can safely say that Make Allowances are now disruptively out of date."
A. I'm sorry. Where are you?
Q. I'm on the first page of Exhibit 199, your second sentence of the second paragraph.
And you state, "Given the inflationary spiral of the past two years, one can safely state" -- I'm sorry -- "one can safely say that Make Allowances are now disruptively out of date."
Do you see that?
A. I still don't see where you are. Oh, I see it now. Okay. Yes.
Q. What do you mean -- or can you tell me what you

mean by saying that Make Allowances are now disruptively out of date?

A. Well, I think from some of the testimony that we have seen from several different people during the hearing, and I also provided some information on that in my initial testimony, you can see of the very deep discounts in spot milk prices that we're seeing across much of the Upper Midwest. I think some of the other disruption that we have seen is a fair amount of dumping of milk this year, particularly this spring, and you're to a point where there is really no excess capacity available to absorb your spring flush this time of year. You just don't have the processing capacity available at this point because there has not been the capital available and returns available for the processing sector to build the assets to have that capacity for the marketplace.

Q. And have you had producers that have had to dump milk?

A. I don't know. Most of our milk moves through cooperative partners, so I can't speak to that.

Q. And you understand that when it moves through cooperative partners, those cooperatives have agreed to take the milk and find a place for it; is that right?

A. I could assume that's the case. I'm not intimately familiar with our milk purchasing agreement.

Q. As you sit here today can you think of an example of when you have any knowledge about milk being dumped?

A. I know we work very, very hard with our partners

to try to avoid any situation where that would happen. It seems to me that I have a recollection of, you know, an extreme weather event when a load couldn't get to a plant or something along those lines. I think that's happened a couple times since I have been with Leprino. Those are very isolated events.
Q. Like if there was a freeze and a truck couldn't get the milk transported?
A. Yeah. Icy roads, snowstorms, whatever.
Q. Okay. So other than those isolated events can you think of any reoccurring event when milk is being dumped?
A. For the places where we operate in our milk sheds, that is fairly rare. I have heard of situations in the Northeast where that could happen. And, again, it's been very much an issue in the Upper Midwest this year.
Q. And do you know what percentage of the U.S. milk supply has been dumped on an annual basis?
A. I have not looked at that data recently. Yeah.
Q. Do you have any reason to dispute that it would be less than one-tenth of 1%?
A. I would hope it is. I don't have a reason to dispute that.
THE COURT: Ms. Hancock --
THE WITNESS: But if it is your milk, it is a lot of milk.
THE COURT: If there's a stopping point -- I really hesitate to interrupt, but I know you're --
MS. HANCOCK: Yeah. I think -- I mean, can I just

finish? I just have a couple sections on -- questions on milk dumping, and then we can take a break.

(Off-the-record.)

THE COURT: Ten minutes. Let's come back at 3:20.

(Whereupon, a break was taken.)

THE COURT: On the record.

THE WITNESS: So just -- I know right as we -- right as we departed you had talked about .1% percent of milk being dumped in the United States. And I -- the comment I made that I just want to make sure it's on the record is that if it's your farm, that's a lot of milk.

BY MS. HANCOCK:

Q. Yeah. But -- that's fine.

You are not aware of any, though, as you sit here, other than the ice storm?

A. Well, I think it tends to be seasonal, but there's a lot of other impacts that we can see that demonstrate disorderly marketing. There's the premiums that we have talked about. Mr. DeJong had charts in his testimony. I had a chart in my testimony. We have seen the erosion of milk premiums over time. Then you can also have situations where you are forced to move milk much larger distances because of lack of available processing capacity. So there's a lot more to disorderly marketing than just milk dumping.

Q. Yeah. You were the one that was talking about milk dumping. I was just asking you what evidence you had of milk dumping.

A. Yep.
Q. Yeah. So you are not aware of any yourself other than the ice storm. I think that's where we landed. Is that right?
A. Well, again, this spring in the Upper Midwest, there was quite a bit in the popular press as well as the industry press about issues with milk dumping.
Q. And the Upper Midwest, do you know what caused that milk dumping?
A. A lot of it was lack of available processing.
Q. Is it --
A. Relative to the supply of milk. It is all -- it's a supply and demand and a balancing.
Q. Yeah. Do you know if it was weather related?
A. I didn't hear that any of it was weather related.
Q. Okay. In your Exhibit 199, still on the first page in that second paragraph under the opposition to Proposal 7 header, the last sentence says, "Given the current system, if manufacturing costs are not covered in their entirety, over time the math just doesn't work."
A. That's correct.
Q. Okay. And is that the manufacturing cost of every plant?
A. It is the manufacturing cost for, I mean, any business. If you are not covering your costs over the long-term, you are not going to be in business.
Q. Okay. Are you saying that the manufacturing -- that the Make Allowances are designed to cover the

manufacturing costs of all of the plants?
A. Well, as I quoted earlier in that paragraph, USDA has published in the Federal Register that the Make Allowance factor represents the cost manufacturers incur in making raw milk into one pound of product. And so the design of Make Allowances is that they are to cover manufacturing costs.
Q. For all plants?
A. For dairy products.
Q. For all plants, though?
A. For all plants, for -- what do you mean by "for all plants".
Q. I'm asking what you mean. When you say that, are you talking about manufacturing costs for all plants have to be covered in their entirety?
A. This is -- I don't see where you picked all plants out of my text, though, I guess.
Q. It doesn't say that. That's why I'm asking the question. Are you talking about all plants or are you talking about on average or something less than all plants?
A. Oh, I see what you are referring to. Yeah, you know, it's -- I think the methodology that has been used historically by USDA in setting Make Allowances, where you are looking for Make Allowances to be set at a weighted average, seems like an appropriate approach. That's what has been done historically. So you are talking about a weighted average for a Make Allowance.

Q. Okay. That's what I was trying to clarify. Thank you.
A. Yes.
Q. And would that be a weighted average of the accurate actual costs of those plants?
A. Yes.
Q. And then you go on in the next paragraph and talk about Leprino Foods there, and you say that "Leprino Foods is perceived to be an efficient dairy processor."
Is Leprino an efficient dairy processor?
A. We hope we are.
Q. Is that the goal?
A. Sure.
Q. And in your opinion, is Leprino Foods an efficient dairy processor?
A. To my knowledge, I think we work very hard to be an efficient dairy processors. I'm not close to a lot of our cost data. But, you know we look at performance information that's available across the industry, which obviously is limited. But, you know we want to be competitive and efficient.
Q. And is one way that you can measure that is to know whether you're beating the Make Allowance that's set by USDA?
A. It could be. But, again, a lot of the products that we manufacture are not directly in the Make Allowance formula. Again, we don't manufacture cheddar cheese. We manufacture products beyond just dry whey or sweet whey.

So there's limited direct comparison in that regard.
Q. But to the extent that it is comparable and used as a basis for measurement, you would agree with me that a goal would be to manufacture your products at a cost that would be better than the Make Allowance provided by the Federal Order system?
A. We would hope to get there, if there is the opportunity to get there.
Q. And has Leprino Foods been able to historically, since 2008, been able to manufacture its products for lower than the Make Allowances for the products that you could measure against in the Federal Order system?
A. I'm not going to discuss our company profitability. We're a privately held company and don't want to disclose proprietary information in that regard. But we will do everything we can as a company to be an efficient processor of dairy products. That's what makes us a reliable market for our suppliers' milk and a reliable supplier to our customers.
Q. And I don't want your proprietary information. I'm just curious to know if there are times since 2008 that Leprino Foods has been able to manufacture its products that can be measured based on the Make Allowances published by the Federal Order system, whether Leprino Foods has been able to manufacture those products below that number.
A. I can't -- honestly, I can't speak to that. I don't have that data.

Q. Do you know what timeframe it was that Leprino Foods began to feel like the Make Allowances were not sufficient?
A. Well, I can say that over time, I know there have been many places where we as a company have engaged with others across the industry to try and look for ways to keep the system up to date and current, to keep the industry as healthy as possible. So I would say that there have been concerns for many years that the system is not in a position to keep the industry healthy.
Q. What is "many years"?
A. Well, my predecessor, Sue Taylor, who you had the opportunity to meet the other day, she told me of being involved in industry efforts that go back to -- oh, gosh, I think she talked about some things back in 2006, 2008 timeframe. There were some other efforts in 2012, forward, and has been ongoing over time.
Q. Well, you already testified that the data that was collected in 2006 went into place in 2008 that increased the Make Allowances then; is that right?
A. Yes. That's correct.
Q. Okay. So what I'm talking about is from that date forward.
A. Uh-huh.
Q. At what point in time, did Leprino Foods have concerns that the Make Allowance were insufficient for its own operations?
A. I think we have been in a situation where we have

been very concerned about the outdated Make Allowances. It's a matter of is there an opportunity to have a hearing such as this to help the industry remain healthy and vibrant. Certainly the inflationary spiral we have seen over the last couple of years has put more strain on profitability. It's a challenging environment.

Q. Okay.

A. But I think it goes back further than just the last couple years.

Q. Yeah. And the pressure that you were talking about in the last couple of years, that -- that really came to light with the global pandemic and the conditions that were created related to that; is that right?

A. Well, I -- the pandemic's part of it. The -- you know, there's a lot of different pieces that have come out of that. You had some costs go up because of the Russia/Ukraine conflict that started last year. There's just a plethora of things that have been going on.

Q. And in page 2 of your testimony, you have at the top of the page there listed some percentages of cost increase that Leprino has experienced between 2006 and 2022; is that right?

A. That's correct.

Q. And those percentages are just percentages in increases of Leprino's costs between 2006 and 2022?

A. That's correct.

Q. You're not saying there that those are increases -- I'm sorry. Strike that. Let me say that

again.
You are not saying there that those percentages are the amount over the Make Allowance that Leprino's costs are now, are you?
A. No -- well, those are percent increases that we have seen since that timeframe.
Q. And so if back in 2008, for example, when the last time the Make Allowances were increased, if Leprino was operating efficiently, as you described on the first page, and was able to beat those Make Allowance costs, it doesn't mean that you were exceeding them for those numbers of years; is that right?
A. Doesn't mean that we were "exceeding them." What do you mean by "them"?
Q. Yeah. That was a really bad question. I'm sorry.
When you were talking about the percentages of increase here, I just wanted to make sure we're clear. You're not saying that the percentage by which Leprino is exceeding the Make Allowance that's currently set by the Federal Order, are you?
A. Well, I think it's a little more complicated because the Make Allowances that were set at that time were based off of CDFA data from that 2006 timeframe as well as data from Dr. Stephenson's last study, and so these percentage increases are very similar to or aligned to that as opposed to the cost increases we have seen since then.
Q. Okay. I think you testified already that you

didn't want to provide me with -- with information about whether you were meeting or exceeding or even beating the current Make Allowance; is that right?
A. Yes, that's correct.
Q. And so it's fair to say that these percentages that you have included here are not giving me the math to do that calculation; is that right?
A. That's correct.
Q. Okay. I got there. It just took me a back door.
Okay. And so let's talk about the plant that you have built -- or in the process that you are building in Lubbock, Texas.
A. Uh-huh.
Q. Is that -- I think that we have heard testimony, Mr. DeJong said that if you build a plant today, it's about $650 million. Is that about right, the cost of construction for your plant?
A. I mentioned earlier, you must have missed it, that our original estimate as of late 2021 was $870 million, and given the inflation that we have seen more recently, our estimate is now $1 billion.
Q. Okay. I did miss that. So thank you.
And when are you expecting that plant to be completed?
A. Completely operational in late '25.
Q. And when did you break ground on it?
A. June of '22, I believe.
Q. Okay. So about the same time I think that Glanbia

broke ground on theirs -- or Hilmar I guess it was that broke ground on theirs as well?
A. I think we broke ground a couple months earlier but similar timeframe.
Q. Nobody's competitive here, are we?
And what products will you be processing out of that plant?
A. You will be surprised. Mozzarella cheese.
Q. Okay. Consistent with the rest of your portfolio now?
A. That's right. And then some whey products as well.
Q. Okay. And you state on page 2 of your testimony that it is very difficult to build a new plant and -- because of these numbers, many other processors have put expansion in plants on hold.
A. Uh-huh.
Q. Can you think of any examples of any processors that you are aware of that's put the -- put their plant constructions on hold?
A. I believe a couple that come to mind, there was one that was going to go in up in Idaho that's on hold. There's another one, I believe the ESL plant that CDI was going to build has been on hold. Seems to me that there has been at least a couple of other announcements of plants on hold, but I can't recall any additional details right now.
Q. Do you know who it was that was going to build a

plant in Idaho that put it on hold?
A. No, I can't recall that right now.
Q. Okay.
A. Sorry.
Q. But you have heard testimony that in addition to Leprino building a new plant, that both Hilmar and Glanbia have built plants as well, or are in the process?
A. Hilmar, yes.
Q. And Glanbia recently had one that they opened?
A. The Michigan one?
Q. Yeah?
A. Yep. Their joint venture.
Q. And then there's another new plant going up in Great Lakes as well?
A. That I understand is primarily -- two things about that. One, it's primarily a replacement for another plant that they have right now. And then the other is a lot of that is going to be what they call cut-and-wrap. So it's the conversion of bulk product to a retailer/consumer ready.
Q. Okay. And even if somebody's replacing a plant, it is still a really expensive endeavor, isn't it?
A. I'm sure it is. Yeah.
Q. It doesn't get less expensive just because you are replacing a plant, does it?
A. No. But at some point you have to replace the old assets.
Q. Yeah.

A. And it takes money.
Q. And hopefully it builds in some efficiencies as well to make you operate more cost effectively?
A. Yeah. One would hope.
Q. Do you believe that there are too many dairy farmers?
A. No.
Q. Do you believe that there's too much milk production in the current market?
A. I believe that we have a situation where the interest that we have heard others, farmers, co-ops, testify to, the interest in producing milk does not align with the processing capacity that's currently available. So you have a mismatch between where the industry could be as to what its potential is right now.
Q. What about for the ultimate sales outlets, do you feel like the market is insufficiently supplied with the final products?
A. Well, ultimately, it's supply and demand, price, is what tells us what the market needs and what the consumer is willing to pay, whether it's here in the U.S. or global markets.
Q. And you say on page 2 of your testimony that "milk production is being overstimulated by the inflated regulated price."
Is that what you were talking about there, that there's more milk production than there is plant capacity?
A. That would be what we have seen in the Upper

Midwest for I think several months so far this year. And you really don't have the availability of -- balancing assets is more limited these days. In other words, you -- your ability to take in additional milk seasonally or -- the base/excess programs that co-ops have in place that limit milk production. I thought -- the gentleman from Hilmar who talked about building a new plant because their producers want to grow, there's limitations on that because of limited processing capacity these days.

Q. When you said "milk production is being overstimulated by the inflated regulated price," does that mean that there's too much milk being produced in the current market?

A. It really means that the regulated minimum price is too high.

Q. And by increasing Make Allowances, you believe that that would lower the regulated price that would be paid to dairy producers; is that right?

A. It lowers the regulated minimum price. It does not necessarily lower the price to dairy farmers because you have supply and demand responses within the marketplace. Again, to -- some of the evidence that's been presented in the erosion of milk premiums over time really illustrates that particular point.

Q. I'm really trying to get through this, but that means I need you to answer the question that I'm asking.

A. Okay.

Q. If Make Allowances are increased, do you believe that that will lower the price that's paid to dairy producers today?

A. If you are looking at a day one response, that would be day one. But the market, again, responds. There's supply and demand. And as that works into the marketplace in the system, the market would adjust.

Q. And do you believe that on day one, and for that period of time until the market makes an adjustment again, do you believe that there will be dairy farmers who will go out of business as a result of those prices going down?

A. I can't guarantee that that would be the case because I think that, again, you have got some programs like the Dairy Margin Coverage Program that helps to provide some margin insurance, particularly for smaller farms. I think thinking about this as an adjustment that's completely in isolation and separate from the overall marketplace isn't the right way to look at it.

Q. When you say "I cannot guarantee that that's what the outcome would be," would you agree with me that it is a very real risk of lowering prices to dairy farmers that at least some dairy farmers will go out of business?

A. I guess my response is that I think that the marketplace is going to adjust. You could see some initial decrease in demand for milk products, but that's going to adjust and -- you know, the market works, supply and demand.

So I -- I think looking at this in isolation is a very -- it's a very limited way to look at it. So I'm not trying to be elusive or not answer your question. I think you are just looking at it in such an isolated way. Markets react to information. They -- supply and demand is part of this. The initial day one response would be a decrease in milk price based on that, but you are going to have a reaction from the consumer side pulling through for on the demand side, and prices will adjust to an equilibrium.

Q. And I understand your point about you can't look at this in such isolation, but I can only ask one question at a time. So I'll get there, but I have to get through --

A. Okay.

Q. -- each question at a time first. Does that make sense?

MR. ENGLISH: Your Honor?

THE COURT: Mr. English rises.

MR. ENGLISH: I rise because that may be what Ms. Hancock is trying to do, but the witness is saying, I don't buy your premise. And I think that, you know, first of all, the question changed from regulated to price, and I think the witness answered there's a difference between a minimum regulated price and a price.

And I think that the problem is that Ms. Hancock is trying to take things in such a narrow way that this witness said, I don't agree with you. I think the witness has actually answered the question four times.

MS. HANCOCK: Your Honor, I disagree. I actually think Mr. English is trying to signal the answer he would like his witness to give now, but unfortunately it is his witness that gets to testify and not him.

THE COURT: Well --

MR. ENGLISH: I didn't signal anything. That's what she said four times already.

THE COURT: That's fine.

I mean, in fairness, does what he says help you sharpen your question? I think she basically has said that she disagrees with your premise, although --

MS. HANCOCK: I mean, I think the record will speak for itself for what she said. I was just explaining that this is why I haven't asked her everything in the totality of the supply and demand markets. I think I'm entitled to ask my own questions. I mean, if we want to piece apart everybody's questions, we can do that for everyone.

THE COURT: No, I'm definitely -- no, don't take offense. I'm definitely not doing that. I think you did ask, is --

MS. HANCOCK: I'm not saying you did, but I'm saying that's what Mr. English is doing.

THE COURT: Well, he doesn't -- I'm your protector here. I think what -- try it again and --

MS. HANCOCK: I think she answered it. I was just giving an explanation.

THE COURT: Okay. That's fine, if you are satisfied with the answer. I think she did say, I disagree with your premise, there may be -- things may go up in the short-term, but the market heals everything. And, you know, it's -- you know, it's a little long. It's not a yes or no answer exactly. But if you don't -- I leave it up to you.

BY MS. HANCOCK:

Q. Ms. Krebs --

A. Yes.

Q. -- it's fair to say that you believe that in day one and in the short-term that there are some dairy farmers that may go out of business if milk prices were to be lowered?

A. I don't think anybody goes out of business in one day. I -- again, I'm not trying to be evasive to you. I just think you just can't look at all these pieces in isolation.

I think the other piece that I would bring into this discussion is that if the market tells us that there is the demand for the dairy products as prices adjust, then you are going to have premiums that come into the market, that would be above the minimum. I think it all is about getting to a regulated minimum price that enables us to clear the market. And with that, given the way the system is set up, that Make Allowances are adequate so that we can have a healthy dairy processing sector, and that will be good for everybody in the industry.

Q. And one way that markets can adjust, especially if you have a milk production that's being overstimulated by

the inflated regulated milk price, would be to reduce that price, and then you reduce the volume that's on the market and available for that supply; is that right?
A. Typically, if milk prices go down, just like what we're seeing right now, you tend to see cow numbers decrease and maybe changes in feed. And so you see farmers adjust and milk supplies decrease in response to that. So, again, market dynamics.
Q. Meaning the market will correct itself if you can get prices where they should be in your view?
A. The market, yes, will tend to work if you have an appropriate regulated minimum price. But that is not necessarily the price of milk for farmers.
Q. That's one factor, though; would you agree?
A. One factor relative to?
Q. To driving the supply of milk.
A. Oh, I would suggest that regulated minimum price should not be driving the supply of milk.
Q. Because you believe that you should be able to pay over the minimum price if the market warrants it?
A. By the system being set up where you have a product price, a Make Allowance, and then the price to the farmer that comes from that, again, you are -- what you are wanting to do is to have -- again, back to those principles that have been talked about within this hearing -- of wanting to have a regulated minimum price that provides for a supply of Class I milk to the industry and enables orderly marketing. That's my understanding of

the intent of the Federal Order system.

Q. On page 3 of your report, you have some concerns about -- about National Milk's proposed numbers and instead proffer that USDA should rely on Dr. Stephenson and Dr. Schiek's surveys and the numbers proposed by IDFA.

Is that a fair characterization of your testimony?

A. Yes, that's correct.

Q. And you understand that IDFA is proposing to use the numbers that Dr. Stephenson used and can be found in the 2023 study, not the 2021 study; is that right?

A. Dr. Stephenson along with Dr. Schiek's work, yes.

Q. Okay. Again, I'm just going to -- one question at a time.

But to the extent that Dr. Stephenson's numbers are being used, it is only his 2023 numbers; is that right?

A. That's correct.

Q. So it's not a blend of the 2001 and 2023 -- sorry -- it's not a blend of the 2021 and 2023 numbers, it is just the '23 numbers?

A. Yes.

Q. And then that's averaged out with the numbers under Dr. Schiek's modeling, those two were added together to create an average, and that's the number that's being proposed by IDFA over a four-year implementation?

A. Correct.

Q. And do you feel like that is an appropriate way to accurately measure the Make Allowances?

A. Do I feel that? So are you referring to the approach of the doctors averaging Dr. Schiek and Dr. Stephenson's studies?
Q. Yes.
A. Okay. Yes.
Q. Do you think that the number that you get when you average both of those two together, and then I guess it -- do you feel like the number you get when you average both of those two together creates an accurate number?
A. The best data we have as an industry right now, it's accurate, yes. It is accurate enough.
Q. You believe it is accurate enough?
A. Yes.
Q. Would you place a percentage on it on the amount that you would estimate it is accurate?
A. Well, I think Dr. Stephenson had robust participation in his latest study. Dr. Schiek's are projected estimates from actual mandatory survey. So, yes.
Q. Do you think it is greater than 50% accurate?
A. I would certainly think so, but I don't know.
Q. Does that mean you also don't know if it is less than 50% accurate?
A. I would be very surprised at that.
Q. Okay. But as you sit here today, we don't know the percentage of the accuracy because we don't have a mandatory audited cost survey; is that right?
A. The -- all of the historical updates to

Make Allowances, none of them have had mandatory cost surveys, and as an industry, we have worked under this system for 23 years now, I think, so --
Q. And on your last page of your testimony, you describe some of the concerns with how long it would take in order to get to that mandatory audited cost survey; is that right?
A. Yes.
Q. You think that -- do you have an estimate on how long it would take to go through all those steps that you have outlined there?
A. You know, I've talked about this with some other folks across the industry, and I think from a historical perspective, could we get all of this done before early 2028? Folks seem to think that that would be fairly ambitious to get to that point.
Q. So you think about three years in order to get through all these steps, to get to a mandatory audited cost survey that would be reliable and accurate?
A. I would say that's going to be at least another three years, and that assumes that we have a Farm Bill, that this gets included in a Farm Bill.
Q. But yet, you feel confident in the study that Dr. Stephenson did in less than two months as being an accurate enough representation upon which you're suggesting USDA should rely in order to increase the Make Allowances for the industry; is that right?
A. I disagree with your characterization of

Dr. Stephenson's work. I think he does good quality work. I think he's a respected dairy economist. And prior Make Allowance updates have been based upon his similar study work. So I have confidence and respect the work that he does. I also respect the methodology that was used by Dr. Schiek.

Q. And how long did it take Dr. Schiek to conduct his study?

A. I don't know precisely. I know he was working on it over a period of months.

Q. And you stated in your testimony that the president of your company said that if Make Allowances aren't updated, the Lubbock plant will have to be the last plant that Leprino builds in the U.S.; is that right?

A. That's correct.

Q. And if the Make Allowances are updated, when's the next time that Leprino is planning to construct a plant?

A. It's probably going to be a while off. We don't make $1 billion investments on a regular basis. You know, it's a matter of having a system that is updated and works. And I think we're all hoping we can get to that place where we have that mandatory cost study data for the future. But in the meantime, we need to have some relief and keep Make Allowances more up to date than they have been.

MS. HANCOCK: Thank you for your time.

THE COURT: Further questions?

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CROSS-EXAMINATION

BY MR. MILTNER:

Q. Good afternoon, Ms. Krebs.

A. Good afternoon.

Q. Ryan Miltner representing Select Milk Producers.

I'll have somebody actually testify to this, but Select does not have a position on any of the Make Allowance proposals right now. Our board does not have one. We're trying to hear all the evidence before we make a decision. But I want to try to find some things that I think we agree upon, like Mr. Rosenbaum did.

A. Okay.

Q. Can we agree Make Allowances are stale?

A. That's a good word for it.

Q. Okay. Can we agree that they need to be updated, therefore?

A. Yes.

Q. And that a mandatory audited cost survey would be the best solution?

A. The best solution, yes.

Q. We don't have that, though, correct?

A. That is correct.

Q. So we need to look to another option, right?

A. Yes.

Q. Dr. Stephenson and Dr. Schiek have -- they have presented options, and National Milk has also presented an option, and each of them have imperfections, correct?

A. To the ideal world, I would agree with that.

Q. None of them are perfect, correct?
A. Correct.
Q. And so we're going to task the folks over here at the front table with getting us the best option we have based on what we're all presenting over this hearing, correct?
A. We need solutions to help us keep a healthy industry.
Q. Okay. So I want to try to find -- those are easy things to agree upon, I think.
A. Okay.
Q. I'm looking at some language in your statement, and I want to try and see if we can get some agreement on a couple other things. And I'm looking specifically at page 2 of your statement and -- actually, no, we're going to start with page 1. You -- you state that "in other words, a Make Allowance is not a cost credit to cover a portion of these conversion costs, a Make Allowance is intended to represent the cost of converting milk into dairy products."
Correct?
A. Yes.
Q. And that -- to be clear, that's your sentence, that's not a quote from a USDA decision, right?
A. That is my sentence that follows a quote from USDA identifying Make Allowances, representing the costs manufacturers incur in making raw products into dairy product -- or raw milk into dairy products. But, yes,

that is my sentence.
Q. Okay. So can we agree that there's a universe of cheese that's produced?
A. Sure.
Q. Can we agree that there is no single cost to produce cheese?
A. Sure. Yes.
Q. And if we narrow that universe to say cheddar, can we agree that we cannot determine the cost to produce cheddar cheese?
A. I would agree with that, yes.
Q. And even if we narrow that universe to say 40-pound blocks, we can't determine the cost to produce a 40-pound block, can we?
A. You wouldn't even get that out of a mandatory cost study.
Q. If we look at this more narrower over the 40-pound block cheddar cheese, and we can't determine the price --
A. The cost -- I'm sorry.
Q. I'm sorry, the cost of manufacturing.
A. Okay.
Q. -- what are retrying to get a Make Allowance -- what do we want the Make Allowance to represent?
A. Well, the way it's been looked at historically, which I assume would be a way to look at it again, is based on weighted average costs of production from prior Mark Stephenson studies as well as some of the prior CDFA work.

Q. So you think a weighted average is the price we're trying -- or the cost we're trying to get to?
A. Again, you know, if you are trying to get something that represents the industry, and you need to come up with the one value, I -- that seems like a reasonable methodology for getting there.
Q. Okay. So if we're asking USDA to establish a regulation which pegs a Make Allowance at a weighted average cost of production for those defined commodities -- and is that what we think we're trying to achieve, or what you think we're asking USDA to achieve?
A. To -- if I understood you correctly --
Q. Okay.
A. -- you are looking for a weighted average manufacturing cost for cheddar cheese to establish a Make Allowance; is that --
Q. Correct.
A. Okay.
Q. And you agree that's the task -- well, I shouldn't say you agree.
Is that the task that Leprino is asking USDA to do?
A. Well, that and the other products, butter, nonfat dry milk, dry whey --
Q. Great.
A. -- products in the formula.
Q. So there's been a lot of discussion from witnesses, and you have alluded to it, too, that

raising -- that a manufacturer who raises their cost of sale doesn't achieve the benefit of a higher sales price because that feeds back into the calculation of the component price; is that correct?
A. In the price of what they sell their product at?
Q. Yes.
A. Because they have that fixed relationship with the Make Allowance price, the Make Allowance, and then the price to the farmer, yeah.
Q. Correct.
A. Yes, it is a fixed relationship for a seller of a commodity dairy product.
Q. Can we agree that that description only holds if the manufacturer is buying milk at the regulated price and producing the commodity that is surveyed for the NDPSR?
A. Yes.
Q. We're doing well. I want to move on to 20 questions about your plants.
A. Okay. I don't know that I can answer them all, but we'll see where we go.
Q. Your statement says you -- you, Leprino -- manufactures sweet whey at the plants in Allendale and Waverly.
A. Yes.
Q. Is there sweet whey produced at any other Leprino plant?
A. No.
Q. And when you refer to sweet whey, is the end

product of those plants dry whey?
A. Yes.
Q. Do those plants also produce any other whey products?
A. I don't believe so.
Q. Do you know if the dry whey that is produced, if the sales of those products is reported to the NDPSR?
A. I believe it is not. And the reason why is because we produce Grade A dry whey as opposed to extra grade, and that's the grade that's reported through the NDPSR.
Q. Do you have any opinion or knowledge about whether the costs to produce Grade A versus extra grade whey are different?
A. I don't have any knowledge of that.
Q. So can I conclude that Leprino does not produce any whey product that would be reported to NDPSR?
A. That's my understanding.
Q. So -- okay. The Greeley, Colorado plant that produces nonfat dry milk --
A. Yes.
Q. -- is that nonfat dry milk reported to the NDPSR?
A. When we sell product, yes.
Q. Do you otherwise use the product within your organization to manufacture other products?
A. From time to time.
Q. And you may have answered this, and I don't remember. Did the Greeley plant report its manufacturing

costs for nonfat dry milk to Dr. Stephenson?
A. Yes, we did.
Q. Okay. You have existing plants that produce mozzarella and other Italian cheeses, correct?
A. Yes.
Q. In Allendale?
A. Yes.
Q. And in waiver lie?
A. Yes.
Q. And in Greeley?
A. Yes.
Q. And Roswell, New Mexico?
A. Right.
Q. That's where my knowledge runs out.
A. Tracy, California; Lemoore -- we have two plants in Lemoore, California; Remus, Michigan; Ft. Morgan, Colorado. Is that nine?
Q. All total that is nine plants.
A. There you go.
Q. To be clear, none of those plants produce any Class I or Class II products, right?
A. That is correct.
Q. Is there any requirement that Leprino pool any of those plants?
A. I don't believe so. I am not in charge of that aspect of our business. They are all in Federal Orders.
Q. You testified that Leprino competes against other cheese manufacturers. Of course, it does.

And you argued that Leprino might be at a competitive disadvantage because of plants that are paying below order prices or otherwise depooling; is that correct?
A. Yes.
Q. What would prevent Leprino from purchasing milk below order prices or depooling if it needed to do so to be competitive?
A. We have contractual obligations and agreements with suppliers --
Q. So it's your --
A. -- that limits some of our flexibility.
Q. So it is a contractual limitation, not a regulatory limitation, that is restricting your ability to do so?
A. That is correct.
Q. You also suggested, I believe, that co-ops that have the ability to reblend and manufacture mozzarella could cause competitive imbalance.
Is that actually occurring in your experience?
A. I believe at least one competitor that I'm aware of has been doing that.
Q. Is that occurring in the Upper Midwest?
A. Yes.
Q. At the top of page 3, you are describing -- you're discussing order -- disorderly marketing. And you state that disorderly marketing -- let me read the whole sentence so you have context: "Whereas tighter supplies

of milk relative to demand will drive prices higher, disorderly marketing instead refers to a situation where there is excess milk relative to available processing capacity within a milk shed."

Is that the extent of what constitutes disorderly marketing to your understanding?

A. You know, I -- when I read this, I added "given today's realities." I think that when orders were first founded, you had -- part of the purpose of the orders was to guarantee a reliable supply of Class I milk, so I would suggest that that is a piece of it. But I have not seen or heard of any issues along those lines. And so given where we -- where we are as an industry today, I think this is an accurate representation.

Q. Your next sentence reads, "This occurs when milk is overpriced relative to demand, not when milk is underpriced."

Are you suggesting that abnormally low milk prices are not a disorderly marketing condition?

A. I think it could be in certain situations. But, again, the market tends to adjust and respond to supply and demand signals. And so if you have low prices, demand will pull those prices higher to incentivize production.

Q. You were here today for Mr. DeJong's testimony, correct?

A. Yes, I was.

Q. Did you have a chance to see his statement as he presented it?

A. I did.
Q. Okay. Do you recall the figures he showed charting mailbox prices against uniform prices?
A. Yes.
Q. Okay. The figure for West Texas, which that would include Lubbock, right?
A. It will.
Q. And it's also a milk shed that might service the Roswell area, correct?
A. I suppose it could.
Q. And so that Figure 5 -- and if you want me to grab you a copy, I'd be happy to -- but for 2022, it shows the mailbox price running more than $2 under the uniform price.
A. Yes.
Q. Is that evidence of disorder in that market?
A. I think that the erosion of premiums over time is a strong signal that there is disorder in that market, yes.
Q. And 2022 was a relatively good year for producers, was it not?
A. At the end of the day, yes.
Q. And so through April 2023, that same figure shows the mailbox price in West Texas at about $2.50 below the uniform price. Is a price at that level evidence of disorderly marketing in that part of the world?
A. Seems to indicate that.
Q. In response to some questions from Ms. Hancock you

wanted to talk about a dynamic analysis of what would happen to prices over time if certain proposals were adopted, correct?
A. Yes.
Q. And we don't -- we don't have that analysis to talk about today, do we?
A. That's correct.
Q. In preparing for this hearing, did you look at all at the econometric analysis from the last time USDA changed Make Allowances?
A. I looked at it, but it's been quite a while since I have looked at it, so I don't recall it.
Q. So I'm going to give you some data from it. If you -- if you have questions about what I'm suggesting, please let me know --
A. Okay.
Q. -- but I'm -- I'm just going to share with you what is in there, certain parts of it.
So USDA calculated the cheese Make Allowance was increased by 19%, the butter Make Allowance increased by about 43%, the nonfat allowance increased by about 7, and dry whey by about 2.
And what the analysis showed -- and there was also a slight change to the butter yield baked in there too. So that actually is going to raise, it's going to offset some of that Make Allowance change.
In the first year, the all-milk price was calculated to drop by about $0.14.

A. Okay.
Q. And at the end of a nine-year average, the all-milk price was still $0.04 lower than its initial baseline. Okay? So we go from $0.14 to $0.04.
A. Uh-huh.
Q. Now, that's a lot of lead-up.
I looked at the percentage changes in Make Allowances for IDFA's year one.
A. Okay.
Q. And so cheese was then about 20% --
A. Uh-huh.
Q. -- butter was about 31%, nonfat was about 30%, and whey was about 32%.
And so what I have just given you in the last two minutes about what USDA analyzed last time, do you have any thoughts about what the adoption of IDFA's proposal in the first year might have on producer income and whether that would cause a hardship to dairy farmers?
A. Well, I think to the numbers that you have shared from the last change, it shows that there's a decrease in milk price, but that over time, that is moderated out, not completely, because, again, the way supply and demand works is you have -- you know, if you've reduced your supply of milk, then you have to have a higher price to pull that supply back up after a price decrease.
So I -- and I have never said that there wouldn't be any decrease in milk price. I think the expectation that it is going to be a prolonged decrease in milk price

that will not get adjusted out or moderated by supply and demand factors is a simplification and not accurate.

Q. If I look at year -- the full implementation of IDFA's Make Allowance changes, so the year four, the total change from now to then, so all of it, cheese would be 41%, butter is 61%, nonfat is also 61%, I hope my math was right, and whey 39%. So much larger increases in total than the changes made in 2007.

Does the magnitude of that Make Allowance change -- change your opinion on the scope of the impact on dairy farmers?

A. I think the magnitude of what you are looking at could have -- well, it's a larger magnitude, but I think that we have got is a situation that unfortunately you have gotten so far out of date, and there's been such a long time since the last update in Make Allowances, that we're just at a very difficult time for the industry. And so how do you keep a healthy processing sector and have investment to have those processing assets so that producers have a market for their milk, if you don't have that as a healthy sector.

So I am not denying at all that there will be some impact on milk prices. But, again, part of the design specifically of that IDFA proposal is to try and moderate that impact over time to enable the producer sector to be as healthy as possible, as you return the processing sector to better health.

Q. Has Leprino done any analysis about overall demand

for its products and the amount of additional milk production that would be needed to satisfy those demands?
A. Well, we continually look at opportunities in the U.S. as well as globally to try and grow our business, to provide more of a market for the U.S. produced milk.
Q. You refer to econ 101. But part of econ 101 is that there has to be a demand curve to match a supply curve, right?
A. Yeah, absolutely.
Q. And so producers may want to produce more milk, and one of the constraints might be available plant capacity.
A. Yes.
Q. It could be that there's not enough plant capacity because there's no end product demand, right?
A. Could be. But I don't think that's the case. That's not the signal that we have been seeing from the marketplace.
Q. I think this will be my last set of questions.
On page 2 you state: "First, while farm level margins may initially decrease and contract milk supplies, economics 101 dictates market forces will subsequently pull farm level prices higher to reach a new equilibrium between supply and demand. Further, margin protection programs such as Dairy Margin Coverage (DMC) will insulate farms, particularly smaller ones, from lower margins as the market adjusts."
Now, in Lubbock, Texas, in West Texas, where

Leprino is building its new plant, do you have any information about how much of the milk produced there is covered by Dairy Margin Coverage?
A. I don't have any information on that.
Q. So -- and I'm trying to summarize, not to put words in your mouth, but you are advocating for Make Allowance changes which will reduce producer prices in the short-term, correct?
A. Yes.
Q. And that you believe will eventually move toward an equilibrium at a higher price, correct?
A. Yes.
Q. And you are suggesting that while that equilibrium works out, producers should rely on Dairy Margin Coverage and other programs to help them through that period, correct?
A. I'm arguing that that is a piece that would help. The word I used there is insulate farms, cushion farms, support any pressure from that margin strain.
Q. If only 10 to 15% of the milk in West Texas were covered by Dairy Margin Coverage, does that change your opinion about what you stated?
A. No, it doesn't. I think that -- I realize that Dairy Margin Coverage has limitations on the volumes of milk. I believe it is 5 million pounds that -- per year that's covered. I -- you know, particularly for smaller farms, as I state, that can help insulate that initial stress of the change in price from a Make Allowance. And

I expect any farm, even if it's a large farm, would participate in Dairy Margin Coverage, even if it's a small portion of their milk production. But large farms also tend to be much more efficient and have lower costs of production.

So I -- yeah, I'm comfortable. And I'm not surprised that you are saying 10 to 15%.

Q.   So DMC, it's a countercyclical payment program, correct?

A.   Correct.

Q.   First tier, heavily, heavily subsidized by the federal budget, right?

A.   Yes.

Q.   So Leprino is asking to lower prices, while a federal government program fills the hole, and $1 billion company expands their plants, right?

A.   I don't think that that's -- I don't appreciate -- or I don't think that's a real accurate characterization. But, you know, we're trying to create an expansion, we're trying to provide a -- you know, be a secure, reliable supplier for our customers, as they want to grow. In that -- in doing that, it provides a market for farmers who want to expand and grow as well.

And so, again, I feel that it's a partnership that we look at as an industry, and we need to help keep both sectors of the market, the producer as well as processors, viable for the health of the industry.

MR. MILTNER: Thank you.

THE COURT: Mr. English.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Good afternoon. Chip English for the Milk Innovation Group. I'll try to keep this as short as I can so we can try to get done with one more witness today.

Ms. Krebs, does Leprino accept Grade B milk?

A. No.

Q. So in response to some questions about Mr. Miltner where he seemed to be comparing audited surveys and then -- which he called perfect, correct?

A. Yes.

Q. -- to what he called imperfect for Dr. Stephenson, Dr. Schiek, and NMPF, I want to suggest an analogy to you.

A. Okay.

Q. And forgive me if you are not a baseball fan, but let me try.

So a pitcher gives up one hit in a game. Another pitcher gives up seven runs in the first inning. Neither pitcher pitched a perfect game, but one performed a lot better than the other, right?

A. Yes.

Q. Okay.

A. Assuming the other pitcher that gave up one hit didn't give up, like, 30 walks.

Q. Yeah. You are clearly a baseball fan. Thank you very much. I accept that assumption for my predicate.

That -- so -- do you think it's fair to equate

Dr. Stephenson and Dr. Schiek's work to the information such as we have from National Milk?
A. Not at all.
Q. And then I may have misheard or whatever, so I'll be very careful to say that there was a conversation between you and National Milk's counsel about Dr. Stephenson's work and the 2019 data that ended up being called 2021 study, correct?
A. Yes.
Q. And there was conversation about, okay, we're talking about the butter and nonfat dry milk allocation which he called transformation, correct?
A. Yes.
Q. And then National Milk's counsel discussed sample.
As I thought I heard it -- and, again, I may have misheard it -- I thought I heard her asking, implying that there was an either/or, it was either transformative or a sample.
How did you take her question?
A. That's what I understood is that she was implying that it was the sample that created that unusual result.
Q. Okay. Is it -- what is your view about the two? Is it -- is it an either/or or is it a combination?
A. Well, you know, Dr. Stephenson testified that there was some overlap in sample with the last study and this study, so you have some differences in sample, and that could always have some level of impact. But my understanding from his testimony was that the degree of

the difference that we saw in those cost allocations was more driven by that change in his methodology as opposed to just being attributed to sample.
Q. And that's at least what you heard, correct?
A. Yes.
MR. ENGLISH: Okay. I have no further questions.
THE COURT: Anyone else other than AMS?
Seeing none, AMS.

CROSS-EXAMINATION

BY MS. TAYLOR:
Q. Good afternoon.
A. Good afternoon.
Q. Thanks for coming back today.
A. I came back.
Q. And you are still here.
Okay. I'll try to back clean up a little bit. Go Orioles. Woo, woo. I can't say that very many years, but I can say that this year, so I will say that.
Okay. So I want to just try to summarize some of the thoughts that came out in your statement and through cross-examination to make sure I understood them, because I had some of the same questions, but I think you did clarify, but I want to make sure.
A. Okay.
Q. On page 1 you talk about how Make Allowances are out of date and are now disruptively out of date. And I think what I heard from you -- and the question is how are they or why are they that way. You see deep, deep

discounts on spot milk prices and milk dumping as an indication of that, because the Make Allowances are not adequate to provide adequate returns to manufacturers to build additional plant capacity.
Would that be correct?
A. Additional plant capacity, you know, some plants close over time, those kinds of things. Basically, processing capacity is not keeping up with that milk supply.
Q. Got you.
And in the next paragraph you talk about your plants that produce NDPSR products.
I know it states that your plants were in the 2022 Dr. Stephenson study.
I don't know if I heard if they were in the earlier study?
A. Yeah. What I understand from Dr. Stephenson is we had submitted data on our whey plants, but I think we missed his deadline.
Q. Okay.
A. And so the data was not actually included in that 2019, 2021 study.
Q. Okay. On your next few paragraphs you talk about the increase in cost that you have -- or that Leprino has experienced.
Is that on a total cost or a per unit cost that you were looking at?
A. Well, what we did was we went back and looked at

the data for our plants relative to the way Dr. Stephenson looked at it for his entire study, so we were trying to look at it as an apples to apples. And so this would be for the whey product at those plants.
Q. And then when you say relative to how he looked at it, like, the same cost categories?
A. Yep, same categories, etcetera.
Q. Okay. And then so you did look at it at a per unit, per pound basis?
A. Yes.
Q. Okay.
A. So 2006 versus 2022.
Q. Okay. I know you talked some with Ms. Hancock about these percentages, and you looked at them comparing to your -- or to Leprino's actually 2006 cost, not the 2008 Make Allowances.
A. Correct.
Q. Okay. Would you say that the -- I am trying to see how I want to word this question. For your plants, when you look at the survey results, do you see Leprino's costs represented in those, even though in the one particular study it wasn't able to be in those results?
A. Yes, I would say that the results of Dr. Stephenson's studies looked very reasonable to us.
Q. And for your plant in California -- well, you have plants in California, but that's not one of these plants that produce NDPSR products?
A. That's correct.

Q. But since Dr. Schiek's study just looked at California costs, I'm curious if you had looked at your California plants just to see if you saw similar increases in those costs as to what was projected by his study methodology.
A. Yeah. Where that gets difficult is the fact that we don't make dry whey at our California plants, so there's really no way to compare that. If we were to look at like Dr. Schiek's results relative to percentage changes that we might see on the cheese side, again, you know, it's kind of an apple and an orange with mozzarella versus cheddar, again, it looks like it's reasonable and valid data.
Q. Okay. Because I was just curious, because he used a lot of indexes, energy index, labor wage rate, and none of that is particular to any product. So, you know, would those -- you kind of see those costs increases as those look similar to what your California plants have experienced?
I mean, we don't have any California specific data on the record, right?
A. Right.
Q. But we have Dr. Schiek's study saying we should -- these costs -- we're projecting these costs -- or what's occurring in California. I'm just trying to get something on the record to say, does that make sense to you, you know.
A. We didn't see anything that was concerning to us.

And, you know, as a result, we looked at those things as part of -- or the results that Dr. Schiek had as part of saying, hey, are we on board with what the IDFA proposal is. And we agreed with the methodology, the approach, and the results and felt that that was indicative of what we have experienced as a company.
Q. Okay. Thank you.
On your Lubbock, Texas plant you talked about, and it's going to produce sweet whey, and I assume mozzarella will be what else it produces.
A. Yes.
Q. You talk about when you estimate the cost for sweet whey, the cost is projected to be 80% higher than the two plants that you already. But that -- because you included the clause "including depreciation," am I right to assume then that's a lot of that is because that is a new capital investment and rates have increased?
A. Yeah. And part of why I included that is to convey that, you know, it is expensive and costly to build new plants and that investment takes money, and if we don't have Make Allowances that enable the industry to invest, then you are not going to have a healthy dairy industry that's able to maintain or grow.
Q. So out of that plant, if you looked at the -- you said the milk going into that plant. How much will be going into the sweet whey part and how much into the mozzarella part?
A. Well, I would say 100% for both because the sweet

whey is the byproduct of the mozzarella. But did I --
Q. I think Mr. DeJong talked about, oh, you still only have a hundred pounds of milk going in, so that's a similar response.
A. Yes.
Q. But I'm just trying to get at -- I mean, that investment decision was made in conjunction with the fact that you're also selling mozzarella at that plant?
A. Yes. Correct.
Q. Or whatever price you get out of the market?
A. Right.
Q. Lower in the page you talk about milk production is being overstimulated by the inflated regulated price. And I know that -- I think you had some discussion about that. Perhaps it was Mr. Miltner. I'm not sure.
But are there other reasons why milk production might be overstimulated other than the regulated price, or are you attributing it all to that?
A. I'm trying to think of what other things. I mean if when you get -- certainly the market goes through cycles, and if you have extremely high prices -- well, we had good prices for farmers in 2022, and so there was probably more milk produced there, and now you have got lower prices this year, and it looks like our supplies are tightening up.
So certainly other -- other factors can impact milk production and -- but in terms of, again, sort of that sustained low price that we saw in the Upper Midwest

and the discount to the class price, that's really a pretty extended, pretty severe disruption that suggests that there's really something amiss here in terms of the capacity to process milk relative to the supply of milk that's available. So there -- there's a mismatch there.
Q. Uh-huh.
A. But certainly other factors can periodically play into that.
Q. On page 3 of your statement, kind of in that middle paragraph, the last sentence there talks about "robbing Peter to pay Paul by placing a financial burden of outdated Make Allowances on manufacturing cooperatives and proprietary processors."
And I just want to make sure I'm clear on who is Peter and who is Paul in this situation.
A. I would say that Peter would be a manufacturing cooperative of whose -- or whom a significant share of the their milk goes into Class III and Class IV processing assets. The other Peter would be a proprietary processor. And then Paul is the independent farmer, somebody who is a member of a marketing cooperative that doesn't have the burden of processing assets, Class III/IV processing assets at this time. And so you have got that movement of value that is favoring one segment of the industry over another.
Q. And this is talking about manufacturers, whether proprietary or co-op that are regulated?
A. Yes.

Q. Where do unregulated --
A. Yes. This would all pertain to regulated -- regulated regions, processors, etcetera.
Q. You talked about your Greeley, Colorado plant and how it helps balance the state's milk supply?
A. Yes.
Q. And I know you talked about how a new plant operator, of course, would like their plant to run as if full as possible.
A. Uh-huh.
Q. But I think we talked earlier in the hearing of other witnesses have been asked, was the plant more of a supply driven plant or a demand driven plant. So kind of asking you that question, and also, as a follow-up, you know, can you just elaborate on how your plant does serve to balance the state supply.
A. Supply driven versus demand driven. Well, we try our best to match those two as closely as possible. As prior witnesses testified, if you are making large investments and have expensive plants, if you are not running them as full as possible, then you're having a very large cost burden on anything you produce, so we try to run the plants as full as possible. And so as a consequence, we need to then make sure that we have got the demand in the marketplace to accommodate that milk. And we work very hard to be a very reliable supplier to -- to our customers. We work very hard on things like quality and customer service so that we can try and

maintain a very steady and reliable pull from the demand side of the industry as well.
Q. Okay.
A. And then you had a follow-up part that I forgot.
Q. Me too.
Just a little, I believe --
A. You asked about balancing --
Q. Yeah, I mean --
A. -- in Colorado.
Q. -- there's been talk, too, of other plants serving balancing -- as a balancing function in their respective markets and do they see higher costs because of that service or perhaps not if you generally try to run at full capacity no matter what anyways.
A. Yeah. We -- again, because we are a large -- if you look at a map of where the dairy cows are in the U.S., Colorado is kind of its own milk shed. And so if you have excess supply of milk for that Colorado milk shed, it's going to have to move a very long distance to find another home. And so we have that basically nonfat dry milk capacity to help ensure that we can keep that milk supply in balance for that Colorado milk shed.
Q. Okay. And I don't know if I asked this or if anybody else did. Are your plants primarily direct ship plants or are they co-op supplied?
A. Almost all co-op supplied.
Q. Okay. On page 2, just a couple last questions that came in, you state -- excuse me -- "For the

long-term, current Make Allowances are not sustainable for any entity that manufactures dairy products regardless of ownership structure."

Can you kind of give a timeframe of what you consider to be long-term?

A. You know, and I would also suggest that that applies to -- primarily to Class III and IV formula products. But long-term I would say, you know, if you are looking out -- well, useful assets, usefulness of a plant, you know, if you go out another five years with Make Allowances where they are, I think you will run into bigger issues and more disruptive issues for the industry. If you go out ten years, 20 years, I think you will see the more severe impacts. I think it's important for -- just based on the design of the current pricing system, the pieces need to be kept up to date to enable the industry to function well.

Q. Okay. On your discussion with Mr. Miltner about how to -- what you think is a proper Make Allowance level, and I think you said -- did I hear you right, you think it should be set at some weighted average level, not a minimum -- you know, we get minimum costs, we get high costs, you know, when information comes out of this. But that implies on each of those numbers that there's winners or losers for lack of better words to use this late in the day.

But, you know, kind of where do you stand on that?

A. Well, I think the methodology that has been used historically, which to my understanding has been looking at weighted average costs, seems like a good approach because, you know, like any industry, people need to be able to demonstrate that they are efficient, productive, and relevant in order to continue their business.

And so if a processor has extremely high costs relative to the rest of the industry, is that somebody -- I -- I'm not -- I don't think we should be subsidizing or even consider subsidizing somebody who would be in that type of a situation. I think you need to enable and allow the industry to compete. I think that's -- that's at the farm level. That's at the processor level. That's at our customers as well.

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

THE COURT: Any further questions, other than redirect?

Mr. Nielsen.

MR. NIELSEN: No redirect, your Honor. At this time I would move to admit Exhibit 199 into evidence.

THE COURT: Any objections?

Exhibit 199 is entered into the record for this proceeding.

(Thereafter, Exhibit Number 199 was received into evidence.)

THE COURT: Thank you. You are dismissed.

MR. NIELSEN: Thank you, your Honor.

THE COURT: All right. We've got about six minutes to 5:00.

MS. TAYLOR: May I suggest -- may I suggest just a quick five minutes so that we can kind of discuss where we need to be tomorrow, and then come back on the record to talk about that?

THE COURT: Go off the record and discuss -- yeah, let's go off the record.

(Off-the-record.)

THE COURT: Let's reconvene.

Ms. Taylor, are you going to report for the record?

MS. TAYLOR: Yes, I probably drew that straw.

So tomorrow we will start promptly at 8:00 a.m., and we will have Terry Brockman from Saputo. And then from the Wisconsin Cheese Makers Association we'll have Kim Heiman and Bob Wells. We also will have two producers here in person tomorrow, who hopefully can get on in the morning.

Then we will plan to break for lunch early again, 11:00-ish, maybe we'll go a little tad into that hour, depending. And then we will do dairy farmer virtual testimony starting at noon tomorrow. I believe we have nine farmers registered to testify virtually tomorrow.

We might, your Honor, possibly take a shorter lunch than an hour tomorrow in order to get through those three morning witnesses.

So we'll see where the day goes, but we do have another hard stop at 3:00.

THE COURT: Very good.

MS. TAYLOR: So that leaves -- assuming we get all through that tomorrow, then we will start Monday again. And I believe Mike Brown from IDFA will be left to testify. And John Umhoefer from Wisconsin Cheese Makers Association, who is here today, has graciously agreed to come back later in the month to testify, as there's not enough hours in our day tomorrow. So I do appreciate that flexibility.

THE COURT: Thank you, sir.

Okay. Anyone else have anything before we sign off for the day?

Very well. See everyone at 8:00 tomorrow. Thank you.

(Whereupon, the proceedings concluded.)

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STATE OF CALIFORNIA)
) ss
COUNTY OF FRESNO)

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

DATED: October 11, 2023
FRESNO, CALIFORNIA

Myra A. Pish

MYRA A. PISH, RPR CSR
Certificate No. 11613

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