

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 15, 2023

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Reported by:

MYRA A. PISH, RPR, C.S.R.
Certificate No. 11613

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A P P E A R A N C E S:
FOR THE USDA ORDER FORMULATION AND ENFORCEMENT DIVISION,
USDA-AMS DAIRY PROGRAM:

Erin Taylor
Todd Wilson
Brian Hill

FOR THE AMERICAN FARM BUREAU FEDERATION:

Danny Munch

FOR THE INTERNATIONAL DAIRY FOODS ASSOCIATION:

Steve Rosenbaum

FOR THE MILK INNOVATION GROUP:

Ashley Vulin
Charles "Chip" English

FOR THE NATIONAL MILK PRODUCERS FEDERATION:

Nicole Hancock
Brad Prowant

FOR SELECT MILK PRODUCERS, INC.:

Ryan Miltner

FOR DAIRY FARMERS OF AMERICA:

Lucy S. Clippinger

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

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1 FRIDAY, SEPTEMBER 15, 2023 - - MORNING SESSION

2 THE COURT: Back on the record. We talked about a
3 lineup at the end of yesterday. Are we ready to go?

4 MS. TAYLOR: Yes, your Honor. I think we do have
5 two dairy farmers we would like to bring with.

6 THE COURT: Good morning.
7 Please raise your right hand.

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

11 THE COURT: Your witness, Ms. Hancock.

12 MS. HANCOCK: Your Honor, at this time we're
13 calling Frank Doll as the next witness.

14 DIRECT EXAMINATION

15 BY MS. HANCOCK:

16 Q. Mr. Doll, would you mind stating and spelling your
17 name for the record?

18 A. My name is Frank Doll, F-R-A-N-K, D-O-L-L.

19 Q. And could you provide your business address?

20 A. My address is 113 Metcalf Road, Pocahontas,
21 Illinois, 62275.

22 Q. Did you provide testimony that you are prepared to
23 give today that's been identified as Exhibit NMPF-85?

24 A. Yes, I did.

25 MS. HANCOCK: Your Honor, if we could assign an
26 exhibit number to this?

27 THE COURT: Yes. This exhibit is marked
28 Exhibit 200 for identification.



1 (Thereafter, Exhibit Number 200 was marked
2 for identification.)

3 MS. HANCOCK: You get the lucky number 200.
4 That's monumental.

5 THE WITNESS: For that, I thank you all.

6 BY MS. HANCOCK:

7 Q. Mr. Doll, if you wouldn't providing us your
8 testimony. And then we have been just reminding each
9 witness that as you are reading testimony, to try and read
10 slow enough that our court reporter can capture what you
11 are saying.

12 A. All right. Thank you.

13 Q. Thank you.

14 A. Good morning, everybody. My name is Frank Doll.
15 This testimony is presented in support of Proposal 19,
16 updating the Class I differentials throughout the United
17 States as proposed by the National Milk Federation, herein
18 referred to as NMPF.

19 My family operates Doll Dairy, Inc. It's located
20 in Bond County, Illinois, outside of Breese, Illinois. We
21 milk approximately 225 cows, along with raising 125
22 replacement heifers. We raise hay, wheat, soybeans, corn
23 for silage, and corn for grain. We own 650 acres. We
24 rent an additional 150 acres. We raise all of our dairy
25 replacement animals.

26 And we also -- at Doll Dairy, Inc., we sell about
27 200 Angus/Holstein cross-calves. We have entered into the
28 beef business a little bit to control population of the



1 Holstein cows, so it's a been a nice side job. We also
2 sell alfalfa and straw from our farming operation. This
3 helps maintain a diversified operation that provides
4 income for our farming operation.

5 Dairy farming is in our family heritage, as well
6 as its future, hopefully. I am a third generation dairy
7 farmer along in the diversified farming operation. My dad
8 and grandfather also have similar operations with hogs,
9 chickens, and an orchard as part of the business model.

10 My grandfather started in 1938, which is a long
11 time ago and a long history. He had 160 acres, and he
12 milked all the cows by hand, which I'm glad I don't have
13 to do. This has gradually grew over the decades to our
14 diversified operation we have today.

15 My father operated it back in the 1960s with 100
16 cows, maintained that for a couple decades. In the last
17 decade, we have doubled to our present size of 225 milking
18 cows.

19 I operate the dairy farm since about 1995, along
20 with my -- along with our diversified operation, to
21 support the rest of the family. I'm hopeful the next
22 couple of years that my son, Blake -- who just called me
23 twice this morning already -- will take over the operation
24 and handle all the day-to-day problems, so we'll test him
25 on that.

26 I also serve on the Board of Directors for Prairie
27 Farms. I am currently the president of that board. I
28 also serve on the National Milk Board of Directors, and I



1 am on the executive committee there. I serve on the
2 St. Louis District Dairy Council Board, where I'm
3 president, along with the Midwest Dairy Board. I'm a
4 member of the Illinois Milk Promotion Board where I serve
5 as president. I'm on the Bond County Farm Bureau Board,
6 which I'm the vice president. And the Gateway Holstein
7 Club. And I also am the president of our local cemetery
8 board, which is three people, one of them my dad, so those
9 are interesting meetings to say the least.

10 I also interact with many dairy farmers. We're a
11 small dairy pocket that's a very close-knit group of
12 farmers, so we interact quite frequently, and this topic
13 today is something that comes up a lot about milk price.
14 In fact, it comes up almost every day.

15 I am a member of Prairie Farms Dairy, Inc., which
16 has approximately 668 dairy farms across the states of
17 Illinois, Indiana, Iowa, Kentucky, Michigan, Ohio,
18 Minnesota, Missouri, and Wisconsin.

19 Prairie Farms has plants in the Southeast markets
20 in Indiana, Kentucky, Louisiana, and Mississippi. With
21 the continued reduction in milk production in the
22 Southeast part of the U.S., I began shipping my milk to
23 the Southeastern market on a year-round basis, since 2017,
24 and continue this today.

25 My hauler ships my milk to Holland, Indiana, or
26 Somerset, Kentucky, the plants that Prairie Farms owns.
27 We continue to see the need for year-round milk supply
28 grow for our Southeast plants, as many of my neighbors



1 have also shipped their milk to those plants.

2 My milk price increased with shipping to the
3 Southeast part of the U.S. with the increase of the price
4 surface. As my milk travels farther South and Southeast,
5 my price increase due to this pricing surface being
6 higher -- larger, sorry -- to help defray some of the milk
7 cost associated with additional miles.

8 We have seen substantial cost increase on the farm
9 in many areas the past few years, especially in the
10 last -- in the last couple decades. I have summarized
11 many of these items that my farm supply company sells me
12 as utilization in my milking parlor -- Deal Them Out is
13 who they are. And the cost associated running and
14 maintaining my parlor as, according to Table 1 below, our
15 costs have gone up annually about 7.7% for the various
16 supplies and labor -- these are examples of various
17 things, so I don't need to read all of them.

18 But as you can see, some of them, Della Super is
19 soaked, so in 2019 it cost \$6300, today it's \$8,800. So,
20 you know, 39% change, 7.7.

21 One of the big ones, it's a very small cost, but
22 milking gloves -- I have a lot of girls that work for me,
23 and they want to wear gloves -- and those things have went
24 up from \$10 a box to \$19, and that's just another cost.
25 Those have went up 90% and change, and that's -- thanks to
26 the pandemic, gloves were in short supply for everything,
27 so --

28 And labor rates is -- is almost not shocking to me



1 anymore, but, you know, I used to pay close to \$12 -- or
2 \$8 for a hired person, a high school kid, and now I have
3 to start them at about \$15 an hour. And anybody with a
4 little bit of experience, I start them more in the \$18 and
5 work up to 22, maybe \$25 an hour for a part-time job,
6 which is a pretty good job.

7 But we're not very close to a community, so I
8 always figure I have to pay more for gas to get people to
9 come out to work. So it's just more cost of running the
10 dairy farm and just attracting people to come out and work
11 in a dirty, hot environment, or really cold. You know, we
12 have got the very extremes of the world out there on the
13 dairy farm.

14 So I'm fortunate that my wife's a teacher and she
15 recruits a lot of broke high school kids that need to buy
16 cars or buy trucks that can't afford them, so they come to
17 work for me because they don't want to work at McDonald's.
18 So that's one of the examples of running a dairy farm that
19 works good to recruit people to come to work on my farm.

20 On our dairy farms, we continue to see costs
21 increase in many areas. The cost of shipping my milk to
22 market to increase as my hauler continues to remain
23 competitive to hire drivers, along with the cost of buying
24 and maintaining equipment. In the last six years, I have
25 seen the cost to ship milk to market increase
26 dramatically. Our cost to ship milk has increased
27 approximately 32.8% in the last six years.

28 The price surface has not been updated in over



1 20 years, so it's time to make changes so we can help
2 offset the additional costs we are experiencing on the
3 farm other than the Southeast. But that was 15 years ago.
4 There have -- there have been many changes in the
5 Southeast and transportation credits for a farm like
6 myself that supplies the market year-round. We do not
7 qualify this credit to help offset the freight costs.

8 As board president of Prairie Farms, I know our
9 cooperative ships milk down to the St. Louis market from
10 northern markets, since my milk is going to the Southeast
11 all the time. Much of that milk is traveling farther than
12 my milk -- than my milk does, and receives less in an
13 incentive from the price surface. My milk from Central
14 Illinois to Somerset, Kentucky, is almost a hundred miles
15 less than milk from the northern markets down to the
16 St. Louis market, and my milk receives 65% higher value.
17 This is one example of why the entire price surface needs
18 to be reviewed.

19 I would like to express my appreciation to the
20 Secretary of Agriculture and the Dairy Division for
21 holding this hearing. I strongly recommend the Secretary
22 to adopt National Milk's Proposal 19, return to the
23 higher-of for calculation of the Class I skim mover. I
24 further recommend that the Secretary adopt all National
25 Milk's proposals for the FMMO modernization. This will
26 promote orderly marketing of milk and ensure a more stable
27 price for dairy producers to manage their businesses today
28 and into the future. Thank you.



1 Q. Thank you, Mr. Doll.

2 MS. HANCOCK: Your Honor, we would make him
3 available for cross-examination at this time.

4 THE COURT: Any cross for this witness?

5 CROSS-EXAMINATION

6 BY MR. MUNCH:

7 Q. Good morning. Danny Munch, the American Farm
8 Bureau Federation.

9 Good morning, Frank.

10 A. Good morning.

11 Q. You attended our Federal Milk Marketing Order
12 forum last year, correct?

13 A. Correct.

14 Q. Could you characterize that event in any way, what
15 you found useful?

16 A. I found it very interesting. It was held in
17 Kansas City. A large gathering of dairy farmers from
18 across the country working for the same common goal and
19 some -- I think in the dairy industry we're a little
20 fractured because we have the cheese makers, the fluid
21 guys, and we all bring to the same table that day working
22 for the common good of increasing costs -- increasing the
23 price of milk for dairy farmers.

24 Q. And would you say some of the proposals that you
25 are supporting today are ultimately agreements that came
26 out of that conference?

27 A. Yes.

28 Q. And you were a member of our dairy working group



1 two years ago, correct?

2 A. Correct.

3 Q. And would you say that the work that you all put
4 in together also represented consensus among different
5 dairy farmers from across the country?

6 A. Yes, I think it helped lay the ground work for
7 where we're getting today.

8 Q. And do you have any comments on how depooling and
9 negative PPDs impacted you or your neighbors?

10 A. Depooling was a definite headache for a lot of
11 farmers, because we didn't understand it, and we had to do
12 a lot of education on depooling. And it showed up on your
13 milk check and -- and guys stayed in Order 32 were
14 screaming about it and we had to -- another dairy farmer
15 here, he's going to talk about it also, but it was an
16 education for me and a lot of other farmers how we were
17 losing that much money on our milk check.

18 Q. And would you characterize depooling as sort of
19 representative of a disorderly marketing condition?

20 A. Yes.

21 MR. MUNCH: That's all I have. Thank you so much,
22 Frank, for your participation at Farm Bureau.

23 THE WITNESS: Thank you.

24 THE COURT: Further cross-examination other than
25 AMS?

26 Seeing none, AMS.

27 CROSS-EXAMINATION

28 BY MS. TAYLOR:



1 Q. Good morning.

2 A. Good morning.

3 Q. Thank you for coming down this morning to testify
4 today.

5 A. You're welcome.

6 Q. Just a few questions for you. I'd like to make
7 sure the record's really clear on some of the statements
8 that you put in there.

9 But first, you describe your very diversified
10 operation. And would your farm meet the business --
11 excuse me -- meet the definition of a small business,
12 which for dairy farmers -- or for farmers is \$3.75 million
13 in gross revenue annually on a whole farm basis?

14 A. Yes. I'm under that, yes.

15 Q. And you talked about you ship continuously into
16 the Southeast market; is that right?

17 A. Correct.

18 Q. About how far does your milk go?

19 A. It's about 100 miles, I believe, to --

20 Q. To your plant?

21 A. Yeah, first plant. The second one is probably,
22 I'm going to ballpark, say 150, something like that, 175
23 maybe.

24 Q. Okay. Thank you.

25 And on the second page you talked about the price
26 surface hadn't been updated in 20 years, but the Southeast
27 was in 15 years ago. And I just want to make sure the
28 record's clear. That's when we increased the



1 differentials in just the three Southeastern markets; is
2 that correct, in 2008?

3 A. I think so, yes.

4 Q. Yeah. And then as you describe in that same
5 paragraph, there are transportation credits to bring
6 supplemental milk down in the Southeast, but your farm
7 doesn't qualify for those; is that correct?

8 A. Yes.

9 Q. So you have to cover the all of the haul to supply
10 that more fluid market; is that right?

11 A. Yes.

12 Q. And then at the -- in your last page, your last
13 sentence, you said adopting Proposal 19, and then this
14 proposal in the -- excuse me -- the Class I skim -- the
15 Class I higher-of proposal and your discussion of the
16 Class I differential proposals will promote orderly
17 marketing of milk.

18 And I just wonder, as a farmer, if you could
19 expand on what you believe is considered orderly
20 marketing. You know, there's no definition for orderly
21 marketing. There's no definition of disorderly marketing
22 really. So from your perspective, what would you see as
23 orderly?

24 A. Well, I -- I just think the -- a more fair price
25 for the milk. The last several years of the milk price
26 swings that are so -- the lows stay so low so long, and
27 the highs don't stay very high very long, so we're
28 struggling to keep people in the market.



1 I think it's just, as the population shifts, as
2 the milk production shifts, I think the whole Federal
3 Order needs to be adjusted to realize that more people
4 seem to be moving south, there's no milk in the south, and
5 milk is moving north, and back maybe a little bit to the
6 center of the country. And I think we just need to adjust
7 all the transportation to move it around, and there's just
8 things are constant change. And I -- and to keep dairy
9 farmers in business I think is the ultimate goal, is just
10 to pay farmers to keep them in business, whether they milk
11 20 cows or 2,000 cows or whatever.

12 Q. Okay. Thank you.

13 There are some proposals in front of the
14 Department from National Milk that would delay
15 implementation of certain pieces. And the reason they
16 explain for doing that is that farmers use a lot of risk
17 management these days, and any sudden change in the
18 formulas will impact their risk management positions that
19 they have taken.

20 So do you use any risk management tools?

21 A. I do use DMC.

22 Q. DMC? Okay.

23 MS. TAYLOR: I think that's it from AMS. Thank
24 you thank you so much.

25 THE WITNESS: Thank you.

26 THE COURT: Anyone else? Redirect?

27 MS. HANCOCK: Your Honor, we have nothing further.

28 At this time, we'd move to admit Exhibit 200.



1 THE COURT: Any objection?

2 Exhibit 200 is admitted into the record of this
3 proceeding.

4 (Thereafter, Exhibit Number 200 was received
5 into evidence.)

6 THE COURT: Thank you, Mr. Doll. We appreciate
7 you coming out.

8 MS. HANCOCK: We have one more producer, Bryan
9 Henrichs.

10 BRYAN HENRICHS,

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

13 THE COURT: Your witness.

14 DIRECT EXAMINATION

15 BY MS. HANCOCK:

16 Q. Good morning, Mr. Henrichs. Would you mind
17 stating and spelling your name for the record?

18 A. My name is Bryan Henrichs, B-R-Y-A-N,
19 H-E-N-R-I-C-H-S.

20 Q. And what is your business address?

21 A. My address is 19207 Ellwood Road, Breese,
22 Illinois.

23 Q. And your zip code?

24 A. 62230.

25 Q. Thank you. Did you prepare Exhibit NMPF-79 in
26 support of your testimony today?

27 A. Yes.

28 MS. HANCOCK: And, your Honor, I believe we're at



1 Exhibit 201.

2 THE COURT: Yes, we are. That Exhibit NMPF-79 is
3 so marked for identification.

4 (Thereafter, Exhibit Number 201 was marked
5 for identification.)

6 MS. HANCOCK: Thank you.

7 BY MS. HANCOCK:

8 Q. Mr. Henrichs, would you provide your testimony,
9 please?

10 A. Okay. My testimony, Henrichs Farms, Ltd.,
11 supports National Milk Federation's proposal for restoring
12 the higher-of for establishing Class I mover from original
13 Federal Order Reform.

14 My name is Bryan Henrichs. My testimony is
15 presented in support of Proposal 13, restore the original
16 Federal Order Reform Class I skim mover at proposed -- as
17 proposed by National Milk.

18 My family operates Henrichs Farms located in
19 Clinton County, outside of Breese, Illinois, not too far
20 from Frank. We milk approximately 310 cows, along with
21 raising 225 replacement animals. I also, myself, operate
22 a custom harvesting business besides the dairy, and we
23 harvest silage for about 75 farms in the Southern
24 Illinois, Missouri, area. Mostly dairies, about 50 -- or
25 70% dairy farms, the rest are beef. These activities
26 utilize our equipment and generate extra income for myself
27 to not be only supported by the dairy farm.

28 Dairy farming is my family's heritage as well as



1 future. I'm a third generation dairy farmer, along with
2 my brother Rodney, who is my partner in the dairy
3 operation. My two nephews and a niece are also employed
4 by the dairy along with helping with some of the custom
5 harvesting that I do.

6 My family started the dairy back in 1938, and we
7 have gradually grown from 4 million pounds a year annually
8 to 7 million pounds over the last decade. I have worked
9 on the dairy farm along with the custom harvesting
10 operation to support my family, which includes five
11 daughters, so you understand why I try to stay so busy and
12 not in the house.

13 I serve on the Board of Directors of Prairie Farms
14 Dairy, and I am the chair of the strategic planning
15 committee. I also serve on the St. Louis Dairy Council
16 Board and Midwest Dairy, along with the American Farm
17 Bureau Dairy working group, through these -- and through
18 this, my involvement with these organizations, I interact
19 with many dairy farmers. A common topic of discussion is
20 milk pricing and a desire to return to the higher of
21 pricing of Class I skim.

22 We have seen many challenges with milk pricing to
23 producer communities through price volatility and
24 disparity of milk pay prices amongst dairy producers.
25 From what I understand, the Federal Milk Marketing Order
26 is to maintain orderly marketing in the regional area.
27 One way that helps with orderly marketing is for the milk
28 to be priced similar for all dairy producers in that



1 Order.

2 Some dairy producers have the ability to depool
3 their milk, which has created disparity amongst dairy
4 producers and disorderly marketing. Our milk from our
5 dairy farm ships to Prairie Farms plants around the
6 St. Louis market, which are all Order 32 plants. All of
7 these are Class I plants that don't allow us to depool my
8 milk. One of the reasons before for setting the Class I
9 price on the higher-of was to ensure the Class I was the
10 highest and incentivize producers to ensure Class I market
11 had a secure supply. With the producers that supply not
12 able to depool their milk was the incentive and maintain
13 orderly marketing.

14 With some farms' ability to depool, this has
15 created disorderly marketing as there isn't the incentives
16 to serve the Class I market as they are getting the
17 higher-of value for their milk. I am unable to have my
18 cooperative depool my milk due to milk serving the Class I
19 market.

20 I have heard from some in the industry that
21 negative producer price differentials that took over
22 \$750 million from the dairy producers' checks, according
23 to National Milk Producer Federation analysts, were caused
24 by the USDA Food Box Program. I would disagree, as the
25 negative PPDs began not too long after the industry moved
26 to the average-of in May of 2019. As you can see in the
27 table below, negative PPDs from Order 32 began in
28 September of 2019, not long after the average-of started.



1 The negative PPDs have taken money from the
2 producers' checks, and while we are appreciative for the
3 PMVAP payments from the USDA in 2022 for the partial
4 compensation of the \$750 million lost by dairy producers
5 during the USDA Food Box Program, I'm appreciative for the
6 PMVAP payments, but I know some dairy producers that
7 needed the money at the time, not 12 to 18 months later.
8 I know of some that are no longer in business as they --
9 when they received the payments.

10 We are appreciative of the support, but the
11 higher-of will ensure that dairy producers are compensated
12 at the time of the sale, instead of later by some other
13 form or support. We are appreciative of the support for
14 our operation from PMVAP, but I worry that the USDA will
15 always have the funds to provide such support.

16 We have used risk management tools in the past,
17 such as forward contracting and DRP, to help manage the
18 price volatility of dairy markets. With the average-of
19 and the higher-of negative PPDs, which act as negative
20 basis, we are -- and if you are familiar with corn, the
21 corn market, which indicates -- sorry -- we are familiar
22 with the negative basis with corn as that indicates what
23 the market value the commodity at the time. At least with
24 corn, I can call the elevator and find out what the basis
25 is and decide if I want to ship to market. We produce
26 milk that is a perishable product, and with a negative
27 PPD, we do not know until two weeks after we are done
28 shipping for the entire month whether or not this is a



1 negative basis.

2 I was shown a check from a neighbor that forward
3 contracted in July of 2020 when prices dropped
4 dramatically. He shared with me his check as he locked
5 in -- he was locked in at \$18 in a Class III futures
6 contract. He lost on the futures contract as he would
7 expect when the market rises, but due to the negative
8 basis, or negative PPD, he ended up with a final net check
9 of around \$9 a hundredweight.

10 I continue to evaluate the amount of negative PPDs
11 since going to the average-of, and I am reluctant to use
12 forward contracting or DRP as part of my farm's risk
13 management program.

14 I would like to express my appreciation to the
15 Secretary of Agriculture and the Dairy Division for
16 holding this hearing. I strongly recommend the Secretary
17 to adopt National Milk Producers Federation's Proposal 13,
18 return to the higher-of for calculation of the skim I --
19 or Class I skim mover. I further strongly recommend the
20 Secretary adopt all National Milk Producer Federation's
21 proposals for the FMMO modernization. This will promote
22 orderly marketing of milk and ensure more stable price for
23 dairy producers to better manage their business. Thank
24 you.

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

27 THE COURT: Yes, Mr. Munch.

28 ///



1 CROSS-EXAMINATION

2 BY MR. MUNCH:

3 Q. Good morning, Bryan.

4 A. Good morning.

5 Q. Good to see you.

6 Bryan, you were a part of our 2022 dairy working
7 group, correct?

8 A. Yes.

9 Q. Do you recall the efforts of the dairy working
10 group aimed at reducing incentives to depool and reducing
11 the prevalence of negative producer price differentials?12 A. Yes, we were -- that was one of our main
13 discussions was trying to figure out options to go -- you
14 know, to alleviate the large negative PPDs that we were
15 seeing in the market.16 Q. And you would say that across the group, which
17 represents different parts of the country and represents
18 folks who sell to both cooperatives and independent
19 handlers, that that was one of their biggest objectives
20 and considered those issues a disorderly marketing
21 condition?

22 A. Yes.

23 Q. As part of the group, you recommended AFBF to hold
24 its Federal Milk Marketing Order forum to help bring
25 consensus across the industry, correct?

26 A. Yes.

27 Q. Would you say consensus was made on a number of
28 issues?

1 A. I believe that the Kansas City meeting, yes, there
2 was quite a few -- quite a bit of consensus across the
3 room of going back to the higher-of and different options
4 like that.

5 Q. Do you recall any opposition to switching back to
6 the higher-of?

7 A. No.

8 Q. Do you recall any opposition to increasing Class I
9 differentials?

10 A. No.

11 Q. Do you recall any opposition to a mandatory survey
12 of handler plant costs and yields?

13 A. No.

14 Q. As part of the dairy working group, you were part
15 of the unanimous approval of AFBF's Federal Order
16 Proposals that include many of NMPF's proposals, as well
17 as AFBF Proposals 4, 5, 18 and 21, correct?

18 A. Yes.

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

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. ROSENBAUM:

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

25 A. Good morning.

26 Q. And I just have some questions about your Table 1,
27 which recites what the PPDs were in the period -- well, in
28 2019, positive in some months, negative in the latter



1 months, correct?

2 A. Yes.

3 Q. I mean, and you -- you ascribe that or at least
4 link that to the industry's move to the average-of as the
5 Class I -- average-of plus \$0.74 as the Class I mover as
6 opposed to the higher-of, right?

7 A. Yes.

8 Q. And have you actually, you know, done sort of like
9 a month-to-month analysis during this time period to see
10 what the Class I mover would have been under the higher-of
11 approach as opposed to what it was based upon the average
12 plus \$0.74?

13 A. Are you asking for since that time up to the
14 current dates?

15 Q. Well, during this particular time period, which is
16 2019.

17 A. Yes. We are always watching it.

18 Q. I mean, just as an example, just to make sure
19 we're looking at it the same way, you know, in May 2019,
20 based upon the information I have before me, the Class III
21 price was -- well, the higher-of Class III or Class IV
22 in -- well, let me start with a new month.

23 In May 2019, the higher of Class III or Class IV
24 was \$7.14, the simple average was \$7.08, so the higher-of,
25 the mover would have been \$7.14, but because it was the
26 simple average plus \$0.74, it actually was \$7.08 plus
27 \$0.74, which would be \$7.82, you know, higher.

28 Did you -- so -- if you just -- I think that's the



1 right way to do the math. Is that -- do you agree with
2 that?

3 A. Yes.

4 Q. I mean, I just -- and have you done that?

5 A. Yes, we have.

6 Q. No one questions, obviously, that come 2020 and
7 the -- and the pandemic, Class III and IV started
8 diverging substantially, and you ended up with less. No
9 one is questioning that.

10 But the -- but the -- do you agree with me that
11 until that happened, you weren't experiencing this kind of
12 anomalous result, were you?

13 A. Not at that point, but once -- when you start
14 receiving the negative PPDs, they got extremely large, as
15 you can see, that didn't cover the -- you know, it was way
16 more of a negative that year than what the positives were
17 prior to that.

18 Q. Okay. But I mean -- well, okay. So take -- take
19 October 2019, if -- assuming my math is right, I think the
20 higher-of was \$9.26 and the average was \$8.55, so when you
21 added \$0.74 to the \$8.55, you were still higher, not much,
22 but a little higher than the -- than the higher-of.

23 Does that seem right to you?

24 A. Possibly.

25 MR. ROSENBAUM: Okay. Okay. That's all I have.
26 Thanks.

27 CROSS-EXAMINATION

28 BY MR. MILTNER:



1 Q. Good morning, Mr. Henrichs. My name is Ryan
2 Miltner. I represent Select Milk Producers.

3 And Mr. Munch asked you a couple of questions
4 about some activities with Farm Bureau. You mentioned a
5 couple of proposals that Farm Bureau has in this hearing,
6 and I wanted to ask you a couple of questions about one of
7 them.

8 So from your statement, I'm gathering that
9 depooling might be one of the most important issues to you
10 as far as your milk check.

11 A. Yes.

12 Q. One of the proposals that Farm Bureau has offered,
13 and we haven't heard testimony on it yet, it comes later
14 in the hearing, would eliminate advanced pricing of
15 Class I and Class II skim milk.

16 Are you a little bit familiar with that proposal?

17 A. Yes.

18 Q. So we haven't heard Farm Bureau's testimony, but
19 when they -- when they submitted it to USDA, they said
20 that advanced pricing creates an opportunity to depool
21 milk from the order to benefit from the non-pooled value
22 of the recently elevated prices, without sharing that
23 value with the pool, and further depresses the PPD. And
24 they suggest that advanced price -- getting rid of
25 advanced pricing would reduce the likelihood of depooling.

26 Is that something that you would support the
27 adoption of a proposal like that?

28 A. Yes.



1 MR. MILTNER: Thank you. That's all I had.

2 THE COURT: Further questions? Anyone other than
3 AMS?

4 Seeing none, Ms. Taylor.

5 CROSS-EXAMINATION

6 BY MS. TAYLOR:

7 Q. Good morning. Oh, I still have some questions for
8 you. Nothing bad. That sounds horrible. I didn't mean
9 it like that. Good morning.

10 A. Good morning.

11 Q. Thank you for coming to testify this morning.

12 A. You're welcome.

13 Q. I'm a little slow to turn the mic on, that's my
14 problem.

15 Did you hear my question to Mr. Doll about whether
16 his farm met the small business definition?

17 A. Yes, I did.

18 Q. Would your farm meet that definition?

19 A. Yes, it does.

20 Q. Yes. And you say your milk goes to a Class I
21 plant?

22 A. Yes.

23 Q. And how far does your milk go?

24 A. About 30 miles most of the time.

25 Q. And you talk about, on the back page of your
26 statement, risk management. And what I gather from that
27 is you used to use forward contracting in DRP, but perhaps
28 you are not doing that right now.



1 A. So I have not done forward contracting. That was
2 a neighbor --

3 Q. Okay.

4 A. -- who had done it through his co-op.

5 Q. Do you -- do you use any risk management?

6 A. I used DRP in the past, and DMC.

7 Q. Okay. And when you did use DRP, how far out did
8 you look to lock in the position?

9 A. Usually one year.

10 Q. One year? And so it's this negative basis you are
11 talking about that seems to be a primary concern of why
12 you might not use risk management tools, currently?

13 A. Yes. When I have had other -- being a custom
14 operator and helping put silage up for a lot of dairy
15 farmers, a lot of questions on dairy pricing get sent to
16 me. And we have had producers that bought, especially in
17 2020, DRP contracts, and in the months of April, May, and
18 June of 2020, they were set to receive a pretty large sum.

19 And because -- but because of depooling, we had, I
20 believe, around at \$20 to \$21 Class III price in June of
21 2020, but the farmers in our area, because of depooling,
22 were unable to receive that in their milk checks, but they
23 were also not able to receive the DRP payments that were
24 set to come to them. They were kicked out because the
25 price on the futures was higher than what their contract
26 that they purchased. If they bought \$18 for an average,
27 well, that \$20 kicked them into -- above that average, or
28 close to it, that they didn't get a payment.



1 Q. Okay.

2 A. If that makes sense. So the two months prior,
3 they were set to large -- you know, they were going to
4 receive a large payment, but the June prices, even though
5 on the Board of Trade they looked good, they were not what
6 we received on our dairy farms.

7 Q. Because that Class III milk wasn't pooled, so --

8 A. Yes, it was -- I believe in Order 32 only 6%,
9 around 6% of Class III milk was pooled in Order 32 that
10 month, so our price was, I believe, around \$12 or \$13 for
11 a hundredweight for our dairy farms. But like I said,
12 they -- their contract, I don't know exactly what numbers
13 that -- their particular dairy producer hedged in their
14 DRP, but they were set to receive a large payment, but
15 they did not because of that \$20 on the Board of Trade
16 price.

17 Q. Okay. Thank you.

18 My last question was similar to what I asked
19 Mr. Doll, because your statement also talks about changes
20 that would promote the orderly marketing of milk.

21 So from your perspective as a dairy farmer and a
22 member of Prairie Farms, what do you see as -- define as
23 orderly marketing?

24 A. So going back to the month of June 2020, and July,
25 we saw large Class III prices, whereas in the average-of,
26 the Class I price and Class IV were very much lower. And
27 you had producers in Wisconsin in Order 30 getting \$4 a
28 hundredweight more per the FMMO website.



1 Q. On the uniform price?

2 A. On the uniform price. Their prices were \$4 a
3 hundredweight. We have producers that are within miles of
4 Order 30 and 32, shipping in 32, who were \$4 difference,
5 and their plant milk was going, you know, not that far --
6 their milk was being produced not far from each other.
7 That's disorderly marketing, in my opinion.

8 And when you have guys who are not wanting to go
9 to a Class I plant because the Class III price is higher,
10 you know, that's what I consider disorderly marketing
11 where you -- you would have people jumping in and out of
12 which product they want to sell their milk to that day
13 because of the pricing disparity amongst the classes.

14 Part of the -- to me, the class pricing and the
15 FMMOs are to stabilize pricing to producers in each order,
16 to be pretty similar.

17 Q. So you -- you would -- if I can extrapolate from
18 that. You see class prices being in what's called typical
19 historical alignment as orderly?

20 A. Yes.

21 Q. Because then their incentive is there to service
22 the Class I plants?

23 A. Service the Class I first, and then from there --
24 make sure that those are full for the fluid industry, and
25 then because they are not able to store product, like the
26 you know, powder and cheese plants.

27 Q. And then I think the last part I heard was
28 farmers, neighboring farmers, receiving significantly



1 different prices for milk when they are both participating
2 in the Federal Order would be disorderly as well.

3 A. Yes.

4 MS. TAYLOR: Okay. I think that's it. Thank you
5 so much.

6 THE WITNESS: Thanks.

7 THE COURT: Anyone else?

8 Okay. Redirect.

9 MS. HANCOCK: Thank you, Mr. Henrichs.

10 Your Honor, at this time we would move to admit
11 Exhibit 201.

12 THE COURT: Any objections?

13 Exhibit 201 is admitted into the record.

14 (Thereafter, Exhibit Number 201 was received
15 into evidence.)

16 MS. HANCOCK: I appreciate your time in coming out
17 today.

18 THE WITNESS: Thank you.

19 THE COURT: Thank you. You may step down. Thank
20 you, Mr. Henrichs.

21 MR. ROSENBAUM: Steve Rosenbaum for the
22 International Dairy Foods Association.

23 We call Terry Brockman as the next witness.

24 THE COURT: Mr. Brockman, please raise your right
25 hand.

26 TERRY BROCKMAN,

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



1 THE COURT: Thank you, sir.

2 Your witness, Mr. Rosenbaum.

3 DIRECT EXAMINATION

4 BY MR. ROSENBAUM:

5 Q. Good morning, Mr. Brockman.

6 Have you prepared a written statement that is your
7 testimony today?

8 A. Yes, I have.

9 Q. Is that the document that's before you that's
10 marked as IDFA Exhibit 27 in the upper right-hand corner?

11 A. Yes.

12 MR. ROSENBAUM: Your Honor, I would ask that this
13 document be marked with the next exhibit number.

14 THE COURT: Yes. This exhibit will be marked 202.
15 (Thereafter, Exhibit Number 202 was marked
16 for identification.)

17 BY MR. ROSENBAUM:

18 Q. Mr. Brockman, could you please read your
19 statement?

20 A. Hi. I'm Terry Brockman, B-R-O-C-K-M-A-N. I'm
21 senior vice president dairy procurement, ingredients and
22 industry affairs for Saputo, USA, headquartered in
23 Milwaukee, Wisconsin.

24 Our business address is 10700 Research Drive,
25 Suite 400, Milwaukee, Wisconsin, 53226.

26 Saputo USA operates 29 plants in the United
27 States, manufacturing and packaging a variety of cheeses,
28 cultured dairy products, whey ingredients, and extended



1 shelf-life, and aseptic dairy products. We employ
2 approximately 7900 employees in the United States. We are
3 among the top three cheese manufacturers, and one of the
4 largest producers of extended shelf-life fluid products.

5 22 of the 29 plants in the United States process
6 milk and receive milk pooled in seven different Federal
7 Milk Marketing Orders. Most of the milk we buy is
8 regulated by the Federal Order system and extends, at
9 least to some degree, to all classes of milk. Therefore,
10 Saputo has a strong interest in the decision by USDA as a
11 result of this hearing.

12 As senior vice president of dairy procurement,
13 ingredients, and industry affairs, my responsibilities,
14 among other things, include milk and cream procurement for
15 all the company's U.S. manufacturing facilities. Another
16 one of my responsibilities is to represent Saputo USA and
17 participate as a member in several industry associations.

18 I'm currently serving as secretary of the
19 International Dairy Foods Association's executive council.
20 I also serve on two segment boards within IDFA, which are
21 the cheese and ingredients segment boards. Additionally,
22 I sit on the executive board of American Dairy Products
23 Institute, or ADPI. Saputo is also a member and supporter
24 of several other key industry associations. We actively
25 participate as a member of the Wisconsin Cheese Makers
26 Association, the Dairy Institute of California, the Cheese
27 Importers Association, and the United States Dairy Export
28 Council, to name a few.



1 I have been part of the dairy industry since
2 August of 1997, working at Saputo USA for that entire
3 26-year period, minus a few months. I have held various
4 roles within Saputo USA with the -- with the longest in
5 duration being president and chief operating officer for
6 our U.S. cheese division for 14 years. My educational
7 background includes a Bachelor of science degree from the
8 University of Wisconsin LaCrosse in political science and
9 graduate course work at the University of Wisconsin Green
10 Bay.

11 Our position:

12 We have reviewed and support the testimony of
13 Mr. Mike Brown representing the International Dairy Foods
14 Association. I specifically want to testify on Proposal
15 Numbers 3, 6, 8, and 9.

16 Proposal Number 3, submitted by National Milk
17 Producers Federation to remove 500-pound cheddar barrel
18 pricing from NDPSR price used to calculate Class III
19 protein should be rejected. Cheddar barrels make up
20 approximately 50% of the cheese surveyed each week. This
21 proposal would create even more price disparity between
22 cheddar barrel CME market price and Class III pricing.
23 They would be completely disconnected. In my opinion,
24 this would create even greater margin volatility for
25 500-pound cheddar barrel manufacturers. This proposal has
26 been rejected in the past by USDA, and it should be
27 rejected again for the same reasons.

28 Proposal 6, submitted by the California Dairy



1 Campaign to include mozzarella cheese in the product price
2 surveys should be rejected. Without more clear and
3 concise information on how this would be accomplished, we
4 cannot support this proposal. As the second largest
5 mozzarella manufacturer in the United States, Saputo USA's
6 mozzarella facilities are all unique. The processes and
7 equipment utilized are designed to make finished products
8 that meet customer and consumer expectation. Recipes are
9 designed to achieve finished good analytical data for fat,
10 solids nonfat, moistures and salt, to meet customer needs
11 and expectations.

12 Our low-moisture part-skim mozzarella string
13 cheese plants are very different and have much higher cost
14 structures than our low-moisture part-skim mozzarella loaf
15 plants that service our foodservice and industrial
16 customers. The multitude of mozzarella recipes, finished
17 product analytical data, packaging formats, and production
18 processes, all vary greatly based upon the customer and
19 consumer expectations. For these reasons, mozzarella
20 should not be included in product price surveys used to
21 establish minimum Class III pricing.

22 Proposals 8 and 9 are addressing Class III and
23 Class IV Make Allowance increases. Saputo USA supports
24 the Make Allowance proposals from the Wisconsin Cheese
25 Makers Association and the International Dairy Foods
26 Associations. The Wisconsin Cheese Makers and IDFA
27 proposals -- proposal use an average of Dr. Schiek's
28 studies, which uses the 2016 California Department of



1 Agriculture audited manufacturing cost study adjusted with
2 inflation indexes and the last manufacturing cost survey
3 from Dr. Mark Stephenson using 2022 plant survey data.

4 Saputo USA participated in Dr. Stephenson's 2022
5 cost survey. We submitted whey drying cost data from our
6 Las Cruces, New Mexico plant. We don't make commodity
7 cheddar, therefore, we did not submit manufacturing cost
8 data for cheddar.

9 Updating the current manufacturing allowances are
10 a must. Manufacturing allowances in Class III and
11 Class IV milk pricing formulas don't reflect current
12 processing costs for cheddar, whey, nonfat dry milk, and
13 butter.

14 Saputo USA's cost to process raw milk into
15 finished product is comprised of the following general
16 cost categories: Overhead, direct raw materials, direct
17 labor.

18 These three categories, when excluding milk,
19 comprise approximately 20% of the total cost to process
20 raw milk into finished cheese. In reviewing the cost
21 history of categories listed above, we focused primarily
22 on the below subsets of these categories, as they are
23 large contributors to the categories:

24 On overhead: Energy and electricity and repair
25 and maintenance cost;

26 Direct raw materials: Resin-based materials and
27 corrugated packaging;

28 And for direct labor: Manufacturing hourly rates.



1 Significant increases have occurred across all
2 major categories that make up the cost of processing raw
3 milk into finished product. While the information below
4 reflects Producer Price Index market information, Saputo
5 has experienced similar increases over the identified time
6 periods.

7 Overhead impact. Over the period from January
8 twenty -- or January 2006 through July 2023, energy costs
9 in particular have increased. The Producer Price Index
10 and industrial electric power and industrial machinery and
11 equipment repair and maintenance used for support are
12 compiled by the US Bureau of Labor Statistics. The annual
13 average price index for electrical power has risen 74%,
14 and repair and maintenance has risen 53% since 2006.

15 And I have the reference and data sources below.

16 Direct raw materials or packaging impact:

17 The annual average price index for plastics
18 material and resin manufacturing has risen 42%, and
19 corrugated paperboard in sheets and rolls has risen 78%
20 since 2006.

21 Manufacturing labor impact:

22 The annual average price index and average hourly
23 earnings of production and non-supervisory employees
24 manufacturing has risen 55% since 2006.

25 Over this same time period, Saputo USA has focused
26 on offsetting these significant cost increases through
27 better efficiencies at all our plants. We consolidated
28 our operational footprint to gain scale and improve



1 efficiency.

2 Additionally, we invested in hundreds of millions
3 of dollars to improve our processing equipment, installed
4 packaging automation systems at the end of our production
5 lines, deployed new technology to reduce energy
6 consumption, and implemented waste reduction initiatives
7 to reduce wastewater cost. This was done throughout our
8 operation -- operational network in the United States, and
9 yet, we have been unable to offset the increases in
10 manufacturing costs.

11 Having accurate manufacturing allowances are an
12 important aspect of the Federal Milk Marketing Order. The
13 Federal Milk Marketing Order system relies on these
14 Make Allowances to set minimum pricing and distribute pool
15 revenues.

16 Dairy manufacturers need Federal Milk Marketing
17 Order Make Allowances to accurately reflect the cost to
18 produce cheddar, whey, nonfat dry milk, and butter.
19 Without this, manufacturers will be sent wrong financial
20 signals impacting investment, capital disbursement, and
21 Federal Milk Marketing Order pooling decisions.

22 It has been over 15 years since Make Allowances
23 were last updated, and it was based on data from 2006.
24 I'm going to reiterate a point that Mike Brown has in his
25 testimony as the IDFA's chief economist made: "The
26 cheese, butter, whey, and nonfat dry milk manufacturing
27 industries urgently need immediate relief from the highly
28 injurious fixed relationship between output prices and



1 minimum regulated prices that do not reflect current
2 industry costs. The existing use of fixed out-of-date
3 Make Allowances is a major problem for all dairy product
4 manufacturers producing cheese, butter, whey, and nonfat
5 dry milk."

6 Thank you for allowing me to testify on behalf of
7 Saputo USA.

8 Q. Thank you very much, Mr. Brockman. I have a few
9 questions relating to some of the testimony that's come in
10 regarding some -- a few issues.

11 One of them was some testimony by, I believe it
12 was a National Milk witness that indicated that under the
13 IDFA proposal, at least some of the time the
14 Make Allowance would actually exceed the sale price for
15 whey, meaning that people would be selling their whey at a
16 loss, I mean, more than their manufacturing cost.

17 Can you comment on what, in fact, has been the
18 experience on that issue historically?

19 A. Historically that happens all the time. The cost
20 to dry whey exceeds what's in the Make Allowance, and the
21 markets frequently don't make sense to even dry the whey
22 because by the time you dry it and sell it, the selling
23 price is lower than the cost of the materials that you
24 paid for it in the milk as well as drying.

25 Q. Okay. And why -- why do you dry under those
26 conditions?

27 A. Well, when you make cheese, you get whey, and the
28 only place to go with it is generally through a dryer or



1 to sell it to someone else that has a dryer, or
2 concentrate it and sell it as animal feed. If you don't
3 have those outlets ahead of time, you have to dry it,
4 there's no choice, and you have to inventory it and sell
5 it for the market price.

6 Q. You get what you can even though it doesn't
7 actually end up being a profitable undertaking; is that
8 right?

9 A. Fair. Yes. If you want to make cheese, you have
10 to process whey.

11 Q. Now, there also has been some testimony about how
12 much of the cheese industry as a whole is priced off of
13 40-pound blocks versus 500-pound barrels, and perhaps some
14 suggestion that -- there may be two or three identified
15 exceptions -- if the product is not being sold off of the
16 500-pound barrel market, then sort of by default it is
17 priced off of the 40-pound block market.

18 Could you comment on your views as to that
19 question?

20 A. Well, I think that, as they mentioned, people were
21 throwing around percentages of what is sold on block and
22 what is sold on barrel. I think what they are -- a big
23 segment that they are forgetting is the branded retail
24 side of the business. So branded retail cheese is sold on
25 a case price to the retailer. It is not sold on a block
26 market. It's not sold on the barrel market. It's a fixed
27 price. And, for example, our branded string cheese, we
28 sell it on a case price to the retailer and work our



1 promotional or trade spending off that price. It has
2 nothing to do with the block market. You focus much more
3 on the Class III for the input cost.

4 Q. What about for export?

5 A. Exports, Asia, and what I would say, the Middle
6 East, North Africa, South America, are on tenders. What I
7 call a tender is people go out for a quarter in advance
8 and ask for pricing, and you have to compete on the global
9 market for that pricing if you want to sell into those
10 markets during that quarter. So it's a global market, and
11 it's not based on any block market indices or barrel.

12 MR. ROSENBAUM: The witness is available for
13 cross-examination.

14 CROSS-EXAMINATION

15 BY MR. MILTNER:

16 Q. Good morning, Mr. Brockman.

17 A. Good morning.

18 Q. For the record, I'm Ryan Miltner, and I represent
19 Select Milk Producers.

20 I wanted to talk with you about your whey
21 operations. You have a lot of cheese plants, correct?

22 A. Yes.

23 Q. You made reference specifically only to one whey
24 plant in Las Cruces, correct?

25 A. Correct.

26 Q. Is that the former F&A cheese plant?

27 A. Yes, it is.

28 Q. Okay. What type of whey products are produced at



1 that plant?

2 A. Just sweet dry whey.

3 Q. It is just dry whey. There are no other WPCs or
4 WPIS produced there?

5 A. That's correct.

6 Q. At your other cheese plants, do you produce dry
7 whey?

8 A. Yes. We have capabilities to produce dry whey
9 even though they are not the primary products.

10 Q. At those plants, do you produce more of the WPCs
11 and WPIS?

12 A. Yes. We produce the WPC34 and WPC80s, as well as
13 drying permeate.

14 Q. At the plant in Las Cruces, what types of these
15 cheeses are produced there?

16 A. Pasta filata or mozzarella and provolone.

17 Q. I think you made reference in your statement that
18 you didn't make any commodity cheddar, and in fact, that
19 at Las Cruces you make no cheddar at all, correct?

20 A. That's correct.

21 Q. For the dry whey that you produce at Las Cruces,
22 is that -- are the sales reported to the NDPSR?

23 A. Yes, they are.

24 Q. Does Saputo report any other dry whey sales to the
25 NDPSR from other plants?

26 A. When we make them in Waupun, we report them as
27 well.

28 Q. Did the dry whey manufacturing costs for any



1 plants other than Las Cruces get reported to
2 Dr. Stephenson?

3 A. No.

4 Q. I can't remember exactly when, but when did Saputo
5 acquire the F&A plant?

6 A. I want to say it was late 2017, December of 2017.

7 Q. That sounds reasonable to me. And you would know
8 better than I, I think.

9 You -- I'm curious, if -- if in preparing National
10 Milk's proposal or preparing for your testimony, did
11 Saputo look at the dry whey costs at Las Cruces, the
12 processing costs from like when you acquired it say early
13 2018 to now?

14 A. I -- I have not looked at that specifically.

15 Q. Did Saputo look specifically at its costs to
16 produce dry whey at any facility in preparing for your
17 testimony today?

18 A. We submitted the survey document whenever that
19 was. That was to the extent on the dry whey that we
20 looked at.

21 Q. Okay. In addition to that, did you -- did Saputo
22 look at any of its historical costs to be able to say,
23 boy, our cost to produce dry whey in 2008 was X, and in
24 2022 or 2023, it is 3X, or whatever that is?

25 A. Not the comparison, but I know what the cost is to
26 dry whey at our plants.

27 Q. Okay.

28 A. So --



1 Q. Are you willing to share that?

2 A. No.

3 Q. I had to ask. Okay.

4 Okay. In your statement you talk about some
5 investments that Saputo has made into its various
6 facilities.

7 Now, you are aware that depreciation costs are
8 included in Dr. Stephenson's study, correct?

9 A. I believe so. Yes.

10 Q. And so whatever those costs that Saputo has, if
11 they were reported to Dr. Stephenson, they would be
12 included in his manufacturing costs, correct?

13 A. Yes.

14 Q. Those projects, those capital projects you
15 described, you described them as investments to improve
16 your efficiencies, right?

17 A. Yes.

18 Q. Now, were you part of the decision-making process
19 on those improvements?

20 A. Yes.

21 Q. Would you characterize those as upgrades to
22 facilities or replacements of equipment that had reached
23 the end of their useful life?

24 A. I think they were in many cases both.

25 Q. Okay. So you did have the ability to make the
26 necessary capital improvements to your plants to keep them
27 functional and operational?

28 A. Yes.



1 Q. When you made those decisions, did you prepare
2 anything like an IRR, an ROI analysis, a payback
3 calculation, or anything on those various projects?

4 A. Definitely on the larger projects.

5 Q. And I assume because you went forward, those
6 analyses showed that they were a net financial benefit to
7 Saputo in your plant operations?

8 A. They offset cost increases that we needed to be
9 competitive, yes. I mean, it is -- when -- when -- when
10 we talk about reasons to invest, a kilowatt rate is a
11 kilowatt rate. And if that kilowatt rate goes up by 50%,
12 and you reduce the number of kilowatts you use because you
13 spend capital, part of that capital return is the -- you
14 know, the return is to pay for the capital you outlaid
15 upfront and the interest you had on it. So that -- but --
16 so it's -- it doesn't change the fact that the kilowatt
17 rates are more expensive for energy.

18 Q. I agree with that entirely.

19 But the investments were made because they were
20 either going to increase the income to Saputo or reduce
21 its operating costs, correct?

22 A. Yes. Yes. For the ones that weren't just
23 equipment replacements.

24 Q. Okay. But those were necessary just to keep the
25 operation going, right?

26 A. Yes, to be functional.

27 Q. So I'm -- I'm -- given that, I'd like to you
28 expand on the last sentence on page 4. Where you say,



1 "This was done throughout our operational network in the
2 United States, and we have yet been" -- "we have" --
3 sorry -- "and yet we have been unable to offset the
4 increases in manufacturing costs."

5 Now, explain for me what you mean by that
6 sentence.

7 A. What I mean is that we spent hundreds of millions
8 of dollars to improve our operational footprint and our
9 ability to process and make cheese and dairy products, and
10 yet, have been able to recover the full cost of the
11 increases that we have received.

12 Q. So if I may take that a step further, even despite
13 these improvements, your overall costs have increased,
14 correct?

15 A. Yes.

16 Q. But Saputo has realized the economic benefit it
17 expected to when it did its IRR or payback or return on
18 investment analysis, correct?

19 A. Depending on when we did them during this time
20 period, I would say earlier ones, yes. More recent ones,
21 not yet.

22 Q. Is that because of interest rate environments
23 or --

24 A. That's -- most of them have duration for payback,
25 so you just have to get to the time period.

26 Q. So -- so they haven't been fully paid back, but
27 you -- you are -- they are generating cost savings or
28 income to move toward a payback?



1 A. Yes.

2 Q. Okay. You provided also a lot of data on PPI and
3 your packaging overhead and labor. I'm curious as to why
4 you chose to present PPI data instead of Saputo's data on
5 those line items.

6 A. Just because I don't want to give out that
7 information publically.

8 Q. And I know that other manufacturers have said not
9 to the dollar amount, but, you know, our packaging costs
10 are up 54% or whatever.

11 But you chose not to provide that information,
12 correct?

13 A. Because it's a public company, we don't share that
14 with our current -- we don't provide that information
15 publicly.

16 Q. Okay.

17 A. So to do it in this setting would be not
18 appropriate.

19 Q. So the current Make Allowance for dry whey is
20 \$0.1991.

21 A. Yes.

22 Q. And is that Make Allowance high enough to cover
23 Saputo's current make costs on whey?

24 A. No.

25 Q. National Milk proposes, in year one -- I'm
26 sorry -- IDFA proposes in year one of its proposal,
27 \$0.2574.

28 Would that be a level high enough to cover



1 Saputo's cost to dry whey?

2 A. Now, it would be no.

3 Q. I didn't hear the first part of your answer.

4 A. No. Right now, no.

5 Q. Okay. In year four of IDFA's proposal it is
6 \$0.3157. Would that be high enough to cover Saputo's cost
7 to dry whey?

8 A. Today?

9 Q. Yes.

10 A. Yes. I don't know what the future will look like.

11 Q. None of us do.

12 You -- it's pretty clear your position on barrels
13 and their inclusion in the survey. Obviously, it's also
14 clear Saputo produces no barrels, correct?

15 A. That's correct.

16 Q. And Mr. Rosenbaum asked you some questions about
17 that, and if I can summarize what I understood from your
18 answers, you explained that the retail market, the
19 wholesale retail market where you sell the stuff that we
20 buy at Kroger every week, that's divorced from block and
21 barrel prices, correct?

22 A. The branded business is.

23 Q. Okay. And I think you also said that the export
24 market is divorced from block and barrel pricing -- or at
25 least barrel pricing. Was that correct? Did I understand
26 correctly?

27 A. The markets that I mentioned, Asia, South America,
28 Middle East, North Africa, yes.



1 Q. And are those Saputo's primary --

2 A. Those are the ones that we sell into that I can
3 speak to.

4 Q. Okay. And right now -- and it changes over time,
5 but barrels tend to decrease the Class III price, at least
6 they have recently, correct?

7 A. Based upon the information that I have seen during
8 some of the testimonies, yes. Over the last, I want to
9 say five years, there's a larger gap.

10 Q. And you -- and I think you said that because of
11 the market Saputo operates in, that Class III price is
12 more relevant to you than the block price or the barrel
13 price when you sell your products, right?

14 A. It is always the most relevant because that's your
15 cost.

16 Q. So is the reason that you want to keep the barrels
17 in, so that the Class III price is lower?

18 A. Well, it actually -- sometimes the barrel price
19 hurts the correlation that I have between what I'm selling
20 versus what I'm -- what I'm selling. So if I'm selling on
21 the block and the barrel market's higher, I have actually
22 had an inverse relationship, which happens during certain
23 months and certain quarters, and it can go the other way.
24 Like you are saying, over the last five years, the gap has
25 widened, that barrel prices are lower.

26 I -- right now, in regards to pricing on the
27 Class III, we sell most of our product, other than what I
28 mentioned in exports and at the retail trade, mostly on



1 the block market on an overage.

2 Q. Okay. I must have missed that because I thought
3 before you said the two markets you were concerned with
4 were retail -- branded retail and export, and that -- and
5 that barrels and blocks didn't apply to that, and now you
6 are saying that you do price product off of blocks and
7 barrels.

8 A. I was specifically talking that retail branded
9 items are not sold on the blocks, and where we sell into
10 Korea, South America, Middle East, and North America are
11 not sold on the blocks. All the rest of our business
12 domestically in the United States on mozzarella, and a lot
13 of other products, are sold on an over-the-block basis.
14 Could be under-the-block basis as well.

15 Q. Okay. So they are all priced off blocks, not
16 barrels?

17 A. Right. I was just trying, basically through the
18 question, is to tie out that 100% subset, 95% was sold on
19 the block, others said 70 to 75%.

20 Q. Okay. But none of your products are sold off the
21 barrel, right?

22 A. That's correct.

23 Q. Okay.

24 A. But we do buy off the barrel.

25 Q. Okay.

26 A. We buy processed cheese --

27 Q. Okay.

28 A. -- and resell.



1 MR. MILTNER: All right. Thanks for helping to
2 clarify that.

3 THE WITNESS: You're welcome.

4 THE COURT: Further questions other than AMS?
5 AMS?

6 Oh, I'm sorry, Ms. Hancock.

7 CROSS-EXAMINATION

8 BY MS. HANCOCK:

9 Q. Good afternoon, Mr. Brockman -- or, no, good
10 morning, sorry.

11 A. Good morning.

12 Q. Maybe I'm still in yesterday.

13 Did you submit -- I think you said that you
14 submitted information for Dr. Stephenson's survey. I
15 think it said 2022; is that right?

16 A. Yeah. I believe it was their 2023 survey, but
17 the -- we submitted it, I think, 2022.

18 Q. Did you submit your information for the 2021
19 survey?

20 A. No.

21 Q. Why not?

22 A. To be honest with you, I -- I don't know why. I
23 don't know.

24 Q. Okay. And you did so for the 2022 survey, because
25 IDFA was encouraging its members to do so, and so there
26 was a direct reach out for that?

27 A. Is that a question?

28 Q. Yeah. Sorry.



1 A. No, I was made aware of the survey, and I wanted
2 to participate. And we used Las Cruces because it was the
3 easiest, cleanest plant that we had in regards to one
4 product, one dryer, it was a very simple, easy exercise
5 for our cost accountants to put together and fill out the
6 survey.

7 Q. Okay. So did you only respond with one plant?

8 A. Yes, as I mentioned.

9 Q. I think you said that -- you were just last
10 talking with Mr. Miltner about pricing mozzarella off the
11 blocks, and I'm wondering if that's been a seamless
12 process for you to be able to price your mozzarella. Any
13 issues?

14 A. What do you mean seamless?

15 Q. Any issues that you have had pricing your
16 mozzarella off the blocks?

17 A. Besides not getting enough of a price, I guess,
18 but -- no, there's been no issues with pricing off the
19 block for mozzarella.

20 Q. Okay. And -- and that's always the case, right,
21 that you just want to get more, a better price; is that
22 fair?

23 A. Yes.

24 Q. And you're a publicly traded company, and so all
25 of your financials are publicly reported online; is that
26 accurate?

27 A. Since 1998.

28 Q. Okay. And if I look at the most recent financials



1 for Saputo, it says that Saputo has been returning a
2 profit 4.468 billion in 2023.

3 Does that sound right?

4 A. I -- I don't have it memorized off the top of my
5 head but --

6 Q. In the ballpark?

7 A. Are you talking EBITA or are you referring to --

8 Q. I'm talking about just Saputo revenues. So we can
9 talk about EBITA --

10 A. Oh, you are talking about revenues, because you
11 said profit.

12 Q. Okay. Well, we can talk about EBITA.

13 Your EBITA was 392 million in 2023; is that right?

14 A. I don't think that's accurate. But are you
15 looking at a quarter? What are you looking at?

16 Q. I'm looking for fourth quarter fiscal 2023.

17 A. Are you looking at the U.S. division? Global
18 division? I don't know what you are looking at.

19 Q. Do you know what the 2023 U.S. division EBITA was
20 for 2023?

21 A. So you are looking at the U.S. division, not the
22 global company?

23 Q. I'm just asking if you know.

24 A. Not off the top of my head exactly what it was at
25 the end of the year. But if you are looking at the U.S.
26 division and you are saying it is 392 million, and you are
27 referring to it as Canadian dollars? Is that what you are
28 referring to 392 to?



1 Q. I'm asking what your knowledge is. Do you know
2 what the profits -- do you know what the EBITA was for
3 fiscal year 2023 for the U.S. division in U.S. dollars for
4 Saputo?

5 A. I would say it's in the upper 300s.

6 Q. And is it fair to say that it represents a
7 sizeable percentage increase in fiscal year 2023 over
8 2022?

9 A. Yes.

10 Q. Do you know what the percentage is?

11 A. Not off the top of my head, no.

12 Q. More than 40%?

13 A. I don't know. Could be.

14 Q. Saputo is -- I think it characterizes its
15 facilities as world class facilities.

16 Have you heard that used to characterize Saputo's
17 facilities?

18 A. I would say some are.

19 Q. Which ones?

20 A. We have over 60, so which one --

21 Q. Which ones would you consider to be the world
22 class --

23 A. Do you want to talk about the U.S. ones or do you
24 want to talk about the global ones?

25 Q. We can talk about U.S.

26 A. I would say we have probably three world class
27 facilities in the U.S. on the cheese side.

28 Q. Which ones would those be?



1 A. I'd say Tulare Paige, Waupun, and Tulare Levin.

2 Q. And the one that is under construction now, where
3 is that located?

4 A. In Southeast Wisconsin.

5 Q. Will that be a world class facility when it opens?

6 A. I hope so. Yes.

7 Q. That's the plan, right?

8 A. That's the plan.

9 Q. It is scheduled to open in 2025?

10 A. It's scheduled to start later this year.

11 Q. Okay. It will start processing in --

12 A. Fully complete by that.

13 Q. Okay. So that's good clarification. You will
14 start processing product there this year, but it will be
15 fully complete by October of 2025?

16 A. Yes.

17 Q. And it started at a \$240 million investment.

18 Do you know where it's landing by the time you are
19 fully open and completed in 2025?

20 A. I don't have any updated calculations on that.

21 Q. Something in excess of the \$240 million?

22 A. I don't know. It's not my area of responsibility
23 anymore to track the capital projects but --

24 Q. And then there's also an expansion to the string
25 cheese on the West Coast?

26 A. Yes.

27 Q. And that's another \$75 million project?

28 A. Yes.



1 Q. And those are expected to provide a profitable
2 return no later than the fourth quarter for 2024 for the
3 two projects; is that right?

4 A. Yeah. Again, that's the plan.

5 Q. So then if we open -- if you are opening the new
6 facility in the end of the year in 2023, within 12 months
7 you are expecting that new plant and the expansion on the
8 string cheese to have profit returned within 12 months?

9 A. Yes.

10 Q. And then you have made some decisions to close
11 several other facilities that were less efficient and
12 outdated?

13 A. Yes.

14 Q. And I think I counted five.

15 Does that sound right?

16 A. That sounds a little high, but it -- I -- I got to
17 go back and count them, I guess. I got to go look at
18 the -- what we call is the strategic plan. But I can --
19 one's not really closed, it's being reutilized. So I
20 won't say it is closed.

21 Q. Okay. So four are closing and one is being
22 repurposed?

23 A. You are -- yeah. Four. Correct.

24 Q. Okay. And with those closures, you would agree
25 with me that Saputo's efficiencies in its plant processing
26 capabilities are going to be improved?

27 A. Yes.

28 Q. And have you measured the percentage of cost



1 efficiency improvement that you expect to receive by
2 closing those plants, those four plants, repurposing one
3 plant, and then opening the new plant?

4 A. The analysis has been done.

5 Q. Do you know what the percentage of improvement is
6 to the cost structure for processing the products by these
7 strategic changes that Saputo is expecting to receive?

8 A. Not off the top of my head, no.

9 Q. Greater than 30%?

10 A. I don't know.

11 Q. Okay. Can you ballpark it?

12 A. It's probably, if it's -- I would refer back to
13 the press release that you are getting the information off
14 of as being the most accurate, public available.
15 That's -- that's what I would use.

16 Q. Okay. If your press release or your public
17 statements that you issue to your shareholders said that
18 it was 47%, would you have any reason to disagree with
19 that?

20 A. I would not.

21 Q. Do you know -- I think that when you were talking
22 with Mr. Miltner just now, you were able to -- to look at
23 the proposed Make Allowance increases and tell him at what
24 point you believed that it would cover the Make Allowances
25 for Saputo; is that right?

26 A. Yes.

27 Q. And I can't -- I didn't -- I don't know if I
28 caught it, but was it year two for IDFA's proposal that



1 you said it would cover the Make Allowances?

2 A. He basically asked the first year and the last
3 year.

4 Q. Okay. Do you --

5 A. That's what he used.

6 Q. What year is it that it would cover Saputo's
7 Make Allowance?

8 A. I would rather just keep it to the answer that I
9 had instead of trying to narrow it in to what my cost is.

10 Q. So somewhere between two and three; is that fair?

11 A. I -- I think I just answered that I would rather
12 not narrow it in.

13 Q. Okay. Can you tell me what year it was that the
14 current Make Allowances that are set became insufficient
15 to cover Saputo's costs?

16 A. I would say the date it was implemented for some
17 plants.

18 Q. Back in 2008?

19 A. Yes.

20 Q. Based on the efficiency levels of those plants?

21 A. Yes.

22 Q. And those are some of the plants that we just
23 talked about have since been closed?

24 A. No, they were closed a long time ago.

25 Q. Okay. And others that have then since been
26 closed.

27 A. Yes.

28 Q. Okay. And so when you were giving the answer to



1 Mr. Miltner about somewhere before year four it would
2 cover the cost of Saputo's manufacturing for cheese, then,
3 did you account for the fact that these four plants that
4 you are closing now, the one plant that's being repurposed
5 and then the new plant that's being constructed, were you
6 accounting for the improvement in efficiencies that are
7 forecasted for Saputo or were you just using your current
8 cost structure?

9 A. You realize the plants that were closing don't
10 process milk, right?

11 Q. Well, I mean, I'm just asking because you said
12 that you closed them for efficiency purposes.

13 A. Yes, but they don't process milk. So really from
14 a Make Allowance perspective, I don't think it has any
15 bearing.

16 Q. So is all of the improvement in the cost
17 efficiencies coming out of just the construction of the
18 new plant?

19 A. They are cut-and-wrap operations that are going
20 into the new plant. So old cut-and-wrap operations are
21 being closed into a new one.

22 Q. And -- and the new --

23 A. They can automate --

24 Q. Go ahead. I didn't mean to cut you off.

25 A. No. They're automated. It's all about automation
26 and having long straight buildings that can have straight
27 lines that can be automated without people. And our older
28 facilities are cut up and not allowing you to have long,



1 straight, narrow, efficient processing lines.

2 Q. And then it also allows to you move into different
3 geographic territories where you can reduce some of your
4 hauling costs as well?

5 A. Yes.

6 MS. HANCOCK: Okay. That's all I have. Thank you
7 for your time.

8 THE WITNESS: Thank you.

9 CROSS EXAMINATION

10 BY MR. ROSENBAUM:

11 Q. Steve Rosenbaum, again, just to clarify what you
12 were talking about at the end.

13 The brand new plant that we have been spending
14 some time talking about, that is not a cheese
15 manufacturing plant; is that correct?

16 A. It is not.

17 Q. It doesn't receive any milk, correct?

18 A. That's correct.

19 Q. It's a cut-and-wrap operation?

20 A. Yes.

21 Q. Its costs are not included in anyone's calculation
22 of Make Allowances, correct?

23 A. That's correct.

24 MR. ROSENBAUM: That's all. Thank you.

25 THE COURT: Mr. English.

26 CROSS-EXAMINATION

27 BY MR. ENGLISH:

28 Q. Good morning. My name is Chip English for the



1 Milk Innovation Group.

2 Mr. Brockman, does Saputo receive any Grade B
3 milk?

4 A. No.

5 Q. If you stopped receiving Grade B milk at any time,
6 when did you last receive Grade B milk?

7 A. We stopped probably in 2015 or 2016.

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

9 THE COURT: Okay. Are we ready for AMS?

10 Looks like Ms. Taylor.

11 CROSS-EXAMINATION

12 BY MS. TAYLOR:

13 Q. Good morning.

14 A. Good morning.

15 Q. Thank you for coming to testify today.

16 A. Thank you.

17 Q. Of your -- okay. So I want to make sure I
18 understand Saputo's footprint.

19 You have 29 plants, and 22 process milk, so the
20 other seven are cut-and-wrap operations or other things?

21 A. Yes.

22 Q. Okay. And of the 22 that you do receive milk
23 from, how are those supplied?

24 A. We purchase milk either through cooperatives or
25 our direct farmer base.

26 Q. And do you know roughly in total percentage
27 breakdown of your co-op versus your independent direct
28 shipper supply?



1 A. Yes, I do.

2 Q. Would you mind sharing?

3 A. We don't share that publicly at this time but --

4 Q. Okay.

5 A. -- it's -- we try to -- to be balanced.

6 Q. And do you pool milk on all of those with the
7 those 22 plants?

8 A. I would say most of the time, yes.

9 Q. But you do not pool milk some of the time when
10 that's a good business decision?

11 A. Yeah, based upon the pooling parameters in the
12 Federal Orders that we reside.

13 Q. Okay. And there's been talk recently, I don't
14 know how much of the hearing, I don't know what week we're
15 on now, you listened to perhaps, but throughout the
16 hearing you have heard discussions of how producers have
17 been impacted by inadequate Make Allowances as they have
18 been presented to us and how that's impacting lower pay
19 prices to them through a co-op side, and then maybe that's
20 reblending those losses across the members; from the
21 proprietary side that might be paying less premiums to
22 your shippers, etcetera.

23 So I wondered if you could talk to how Saputo has
24 dealt with or tried to -- how Saputo has dealt with those
25 manufacturing losses as you would term them in their pay
26 prices to producers?

27 A. I think there's been terms thrown around like
28 relief valves or things that you can do to -- obviously,



1 depooling at times is one way. Premiums have decreased
2 significantly. I would say they are down, you know, in
3 ballpark figures over a dollar in Upper Midwest from where
4 they were ten years ago.

5 Q. And are you talking there Saputo specifically or
6 just generally?

7 A. Talking about that's -- that's the market. What I
8 would say the -- to buy milk, that's the market. So if
9 you want to procure the milk, the market's \$1.50 over
10 class, that's what you have to pay. Sometimes it is
11 lower. And I would say right now it is a dollar off where
12 it was just ten years ago on the over-class premiums in
13 the Midwest.

14 Q. So Saputo does pay premiums when it needs to -- to
15 get milk supply?

16 A. Yes.

17 Q. And there's been discussion from -- you know,
18 there's two sides of the coin, right? We hear people
19 testifying that from a producer side it is really hard to
20 renegotiate those premiums. And I mean, to be frank, we
21 hear testimony on the other side that says, well, if they
22 need more premiums, they can come to us, and we can
23 negotiate that.

24 So I guess it's up to the USDA to figure that out
25 as everyone has so eloquently put in this hearing multiple
26 times, but when it comes to how Saputo operates, you know,
27 how often do those -- how often do those discussions
28 occur?



1 A. So since I'm responsible for the milk procurement,
2 I have several conversations with farmers weekly, monthly,
3 that I can say unequivocally the farmers have been worried
4 more about market access and having availability to
5 markets over their last five years than they have been
6 worried about premiums. They want a market for their
7 product, one they can go back to the bank and say, I have
8 somebody that's going to take my milk. Not somebody that,
9 I am making \$0.50 or \$0.60 over class. It's more, will
10 you take my milk and take it every day? I can't afford to
11 be cut off. I have a 3,000-cow dairy; I need a market for
12 the milk.

13 Q. So -- but when it comes to my question on how
14 often you have discussions about premiums?

15 A. How often? We generally set our premiums on an
16 annual basis.

17 Q. Thank you.

18 Do you have any plants that take milk located in
19 California?

20 A. Yes, it's one of our biggest orders.

21 Q. Okay. So we have a study -- you know,
22 Dr. Stephenson's study, which you all did participate
23 in -- well, let me ask this question because I don't know
24 Saputo's footprint. In California, those plants, do they
25 produce products that were reported to Dr. Stephenson?

26 A. No.

27 Q. Okay. Then I won't ask.

28 And you make cheddar, so -- but you don't make



1 barrels; is that right?

2 A. We make what I would call specialty cheddar, you
3 know, aging product for three years, or that include --
4 have inclusions and/or kosher, organic, non-GMO, what I'd
5 call specialty cheddar.

6 Q. Okay. So no reportable cheddar, NDPSR reportable
7 cheddar?

8 A. If we do make it because we don't have anything
9 else to put it in, then we would and report it.

10 Q. Okay. I wanted to ask you a couple of questions
11 on mozzarella, what you do make; is that correct?

12 A. Yes.

13 Q. Okay. I know you talked about how your costs are
14 different in making cheddar. Would you say they are -- I
15 guess, can you expand on how they might be different -- or
16 excuse me -- on making mozzarella, can you expand on how
17 they might be different and how much more of a cost you
18 would see in making your mozzarella products versus your
19 cheddar that you might happen to put in a block or a
20 barrel and report?

21 A. I wouldn't say necessarily that it's more. I
22 mean, mozzarella is a different type of cheese, generally
23 with a much higher moisture content than cheddar. So,
24 therefore, you know, when you -- it just -- you have less
25 solids than if you are selling it as a 48 or 50% moisture.
26 So it's the cost that's -- not necessarily higher, unless
27 you put it into different formats.

28 Q. Okay. And there has been some discussion when we



1 did have California Dairy Campaign here to discuss
2 mozzarella about if it was included in the survey, what
3 would be considered a bulk size to be kind of comparable
4 to what we currently survey.

5 Do you have an opinion on what would a bulk size
6 be for mozzarella?

7 A. For kind of like as a clearing type?

8 Q. Sure. Uh-huh.

9 A. I would say 20-pound mozzarella loaf.

10 Q. You indicated that you participated in the 2023
11 Dr. Stephenson study but not the 2019?

12 A. That's correct.

13 Q. I don't know if you remember, did you all
14 participate back in 2006 when Dr. Stephenson did that
15 survey? I know I'm testing your memory probably.

16 A. And I don't -- I don't remember.

17 Q. Okay.

18 A. I really don't. And to be -- I don't think we
19 owned a whey plant then.

20 Q. Okay.

21 A. In fact, back then, because we acquired our -- the
22 Alto asset, which had a whey dryer, and the Land O'Lakes
23 assets in 2007 and 2008.

24 Q. Okay. You talk about on page 4, give some indices
25 for costs and for energy, and I know there's some cites
26 there.

27 Two questions: Does Saputo use any type of
28 hedging to lock in your energy rates?



1 A. Yes.

2 Q. And you talk about in that energy section,
3 comparing your costs to 2006 -- or not your cost
4 specifically, but just what the indices say. And we did
5 look up some of those references which you provided, and I
6 know the one for -- or it seems to be the one for repair
7 and maintenance, that series only goes back to 2009.

8 So I guess I would ask you about that. And so for
9 the repairs and maintenance, are you saying that should
10 just be a comparison from 2009?

11 A. I'll go back and check, but -- it's a follow-up,
12 but I -- I will look. I might have just not put the right
13 data on the testimony. Sorry if that's not right.

14 Q. I have all these wonderful people behind me that
15 check all these things.

16 A. I believe it is right off the St. Louis Fed, and I
17 know our procurement groups look at them --

18 Q. Yes.

19 A. -- religiously to make sure that procuring
20 correctly.

21 Q. Okay. On your discussion of efficient investments
22 in your plants, and I think I caught you're building a new
23 plant, but that's just cut-and-wrap?

24 A. Yes.

25 Q. So of the other plants where you did put some
26 investments in to gain efficiencies, would these be also
27 to increase yields to efficiencies, not just reducing
28 costs but increasing output?



1 A. Well, the ones that -- that is currently a
2 mozzarella plant that's being repurposed to make goat
3 cheese, and so it's --

4 Q. Not a --

5 A. I can't compare -- goat cheese is completely
6 different than the mozzarella that it was making and the
7 equipment is completely different.

8 Q. Have you put any investments in on the whey side
9 of the house since that is a reportable product?

10 A. Mostly in the fractionation side.

11 Q. Okay. On page 5, the last sentence of the first
12 paragraph -- well, first, the paragraph talks about dairy
13 manufacturers needing accurate Make Allowances. And you
14 say, "Without this, manufacturers will be sent wrong
15 financial signals impacting investment, capital
16 disbursement and Federal Order pooling decisions."

17 I'm wondering if you can just expand your thinking
18 on that sentence for us.

19 A. So -- well, as a -- as a -- what I would call a
20 global company, every division is working to get as much
21 capital as they can to reinvest in their division or their
22 area. And ultimately, if we want to continue to reinvest
23 in cheese making, we have to have a positive return.
24 Ultimately, with the Make Allowances being out to date --
25 out of date, making cheese -- making it more challenging
26 to make the return that's acceptable, you will redirect
27 funds and capital to other areas of the business, it could
28 be fillers for aerosol, it could be tabletop, it could be



1 a variety of things. But those would get preferential
2 treatment over cheese, maybe inaccurately. So because the
3 demand in the marketplace might be for cheese, but if
4 cheese makers can't make profits, then they won't invest
5 in it.

6 And pooling decisions, I think people have talked
7 about disorderly marketing quite frequently, but when
8 people are depooling, just because it's their only way
9 that they can make cheese and process whey to make money,
10 I think that's disorderly.

11 Q. So you would rather see it where more milk is
12 pooled?

13 A. I think that's better for everyone.

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

15 THE COURT: Mr. Rosenbaum?

16 MR. ROSENBAUM: Your Honor, I would like to move
17 Exhibit 202 into evidence.

18 THE COURT: Any objections?

19 Seeing none, Exhibit 202 is admitted into the
20 record.

21 (Thereafter, Exhibit Number 202 was received
22 into evidence.)

23 MR. ROSENBAUM: We have another witness, but we
24 have been going for about --

25 THE COURT: Yes, we have, an hour and 45 minutes.
26 Off the record.

27 (Off-the-record.)

28 THE COURT: All right. You are dismissed. Thank



1 you so much for coming in.

2 And we'll take a ten-minute recess. Come back at
3 9:55.

4 Off the record.

5 (Whereupon, a break was taken.)

6 THE COURT: On the record.

7 Please raise your right hand.

8 KIM HEIMAN,

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

11 THE COURT: Your witness. I think it's still a
12 valid swearing in.

13 MR. ROSENBAUM: I think they used to call them the
14 mystery knights, you know, in the jousting competitions.

15 DIRECT EXAMINATION

16 BY MR. ROSENBAUM:

17 Q. Could you please state your full name for the
18 record?

19 A. My name is Kim Heiman. And it's spelled K-I-M,
20 last name is H-E-I-M-A-N.

21 Q. And what is your mailing address or business
22 address?

23 A. Our business address is 10898 U.S. Highway 10, and
24 we're in Marshfield, Wisconsin, 54449.

25 Q. And you are here today appearing on behalf of the
26 Wisconsin Cheese Makers Association; is that correct?

27 A. That is correct.

28 Q. The first witness for that organization to appear.



1 A. Thank you.

2 Q. Welcome.

3 You have prepared a written testimony that's been
4 marked as exhibit WCMA-2; is that correct?

5 A. That's correct.

6 MR. ROSENBAUM: Your Honor, I'd ask that this be
7 marked with the next Hearing Exhibit number.

8 THE COURT: So marked as 203.

9 (Thereafter, Exhibit Number 203 was marked
10 for identification.)

11 BY MR. ROSENBAUM:

12 Q. Now, Mr. Heiman, you have prepared and attached to
13 your statement a rather detailed discussion of your
14 company's cost of making cheddar cheese; is that correct?

15 A. That is correct.

16 Q. I believe it is perhaps the most detailed
17 information that any witness has provided so far in this
18 hearing, so it will be of some interest as we go through.

19 You are here to testify about WCMA Proposal 8,
20 correct?

21 A. That is correct.

22 Q. And are you aware that WCMA Proposal 8 and IDFA
23 Proposal 9 are identical, in fact?

24 A. Yes, I am.

25 Q. Developed jointly in essence, correct?

26 A. That's correct.

27 Q. Okay. Could you please read us your testimony?

28 A. Thank you. I'd love to.



1 My name is Kim Heiman, and I am here today to
2 testify in support of Proposal 8 which seeks to update the
3 current Make Allowances with a phased-in implementation
4 schedule.

5 I serve as president of Nasonville Dairy, a cheese
6 manufacturer in Central Wisconsin that is now employing a
7 third and fourth generation of our family, alongside 130
8 full-time and part-time employees. Our production site
9 west of Marshfield is really two plants in one, with
10 separate lines running American-style cheeses and Feta
11 cheese. In all, we produce about 60 million pounds of
12 cheese in 42 different varieties and styles of cheese,
13 including colored cheddar in 40-pound blocks.

14 As an owner and principal of Nasonville Dairy, I'm
15 involved in nearly every aspect of operation, with a daily
16 emphasis on the cheese production, whey production, and
17 wastewater processing. I have been employed with the
18 dairy for over 40 years, and since the age of 16 have been
19 a licensed cheesemaker in Wisconsin -- Central Wisconsin
20 cheesemaker.

21 Accuracy in Make Allowances is important to the
22 proper functioning of classified milk pricing. We pool
23 milk in Order 30 and follow the requirements for paying
24 our dairy farmers partners -- or dairy farm partners,
25 excuse me -- according to order regulations. Together
26 with my controller, I have gathered information on our
27 costs to produce colored cheddar in 40-pound blocks, which
28 comprises about 27% of our total cheese production.



1 It is my hope that our real world data is useful
2 to USDA as it contemplates updating Make Allowances.
3 Cheese plants like us, and smaller cheesemakers and the
4 large operators need up-to-date Make Allowances that
5 reflect production costs that have skyrocketed in recent
6 years. I can tell you that if our 55-year family
7 operation only made colored cheddar blocks, we would not
8 have survived the last decade. An accurate Make Allowance
9 is the key to keeping a healthy diverse number of cheese
10 factories operating around the country, providing the most
11 possible options for dairy farmers to sell their fresh
12 milk.

13 And not only that, but a healthy cheese making
14 community means that a wide variety of cheeses are being
15 produced in my state and across the U.S. The dairy
16 industry will thrive and grow if we're producing a wide
17 varieties of delicious cheeses from artisans, family
18 operations, cooperatives, and corporations. We have to
19 keep an eye on the goal of pleasing the consumer, even
20 when we're talking about issues that are in the weeds as
21 milk pricing formula.

22 As you can see by our spreadsheet marked Wisconsin
23 Cheese Makers Association Number 2, Nasonville has broken
24 out labor costs, utilities, bulk packaging, and non-labor
25 and utility categories such as ingredients, supplies,
26 maintenance, depreciation, and added these costs to the
27 administrative costs and return on investment to yield a
28 per pound cost of colored cheddar cheese.



1 These costs are our actual costs taken from our
2 2022 financial statements, and they represent our 2022
3 costs to produce colored cheddar cheese. At the bottom
4 line, we show a cost of \$0.3226 to produce colored cheddar
5 in 40-pound blocks, with labor representing 19% of the
6 cost, utilities 7%, packaging 14, non-labor and utilities
7 39, administration 11%, and a return on investment 11%.

8 I appreciate the opportunity to present this
9 information to USDA so they can use real-world example of
10 costs. Thank you.

11 Q. Thank you for reading your statement, Mr. Heiman.
12 A few things before I make you available for
13 cross-examination.

14 I think one thing you told me was that you --
15 although you obviously are in the cheese manufacturing
16 business, you are actually fairly close to the dairy
17 farmer business, too. Tell me about that.

18 A. Okay. Yes. To think that we don't take this
19 seriously in our family on milk pricing, my two brothers
20 have a 500-cow dairy herd. You can imagine there's quite
21 some discussion on that. So the first phone call is
22 generally -- if milk price is low, I know where the first
23 phone call is coming, and it's going to be a nephew. So
24 we take it very seriously.

25 Our farms that we get our milk from, we have about
26 200 producers, they are probably all within about a
27 30-mile radius of our plant, and these are people we go to
28 church with, people we go to schools with. They are our



1 neighbors. So we're not trying to beat them out of
2 anything. What we're trying to do is be sure that we're
3 still available to market their milk, because if we can't
4 market their milk, now there's 200 farm families
5 scratching and thriving to try and find a place to market
6 their milk.

7 Q. Thank you.

8 Now, as I look at your -- we're going to have you
9 talk about your information in a bit of detail in a
10 minute, but I note if we turn to page 9 of 9, you have got
11 a breakdown, poundage, labor, etcetera, etcetera, leading
12 up to your total cost of \$0.3226 a pound, correct?

13 A. That is correct.

14 Q. Did you, in fact, put these materials together in
15 a way that follows Dr. Stephenson's methodology of
16 organizing costs?

17 A. That's correct. We did not participate in Mark's
18 survey, not by choice, simply by my own fault. I did not
19 get the information in in time. I'll take full
20 responsibility. But we tried to follow the methodology as
21 close as possible to Mark's information that he asked for
22 to gather this as close to his information.

23 Q. Okay. And then another, I think you mentioned to
24 me when we met, was related to the question of return on
25 investment. And I -- I -- you explained to me something
26 that hasn't come up in the hearing yet but something that
27 makes that actually particularly important for
28 manufacturers in Wisconsin.



1 So could you tell me about that?

2 A. In Wisconsin, it's called the Producer Security
3 Act. You have to -- being a processor that's going to buy
4 milk from a dairy farm in Wisconsin, you have to be able
5 to be secured that you can cover that milk check every two
6 weeks that you are going to send out to that farm.

7 Two methods you can do this is using your audited
8 financial statement to show two different ratios. The
9 first ratio is your current assets divided by your current
10 liabilities cannot be greater than 1.25. The second one
11 is your debt-to-equity ratio; your total liabilities
12 divided by your equity and basis, has got to be less than
13 2.0.

14 This is important coming into return on
15 investment. If you have no return on investment, there's
16 no way you can make those ratios. If you can't make those
17 ratios, you have to either buy insurance or bonding that
18 could guarantee that you can cover that milk check.

19 And so if you have to buy outside things to do
20 that, that's going to just continue to increase your costs
21 of producing 40-pound colored cheddar blocks.

22 Q. One last question before we get into your specific
23 numbers.

24 One of the -- some of the figures here that sort
25 of are calculated using the Dr. Stephenson approach, based
26 upon a valuation of your facilities; is that correct?

27 A. That's correct.

28 Q. And what did you actually use for that purpose?



1 A. A valuation of the business?

2 Q. Yeah. What did you have -- what did you have
3 those numbers from?

4 A. From our 2022 audited financial statement.

5 Q. Okay. And had you had a valuation performed of
6 your facility as well?

7 A. Yes, we did. If you go to page 6, when it talks
8 about the estimated market value of our business of
9 \$39,037,000 -- or 37 -- yes, that valuation was actually
10 done in 2020, simply because we had a death in the family
11 and had to value the business for a stock retention.

12 Q. So take us through your financials that are
13 attached.

14 A. Okay. If we can start on page 5, it shows the
15 productions in volume. That will be important as we get
16 to the next page. You can see we can spell out the
17 cheddar cheeses, the colored cheddar cheese, and then the
18 other cheddar cheeses which are -- we like to call them on
19 the cheddar side, but they may be Asiago or Fontina, or
20 Queso, or Monterey Jack, or blue marble, or whatever.
21 There's a number of different cheeses, but they are all in
22 the 40-pound block. And all the labor is from that side
23 of the plant. The other side of the production is the
24 Feta cheese production, which represents 32.7.

25 If you add the two cheddars together, you will get
26 a number of 38,972,027. And if you divide that by the
27 cheddar, the colored cheddar, you will see that that's
28 where the 40.53 comes through, and that is actually the



1 percentage of all of our cheddar that's colored cheddar,
2 that actually goes with the pricing index for colored
3 cheddar.

4 Q. Okay.

5 A. That's important as we go to the next item. You
6 will see gross wages. That's all of cheddar production,
7 and that's why that number is multiplied by 40.53 to get
8 the \$537,000.

9 As you skip down, you will see we put in there
10 what our Feta wages were, our milk hauling. Those are all
11 exempt. They are left out of there because they were not
12 asked to be in Mark Stephenson's survey.

13 The lab analysis, colored cheddar is 27.25 of our
14 production. So putting that -- as you figure all pounds
15 that the lab is dealing with for samples, 27.25% of their
16 time should be with the colored cheddar. The same with
17 warehouse and loading, maintenance, things like that.

18 When you get down to the payroll taxes and
19 benefits, you slide down to the next column, you will see
20 where that all adds up to 1.86 million.

21 Just below that is gross wages. The gross wages
22 are all wages, including administration. So you will take
23 all of the wages, the gross wages on the first column to
24 your left, and then go down to under general
25 administration, you will see gross wages, general and
26 administrative. Those added together will give you the
27 6,871,000. Now, divide that by your benefit package, and
28 that's where you come up with 27.07. So if you move that



1 back up to your 27.07 times your cheddar gross wages will
2 give you the \$201,000 in benefits.

3 Q. That's what appears in the first -- is it the last
4 entry item under processing labor at the top of that page?

5 A. That's correct.

6 Q. Okay. Please continue.

7 A. So when you get through the wage part of that, you
8 will see when you add those numbers to the right, you will
9 come up with .0598.

10 Q. And that's your processing labor costs?

11 A. That's processing labor costs for colored cheddar
12 block.

13 Q. Per pound.

14 A. As you move down to utilities, that's electric and
15 gas times 27.25, which is the colored cheddar percentage
16 of our cheese, giving -- those are straight multiplied
17 across gives you the \$0.0226.

18 Q. And that's, once again, that's the cost per pound
19 for the cheddar cheese?

20 A. Colored cheddar cheese.

21 Q. Colored cheddar cheese. Thanks for the
22 correction.

23 A. Packaging, you will see that it asks you to go to
24 the packaging detail, which is on page 8. The average
25 weight of a block of colored cheddar at our facility is 43
26 and a half pounds.

27 Q. I'm sorry, are you on page 8 now?

28 A. Yes, I am.



1 Q. Okay. Thanks.

2 A. The number of blocks on a pallet is 54. That
3 number will come important as we get down to the bottom of
4 the cost of a pallet.

5 So what you have is your cost of a 40-pound block,
6 every box that you put on a 40-pound block of cheese costs
7 approximately \$0.58. Divide that by 43.50, and that will
8 get you your numbers. The same with the cost of the bag,
9 the liner, the cost of the label on the outside. That
10 will get you a .0392 if you add those top four numbers
11 together, divide it by 43.5 because that's how many pounds
12 are in each block, that will get you your cost per pound
13 of .0392.

14 When you get to the pallet costs, the pallet is
15 \$14.25, but you have 54 blocks on there, so you need to
16 take that 43.50 times the 54, which is 23.49, divided that
17 into the 14.25 gives you \$0.006 for a pallet.

18 Now, this is a little skewed with the fact that
19 that's granting that every pallet has 54 blocks of cheese.
20 You may have a customer that buys 27 or 36 blocks. That
21 pallet is still going to cost you 14.25. But for ease of
22 methodology, we just figured it at 54 blocks.

23 You add those two numbers together, the cost of
24 the box bag liner, label, along with the pallet cost, you
25 will get a packaging cost of .0452.

26 Q. Okay. Are you going to take us back to page 6
27 again?

28 A. Now we're back to page 6, non-labor and utilities.



1 Q. Non-labor or utilities, correct?

2 A. Yeah. Yep. Non-labor and utilities processing,
3 okay. In the ingredients, again, we have to move to
4 page 7 because there's some math into this side of things.

5 Q. All right.

6 A. Starter culture is a culture that you use to
7 actually produce cheese. You need a good bacteria. Once
8 you pasteurize milk, you are going to kill all the
9 bacteria in the milk, good and bad, so you need a good
10 bacteria or a mesophilic culture to put back into your
11 cheese.

12 We make our own starter powder, so that's where
13 this cost comes in as the starter ingredient. The powder
14 costs are \$5.36 a pound. It takes 62 pounds. And what
15 you are doing is you are dividing that by 9.56, because
16 you are going to get nine and a half vats of cheese out of
17 that.

18 So you take your cost times your unit, divide it
19 by 9.56 is your cost per vat. And then you divide that by
20 the 4,725 pounds of cheese that you get out of each vat,
21 will give you the cost per pound. That leads us up to the
22 .0075.

23 So if you take 536 times 62, divide that by the
24 9.56, and then divide it by the 4,725, that will get you
25 the cost per pound of starter powder.

26 The same with starter cultures. Once you have
27 made the starter, you have to put in, they're called
28 defined cultures, or a cocktail program, and you have four



1 different cans generally you put in there. That's where
2 that cost comes in, and that's the .0017.

3 Below that it's pretty easy. It is the rennet
4 costs are \$0.37 an ounce. It takes 45 ounces. You
5 multiply both those numbers together and divide by the
6 4,725 pounds of cheese you are recovering per vat to get
7 the numbers on the right-hand side: The salt, the
8 Annatto, the calcium, and a TC culture, which is another
9 Thermococcus, or another starter culture or acid provider.

10 When you add those all together, you will come up
11 with an ingredients cost per pound of cheese of .0311.

12 Q. Okay. So we go back to page 6 again?

13 A. Back to page 6. The rest of these are all pretty
14 much straightforward. It's the depreciation, repairs and
15 maintenance to the production facility, supplies for
16 production, outside services of lab testing, taxes,
17 personal property, real estate, and trash removal are all
18 expenses in manufacturing.

19 We have taken all of those numbers and multiplied
20 them by the 27.25% of colored cheddar to get to the \$0.126
21 in the non-labor and utilities processing.

22 Next is general administration. This number is,
23 again, the gross wages on top of administrative times
24 27.25, you are figuring if your administration is working
25 for all of your facilities, 27.25 of that should be
26 expenses for the colored cheddar.

27 Payroll taxes and benefits. If you go back up to
28 where it had the total of 1,860,000 there for total



1 payroll taxes and benefits, subtract the payroll taxes and
2 benefits from the gross wages of the upper column of the
3 general labor, you will come up with 211,000 in the total
4 process payroll taxes and labor for administration.

5 That's using the 27.07%, again, for what your percentage
6 of is for your -- for your general taxes and benefits.

7 Below that are all pretty much straightforward
8 accounting and audit: Dues and subscriptions, business
9 insurance, licenses and permitting, supplies for office
10 and IT, telephone expense, those are all multiplied by the
11 27.25 as shown, and that will get you a .0348 total.

12 Q. So \$0.0348 per pound for G&A, correct?

13 A. Correct.

14 Q. Okay.

15 A. Then we get into the annual return on investment.
16 We followed Mark Stephenson's survey here with the -- per
17 Stephenson's testimony on page 9 of return on investment
18 and using the average Moody bond index that he had printed
19 in pages 29 and 30 of his report, the average of 2022, if
20 you add all 12 of those together, you will end up with a
21 5.07 for the yearly average.

22 We multiplied that times what our estimated market
23 value of our business is, to come up with what our annual
24 return on investment with a 5.07%, and then multiplied
25 that by .2725 to get the 539,000, or basically \$0.0342 per
26 pound.

27 Q. And -- and just to remind us what the total cost
28 then is?



1 A. The total cost when you add all those together and
2 we get to the final number, we're at \$0.3226 per pound.

3 Q. And that's per pound of colored cheddar cheese.

4 A. Per pound of colored cheddar cheese.

5 MR. ROSENBAUM: The witness is available for
6 cross-examination.

7 CROSS-EXAMINATION

8 BY MR. MILTNER:

9 Q. Good morning, Mr. Heiman.

10 A. Good morning.

11 Q. My name is Ryan Miltner. I represent Select Milk
12 Producers. Thank you for coming to testify.

13 A. Thank you for having me.

14 Q. Did you participate in both of Dr. Stephenson's
15 most recent surveys?

16 A. No. I believe I stated that at the start, that I
17 did not participate in them, and it was not because of a
18 not wanting to, it was simply my fault. Didn't get it --
19 didn't get it tolled over to the controller in time to get
20 the numbers sent in, so I take full responsibility for
21 that. And that's why we tried to follow along
22 Stephenson's approach as closely as possible to get our
23 numbers.

24 Q. I thought I heard that, but I just wanted to make
25 sure. So thanks for clarifying what I didn't hear
26 correctly.

27 A. Thank you.

28 Q. In your -- and I -- first of all, I appreciate how



1 much data you have chosen to share with us. You obviously
2 know you don't have to do that, and some folks have and
3 some folks haven't. I think it is helpful to have the
4 information, so thank you.

5 And I'm looking at page 5 of your statement. And
6 I'm pretty clear what goes into the Feta category. But I
7 know Mr. Rosenbaum asked some questions of you, but if you
8 could go through, what's in the category of other cheddar
9 and jack? I think you mentioned some cheeses, but I want
10 to make sure I have them correct.

11 A. We probably do about 40 different varieties of
12 other cheeses, everything from Asiago, to Fontina, to
13 Parmesan, to Romano, on just the hard cheese sides of
14 things, along with Monterey Jack, Queso, and in the
15 Monterey Jacks we'll do a number of different flavored
16 cheeses. It's important for us to do this because, as I
17 stated earlier, if we were just a colored cheddar cheese
18 manufacturing plant, we could not possibly -- could not
19 possibly survive with the Make Allowances what they are as
20 of right now, so we need to go and invest into -- or
21 diversify into other specialty products.

22 Q. So -- and I'm -- I am not a cheesemaker,
23 certified, master, or otherwise. Cheddar is both a style
24 of cheese and a process of cheese making, is it not?

25 A. That is correct.

26 Q. So when you say "other cheddar," those are cheeses
27 made with the cheddar processing, but they are not cheddar
28 cheese, correct?



1 A. Correct. You can -- you can use the same
2 process -- or the same equipment, but you are -- and
3 you're using the same block forms. It's coming out in
4 40-pound blocks, but it's not labeled as a colored cheddar
5 cheese.

6 Q. Great. Now, you mentioned the number of styles
7 you make, and I have seen some of them on your website
8 while you were testifying, too, and I need to try some of
9 them.

10 That changeover process for making all those
11 different styles, can you describe for us what goes into
12 that?

13 A. Well, there's certain things that you can do
14 depending upon you can start out, say we're not making --
15 if we're making a colored cheddar, we're going to be on
16 colored cheese all day, because once you have put an auto
17 seed into coloring into that first vat and that first vat
18 is orange, you are going to be making orange cheese the
19 rest of the day, you know, so that's just a given.

20 You may go at the end of the day, maybe making a
21 marbled cheese where you are going to mix a color and a
22 Monterey Jack cheese together or something like that, or
23 maybe a flavored cheddar, but you are going to be staying
24 on that all day long.

25 If you are making a white cheddar cheese, say the
26 East Coast New York-style type white cheddar cheese or
27 something like that, you may follow that with a pizza
28 cheese or a Fontina or something else that maybe have



1 different flavor profiles, and then you may end up
2 finishing your day with a cheese that has like a condiment
3 in it, like a horseradish or a pepper jack or, you know, a
4 case of, let's see vegetable, a number of different
5 varieties.

6 Q. How many different styles of cheese do you think
7 you can make a day on that cheddar line?

8 A. You can probably get four to five, depending upon
9 the varieties that you are doing. Some are certain -- I
10 mean, if you are going to make a horseradish, you are
11 going to make a pepper jack, or something with a
12 condiment, once you go to that style of cheese, you are
13 done. That's what you are going to be making the rest of
14 the day.

15 But before that, maybe you can make a Monterey
16 Jack, and maybe you can make a Fontina or something after
17 that. But some of the -- especially the flavored
18 programs, once you get to that cheese, you are going to be
19 done all the way until you wash.

20 Q. Does your family supply milk to the plant?

21 A. Yes, they do.

22 Q. Do you source from other farms as well?

23 A. Yes. All of our farms are direct farm ships that
24 we have. I mean, so all of our farms that the 200 -- just
25 about 200, I just use that number as an example, but they
26 are all farm family independent-owned farms. We run our
27 own milk trucks picking up all of the milk.

28 Q. Do you pay them the federal price?



1 A. We pay by the Order 30, correct. We're governed
2 under Order 30 is where the Federal Milk Marketing Order
3 that we are under.

4 Q. When it's economically advantageous to you, do you
5 depool the milk?

6 A. Yes, we do.

7 Q. Do you share those proceeds with your patrons?

8 A. Yes, we do.

9 Q. I think it was on your website, that you actually
10 have the largest -- or the oldest cheese making facility
11 in the state of Wisconsin?

12 A. No, not in Wisconsin, but in Wood County,
13 Wisconsin. The original plant that we're at right now is
14 125 years old. The original facility burned down, and of
15 course some of the old wood buildings have from years gone
16 by, but it was rebuilt onto that same and it's been added
17 on and -- and it's pretty much maxed out to what we can do
18 now.

19 Q. And sorry to hear about the fire but --

20 A. That was a hundred years ago, so I didn't know
21 much about it.

22 Q. Well, we have heard too much testimony this
23 hearing about plants and fires, and -- and it's
24 devastating. But how -- when was the fire and when did
25 you rebuild?

26 A. Oh, that was -- that fire had to be probably
27 back -- the plant was built in 1885, so I would assume the
28 fire was probably around the late 1890s to 1900, so it's



1 been quite a while.

2 Q. And over my career I have seen some old facilities
3 that just do a fantastic job, and it sounds like yours is
4 one of them, but I also imagine with a plant footprint
5 that's that old there are certain inefficiencies because
6 of layout and things that -- that would not happen if you
7 were to build a brand new facility. Would that be
8 accurate?

9 A. That is correct. That's why we are asking about
10 that the price of 40-pound block be across the board, not
11 just to the super -- or as they refer to the deadly
12 efficient plants of the West, so -- so that other
13 facilities can still survive. Because if you don't have
14 other facilities to buy that milk from that producer, you
15 are going to get to a monopolized state. And at that
16 point, you wouldn't have an Order 30, because they would
17 govern exactly what you are going to get for milk.

18 Q. I imagine you might lose some of the artisan
19 techniques and some of the unique cheeses a plant like
20 yours makes, too, correct?

21 A. That is correct.

22 Q. For your cheddar processing, what kind of vats do
23 you use? Are they open, horizontal, vertical?

24 A. We use what's called a Damrow Double-O vat. And
25 then our cheese from there goes onto a finishing table.
26 And from there it goes into the block formers.

27 Q. For as long as you have been working at the plant,
28 has the -- has the style of cheese been pretty constant



1 throughout?

2 A. No. When we were younger, it was strictly a
3 colored cheddar facility. When we came back in the late
4 '60s up until probably the mid-'70s, it was simply a
5 colored cheddar cheese plant.

6 Q. Was it in the '70s and '80s then that you started
7 making more of these specialty artisan cheeses?

8 A. We started to move into some of the other things
9 that were able to make it to the point of where we could
10 survive a little better in the industry, correct.

11 Q. So it's been a long time since the best business
12 model for you was to just crank out 40-pound cheddar
13 blocks?

14 A. It has been a long time, yes.

15 Q. I know you have been here a couple days. I don't
16 recall if you were here when Agri-Mark testified about
17 their cheese producing.

18 A. No, I was not.

19 Q. Okay. One of the things that they testified about
20 is that they will make 40-pound blocks and depending on
21 the quality of the output or whatever, they will select
22 the highest quality cheese for aging to be marketed as
23 Cabot cheese and the rest goes to a commodity market.

24 Does your plant do anything similar in terms of
25 segregating output for different markets?

26 A. What we try to do is produce cheese to what our
27 customer is looking for, so we try to be defiant to
28 whatever our customer wants. We try to make sure if -- in



1 a best case scenario world, you would be able to label
2 every pallet as it came off the line where it was going to
3 end up at the customer and who would be picking it up.
4 That doesn't always happen. When -- when cheese or cheese
5 starts to slow down in sales and you need to put some into
6 storage, that will happen. But the fact is, at our
7 facility, we try to make our cheese as close to what our
8 certain customers so we can tweak it in one direction or
9 another to satisfy them for their end user.

10 Q. So your preference is you are making cheese to
11 order, correct?

12 A. Correct.

13 Q. Do you get a lot of orders for just straight
14 unflavored 40-pound yellow cheddar blocks?

15 A. Yes. We probably do. As I said, 27% of our
16 cheese is that way, straight colored cheddar, 40-pound
17 blocks.

18 Q. On your - your website you -- there are some
19 cheeses that are on here. There's, for instance, a smoked
20 cheddar cheese in various flavors, a some -- some hot
21 cheddar cheeses, Carolina Reaper and Scorpion and others.

22 Would those types of cheeses be included in your
23 the category of yellow cheddar in your page?

24 A. No, they wouldn't. The only thing included in the
25 yellow colored cheddar cheese is any of the cheese that
26 needs to be reported on the NASS survey is the only
27 cheddar that's reported into the colored cheddar side of
28 the 27.25%.



1 Q. You also, on your website, say that you offer your
2 block cheeses in 40-pound blocks, 10-pound prints, 5-pound
3 loaves, 2.5-pound mini-loaves, and 1-pound chunks.

4 Is that for -- or anything other than 40-pound
5 blocks, would that be included in the other cheddar
6 category?

7 A. No. This would -- that would be -- you are
8 talking about cheese that's offered in a retail section.
9 So we would ship those 40-pound blocks that we manufacture
10 to a cut-and-wrap operation who would go and put those --
11 and cut those into the styles that you had asked for, the
12 10-pound loaves, the 5-pound prints, the 2.5-pound chunks.
13 That would be an added cost. That has nothing to do with
14 the manufacturing costs of our cheese.

15 Q. And the underlying cheese, though, would be in
16 your yellow cheddar category on your breakdown?

17 A. None of that would be. That would -- that would
18 just be the original cost of producing the 40-pound block.
19 It has nothing to do with the underlying costs of doing
20 the 10-pound prints or anything like that. That's an
21 added cost on later from there.

22 Q. Okay. And so I think I know what you are saying,
23 but I want to make sure I'm clear about it.

24 If I wanted to buy from you 5-pound loaves, the
25 cheese that I bought from -- from you, would that cheese
26 be included in the category of colored cheddar or other
27 cheddar on your cost breakdown?

28 A. If it was an original block of colored cheddar,



1 the cost of the colored cheddar would be included there,
2 the cost of the sale of the colored cheddar. But the cost
3 of conversion -- of converting it to -- the overage that
4 you would pay to have it converted to the 5-pound loaves
5 would not be included into that, nor would any of the
6 labor or anything.

7 Q. So you would be selling it -- you wouldn't be
8 selling it to me as a 40-pound block, you would be selling
9 it to me as a loaf, and there would be costs for the
10 cut-and-wrap.

11 A. That is correct.

12 Q. Okay. Great.

13 Of the cheese that's listed in your -- as colored
14 cheddar on your breakdown, about how much of that is
15 actually sold as a 40-pound block reportable to the NDPSR?

16 A. All of it.

17 Q. All of it.

18 A. All of it.

19 Q. So if I'm buying your 10-pound loaf --

20 A. We have to report that we made a 40-pound block of
21 colored cheddar. Now, if you have pulled that out of your
22 inventory to show that it went to a cut-and-wrap, you are
23 paying the overage over that colored cheddar to get your
24 piece into the size that you want.

25 Q. So who -- so you sell it as a 40-pound block?

26 A. Correct.

27 Q. Okay. And then if I'm buying 10-pound loaves,
28 that -- do I get a separate invoice from you or the



1 cut-and-wrap operation for the conversion?

2 A. No, the cut-and-wrap operation will bill back to
3 us, who will make it one simple place for you to run your
4 bill to, will be directly to you, but there will be
5 included -- the cut-and-wrap operation will be included
6 into that price.

7 Q. That's very helpful to understand that. Thank
8 you.

9 A. Okay. You're welcome.

10 Q. You have a vat summary on here, and this is
11 page 7.

12 A. Okay.

13 Q. At the very top there you have vat summary. It
14 says yield per hundredweight, 10.5%. Is that really like
15 10.5 pounds? Or how do you calculate 10.5%?

16 A. What it is, is we have excellent farms. We have
17 very good solids, very good butterfat, simply due to the
18 genetics that they have, the food rations and things that
19 they have from our farms. So on an average, we are
20 generating a 10.5 yield on our cheddar, which means that
21 for every hundred pounds of milk, we should be able to
22 retain 10.5-pounds of cheese.

23 Q. So, yeah. I think I have seen it both ways where
24 somebody will say, I get a 10.5 pound yield, or a 10.5%.

25 A. Oh, no. 10.5% means that -- what that means is
26 out of that 45,000 pounds of milk, that's where they are
27 getting that 4,725 pounds of net cheese out of that vat.

28 Q. Very good.



1 What type of rennet do you use?

2 A. We use what's called a Mucor miehei, or it's --
3 it's a rennet that is plant-based or grown from a plant,
4 simply, because we do some organics, things like that, so
5 we can't use a true calf rennet, which would be something
6 that would come from a calf's stomach, which is what
7 rennet traditionally is from. This is a grown-up rennet.
8 So we buy it from one of our supplies.

9 Q. Does that particular rennet come with any -- any
10 claims that it helps to increase the amount of butterfat
11 retained or anything like that or increase the yield?

12 A. No. I mean, all rennets will tell you the
13 clotting ability that they have, but this one does -- it
14 isn't like it's a simple claim that said that if you use
15 my rennet -- well, any good salesman will tell you, if you
16 use their rennet, it's going to produce more cheese than
17 the other person's rennet. That's going to be a given.
18 But, no, it doesn't make any claim to that.

19 Q. Okay.

20 MR. MILTNER: I think those are all the questions
21 I had. Thanks again.

22 THE WITNESS: You're welcome.

23 THE COURT: Further questions?

24 CROSS-EXAMINATION

25 BY MS. HANCOCK:

26 Q. Good afternoon, or --

27 A. Good afternoon -- or good morning.

28 Q. Good morning, Mr. Heiman. Still not quite there



1 yet. Let me see where to start.

2 So I just wanted to make sure that I understand
3 some of what you have already talked about.

4 So we have -- you have just over 15 million pounds
5 of 40-pound blocks of the colored cheddar that was
6 produced in 2022; is that right?

7 A. That's correct.

8 Q. Is this about an average amount of production that
9 you would expect in other years as well?

10 A. This is pretty close to average, yes. We try to
11 run our plant pretty efficiently with the fact that we run
12 full days Monday through Friday and a little bit of a
13 shorter day on Saturday, try to take Sunday off.

14 Q. Okay. And has your production -- do you run at
15 capacity, with those hours?

16 A. Yes, we do. With the fact that the milk volume in
17 our area is such that we need to run at production to use
18 up all of our milk.

19 Q. Okay. And you have not had any issues in -- in
20 milk supply?

21 A. No, we haven't. We have -- as I said, we have a
22 fantastic group of farms that we get milk from, and so we
23 have been very fortunate.

24 Q. So it's about a third of the production that runs
25 through your facility, maybe just a little under a third?

26 A. Yeah. Between a quarter and a third, correct,
27 would go into the cheddar side, correct.

28 Q. Okay. Your overall operation for processing



1 facility, would you consider yourself to be on the smaller
2 side of the processors?

3 A. I would say we're probably on the smaller side of
4 processors when -- you know, we, process approximately
5 1.7 million pounds of milk a day. I don't know what the
6 number would be for a Glanbia or a Hilmar, but it's
7 probably maybe eight to ten times that amount. And I
8 don't know their numbers, but I would say that they are,
9 the larger plants are certainly a lot larger.

10 Q. I think what you're producing in about -- in --
11 for each year, Glanbia's producing in less than a month.

12 Does that sound about right?

13 A. That's sounds about right. Correct.

14 Q. Okay. And you would agree with me that there's
15 some efficiencies that are gained when you have an
16 operation that can produce in that volume of quantity that
17 we just talked about with Glanbia; is that right?

18 A. Exactly.

19 Q. And I think you had talked about with Mr. Miltner
20 that in some of your lines you are changing out the
21 product that you are producing four or five times a day
22 depending on what you are producing through there?

23 A. That's -- the goal is to be able to do that as
24 quickly as you can, the most efficient way that you can,
25 to get the most return on your processing.

26 Q. Okay. And it would be more efficient if you had
27 enough volume that you could have one line that just runs
28 one product at all times.



1 A. Sure. That would be fantastic if you had that.
2 In a real world or in a perfect world, yes, that would be
3 great.

4 Q. And you understand that the Make Allowances that
5 we're looking at or considering here are designed to
6 capture the cost of manufacturing those products for all
7 of the different types of manufacturers who were subjected
8 to the Federal Order system?

9 A. That is correct, the large and the small. So you
10 are looking at, you know, the super efficient, or deadly
11 efficient person that can do it for \$0.22 a pound, to the
12 person that's doing it for \$0.32 or \$0.33 a pound.

13 Your processors -- or your producers need all of
14 these facilities running in order to sell their milk
15 product. And the big thing that you need to have is you
16 need to produce something that the end consumer is going
17 to want and going to buy. If you don't have that, then
18 you don't have a market, and you don't have a need to buy
19 milk.

20 Q. And I just love that Mr. DeJong's deadly
21 efficiency just lives on.

22 And if you were the one in the decision-making
23 seat, how would you set a Make Allowance that would
24 account for plants such as yours that would be on the
25 smaller side and running multiple different types of
26 products, and other plants like Glanbia, for example, that
27 might be deadly efficient, and doesn't have to -- doesn't
28 have to change out product lines and has dedicated plants



1 and all the other things that they can build in their
2 modern technologies. How would you weight those?

3 A. That's a very tough question, and that's why we
4 come to the people with USDA and present our information
5 to them and have their expert analysis go about putting
6 these numbers together to make it the most efficient for
7 every plant to survive and thrive.

8 Q. And you have family members that you mentioned
9 are --

10 A. Correct.

11 Q. -- are dairy farmers?

12 A. Yep.

13 Q. And so you -- you have -- and I think maybe a
14 little touched by the struggles and the balance that you
15 have to try and reach; is that fair?

16 A. Exactly.

17 Q. And you understand that many of the cooperatives
18 are in similar positions where they process on one side,
19 and they have an ownership that is representative of the
20 dairy farming community that has struggles on their side
21 as well?

22 A. That's correct.

23 Q. And that's the balance that we have to strike in
24 making sure that we set the Make Allowance at the right
25 level; is that fair?

26 A. That's fair.

27 Q. And would you agree with me that it's important
28 that we don't set the Make Allowance too high?



1 A. It's important that you don't set it too high.

2 It's important that you don't set it too low.

3 Q. And --

4 A. There's a -- a flip side to everything. There's
5 an action and reaction to everything. And, again, that's
6 where I push it over on to USDA to take the information
7 that they gather and to utilize that information to an
8 algorithm and come up with a good Make Allowance that is
9 good for everyone, including the dairy farmer.

10 Q. And you can appreciate, or maybe even empathize,
11 with the burden that that puts on them in order to make
12 sure that they hit that right balance, that it's not too
13 low and it's not too high?

14 A. That's correct.

15 Q. And you understand that they don't have a black
16 box to put this algorithm into to pop out a magical
17 number; is that fair?

18 A. No one has that. You are correct.

19 Q. And do you agree that it's important that we have
20 accurate information that's reflective of the processors
21 actual Make Allowances?

22 A. That's why I want and had our controller break
23 down things and share as much information as I did today
24 of what our processing costs are, so that you have a true
25 and accurate account of what it costs to produce 40-pound
26 blocks at Nasonville Dairy.

27 Q. And I appreciate that, because I can -- I can tell
28 that it's a considerable amount of work for your team to



1 be able to put that information together.

2 You understand that National Milk's position is
3 that it wants to increase Make Allowances as well?

4 A. That's correct. They understand that that --
5 that's their also -- I mean, I can understand their
6 platform with the fact that they understand that the
7 processors need to survive if they want to sell -- if they
8 want to sell milk.

9 Q. And you understand that they have also -- while
10 they want to increase Make Allowances, they want to make
11 sure that it's not set too high as well?

12 A. I understand their side, correct.

13 Q. And -- and I think we have already talked about
14 that, but you agree that you don't want to set them too
15 high either?

16 A. Correct.

17 Q. And you understand that National Milk is
18 advocating for a mandatory audited cost survey that would
19 allow the USDA and the industry to have full confidence in
20 the numbers that are used to set Make Allowance.

21 A. I believe that's true.

22 Q. And do you agree that you also would like to have
23 a mandatory audited cost survey so that your nephews and
24 your brothers that are involved in the dairy farming
25 industry can have confidence that the Make Allowance
26 numbers that are set are also accurately set?

27 A. My feelings can't be portrayed as what industry
28 would like to see or like to do, so I will have to defer



1 from that question.

2 Q. And I don't want you to speak on behalf of the
3 industry. I just want you to speak on behalf of
4 Mr. Heiman today. Do you agree that you would like to
5 have an audited mandatory cost survey so that you could
6 have confidence that the numbers that are used to set
7 Make Allowance accurately reflect what's in the industry
8 today?

9 A. I'm not sure I want more regulation. So, no.

10 Q. So you don't want a mandatory audited cost survey?

11 A. I don't believe it will happen.

12 Q. Why not?

13 A. It's just my answer. That's just my belief.

14 Q. And let's assume that it -- it is an -- is an
15 option for it to actually happen, and there's an option
16 for USDA to be able to use audited mandatory cost surveys
17 to set Make Allowance. Would you agree with me that that
18 would be a more accurate way to set Make Allowances?

19 A. For one type of cheese.

20 Q. And that would be for cheddar?

21 A. Correct.

22 Q. Okay. And that's actually what we're looking at,
23 in any -- any change that's being proposed, is that it
24 would be -- it would be set for just cheddar cheese?

25 A. I --

26 Q. Is that right?

27 A. You made a statement. I didn't know where you
28 were leading there.



1 Q. Well, they always end with a question mark.

2 A. Oh.

3 THE COURT: I think she's asking you to confirm
4 that that's so.

5 MS. HANCOCK: Right.

6 BY MS. HANCOCK:

7 Q. Is that right?

8 A. That's what you are referring to, correct.

9 Q. Even under IDFA and WCMA's proposal, you
10 understand that you are proposing a Make Allowance that's
11 just set based on cheddar cheese prices; is that right?

12 A. That's what National Milk is promoting -- is -- if
13 that's what you are asking me, if National Milk is asking
14 to do that, that is -- I believe that is their stance.

15 Q. And that's also what IDFA and WCMA is offering as
16 well --

17 A. Correct.

18 Q. -- is just a different price, but based still on
19 just cheddar cheese?

20 A. Correct.

21 Q. And that's actually in your Exhibit 203, that's
22 what you calculated, and then you did a lot of extra work
23 to make sure that your allocations were attributed to just
24 your cheddar cheese?

25 A. That is correct.

26 Q. So if everybody's in agreement that we're going to
27 price it based on cheddar cheese, would you agree with me
28 that the best way to do that and to ensure the accuracy



1 would be to have a mandatory price survey?

2 A. That would be something you would have to pool all
3 the plants to do. So that would be -- it would be an
4 intriguing and a boatload of work for USDA.

5 Q. But it would make the information more accurate;
6 would you agree?

7 A. If everyone had participated and -- had I had not
8 forgotten and had everyone participated in the Mark
9 Stephenson survey, it would have been the same situation
10 if you are asking that, correct.

11 MS. HANCOCK: Thank you so much for your time
12 today. I appreciate it.

13 THE WITNESS: You're welcome.

14 REDIRECT EXAMINATION

15 BY MR. ROSENBAUM:

16 Q. So the -- Steve Rosenbaum for International Dairy
17 Foods Association.

18 The total cost that you have calculated for making
19 cheddar cheese if you are -- for your company is \$0.3226 a
20 pound; is that correct?

21 A. That's correct.

22 Q. Now, are you aware that under the proposals by the
23 International Dairy Foods Association and the Wisconsin
24 Cheese Makers Association, the Make Allowance for cheese
25 would be raised to \$0.3006 per pound?

26 A. Over a four-year period. That would be a step-in
27 approach. I'm giving you real numbers from 2022 here.
28 You're looking at the total increase would be over four



1 years. So, therefore, four years from now we'll be close
2 to what it costs me today.

3 Q. So just -- and you're ahead of me.

4 So -- but IDFA is proposing a staggered
5 implementation of an increase in the Make Allowance,
6 correct?

7 A. That's correct. And WCMA follows along with that
8 same platform.

9 Q. And even in year four, which is the January 1,
10 2028, number, that number rises to and stops at that point
11 at \$0.3006, correct?

12 A. That's correct.

13 Q. So you will still not have your cost of
14 manufacture covered even five years from now?

15 A. Correct. We still will not -- it will be closer,
16 but we will not have all of our costs for producing
17 colored cheddar cheese.

18 Q. Okay. And the National Milk proposal is to
19 increase the Make Allowance to \$0.24 from its current
20 \$0.20. Are you aware of that?

21 A. That's correct.

22 Q. And does that leave a considerable gap between --

23 A. That does.

24 Q. -- between -- between your cost of manufacture and
25 their proposed Make Allowance?

26 A. Yes, it does.

27 Q. If you take -- as I think this is a given, that
28 the audited mandatory surveys in California indicated that



1 back in 2016, seven years ago, it already cost \$0.24 to
2 make cheddar cheese. That's a published number. It's in
3 the record.

4 Have you experienced cost increases since 2016 in
5 your manufacturing of cheddar cheese?

6 A. As everyone has. I mean, you -- it doesn't matter
7 what industry you are in, the farming side, the cheese
8 making side, the processing, the food truck, the trucking,
9 everyone has seen great examples of increase in costs.

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

12 THE COURT: Okay. Anyone else?

13 I mean, that was redirect, but I think it's
14 appropriate given that AMS should have as much from other
15 people before it's their turn to cross, and no one
16 objected.

17 MS. TAYLOR: Thank you, your Honor. AMS does have
18 a couple questions.

19 THE WITNESS: Certainly.

20 CROSS-EXAMINATION

21 BY MS. TAYLOR:

22 Q. Thank you for coming to testify today.

23 A. Thank you for allowing me to be here.

24 Q. You mention you have 200 farm suppliers.

25 Are those independent shippers?

26 A. Yes, they are.

27 Q. You talked about how Nasonville pools milk but
28 will also choose to depool milk when it is financially



1 advantageous to do that. And you did talk about how when
2 the company does that, you do share some of that revenue
3 with your producer suppliers; is that correct?

4 A. Correct.

5 Q. In a normal month, there's been some discussion
6 about how are producers being impacted by -- as people are
7 terming them -- inadequate Make Allowances, so I wanted to
8 hear a little bit about how you're able to cover what
9 is -- based on what you have presented here, are
10 Make Allowances that don't cover your cost of cheddar and
11 maybe how that's reflected in your producer pay prices for
12 your direct shippers.

13 A. Well, we're in a direct competition with a number
14 of other dairy plants in Central Wisconsin, so we
15 certainly need to pay a very competitive price to hang on
16 to our farms, because if they are not shipping with us --
17 although all plants are getting pretty full, but they --
18 they have the ability to ship their milk where -- we don't
19 hold a contract with any of them. So if they want to call
20 me tomorrow and say they want to ship their milk somewhere
21 else, they certainly can. So our best way is having a
22 good sales staff that can go out, sell our product, and
23 get us a good return on to our cheese, so that we can
24 continue to be competitive in the market for the milk
25 supply.

26 Q. Okay. And do you pay premiums to your producers?

27 A. There are premiums. I can't tell you for sure
28 what they are, but I do know that there are premiums to



1 the producers, whether it be quality or quantity or --
2 those situations, I'm not coherent. I don't know those
3 answers, but I do know we do have premiums.

4 Q. Thank you.

5 And have you seen -- well, you probably don't know
6 the answer to over the last few years have those declined?

7 A. I would say that they probably have as -- as most
8 producers -- most dairy plants have.

9 Q. And for your 40-pound blocks, as I understood it
10 with your conversation with Mr. Miltner, you will sell
11 those to entities, but they then go on and get further
12 broken down to whatever more retail sized packaging is
13 requested; is that right?

14 A. They can, but a lot of them will sell out directly
15 to another -- another facility or another processor who
16 may shred it and it may end up in the grocery store under
17 their label. It all has traceability back to our dairy
18 plant, but it all -- it may go to another customer who is
19 going to process -- or put it into a slice or a
20 cut-and-wrap operation.

21 Q. Okay. Okay. Thank you.

22 And when you sell your cheese, how do you look to
23 price your cheese? Do you price off the CME block price
24 or --

25 A. Basically, just about everything is based off of
26 the CME block price, correct.

27 Q. I just had a quick question, if you could turn to
28 page of 6 of your testimony. We wanted to understand --



1 just check on a couple of categories under your processing
2 labor.

3 For warehouse and loading costs, is that at the
4 end of the production chain, to load up the product?

5 A. No. That's actually bringing in raw material from
6 the warehouses.

7 Q. Okay.

8 A. And then the other part is just moving the cheese
9 around, you know. You are going to be -- as you make
10 cheese in one section of the plant, your loading people
11 are going to come and grab that pallet of cheese, put it
12 down, take it into the coolers, and situations like that.

13 Q. Okay. That's helpful.

14 And intake trucking is raw milk intake?

15 A. Correct. Yep. And that's why that number is not
16 included at all into the survey because they asked not to
17 include anything with your whey plant, your milk intake,
18 or anything to do with the milk hauling or the Feta
19 production.

20 Q. Okay. And I know you don't report whey, but do
21 you list -- and I know your whey costs aren't in there,
22 but I'm just curious what you all do with your whey.

23 A. We have an ultrafiltration system and an RO
24 system. So we make 80% -- excuse me -- 55% WPC that we
25 sell in a liquid form. We do not dry any whey. And the
26 same with our permeate is run through an RO system where
27 we produce permeate that's about 18% solids and sold in
28 the liquid form.



1 Q. Okay. And my last question -- and Mr. Rosenbaum
2 hit on that a little bit -- under year four, the IDFA
3 proposed Make Allowances would not cover your
4 Make Allowances as you've given us the information for
5 2022.

6 How are you going to deal with that?

7 A. The same way that I'm dealing with it right now in
8 its \$0.12 difference.

9 Q. And how is that?

10 A. You are going to try and find a type of cheese or
11 an -- almost an artisan type brand where you can probably
12 get a higher return on your cheese, or a higher yielding
13 cheese to create the most amount of income that you can,
14 so that you can continue to survive.

15 Q. So put it another way, you will look to make less
16 40-pound cheddar and more something else?

17 A. In a perfect world, yes.

18 Q. Right.

19 A. But the 40-pound cheddar is still a very good
20 selling item.

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

23 REDIRECT EXAMINATION

24 BY MR. ROSENBAUM:

25 Q. One quick correction on an error introduced into
26 the record by Mr. Rosenbaum.

27 The proposed Make Allowance is \$0.284. I don't
28 know where I got the \$0.30 figure from.



1 A. I was pretty excited about going up to \$0.30. I
2 was just going along with it. I thought I could maybe get
3 a couple more cents here.

4 Q. And with that self-correction, but, you know, that
5 simply further demonstrates that the Wisconsin Cheese
6 Makers Association, IDFA proposals would not themselves
7 actually cover all of your current costs of manufacturing,
8 even as they reach their peak in 2028, correct?

9 A. Right. It would -- it would rely on us to become
10 a more deadly efficient plant basically.

11 MR. ROSENBAUM: Your Honor, I would move Hearing
12 Exhibit 203 into the record.

13 THE COURT: Objections?

14 Exhibit 203 is made a part of this hearing record.
15 (Thereafter, Exhibit Number 203 was received
16 into evidence.)

17 MS. TAYLOR: Your Honor, if I could, because I'm
18 trying to keep track of time as well, and I recognize we
19 have one more witness to get on this morning. So what we
20 are doing is notifying the dairy farmers that are
21 scheduled to testify today that we will start a little bit
22 late, at 12:15, to help us maybe try to get through
23 Mr. Wills now and still take a small lunch break.

24 So if that's okay with everybody, we'll --

25 THE COURT: Raise your right hand.

26 ROBERT WILLS;

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



1 THE COURT: Your witness.

2 DIRECT EXAMINATION

3 BY MR. ROSENBAUM:

4 Q. Good morning, Mr. Wills.

5 Do you have before you the document that's marked
6 as Exhibit WCMA-3?

7 A. I do.

8 Q. And is that your written testimony?

9 A. Yes, it is.

10 MR. ROSENBAUM: Your Honor, I'd ask that it be
11 marked with the next Hearing Exhibit number.

12 THE COURT: Yes. WCMA-3 is marked 204 for
13 identification.

14 (Thereafter, Exhibit Number 204 was marked
15 for identification.)

16 BY MR. ROSENBAUM:

17 Q. Mr. Wills, given the time pressures, I'm going to
18 limit my questions of you, except that you have told me
19 that you have a background that doesn't appear on the
20 document. Can you just tell us your educational
21 background?

22 A. To the degree it's relevant, I have a Ph.D. in
23 economics and a law degree, and worked for Economic
24 Research Services of USDA, as well as the University of
25 Wisconsin, before I decided to become a cheesemaker and
26 follow my passion.

27 Q. Please read us your statement.

28 A. Do you want my address and all that kind of stuff?



1 It's in the written part, but I'm just following the
2 pattern here.

3 Q. And you're being a lawyer now, too. Yes, please,
4 do that.

5 A. Robert Wills, R-O-B-E-R-T, W-I-L-L-S. The address
6 of our factory is E5904 Mill Road, or Post Office Box 185,
7 Plain, Wisconsin, 53577.

8 Q. Thank you.

9 A. Sorry about that.

10 Q. No, no apology.

11 THE COURT: I appreciate that.

12 THE WITNESS: Today I want to discuss how
13 Make Allowances impact farmers who sell milk to companies
14 like Cedar Grove Cheese, and why higher Make Allowances
15 are beneficial for us and for the dairy market.

16 Attached is a spreadsheet showing the cost of
17 production for cheddar at Cedar Grove Cheese. The data
18 were not included in previous compilations. Our costs at
19 about \$0.77 per pound are on the highest end of those
20 discussed in these hearings.

21 And to be clear, we are not advocating at this
22 time for our cost to be a national standard for
23 Make Allowance. We are able to recoup some of our higher
24 costs by providing better products and services than most
25 commodity cheddar.

26 Cedar Grove Cheese has been operating since 1878.
27 For most of that time, cheddar has been part of our
28 repertoire. We currently purchase milk from around 30



1 farms. Cedar Grove Cheese was one the first small
2 factories to participate in the Federal Milk Marketing
3 Order. We installed a Grade A receiving station and
4 provided pooling services for several other small plants
5 to qualify their milk. However, in the last couple years,
6 we had completely left the market order, and this year we
7 have been pooling milk from less than half of our
8 producers.

9 In these hearings, as in the -- as in the past,
10 academics and advocates have been discussing how to set
11 the Make Allowance for commodities used in milk pricing
12 formulas. Typically, the appropriate value for the
13 Make Allowance is viewed as one that exceeds the cost of
14 production of processors of some percentage of the
15 product, for example, 80% of cheese.

16 Companies with costs below -- costs above that
17 value will either fail, add enough value to their products
18 or services to make up for their higher costs, or leave
19 the market order and pay their suppliers a lower price.
20 If the 80% is made by 35% of processors, it suggests that
21 the remaining 65% percent would be doomed to fail or
22 underpay their producers.

23 Over the years, this has led to significant
24 increases in market concentration and fewer sales
25 opportunities for farmers.

26 Most testimony on Make Allowances describe a
27 zero-sum game. Any addition to Make Allowances is viewed
28 as reducing returns to farmers. A higher Make Allowance,



1 one that covers the cost of more processors, is presented
2 as taking money away from farmers.

3 This is a false trade-off. At market prices the
4 market order pool only generates a certainly amount of
5 total product sales. The formulas are complicated, but
6 ultimately, the money available to pay farmers is no more
7 than the value of those sales less the cost of making the
8 products. The market order Make Allowances do not
9 determine either consumer purchases of dairy products or
10 the cost of producing those goods.

11 If the Make Allowances do cover the cost of
12 production, and processors either pay -- did I miss a word
13 there?

14 Q. I think your word is do not.

15 A. -- do not cover the costs of production, then
16 processors either pay less than the market order minimum
17 price or they stop producing.

18 Market order rules including Make Allowances are
19 only about who gets the class premiums. Make Allowances
20 do not produce value.

21 I remember when Make Allowances were more than
22 adequate. We paid farmers over-order premiums. Recently
23 when Make Allowances have not been close to covering the
24 cost of production, many proprietary processors, like
25 Cedar Grove Cheese, have been forced to depool some or all
26 of their farmers' milk. Economics forced us to choose
27 between participating and losing money.

28 As I said at the top, we do not need market order



1 formulas to cover all of our costs for us to participate.
2 However, when Make Allowances are too low, and when other
3 estimates of revenue in the formulas such as the value of
4 they are unrealistic, then we are forced to take our
5 farmers' milk out of the order.

6 Under normal conditions with positive pool draws,
7 no processing company wants to depool its farmers' milk.
8 Depooling gives up those farmers' share of money generated
9 from class premiums, the tax on consumers of milk. In
10 that case, the pool money goes to competing firms that are
11 then able to keep their -- that are able to keep their
12 milk in the market order, and those competing firms get an
13 advantage selling products and attracting farm patrons.

14 In my earlier request for a market order amendment
15 to be included in this hearing, I pointed out the
16 anticompetitive effect of particular FMMA rules. Those
17 rules on reblending and permitting deductions only by
18 cooperatives enable those firms to receive pool money
19 while paying less than the market order minimum.

20 Proprietary firms, meanwhile, must pay each and
21 every farmer a higher price. Although USDA decided that
22 the market order administration does not have the
23 authority to correct that inequity directly, setting high
24 Make Allowances is a different way to help meet your
25 statutory obligation to protect competition.

26 If Make Allowances are high enough, most
27 processors will be able to cover their processing costs
28 and pay the minimum prices, then all farmers associated



1 with those processors can benefit from the value of the
2 market order pool.

3 As has been occurring, market competition for milk
4 will move extra dairy product value to farmers. With
5 adequate Make Allowances to cover costs, companies like
6 Cedar Grove Cheese will be able to qualify more of their
7 milk and their farmers will share in the pool.

8 Lower Make Allowances mean the pool draw will go
9 to some other farms. Farmers will not receive equal
10 treatment under the order and competition for dairy
11 products will deteriorate further. Thank you very much.

12 Q. Thank you very much.

13 MR. ROSENBAUM: The witness is available for
14 examination.

15 CROSS-EXAMINATION

16 BY MR. MILTNER:

17 Q. Good morning, Mr. Wills.

18 A. Good morning.

19 Q. Ryan Miltner, I represent Select Milk Producers.

20 On the first page of your statement, fourth
21 paragraph, there's a sentence which reads, "Typically the
22 appropriate value for a Make Allowance is viewed as one
23 that exceeds the cost of production of processors, of some
24 percentage of the targeted product (e.g., 80% of cheddar
25 cheese)."

26 With that parenthetical, are you suggesting that
27 that's where the Department should set the Make Allowance
28 mark?



1 A. No, it's just a number that has been used --

2 Q. Okay.

3 A. -- in the -- I believe in this hearing and in
4 other situations, yes.

5 Q. And on the second page you have a line that says,
6 "I remember when Make Allowances were more than adequate."

7 Do you remember when that was?

8 A. Well, we were able to pool milk up until about
9 four years ago or five years ago, when it became -- when
10 we took most of our milk out of the pool, because there
11 wasn't a value in being --

12 (Court Reporter clarification.)

13 THE WITNESS: When there wasn't value for us in
14 being in the market order.

15 So to clarify that, you know, we have to balance
16 out whether the -- whether paying the minimum price that's
17 required by the market order is possible while -- without
18 losing money, and whether there's sufficient return in the
19 PPD to be -- to justify staying in the -- in the -- to
20 justify staying in the order and getting that money for
21 our producers.

22 So when either the Producer Price Differential is
23 small or -- or when the cost of -- when the revenues from
24 the market order that -- from sale of the products in the
25 market order are not sufficient to cover our costs,
26 then -- then we have to leave.

27 BY MR. MILTNER:

28 Q. And that turned, for your plant, your business,



1 sometime four or five year ago you think?

2 A. That's when we made the decision that we were not
3 able to be in, yeah.

4 Q. Okay. So the next paragraph down begins, "Under
5 normal conditions, with positive pool draws, no processing
6 company would want to depool its farmers' milk."

7 And if I could add my understanding of what you
8 are saying there, is that when there's a strong positive
9 difference between the blend price in Class III, that
10 positive difference allows you to pay your patrons more
11 than if they were not participating in the order, correct?

12 A. That's correct.

13 Q. So there's a proposal in this hearing that would
14 reduce the Class I differential by \$1.60, making the
15 Class I differential \$0.20 in your part of the world.

16 What would that do to your ability to participate
17 in the pool and attract producers to your plant?

18 A. The only reason for the market order is to
19 distribute the -- the tax money, the surplus revenues
20 from -- from the premiums. And so, you know, basically
21 all the rules are determining who gets that money. I --
22 if there is no pool there, then the only thing -- then the
23 only service the market order is providing is, is
24 information, which is valuable. So, you know, I'm not
25 really here to testify on the Class I, but -- but
26 personally, if the -- if the pool money disappeared
27 completely, it would create a more even playing field for
28 all of us.



1 Q. Would it make it easier or harder for you to
2 attract milk to your plant and pay your producers if the
3 Class I differential were \$0.20?

4 A. So if there were -- if there were not a pool draw
5 for the people who are competing against me, it would --
6 it would make it easier for me to compete.

7 MR. MILTNER: Okay. Thank you very much.

8 THE COURT: Anyone else other than AMS?

9 THE WITNESS: Good morning.

10 CROSS-EXAMINATION

11 BY MS. HANCOCK:

12 Q. Good morning.

13 A. It's still morning, right.

14 Q. I keep looking. It's not moving very fast.

15 So thank you for being here. I just have a couple
16 of questions.

17 You're a small cheese processor; is that right?

18 Would you characterize yourself as small?

19 A. There are smaller ones.

20 Q. Okay. On the spectrum of sizes of processors --

21 A. Certainly in terms of people who are testifying in
22 these hearings, we are probably the smallest, yes.

23 Q. And -- and you just heard me ask the prior witness
24 the question about efficiencies in operating large plants
25 versus small plants.

26 Do you remember that?

27 A. What -- is there a question? I -- I -- I know you
28 had that conversation with him, but I may have been out of



1 the room. I'm not sure.

2 Q. Okay. Is it fair to say that in operating a small
3 plant there's oftentimes less efficiencies than in
4 operating the larger plants?

5 A. There are lower efficiencies if you are only
6 looking at costs. There's also much more in terms of
7 flexibility and quality. And so all sizes of plants, I
8 think have things to contribute to the market.

9 Q. And I was doing a little bit of online research,
10 and it looks like that flexibility and the quality you
11 talk about is actually one of -- one of the things that
12 your brand is built on; is that right?

13 A. That's correct.

14 Q. And, in fact, you're award-winning in your cheese
15 making, I saw.

16 A. We do pretty well on awards, yes.

17 Q. Okay. And that's -- those premium products are
18 reflected in the processes that you've built into your
19 plant operations; is that right?

20 A. That's correct.

21 Q. And in order to produce those premium quality
22 levels, it requires a higher cost of production; is that
23 fair?

24 A. Yes.

25 Q. And have you had that same brand recognition since
26 you joined the operations I think back in the '80s? Has
27 that philosophy stayed the same throughout that whole
28 time?



1 A. Absolutely, yes. In fact, we've gone away from
2 commodity cheese production. We have moved more of our
3 production away from commodity cheese production and more
4 into -- into products that take advantage of our
5 experience.

6 Q. Experience in making those quality premium cheese
7 products?

8 A. Yes.

9 Q. And -- and with that, that has an effect on the
10 cost of your production as well; is that fair?

11 A. Yes.

12 Q. So even -- I think on your calculations that you
13 have included here, you have done it on a straight line
14 percentage allocation based on the volume of the products;
15 is that right?

16 A. I'm sorry.

17 Q. You have done --

18 A. We have allo- -- how we allocated the expenses; is
19 that what you are saying?

20 Q. Yes.

21 A. Yes.

22 Q. You have done that on a percentage of your total
23 costs commensurate with the volume that the percentage of
24 volume that you produced for cheddar cheese?

25 A. That's true to a degree, although there's some
26 expenses which were -- which are associated with the --
27 that were excluded because they were, you know, things
28 that go beyond like packaging expenses, and -- and sheep



1 and goat milk cheeses, and transportation, so -- so among
2 the things we do are customized cheese where we will take
3 milk from a single farm, for instance, and those expenses
4 would not have been included in the analysis.

5 Q. Okay. Things that were unique to the non-cheddar
6 products you have already pulled out; is that right?

7 A. Right.

8 Q. But the things for the shared cost expenses, you
9 have just allocated the percentage to cheddar that is
10 commensurate with the volume of cheddar that's produced?

11 A. Right.

12 Q. And I just want to --

13 A. And, again, though, I -- so what -- so part of the
14 myth of this whole -- of this whole hearing is that
15 cheddar is cheddar. And so, you know, there are a lot of
16 variations on cheddar, and we have included in the -- in
17 the 23% of our production, those things which would be
18 reportable. But so -- so -- so we do have higher expenses
19 for making cheddar than would be standard for most
20 producers, because we make a different style of cheddar
21 than some other people do.

22 Q. Okay. Appreciate that.

23 And that's what's reflected in the numbers in your
24 chart here?

25 A. Right.

26 Q. And just one clarification. If you can turn to
27 page 5 of your --

28 A. Just.



1 Q. -- of your statement.

2 A. So I scrambled my pages, would you -- could you
3 just tell me where it starts?

4 Q. Sure. It's the general ledger.

5 A. Oh, okay. Yep.

6 Q. Next page over, I believe.

7 Do you have the general ledger?

8 A. Yes.

9 Q. And on the comment column it looks like --

10 A. Oh, yeah, there's an error there.

11 Q. Yeah.

12 A. So -- so in order to have comparability -- and we
13 were in -- we benefitted by having Nasonville share
14 their -- their model with us. And so all of the lower
15 part there, if you do the math, it's really the 21.03 is
16 used as a multiplier rather than the 27.25 as the label
17 says, as the comments say.

18 Q. Okay. So just to be clear, you used Mr. Heiman's
19 spreadsheet, but your math is correct, just the comment
20 column doesn't reflect the correct spreadsheet.

21 A. That's correct. Yeah.

22 Q. Okay. And then you say in your statement -- I'm
23 back on page 2. It says, "In June, I made a request for a
24 market order amendment to be included in this hearing."

25 That's the WCMA proposal for Make Allowances? Is
26 that what you are referring to?

27 A. No. When there was first a request for -- for --
28 for proposals to be included in this hearing, I personally



1 submitted on behalf of Cedar Grove Cheese a request
2 that -- that would level the playing field by providing
3 the same opportunities for -- for staying in the order
4 while paying under the market that -- to proprietary
5 plants that are available to cooperatives. And the
6 response that I received was that they did not -- that
7 USDA did not have the authority to do that.

8 Q. Okay. I got confused with that.

9 MS. HANCOCK: That's all I have. Thank you so
10 much for your time.

11 MR. ROSENBAUM: Your Honor, I have been informed
12 that we perhaps didn't swear this witness in before he
13 started to testify.

14 THE WITNESS: We did.

15 MR. ROSENBAUM: We did? All right. I just wanted
16 to make sure. Someone sent a text to that effect. I did
17 not think that was right, but I wanted to would check.

18 THE COURT: No insult taken at all, I think.
19 Belts and suspenders on this. If we have to do it twice,
20 better than doing it no times. Anyway, thank you. I
21 appreciate that, Mr. Rosenbaum.

22 Anyone else have questions other than AMS?

23 Seeing none, Ms. Taylor, I think you are up.

24 CROSS-EXAMINATION

25 BY MS. TAYLOR:

26 Q. Good morning.

27 A. Good morning.

28 Q. Nice to see you today.



1 A. Yeah, thank you.

2 Q. I don't think you listed in here about the number
3 of employees Cedar Grove Cheese has. And I ask, because
4 we want to get information on small businesses, which for
5 cheese manufacturers is those with less than 1250
6 employees.

7 Would you be a Small Business?

8 A. We are seriously smaller than that. We have about
9 30.

10 Q. See you can't get -- seriously small defined.

11 A. Yeah.

12 Q. Okay. Thank you.

13 And you have 30 farms shipping to you. Is that
14 independent shippers?

15 A. Yes.

16 Q. And you talk throughout your two pages about not
17 being able to pay minimums and that kind of influences
18 your decision on whether to pool that milk or not.

19 A. Correct.

20 Q. And on the second -- second page of your statement
21 you say that cheesemakers are then forced to take our
22 farmers' milk out of the order.

23 I could read that statement to say -- when I read
24 that statement, one can infer that you'd actually prefer
25 to stay in the order if you could. Is that a correct --

26 A. Yes.

27 Q. -- inference?

28 A. We would like our producers to have access to the



1 money from the pool, which we would have to stay in the
2 order in order to do that.

3 Q. Okay. When you do depool -- well, what causes you
4 to -- what are the reasons why you choose to depool?

5 A. Well, so it has to do with what our -- what our
6 total revenues are relative to the price that the market
7 order would require us to pay. So a lot of it has been --
8 some of it's been the inadequacy of the Make Allowance,
9 which we're talking about today, and some of it -- a lot
10 of it has to do with whey prices.

11 So -- so over, you know, in the last year I think
12 there was a -- periods when the attributed value of whey
13 for cheese manufacturers was somewhere in the 2.5 to \$3 --

14 Q. Can you talk a little closer to your mic?

15 A. I'm sorry. Yeah.

16 So I think there were periods when the attributed
17 value of whey in the formula was somewhere in the 2.5 to
18 \$3 a hundredweight range. We receive \$0.11 a
19 hundredweight when we sell our whey, after chilling it and
20 after separating the cream off of it. So -- so that has
21 played a big role in determining when we can be part of
22 the market order and when we can't.

23 Q. So it's not just the cheese side of the business.

24 A. It's not -- it's not just the cheese manufacturing
25 costs, but it's also the way the rest of the formula
26 creates the price that we have to pay for milk.

27 Q. Okay. Is one piece of when you choose to depool,
28 when class prices aren't in alignment and under what we



1 would term historical alignment?

2 A. When PPDs go negative; is that what you are
3 referring to?

4 Q. Yeah, or Class III is above I, or high enough that
5 it would be -- you would have to pay into the pool.

6 A. Yeah. I think it's a real disorder in the
7 marketing when farmers supplying cheese plants have to pay
8 money to keep -- to bottling plants and in that -- or to
9 other to other classes. And so it really makes -- I think
10 it's inappropriate for us to keep our producers in the
11 order if they are having to have money deducted from their
12 checks to pay into other classes of milk producers.

13 Q. Okay. In those circumstances, do you share any of
14 the money that you aren't putting into the pool with your
15 producers?

16 A. We're always paying our producers as much as we
17 can pay them. So by not having to deduct that money from
18 the -- from their checks that would be paid into the PPD,
19 they get more money.

20 Q. Okay. So your pooling decision does impact how
21 you pay your farmers?

22 A. Yes.

23 Q. For your 40-pound blocks, you -- so as I read it,
24 21.03% of your production in 2022 went to 40-pound blocks?

25 A. Yes.

26 Q. And then, what do you do with those -- I don't
27 think that's been covered, and if it has, I apologize --
28 but do you sell those blocks directly? Do you age some?



1 How does that work on your operation?

2 A. So we -- so we're not including aged cheese --
3 well, I guess, it -- some may end up being aged. Most of
4 that cheese is being produced for other customers, some of
5 whom may use it in producing and shredding in their own
6 cut-and-wrap programs or in aging. So we don't really
7 know for sure how much of it, but it's not --

8 Q. You don't keep it and age it?

9 A. Well, we keep too much to age, but, yeah.

10 MS. TAYLOR: Okay. I think that's it from AMS.

11 Thank you so much.

12 THE WITNESS: You're welcome.

13 MR. ROSENBAUM: Your Honor, we would move Hearing
14 Exhibit 204 into evidence.

15 THE COURT: Any objection?

16 Exhibit 204 is admitted into the record.

17 (Thereafter, Exhibit Number 204 was received
18 into evidence.)

19 THE COURT: Thank you, sir.

20 Break for lunch? Half an hour enough?

21 MS. TAYLOR: We have -- we have already notified
22 our virtual dairy farmers we would start at 12:15, so I
23 think 12:15.

24 But if we do have parties who have written
25 statements for those farmers, if you could pass them out
26 in advance, then we don't have to spend time doing that in
27 the moment.

28 THE COURT: Let's come back at 12:10. That will



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give us a few minutes off the record.

(Whereupon, a luncheon break was taken.)

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1 FRIDAY, SEPTEMBER 15, 2023 - - AFTERNOON SESSION

2 THE COURT: Let's go on the record.

3 MS. CLIPPINGER: Thank you very much, your Honor.

4 Good afternoon. My name is Lucy Clippinger,

5 L-U-C-Y, C-L-I-P-P-I-N-G-E-R. I'm with Baker & Miller,

6 PLLC, and I'm here on behalf of Dairy Farmers of America.

7 THE COURT: Very good. Welcome.

8 Okay. Are we ready to go otherwise?

9 MS. TAYLOR: I think, your Honor -- this is Erin

10 Taylor from AMS. I think the first one's on deck. One

11 second. Trying to make sure exhibits got posted online,

12 too, so I can refer to them. They are online. Perfect.

13 So I think the first producer we have up is Amy

14 Penterman. If the team wants to put her on the screen.

15 THE COURT: I'll swear her in.

16 Hi, Ms. Penterman. I'm Channing Strother, the

17 Judge presiding over this hearing. I need to swear you

18 in. Please raise your right hand.

19 AMY PENTERMAN,

20 Being first duly sworn, was examined and

21 testified as follows:

22 THE COURT: Your witness, Ms. Taylor.

23 MS. TAYLOR: Okay. Thank you for joining us, Ms.

24 Penterman. I think from the list I saw, you are here

25 representing Edge Dairy Cooperative; is that correct?

26 THE WITNESS: That is correct.

27 MS. TAYLOR: Okay. And I believe that your

28 statement that was submitted online is Edge-9, which -- is



1 that correct, first?

2 THE WITNESS: That is correct. That is correct.

3 MS. TAYLOR: I'm noticing on our website we have
4 Edge -- I think it got updated and there was an error. So
5 it lists Edge-9, but there's no live link, and I do have
6 someone looking into that right now, so it will go live
7 here shortly.

8 But in the meantime, I think you can just read
9 your statement in, and everyone will listen, and they can
10 read it later.

11 But if you could first, I guess I should start,
12 spell and -- state and spell your name for the record and
13 give a business address.

14 THE COURT: Excuse me. Do we want to hold the
15 next Exhibit Number for that statement? I don't seem to
16 have a copy.

17 MS. TAYLOR: Yes, we're working on that. That
18 would be -- that would be great. And I will mark that
19 down, your Honor.

20 THE COURT: Okay. So let's -- when we get the
21 copy for the record of the statement, that is Edge-9, it
22 will be marked as identification 205.

23 (Thereafter, Exhibit Number 205 was marked
24 for identification.)

25 MS. TAYLOR: Thank you.

26 THE COURT: Yes, you may continue.

27 MS. TAYLOR: So if you could state and spell your
28 name and give us a business address.



1 THE WITNESS: Amy Penterman, A-M-Y,
2 P-E-N-T-E-R-M-A-N. Business address, N 13853 Gorman
3 Avenue, Thorp, Wisconsin, 54771.

4 MS. TAYLOR: Thank you.

5 And if you could go ahead and give your statement
6 for us.

7 THE WITNESS: Hello. My name is Amy Penterman.
8 My husband Sander and I farm at Dutch Dairy in Thorp,
9 Wisconsin. Sander is a first generation immigrant and
10 multi-generational farmer with formal records dating back
11 to 1643 in the Netherlands.

12 I'm a third generation farmer. In addition to
13 running the farm, I serve as clerk to our local school
14 board, president of the Thorp FFA alumni,
15 president-emeritus of the Dairy Business Association,
16 which is a state trade association in Wisconsin. In
17 addition to my role on the farm, I am also a crop
18 insurance agent.

19 We milk 900 cows and farm 1,450 acres, both rented
20 and owned. We have 12 full-time employees and four
21 part-time employees. Our milk goes to a privately-owned
22 cheese plant in Federal Order 30. We try to adopt
23 innovative practices that are good for our environment,
24 like no-till planting and manure injection as well. Our
25 farm would not qualify as a small business under the
26 definition of the \$3.75 million in annual revenue.

27 With three young boys, we are positioning our farm
28 to be efficient and of size to bring in the next



1 generation, putting environmental and economic
2 sustainability at the forefront of all of our decisions.

3 One key aspect of economic sustainability is
4 effectively managing our price risk. As market prices
5 fluctuate significantly in short periods of time, our farm
6 and other farms like it need the effective tools to ensure
7 a certain amount of price certainty. If Dairy Revenue
8 Protection were to be suspended for any amount of time,
9 farmers would lose a valuable tool that helps them
10 successfully run their businesses.

11 I would also like to support my voice for
12 Proposals 16 and 17 submitted by Edge Dairy Farmer
13 Cooperative for consideration, as both remove advanced
14 pricing and create a better environment for farmers to
15 effectively manage price risk.

16 Advanced pricing can create negative PPDs, or
17 producer price differentials, when markets experience
18 rapid fluctuation as seen in the last few years. This can
19 result in adverse conditions for farmer risk management,
20 as nearly all hedging programs do not account for negative
21 PPDs. Additionally, Proposal 16 bases the fluid skim milk
22 price on dairies most traded commodity, cheese.

23 Thank you very much for allowing me the
24 opportunity to testify at this hearing. I am thankful to
25 see so many farmers able to participate in this critical
26 dairy policy discussion, and enhanced flexibility has
27 encouraged that. Thank you.

28 THE COURT: Okay. Does that complete your



1 statement? And sorry for mispronouncing your name. I put
2 an F on there instead of a P, didn't have it in front of
3 me.

4 Is there -- are there questions for this witness
5 from anyone besides AMS?

6 Mr. Munch.

7 CROSS-EXAMINATION

8 BY MR. MUNCH:

9 Q. Hi, Amy. My name is Danny Munch. I'm with the
10 American Farm Bureau Federation.

11 Can I just ask, are you a Farm Bureau member?

12 A. Yes, I am.

13 Q. That's great to hear.

14 Can you speak to any of the disorderly marketing
15 conditions you've faced over the past few years and how
16 that impacted your farm?

17 A. Yeah. As prices change and fluctuate, what -- we
18 utilize DRP and some forward contracting on our farm, and
19 being an insurance agent myself, we really try and
20 protect, go out probably six to 12 months at a time. And,
21 you know, you there are some gaps in there that we weren't
22 able to protect. Even over this past summer, prices the
23 way they dropped, there's -- there just wasn't a lot of
24 protection out there.

25 We also experienced a roof loss from a heavy
26 snowfall too, and so we kind of had a double sword whammy
27 against us as prices continued to drop.

28 And so it's really challenging as a farmer when



1 you are trying to plan out the next year or two and
2 continue to be relevant in the market to have that floor
3 protected, but it's really important that you stay on top
4 of it also.

5 MR. MUNCH: Thank you. That's all I had.

6 THE COURT: Anyone else other than AMS?

7 Seeing none, AMS. Ms. Taylor.

8 CROSS-EXAMINATION

9 BY MS. TAYLOR:

10 Q. Good afternoon. This is Erin Taylor with AMS.
11 Thank you for joining us to testify virtually today.

12 You mentioned you do use DRP. When you are making
13 those risk management decisions, how far out do you look
14 to lock in positions?

15 A. So today being September, I am looking out to
16 second quarter and third quarter next year already. I may
17 not do all of it, but I am looking out that far.

18 Q. Thank you.

19 And for those watching and in the room, the Edge
20 exhibits are live now, so you can look at that online.
21 And Ms. Penterman's is marked as Edge-9.

22 And at the bottom of your statement you talk about
23 negative PPDs in your check. You also talked a little bit
24 about that with the question from Mr. Munch.

25 And I wanted to just ask, when it comes to what
26 you all receive in your paycheck, we have heard a lot of
27 discussion over the past few weeks about how prices
28 received by the producer in a way already reflect some



1 problems as people see them with the price formulas, and
2 so producers are seeing lower premiums, for example, in
3 their checks. So I'm just curious if you could speak to
4 your experience.

5 A. So what we're doing is we're projecting -- you
6 know, we're constantly looking at our bottom line, we know
7 where our cost of production is. And I'm contracting
8 through DRP or whatever methods I have for that -- that
9 floor that I know that I need to get.

10 So you're banking on -- you are looking at the
11 futures prices and what -- what's predicted out there, but
12 when you actually get your check, and with these negative
13 PPDs, some months it could be \$0.25 lower, some months it
14 could be negative \$0.70, or even higher. And so that
15 really makes a huge difference on your bottom line when
16 what you think you're protecting and what you are getting,
17 there's a gap there. And there's nothing to protect you
18 for that, and it gets really frustrating.

19 Q. Okay. And when you are locking in for your cost
20 of production, you know, can you give a rough estimate of
21 how much of your production you try to cover?

22 A. Usually I stick around 75%, and I do it in
23 increments. I'm usually -- I have got that 75%
24 protected -- like for fourth quarter of this year, I have
25 everything that is protected for fourth quarter. Into the
26 first quarter of next year, I want to have that 30% --
27 depending upon what markets are doing -- 30 to 40% for
28 first quarter, and then maybe just 25% for second quarter,



1 and then entertaining to look at third quarter.

2 Q. Okay. Thank you.

3 A. Yep.

4 MS. TAYLOR: That's all from AMS. Thank you.

5 THE COURT: Very well. Anyone else?

6 I guess we'll wait until we get hard copies of the
7 exhibit. We won't need the witness here for that, I don't
8 think.

9 I appreciate you testifying before us today,
10 Ms. Penterman, and I guess that's it. You may step away
11 from the camera or whatever it is at your location.
12 Anyway, thank you very much.

13 MS. TAYLOR: Your Honor, we do have a number of
14 witnesses from Edge that -- whose statements are online,
15 but we don't have printed copies. So that's what we did
16 last week, is we can reserve those numbers, and we'll
17 print them off and have them hard copies on Monday.

18 THE COURT: Very well.

19 MS. TAYLOR: Okay. I think up next Steve Pierson.

20 THE COURT: Mr. Pierson, please raise your right
21 hand.

22 I'm Judge Strother, by the way. I'm presiding
23 over this proceeding. And I need to swear you in, sir,
24 raise your right hand. I can see you.

25 Apparently, we were on mute. I'm Judge Strother.
26 I preside over this hearing, and I need to swear you in as
27 a witness.

28 Please raise your right hand.



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STEVE PIERSON,

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

THE COURT: Very well. Your witness.

DIRECT EXAMINATION

BY MS. VULIN:

Q. Hi, Mr. Pierson, this is Ashley Vulin. I'm an attorney with the Milk Innovation Group. How are you doing?

A. Good. Good morning, Ashley.

Q. Good to see you.

A. Actually good afternoon where you are, maybe.

Q. We call it -- we're here all day, so it doesn't matter.

So can you state and spell your name for the record, please?

A. Certainly. My name is Steve Pierson, S-T-E-V-E, P-I-E-R-S-O-N.

Our address is 22431 River Road Northeast in St. Paul, Oregon, 97137.

Q. Thank you, Mr. Pierson.

And do you have in front of you your statement?

A. I do.

Q. And could you share that with us today, please?

A. I certainly will. And -- but before I get started, I do want to tell you how honored I am to have this opportunity to address you, Judge Strother, and the USDA. So thank you so much for this opportunity.



1 Q. And should we -- sorry to interrupt. Before you
2 start reading.

3 MS. VULIN: Do we need to give it an exhibit
4 number now?

5 THE COURT: Yes, might as well. Let's reserve --
6 or as far as I'm concerned it's marked as 206 now, and
7 we'll admit it into the record when we have hard copies --
8 I do have them?

9 MS. TAYLOR: I think you have a paper copy.

10 THE COURT: MIG-14 is now 206.

11 (Thereafter, Exhibit Number 206 was marked
12 for identification.)

13 MS. VULIN: Thank you.

14 BY MS. VULIN:

15 Q. Okay. Sorry to interrupt, Mr. Pierson.

16 THE COURT: And thank you for being here. I'm
17 very honored that you would come and talk with us today.

18 THE WITNESS: Well, thank you so much.

19 Anyway, I do appreciate the opportunity to offer
20 this testimony on the Federal Milk Marketing Order pricing
21 topics and the ability to provide my remarks to the
22 Zoom -- on the Zoom format.

23 I do farm in Oregon. Travel to Indiana would have
24 been a bit of a strain on the farm operation and employees
25 and most importantly my family. It's remarkable, quite
26 frankly, that technology allows us to offer this live
27 testimony from a remote setting, and just a couple minutes
28 ago, I just got done doing my morning tours on the dairy.



1 BY MS. VULIN:

2 Q. And, Mr. Pierson, I'll just remind you to go nice
3 and slow for our court reporter, please.

4 A. Sure. Sorry.

5 Q. Thank you.

6 A. We operate a USDA certified organic dairy near
7 St. Paul, Oregon. We're about 30 miles south of Portland.
8 We ship our milk through CROPP cooperative.

9 At Sar-Ben Farms we milk about 285 cows and we
10 manage about 700 animals in total when you include the
11 non-lactating youngstock and the dry cows. I graduated
12 with a Dairy Science degree from the University of
13 Florida, and while I didn't come from a dairy background,
14 I have now over 30 years as dairy farmer. I'm actually a
15 first generation dairy farmer.

16 I know USDA is interested in whether we are a
17 small business or not, and the answer is yes, we are a
18 small business under \$3.75 million in sales a year.

19 And on the farm we crop nearly 180 acres which is
20 entirely in perennial pasture which is irrigated. We milk
21 Jerseys and Holsteins and Jersey-Holstein crosses, and
22 this is our mix that works well for our farm for a lot of
23 different reasons.

24 Our family and farm is truly focused on dairy and
25 other than selling a small amount of composted manure
26 solids to a fertilizer company, we derive 100% of our
27 revenue from organic milk sales and organic animal sales.

28 The farm first started milking cows on this



1 facility in 1958, and today there are four generations on
2 the farm which of course include my young grandchildren.
3 We are a licensed Grade A dairy operation and much of our
4 milk goes into fluid processing in the Pacific Northwest
5 and a smaller portion is used for powder, butter, and
6 yogurt.

7 The farm is the primary income for five family
8 households and much of the labor and day-to-day management
9 is carried out by our family members. We also have two
10 full-time employees.

11 We became certified organic in 2005 after starting
12 that transition in 2002. Becoming certified organic has
13 been a game changer for us and has allowed us to continue
14 to bring more generations onto the farm.

15 I have to admit, I am proud of the fact that our
16 three adult children -- Kevin, Ryan, and Sarah -- all
17 graduated with honors from Oregon State University, and
18 also come back to farm with us on the dairy. So all three
19 of the kids are here, as well, of course, as my wife
20 Susan.

21 Part of what drew us to CROPP Cooperative was not
22 only the opportunity for a higher, more stable and
23 predictable pay price, a challenge that we just heard the
24 previous witness, you know, speak about very eloquently,
25 in the conventional market, but also the mission to
26 really -- that really resonated with us.

27 And I'll state our mission for you. It is "to
28 create a cooperative" -- "to create and operate a



1 marketing cooperative that promotes regional farm
2 diversity and economic stability by the means of organic
3 agricultural methods and the sale of organic" -- or
4 "certified organic products."

5 In a nutshell what we're saying is we want to
6 support small family farms and the rural communities that
7 they exist in.

8 In 2005, we became CROPP Cooperative members.
9 While the co-op has over 1600 members nationwide, as of
10 today we have around 80 farm members in the Pacific
11 Northwest as well as a processing plant in McMinnville,
12 Oregon. This plant has been used for standardizing farm
13 milk, some butter and powder production, and the co-op
14 bought the facility in 2016.

15 After substantial capital investment, we brought
16 the plant up to a very modern processing facility, which
17 is much needed in the Northwest. However, in 2021, we --
18 the plant suffered a devastating fire, which we are still
19 trying to rebuild from. The facility is certified organic
20 and processes only organic milk.

21 With a supportive family, I was able to run for
22 the CROPP Cooperative board in 2012 and was honored to be
23 elected to the Board of Directors of the co-op.

24 So I have served on the Board for over ten years,
25 and it is a privilege to serve, but it certainly demands a
26 lot of my time. And as any cooperative board member can
27 state, it can be fairly stressful at times.

28 Decisions in the board room impact all the



1 thousands of the farmer members that we have, as well as
2 the 900 employees that are dedicated to our mission and to
3 our farmers.

4 We do have a saying in our co-op, "no margin, no
5 mission."

6 So like all the dairy in the dairy industry, we
7 are operating on an extremely competitive landscape. The
8 Federal Milk Marketing Order regulations have an outsized
9 impact on a cooperative, creating a multimillion dollar
10 pool obligation annually and provide no benefit to our
11 members or the cooperative. It is detached from our core
12 business of sourcing organic milk, processing organic
13 milk, and selling or marketing organic milk.

14 At the cooperative, we as the board of management
15 annually establish our pay price based on market
16 performance and our own ability to manage the supply and
17 the inventories of organic -- of our organic products. We
18 have some seasonal adjustments and quality premiums but do
19 not as a regular course of business change the pay price
20 month to month, which sets us -- you know, obviously
21 differentiates us from the conventional world.

22 Our primary method of balancing our own milk
23 supply is through a quota system that every member must
24 adhere to, and it allows us to plan throughout the year.

25 CROPP's organic utilization is set at 98%.
26 Selling organic milk as a non- -- as a non-organic is our
27 last option, and we take every effort to avoid. It is a
28 losing proposition to sell our organic product in the



1 conventional market.

2 Let me just state real quickly another concept we
3 have in our co-op, and that of course is that none of us
4 is as smart as all of us. And our robust supply
5 management program to bring us up to 98% organic
6 utilization has been key to helping our success and
7 minimize our opportunity to use the convectional market.

8 We engaged our membership for over a period of
9 several months to come up with a supply management program
10 to help ensure that we don't have an oversupply of organic
11 milk.

12 And I guess I would like to just say for a minute
13 that this "none of this is as smart as all of us" is
14 really emblematic of what we're trying to do here today.
15 You know, we're trying to work collaboratively with the
16 USDA to come up with workable solutions together that work
17 best for both the conventional market and the organic
18 market. So I do appreciate the fact that we are able to
19 work collaboratively on that.

20 Our participation in the Federal Milk Marketing
21 Order restricts our ability to return more financial
22 stability to our farmers. If this hearing creates an
23 outcome that increases our pool obligations, let's just
24 say 30, 40, or 50% of what we're already contributing, it
25 would require cooperative leadership to do one of three
26 things:

27 Increase the consumer prices to try to generate
28 more income, which essentially is a non-starter in this --



1 in these -- in this time of high inflationary economy, and
2 especially a risk for those of us in the premium dairy
3 categories where we are already seeing some price
4 sensitivity, organic consumers stepping away from the
5 organic dairy because of price increases we have been
6 forced to put in because of supply chain inflation; pull
7 back on the cooperative asset investment and staffing, a
8 move that would fundamentally limit our ability to bring
9 products to the market; but most likely scenario would be
10 a suppression of farm milk price increase opportunities
11 and perhaps a reality that we may need to lower the pay
12 price to our farmer members to satisfy our obligations to
13 the FMMO.

14 The latter of those I hope will never happen
15 because -- and we definitely don't want to have to
16 consider that in the board room.

17 The biggest risk to the co-op is increased Class I
18 differentials. And I know the Milk Innovation Group is
19 asking in this hearing and examination -- of the
20 examination of the Class I differentials, and that's the
21 right starting point: Do these even make sense anymore as
22 justification to draw milk to service the Class I market?
23 My guess is they don't, but that should definitely be
24 explored.

25 I know the USDA does not see all dairy farmers as
26 a monolithic block, and frankly, the order should not
27 treat everyone like they are a monolithic block, either in
28 this or national hearing.



1 You did mention you are a small business, and I
2 did want to ask a little about risk management, since I'm
3 asking all the producers. And I'm guessing your situation
4 is a little different since you are organic based on how
5 you are paid, but I'll still ask the question, if you
6 utilize any risk management tools.

7 A. We are enrolled in DMC, but we don't use any
8 market hedging with our milk. Our risk management is
9 mostly built into our participation in Organic Valley. We
10 have a long-term contract and a set pay price for our milk
11 throughout the year. The cooperative is built in part to
12 function as a hedging tool for the farm -- for a farm like
13 me.

14 Q. Okay. Thank you.

15 A. Yeah. You know, in effect, the co-op absorbs much
16 of the up-and-down market movement and takes a risk --
17 helps to minimize that risk for the dairy farmers.

18 Q. Okay. And you say most of your milk goes to a
19 Class I plant; is that correct?

20 A. I believe so, yes.

21 Q. And how far does your milk go to make it to that
22 plant?

23 A. Well, the processing for Class I is generally done
24 at Portland, and like I mentioned earlier, I'm about
25 30 miles from Portland.

26 Q. And do you have to pay the haul on that load or
27 that's accounted for in the contract price you have
28 with --



1 A. The co-op -- the co-op subsidizes our hauling to a
2 degree. We do pay some stop -- monthly stop charges and a
3 small charge but -- for hauling, but not the entire
4 amount.

5 Q. Okay. And have you seen those hauling costs
6 increase over the past few years or --

7 A. Actually the Board of Directors approved a hauling
8 cost increase, I want to say in 2017, which was the first
9 time probably in ten years that we had done that. So the
10 hauling costs have not been changed very much at all.

11 Q. Okay.

12 A. But again, that burden on the supply chain,
13 inflation has been absorbed -- is being mostly absorbed by
14 the co-op.

15 Q. Okay. And with your contracted pay price, has
16 that changed much over the years? I don't know how often
17 that is, you know --

18 A. That's a great question. And every year the Board
19 of Directors passes its annual budget, and in that annual
20 budget is our -- it includes our stable pay price for the
21 next year. We are -- last year we did budget a \$0.50
22 increase across the nation to the farmers, and we're
23 planning on doing that -- hopefully we can do that again
24 next January. So it goes up incrementally.

25 Q. Okay. But you haven't seen a decline?

26 A. We have not seen a decline. We did see a decline
27 in 2016 when we -- when we became oversupplied for a
28 period of time until we started our supply management



1 program.

2 Q. Okay. At the bottom you mention that most of the
3 milk goes to fluid, then a smaller portion is used for
4 powder, butter, and yogurt.

5 Is that organic butter, powder, and yogurt?

6 A. Yes, all.

7 Q. It is?

8 A. Yeah.

9 Q. Okay. But so the --

10 A. That's what contributes to our 98% organic
11 utilization.

12 Q. Okay. Okay. You talked about -- you mentioned
13 that the way Organic Valley and CROPP balances supply is
14 through a quota system.

15 Is that for the co-op as a whole or just in your
16 area?

17 A. The co-op as a whole. And, you know, different
18 areas can be -- I would -- you know, I would be -- you
19 know, can be approved for more production based on
20 processing capabilities and local demand. But the whole
21 co-op is under it, yes.

22 Q. Okay. So then do you think there's a lack of
23 organic milk in the market right now, on the raw milk side
24 since you -- you have instituted some supply management
25 system, or not?

26 A. I would say -- I don't think that there is a lack
27 of -- I think we're fairly balanced, in my opinion, across
28 the country, reasonably well balanced right now, in



1 organic supply. To be honest with you, I think we're very
2 concerned about the -- if the economy is going to go into
3 a deep recession, what that would do to premium products,
4 including organic. So far it hasn't been -- we haven't
5 seen a serious decline in demand, but there definitely has
6 been a softening of demand because of price increases that
7 we have had to employ. But I would say we're reasonably
8 balanced.

9 Q. Okay. And then when you talk about the 2% going
10 into non-organic, since 98% is the goal, is the 2% -- what
11 drives that, maybe lack of demand or lack of organic
12 processing capacity?

13 A. I would say most of it is lack of the ability to
14 capture the product in line loss. There would be -- I
15 don't think it's lack of demand. Lack -- if it was lack
16 of demand, it would be significantly higher than 2%, I
17 believe. I think that when you go into a plant -- because
18 we use co-producing plants across the country -- Organic
19 Valley employs about 60 or 70% co-processors across the
20 country, and there is going to be some efficiency loss
21 in -- when you do process, because typically what happens,
22 of course, is you will have to process the organic milk
23 first and then they'll sanitize their systems and process
24 the organic milk first, and then they will process the
25 conventional milk after that. And there will be some
26 typically line loss that we -- that we see.

27 Q. Okay. And you say --

28 A. But I don't believe it is demand.



1 Q. Okay. And you say the goal is 98%. But can you
2 speak to what -- what is maybe the average?

3 A. Oh, I -- okay. Maybe I -- maybe I slightly
4 misspoke. Our current -- we currently are at 98%. I
5 would have to say we would happen to hit a range between
6 95 and 98 would probably be realistic. Things happen,
7 that sometimes you do need to be forced to sell milk, you
8 know, other than organic. Say, for instance, your
9 processing plant can't handle your milk at that point in
10 time, things are out of your control. But, like I said,
11 we are -- this is something the Board of Directors
12 monitors very closely because it has a direct impact on
13 our bottom line, and we are at 98% right now.

14 Q. And when the processing plant can't handle your
15 volume, what happens to that milk?

16 A. Well, I would imagine that -- well, actually, I
17 can't really speak to that because I don't -- I don't
18 really get down that far into the weeds of what -- where
19 the milk goes. But typically we would try to find an
20 alternative processor, and it could be organic -- it could
21 be a conventional market or it could be another organic
22 market, too, that's available. But that's really not part
23 of what I get involved with.

24 Q. Okay. Thank you.

25 A. Sure. Thank you.

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

27 Thank you, your Honor.

28 THE COURT: Anyone else? Okay.



1 MS. VULIN: Thank you for joining us, Mr. Pierson.

2 And do I need to move to admit Exhibit 206?

3 THE COURT: That's what we have been doing.

4 Any objection to Exhibit 206 coming into the
5 record?

6 Seeing none, Exhibit 206, this witness statement,
7 is made a part of the record in this proceeding.

8 (Thereafter, Exhibit Number 206 was received
9 into evidence.)

10 THE COURT: Thank you so much, Mr. Pierson.

11 THE WITNESS: My pleasure, my honor. Thank you,
12 Judge.

13 THE COURT: Bye-bye.

14 MS. TAYLOR: Thank you.

15 And then I think up next is Neil Hoff, so we'll
16 bring him up on the screen.

17 Mr. Hoff, if you are there and your video is on,
18 if you could just speak, and then I think on our side the
19 screen will change. I'm hoping.

20 I don't think your video is on, but that's okay if
21 you don't want to turn your video on.

22 THE WITNESS: No, I want to do that.

23 (Off-the-record.)

24 THE COURT: Back on the record.

25 Welcome, Mr. Hoff. My name is Channing Strother.
26 I'm the presiding judge in this proceeding. I would like
27 to swear you in. Please raise your right hand.

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NEIL HOFF,

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

THE COURT: Your witness.

DIRECT EXAMINATION

BY MR. PROWANT:

Q. Good afternoon, Mr. Hoff. I'm Bradley Prowant, one of the attorneys representing National Milk.

If you could go ahead and please state and spell your name and provide us with a business address.

A. Sure. I'm Neil Hoff, N-E-I-L, H-O-F-F. And my address is 2205 Hoff Road, Windthorst, Texas.

Q. Thank you.

Mr. Hoff, did you prepare a written statement for today?

A. I have.

Q. And is that the document labeled NMPF Exhibit 74?

A. Yes.

Q. All right.

MR. PROWANT: If we could go ahead and mark that with the next exhibit number.

THE COURT: Yes. NMPF-74 is marked for identification as 207.

(Thereafter, Exhibit Number 207 was marked for identification.)

BY MR. PROWANT:

Q. Mr. Hoff, could you go ahead and please read your statement for us.



1 A. Yes. And thank you, your Honor, for allowing me
2 to do this virtually. Like the previous presenter said,
3 it's pretty nice to stay on the farm and be able to do the
4 work. So thank you for allowing me to do it in this --
5 virtually like this.

6 THE COURT: We're all very pleased to have you
7 here, sir.

8 THE WITNESS: Thank you very much.

9 Hello, my name is Neil Hoff, and I am a dairy
10 farmer from Windthorst, Texas. Today I am testifying on
11 behalf of the National Milk Producers Federation (NMPF)
12 and my dairy cooperative, Dairy Farmers of America (DFA),
13 in support of the NMPF proposals. Thank you for giving me
14 the opportunity to express my thoughts on milk order
15 modernization.

16 I am a fourth-generation dairy farmer, working the
17 same land as my great-grandfather did back in the late
18 1800s. Two of my grandsons currently help me on the farm.
19 They are the sixth generation milking cows on this farm.

20 In our industry, all farms strive to be
21 sustainable but the term sustainability remains hard to
22 uniformly define. At my farm, as each generation hands
23 off to the next, we make sure that the farm and the cows
24 are in a better place than when they took over. We make
25 sure the farm is improved with each generation. That, to
26 me, should be the definition of what sustainability is all
27 about.

28 I currently milk about 100 cows, half Holstein and



1 half Jerseys. This is about the same number of cows that
2 I milked 20 years ago. One of the reasons I have not
3 grown over the years has been due to me being away from
4 the farm because of my expansive involvement in the
5 leadership of our industry.

6 On the dairy marketing side, I was on the original
7 Board of DFA when it was formed back in 1998, and still
8 serve today on its corporate Board of Directors. On the
9 policy side, I currently sit on the NMPF Board of
10 Directors, and on the advertising and promotion side, I
11 have served on the Dairy Management, Inc. (DMI) Board of
12 Directors for about 25 years. Additionally, for the last
13 12, I have been honored to have served as Chairman of the
14 United Dairy Industry Association (UDIA), the dues paying
15 and state and region side of dairy promotion.

16 So I wear a lot of hats in our industry, but my
17 testimony today is personal, not from one of the hats I
18 have worn or wear today, but from me, from my heart.

19 I would like my small dairy to stay viable for at
20 least my next two generations. I would like for my
21 grandsons, currently working on my farm, to have the
22 opportunity to make a decent living and raise their
23 families the way my parents and grandparents did. I
24 believe the NMPF proposals provides the best chance!

25 The past few years there have probably been well
26 over 100 meetings of dairy producers to try to gain some
27 consensus for a unified Federal Order plan. I have been a
28 part of many of those meetings.



1 Dairymen are generally conservative, independent
2 thinking people. It is usually hard for dairy producers
3 from all across this country to come to an agreement on
4 just about any issue. But through the many meetings held
5 by both the cooperative and the NMPF membership, producers
6 have united!

7 The NMPF Board of Directors, representing all size
8 farms, from all areas of the country, voted unanimously
9 for the proposal that has been submitted to this hearing,
10 and the 48 members of the DFA Board of Directors
11 representing all size dairies from all across the country
12 also voted unanimously!

13 Now, I understand that Make Allowances are an
14 important aspect in determining Federal Order Class
15 Prices, and from time to time there is a regulatory need
16 to adjust them. I ask that in doing so that the USDA
17 consider the impact on dairy farm operations' milk prices,
18 and maybe, more importantly, the impact on dairy farm
19 profitability.

20 The more modest changes proposed by NMPF, which
21 they have indicated will still lower farm milk prices by
22 just a little bit about, all else equal, is a troublesome
23 but acceptable change for me. The significant changes
24 proposed by the International Dairy Foods Association and
25 the Wisconsin Cheese Manufacturers Association would be
26 much more detrimental to my milk price and I think should
27 be rejected.

28 My community, Windthorst, is a small, but



1 thriving, community in North Central Texas, north of
2 Dallas, with about 500 residents. Windthorst is like many
3 of the small towns across this country that make up the
4 backbone of America, but the only industry in my town, and
5 supporting its people, is the dairy industry!

6 I believe to keep a stable dairy industry that
7 will support my small town, we need help from USDA with
8 this order modernization.

9 So, on behalf of my small dairy and my family who
10 operate it, and my community that I love, I ask you all to
11 support the NMPF proposals that have been already
12 submitted at this hearing.

13 Now, I understand that for a fair hearing all
14 interests should be heard. But at the end of the day the
15 recommended decision by USDA will be a producer program,
16 voted on by producers only! I ask that you listen to the
17 producers and seriously consider the NMPF proposals
18 submitted at this hearing. I really do think that these
19 proposals will give my small farm a fighting chance going
20 forward.

21 So let me conclude, my dairy, my family, and my
22 community are asking for your help today.

23 Thank you, and I will be available for any
24 questions.

25 BY MR. PROWANT:

26 Q. Thank you, Mr. Hoff. Just a couple quick
27 questions that are being asked of all witnesses.

28 A small business for a dairy farmer is defined as



1 one that has \$3.75 million in gross receipts on a farm
2 wide basis.

3 Would you meet that definition?

4 A. I'm definitely under that amount.

5 Q. All right. And then the other question that's
6 being asked of all of our producers is whether or not they
7 use any sort of risk management tools.

8 Do you use any sort of risk management tools on
9 your farm?

10 A. Yeah. The risk management that I currently use is
11 the Congress-approved DMC, Dairy Margin Coverage Program,
12 and for my size farm it has greatly helped, and the farms
13 that I represent here in Texas. I do have available at my
14 fingertips through my co-op all kind of risk management
15 plans, but at the current time I am happy with what is
16 provided by the DMC program.

17 Q. Thank you, Mr. Hoff.

18 MR. PROWANT: Mr. Hoff is available for any
19 questions.

20 THE COURT: Anyone other than AMS?

21 Yes.

22 CROSS-EXAMINATION

23 BY MR. MUNCH:

24 Q. Hi, Neil. My name is Danny Munch. I'm from
25 American Farm Bureau Federation.

26 Any chance one of your other hats is a Texas Farm
27 Bureau member?

28 A. I am a Texas Farm Bureau member, proudly, for a



1 number of years.

2 Q. Well, that's great to hear. We appreciate that.

3 Is there any way you could maybe talk about some
4 of the specific disruptions your farm has faced in the
5 past few years related to milk markets and pricing
6 dynamics?

7 A. Yeah. My farm, like many small farms, we faced a
8 lot of disruptions, not only from the markets and from
9 what happens out there that we really don't have a lot of
10 control over, but even some things like weather and feed
11 prices and hauling and all of these things that years ago,
12 I guess were big issues, but it didn't seem like it at the
13 time, but today all of a sudden are big ticket financial
14 issues. So that has caused some trouble on the farm.
15 But -- but other than that, through the programs, my co-op
16 has done a pretty job of taking care of those things for
17 me, and I rely heavily upon them to take care of most of
18 the regulatory and the -- and the environmental stuff that
19 I have to do -- have to -- have to look forward to.

20 MR. MUNCH: Thank you, Neil. That's all I had.

21 THE COURT: Anyone else other than AMS?

22 Seeing no one, Ms. Taylor.

23 CROSS-EXAMINATION

24 BY MS. TAYLOR:

25 Q. Good afternoon.

26 A. Hi.

27 Q. Thank you for joining us virtually to testify
28 today.



1 A. Yes.

2 Q. Just a couple questions from AMS, although soon
3 everyone is going to anticipate my questions and I won't
4 have any questions. I'm waiting for that day.

5 Since you are a co-op producer, can you talk a
6 little bit about how the current Make Allowance levels are
7 impacting you -- are impacting your cooperative since you
8 serve on the DFA board and you as a producer?

9 A. Yeah, I -- I testified this morning on the total
10 package. I hate to break down into individual deals, but
11 I do know that even small increase in Make Allowances will
12 negatively impact -- impact my farm.

13 I think the bigger picture for me is -- and I have
14 been told by dairy economists that the NMPF total package,
15 when you look at it all -- and I don't think it's fair to
16 break out individual parts of it -- when you look at the
17 total package, it would still maybe have a small negative
18 impact on my milk price going forward.

19 But if you look at some of the other proposals,
20 such as IDFA, this could impact my farm negatively to
21 about \$1.50 a hundredweight is what I have heard from the
22 economist. \$1.50 a hundredweight would in my opinion just
23 about kill my dairy, and the small dairies that I
24 represent, it would -- it would all but erase the small
25 dairy farms that are across my part of the country.

26 So I know Make Allowances, I haven't gotten deep,
27 but we have staff, paid staff, that have gotten real deep
28 into that in this testimony. So at this time, if it is



1 okay, I would rather not get real deep into that.

2 Q. It sure is, and I don't blame you, frankly so.

3 I did have a question, you mentioned hauling. How
4 far do you -- does your milk have to go to find a home?

5 A. Yeah. I -- I testified that I was north of the
6 Dallas area. I'm 130 miles north of the Dallas area.

7 That is our primary market. So it -- hauling is a large
8 part of my expenses going forward. At our co-op level we
9 do have what we call farm-to-market hauling that is
10 individual to my dairy based on size and how far I am from
11 the market. And then everything above that is spread like
12 peanut butter and called inter-market hauling. So it
13 works out pretty well, but it is still a large expense for
14 me would be the hauling, being 130 miles from my primary
15 market.

16 Q. So if I want to resay what I think I heard was
17 you're responsible for the payment of your milk to your
18 closest market, but if your milk ends up needing to go
19 somewhere else, your co-op covers that piece?

20 A. Yeah. We as producers of the co-op cover that,
21 yeah. Yeah. That's -- you said that right.

22 Q. Okay. And -- and for the haul that you are
23 charged for, have you seen those costs increase or from a
24 co-op side have you seen, you know, the ability -- the
25 money has to come from somewhere. If your co-op is
26 blending that cost amongst all its members, have you seen
27 those costs increase?

28 A. Oh, without a doubt costs have increased. Diesel



1 has gone up. The cost of equipment has gone up. And
2 without a doubt hauling has increased. Our co-op does a
3 nice job of trying to keep it at the lowest level. But,
4 again, as you say, that money has to come from somewhere,
5 and I think where that money has to come from is the dairy
6 farmers. So -- so we do -- hauling is a major expense,
7 and we do everything we can to try to -- try to keep it as
8 reasonable as we can. But without a doubt, it's gone up
9 over the past years.

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

11 THE WITNESS: Thanks.

12 MR. PROWANT: Your Honor, we just move to enter
13 Exhibit 207 into the record.

14 THE COURT: Seeing no objections, Exhibit 207,
15 this witness' statement, is entered into the record of
16 this proceeding.

17 (Thereafter, Exhibit Number 207 was received
18 into evidence.)

19 THE COURT: Thank you so much, Mr. Hoff. I
20 appreciate you coming to talk to us.

21 THE WITNESS: Thank you, your Honor. I appreciate
22 it.

23 MS. TAYLOR: Okay. Next up we have Sietse
24 Tollenaar, and apologies if I am not saying that quite
25 correctly, but we will bring them on the screen.

26 THE COURT: There you go, sir. Hi. I'm Channing
27 Strother. I'm the presiding judge over this proceeding,
28 and right now I'm here to swear you in. Please raise your



1 right hand.

2 SIETSE TOLLENAAR,

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

5 THE COURT: Your witness.

6 DIRECT EXAMINATION

7 BY MS. CLIPPINGER:

8 Q. Good morning, Mr. Tollenaar. And I say morning --

9 A. Good morning.

10 Q. -- because I know he's on the Pacific time right
11 now.

12 Would you please and state and spell your name for
13 the record?

14 A. Sietse Tollenaar, S-I-E-T-S-E, and the last name
15 is T-O-L-L-E-N-A-A-R.

16 Q. Thank you.

17 And would you please provide your business address
18 for the record?

19 A. 3355 Virginia Road, Wheatland, W-H-E-A-T-L-A-N-D,
20 California, 95692.

21 Q. Thank you.

22 And I understand you have prepared a written
23 statement today. Has that been marked as DFA Exhibit 5?

24 A. Yes.

25 MS. CLIPPINGER: I would ask that that be marked
26 as Exhibit -- I think it is 208 we're on?

27 THE COURT: Yes, that's what my records indicate.
28 DFA-5 Is marked for identification as 208.



1 (Thereafter, Exhibit Number 208 was marked
2 for identification.)

3 MS. CLIPPINGER: Thank you very much.

4 BY MS. CLIPPINGER:

5 Q. And then, Mr. Tollenaar, would you please read
6 your statement for the record?

7 A. I sure will. Thank you.

8 My name is Sietse Tollenaar, and for over 28 years
9 it has been my joy to be part of the dairy industry. In
10 1992, my wife and I left my parents' dairy to work for the
11 Fred De Boer Dairy in Southern California. In 1995, we
12 started Tollcrest Dairy in Wheatland, California, just
13 north of Sacramento.

14 I serve on the Western Area Council of Dairy
15 Farmers of America, Milk Producers Council, California
16 Dairy Research Foundation, Council on Dairy Cattle
17 Breeding Producer Advisory Committee and treasurer for our
18 church board.

19 In June of this year, our youngest son and his
20 family moved back to Wheatland, and we are beginning the
21 process of bringing them into ownership. We are thrilled
22 to bring the second generation to our dairy farm!

23 I am convinced this is an exciting time for our
24 industry, filled with opportunity and possibility. By
25 adopting NMPF's proposals, you ensure the continued
26 support and growth of our nation's dairy economy.

27 I appear today in support of the National Milk
28 Producers Federation proposals to:



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

3 (2) Return the Class I mover to the higher-of;

4 (3) Eliminate the barrel cheese price from the
5 calculation of the Class III protein price;

6 (4) Increase and regularly update the skim
7 component tests used to determine Federal Order skim milk
8 price;

9 (5) Implement their national Class I differential
10 and price surface proposal.

11 This has been a trying and challenging year for
12 Tollcrest Dairy. Since June of 2022, the Federal Order 51
13 Statistic Uniform Milk Price has declined by over \$9 per
14 hundredweight, which is comparable with the decline in our
15 milk check. Our costs of production have not gone down to
16 the same degree. Feed costs, utility, labor, insurance,
17 equipment maintenance, and other expenses have all greatly
18 inflated since 2020.

19 My hope is the Secretary of Agriculture considers
20 the impact on dairy farmers' milk checks and the need to
21 be profitable. The more modest Make Allowance changes
22 proposed by NMPF, which they have indicated will lower
23 farm milk prices by about \$0.50 per hundredweight, is
24 still challenging, I believe, but doable.

25 In 2019, the dairy industry agreed to "experiment"
26 with a Class I mover that utilized the average of the
27 Advanced Class III and Class IV skim milk prices plus
28 \$0.74 per hundredweight instead of the higher-of. We were



1 told this change was important to the Class I processing
2 industry to allow them to hedge their Class I milk.

3 I'm not sure how that worked out for them, but I
4 know our dairy's blend price has been lower due to the
5 change. This experiment has failed for dairy farmers, and
6 it would benefit farmers to immediately fix the mover and
7 return the revenue to my blend price on a monthly basis.

8 I close by repeating my support for the NMPF
9 proposals to eliminate barrel prices from the Class III
10 protein price formula and updating of the Class I
11 differential and producer price surface. Others from DFA
12 will be speaking more directly to these issues. Thank you
13 for allowing me to testify today on these issues that are
14 very important to my family and the future success of our
15 dairy business. Thank you.

16 Q. Thank you.

17 MS. CLIPPINGER: And with that, I would make
18 Mr. Tollenaar available for cross.

19 THE COURT: Any questions?

20 CROSS-EXAMINATION

21 BY MR. MUNCH:

22 Q. Hello there. My name is Danny Munch. I'm with
23 the American Farm Bureau Federation.

24 Is there any chance that you are a California Farm
25 Bureau member?

26 A. I sure am.

27 Q. Thank you for that.

28 I was just curious. A lot of this discussion is



1 about buffering against disorderly marketing conditions.
2 What would you consider disorderly marketing in your
3 operation?

4 A. We are certainly blessed with -- I'm part of the
5 Western Area Council of DFA, and we just have a tremendous
6 staff that is -- is remarkable. And -- and disruptions,
7 of course, in every business you are going to have that.
8 But it just -- being part of our co-op, they have
9 certainly just been tremendous in that regard.

10 And one of the things I -- I love too is that my
11 vendors are my teammates, and so whenever we have -- we
12 have gone through so much disorder with all the COVID
13 things and those type of things, they just -- the amazing
14 teammates that we have and the amazing vendors that we
15 work with, each and every one of them went above and
16 beyond what was necessary to -- to have us continue to
17 move on. And so we're just certainly blessed.

18 MR. MUNCH: Thank you.

19 THE COURT: Anyone else other than AMS?

20 AMS.

21 CROSS-EXAMINATION

22 BY MS. TAYLOR:

23 Q. Well, good morning there.

24 A. Good morning.

25 Q. This is Erin --

26 A. Or good afternoon.

27 Q. I have lost all sense of time at this point, so
28 I'm not sure, just generally.



1 This is Erin Taylor from AMS.

2 I'm not sure if I read in your statement, your
3 operation, how many cows do you milk?

4 A. We milk a little over 2,000.

5 Q. Okay. And I'm not sure if you heard our questions
6 of earlier virtual witnesses today of the small business
7 definition and whether your farm would meet that?

8 A. No, it would not.

9 Q. It would not.

10 And then another question is do you utilize any
11 risk management tools?

12 A. Yes, we do.

13 Q. Could you elaborate on what you do use?

14 A. DMC.

15 Q. Just DMC, not DRP or anything?

16 A. Yes.

17 Q. Okay. Thank you.

18 About how far does your milk go to find a plant?

19 A. We -- we have two plants that are -- most of
20 our -- our milk all goes to Class I, and so one of them is
21 60 miles away and the other one is 75 miles.

22 Q. Okay. And for those hauls in recent years, have
23 you seen those costs increase?

24 A. Yes, they have. Just -- yeah, everything has gone
25 up, just from tires to fuel, of course, and -- just in
26 California, we have some unique challenges because we --
27 trucks that get sold in -- are no longer allowed in
28 California get sent to other states. We have to



1 constantly have -- since the -- like regulatory definition
2 of -- you know, these trucks have to just be updated
3 constantly, and so that -- that makes the equipment cost
4 tremendous -- tremendous equipment costs. And so, yeah,
5 it has gone up tremendously.

6 Q. And if you would be willing to speak a little bit
7 about -- and I know you spoke well of your DFA staff out
8 there and their ability to market your milk and etcetera.
9 And I just wonder if you could speak a little bit about
10 maybe over the past few years how you have seen kind of
11 what's happened to your milk check. I know you talked
12 specifically about one month this year. But there's been
13 discussions at the hearing about the impact of
14 Make Allowances and how that is impacting co-op producers
15 specifically and differently from independent shippers.
16 And I just wondered if you might speak a little bit about
17 how that stuff has impacted you, and since you are on a
18 DFA board out there, maybe there's -- you know, you're
19 kind of aware of how that's impacted the co-op.

20 A. So if I'm hearing you, there's like five different
21 questions within your question. So could you make it a
22 little bit more specific?

23 Q. You know, my kids tell me the same thing sometimes
24 when I ask them questions.

25 I guess -- you know, well, I'm not sure how -- I'm
26 sure you've had better things to do than listen to this
27 hearing over the past few weeks. But what we have been
28 hearing --



1 A. No. This has been entertaining.

2 Q. That's good to hear.

3 Well, what we have heard is that different pieces
4 of the formulas, not just Make Allowances, need to be
5 changed, and the -- and one of the reasons that we need to
6 reform things is because there -- it's impacting --
7 various pieces are impacting producer checks, whether
8 that's low Make Allowances, whether that's the new Class I
9 skim formula we use that got changed in 2018, you know,
10 all of those things.

11 And there's been discussion about how that is
12 impacting cooperative producers, and also how that impacts
13 direct ship producers, so non-co-op members, and how there
14 might be differences in the impacts.

15 And so I wondered if you could speak to how
16 perhaps that's impacting you as a cooperative producer,
17 and perhaps, you know, since you are on the DFA board out
18 there, you know, I'm sure you all have had those
19 discussions in your meetings about how this is impacting
20 the co-op.

21 A. Yeah. Well, ultimately, we -- we -- as a
22 director, one of the things that we're challenged with is
23 recommendations come to the board through staff or through
24 different things, and we discuss those things, but it is
25 always with the producer -- the -- you know, we represent
26 the producers.

27 So, yes, when we -- when we are looking at
28 different things, the question is always asked, what is



1 that going to cost, the producers that we represent. And
2 so -- and I just -- again, I assure that we have an
3 amazing staff, and we are incredibly blessed that they
4 truly understand where we come from and that's -- that's
5 why I just -- I'm excited about supporting, you know, this
6 NMPF proposal because DFA has been a big part of that.

7 Yeah, I hope that answers your question. I just
8 with -- with all the nuts and bolts and the intimate
9 details, I'm not the most qualified to do that, but we
10 have people that are paid a lot more than I am that
11 understand this a lot better.

12 Q. Well, I think from USDA's perspective as a
13 producer you are very qualified to talk about how it
14 impacted you, and I do appreciate you testifying about
15 that today.

16 MS. TAYLOR: So thank you so much.

17 THE WITNESS: Thank you.

18 THE COURT: Done? Okay.

19 MS. CLIPPINGER: At this point we would move that
20 Exhibit 208 be admitted into the record.

21 THE COURT: Any objections?

22 Seeing none, this witness' statement labeled 208
23 is admitted into this record.

24 (Thereafter, Exhibit Number 208 was received
25 into evidence.)

26 THE COURT: Thank you, sir. You may stand down
27 from the virtual stand. We appreciate you being here.

28 THE WITNESS: Thank you so much.



1 MS. TAYLOR: Okay. I think next on the list is
2 Stephanie Alexandre.

3 MS. VULIN: Hi, Ms. Alexandre, can you hear us?

4 THE WITNESS: Yes, I can. Good morning.

5 MS. VULIN: Good morning. This is Ashley Vulin
6 with the Milk Innovation Group.

7 THE WITNESS: Good morning. Thank you for having
8 me.

9 MS. VULIN: And, your Honor, would you like to
10 swear in the witness, and then we can mark the exhibit?

11 THE COURT: Yes. Thank you.

12 Ms. Alexandre, I'm Channing Strother, the
13 presiding judge here, and I'm going to swear you in right
14 now. Please raise your right hand.

15 STEPHANIE ALEXANDRE,

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

18 THE COURT: Your witness.

19 DIRECT EXAMINATION

20 BY MS. VULIN:

21 Q. Good afternoon Ms. Alexandre. I know you are not
22 a MIG member, but this is Ashley, and I'm here to help get
23 you started.

24 A. Hi, Ashley.

25 Q. Hi. So first, could you state and spell your name
26 for the record, please?

27 A. Stephanie Alexandre, S-T-E-P-H-A-N-I-E,
28 A-L-E-X-A-N-D-R-E.



1 Q. And could you give us your business address for
2 the record, please?

3 A. 8371 Lower Lake Road, Crescent City, California,
4 95531.

5 Q. And do you have your statement in front of you?

6 A. I do.

7 Q. And it's marked at the top Alexandre-DF, correct?

8 A. Collect.

9 MS. VULIN: And I'd ask that be marked
10 Exhibit 209.

11 THE COURT: Yes. So marked.

12 (Thereafter, Exhibit Number 209 was marked
13 for identification.)

14 BY MS. VULIN:

15 Q. Ms. Alexandre, would you like to read your
16 statement for us, please?

17 A. Yes. And --

18 Q. And just a quick reminder to go nice and slow for
19 the court reporter.

20 A. Okay.

21 Thank you for providing me the opportunity to
22 testify today via Zoom. The past few weeks have been
23 exceptionally busy due to forest fires in our area. We
24 were out of power for nine days last month and then we had
25 sketchy power using individual grids in our community for
26 weeks. I was very happy when power was fully restored
27 earlier this week.

28 I grew up in the dairy farming valley of Chino,



1 California. My parents had 900 cows in the 1980s, and I
2 was out with the calves and cows as soon as I could walk,
3 just loved it. I went to Cal Poly San Luis Obispo and
4 earned a BS in ag business with a minor in dairy science.
5 I met my husband, Blake Alexandre, at Cal Poly in 1984.
6 Like me, Blake is a fourth generation dairy farmer, and
7 we've raised five kids on the dairy farm.

8 The fifth generation has followed in our
9 footsteps, earning ag degrees at Cal Poly and bringing
10 their knowledge back to our family farm. Since 2005, they
11 have also operated Alexandre Kid's Eggs, a successful
12 pastured-based organic egg business that uses the same
13 regenerative organic practices as our dairy operations.

14 Our family, with our four adult children, along
15 with a dedicated management team, is involved in the
16 day-to-day activities of the farm. Everyone brings
17 different, bright passions for agriculture. This proud
18 grandma is hopeful that the sixth generation chooses
19 organic agriculture, too.

20 I've served on the California Certified Organic
21 Farmers (CCOF) Board of Directors as a Del Norte County
22 4-H Club Leader, and I'm a passionate nutrient-dense food
23 enthusiast.

24 In 1998, we started Alexandre Family's Bucket Calf
25 program as a way for our kids to have their friends come
26 to the dairy and learn about agricultural life and show a
27 calf at the county fair. This summer was our 25th year
28 with over 120 kids adopting a calf from our farm.



1 We're strong proponents of sustainable organic
2 farming practices. In 2001, we were among the first
3 dairies in California to become certified organic.
4 Environmental stewardship and nutritional education are
5 central to our management strategy. Together our family
6 operates five grass-based organic dairies in Del Norte and
7 Humboldt County, with 4500 crossbred milk cows on 5800
8 acres of irrigated pasture. We also have 2,000 acres of
9 organic hay cropland in Modoc County.

10 We sell our organic milk to: Rumiano Cheese,
11 Humboldt Creamery, Organic West Milk, and our own
12 Alexandre Family Farm Creamery. Our family's gross
13 revenue is over \$3.75 million, the Small Business
14 Administration threshold for small dairy farms.

15 Almost 20 years ago, in our quest to better
16 understand the nutrient density of milk from
17 grass-pastured cows, we learned about beta casein in milk
18 and its effect on human digestion. We have been breeding
19 for 100% A2 beta casein protein genetics ever since. And
20 we now have a large herd of strictly A2 organic cows.

21 In 2016, we purchased the assets of a small
22 creamery in San Leandro to bottle our milk and make
23 yogurt. We started with four employees, and we're pleased
24 that we're now up to 27 employees at the creamery. Our
25 Alexandre Family Farm branded milks and yogurts are
26 distributed nationally. The creamery operation is under
27 the Small Business Administration employee threshold for
28 small dairy processors.



1 For the past seven years our family has subsidized
2 the development of our Alexandre Family Farm consumer
3 brand from our well-established and profitable dairy
4 operations. We started our brand to bring health to our
5 farm, employees, and our rural community. We strive to
6 educate consumers and, most importantly, bring people back
7 to dairy for their health and the health of the earth.

8 Besides being passionate about nutrient-dense
9 foods in my kitchen, I'm the controller for the Alexandre
10 Family businesses, and my primary role in the business is
11 heading up all financial matters. Before starting the
12 creamery, like many dairy farmers, we didn't know much
13 about the federal milk orders.

14 Today our son Joseph Alexandre handles FMMO
15 matters for the family and our creamery. It's been a
16 tremendous learning experience for me, him, and Blake. We
17 struggle to understand how organic dairy farms and
18 processors fit into the FMMO system. So far this year,
19 we've paid over a quarter of a million dollars into the
20 pool. We don't see any benefit from this for either the
21 farming or the creamery operations. Those pool
22 obligations are resources that leave our business and
23 limit our ability to invest and grow.

24 In simple terms, the pool obligation effectively
25 increases the cost of organic milk for our creamery.
26 Because the pool does not affect organic mailbox prices,
27 its inclusion of organic milk producers is not necessary.

28 As I understand it, a FMMO benefit for a creamery



1 bottling milk is access to farm milk supply and balancing
2 the supply to finished goods manufactured. Our consumer
3 products are certified organic plus 100% A2. We can't use
4 conventional pool milk at our creamery. The benefit of a
5 milk supply supported by the pooling formula is not valid
6 when there are no organic raw milk prices tied to pool
7 pricing. Organic raw milk producer prices are independent
8 of the pool and are primarily long-term contracts with
9 organic processors and cooperatives. The FMMO system does
10 not balance for us because of the extreme loss of selling
11 organic milk into the conventional market.

12 I am concerned that some of the proposals under
13 consideration at the FMMO hearing would increase the pool
14 obligations for operations like the Alexandre Family Farms
15 creamery. The majority of our consumer business is
16 dedicated to organic Class I fluid milk.

17 Organic dairy farming requires significant ongoing
18 investments and innovative methods, for example, to
19 improve soil and animal health. These investments are
20 directly competing with pool payments to the FMMO. As
21 organic farmers we should not be asked to fund a system
22 that does not support our organic farming operations. The
23 central question of how organic dairy fits in the FMMO
24 system needs to be addressed at this hearing.

25 I understand USDA is here to decide FMMO pricing,
26 and I do not believe organic milk belongs in the FMMO
27 pricing system. Blake and I, along with 174 organic dairy
28 farmers, signed a letter urging inclusion of proposed



1 organic exemption in the hearing proceedings. USDA's
2 response and rejection is insufficient and we believe in
3 error. I urge USDA and Judge Strother to reconsider that
4 decision, please.

5 I think it makes sense for the dairy industry to
6 be more market-centered and encourage the development of
7 new products. Dairy products and specifically organic
8 dairy companies like ours have so much to offer consumers.
9 I love milk and dairy and hope for a future where real
10 dairy fills my neighbors' fridges. Cow's milk provides
11 amazing nutrition, and I'd like more people to choose that
12 over plant-juice.

13 The pasture-based, natural grazing lifestyles our
14 cows enjoy helps satisfy people's concern about ethical
15 treatment of the animals that give them food. We are
16 completely transparent on our farm, and we invite everyone
17 to come visit us and our cows and see where their milk
18 comes from. Today we have hundreds of grateful customers
19 who have found our A2 organic products and have shared
20 their joy with us that they can drink dairy again.

21 But in order to be able to continue to thrive and
22 provide our great products to consumers, we need to be
23 released from the FMMO system so we can focus on producing
24 great milk and dairy products.

25 Thank you for the opportunity to testify.

26 Q. Thank you, Ms. Alexandre.

27 MS. VULIN: The question witness is available for
28 questioning.



1 MR. MUNCH: Hi, Stephanie. My name is Danny
2 Munch. I'm with the American Farm Bureau Federation. I
3 just wanted to make a comment. We just wanted to thank
4 you and your family for your active involvement in
5 California Farm Bureau, and just we know how much time and
6 effort it takes to be an advocate and get involved in the
7 process, so we just wanted to thank you guys for that.

8 THE WITNESS: Thanks. You know we're very active
9 with our son, the president of our county, and my husband
10 is a past board Director and part of many committees.

11 MR. MUNCH: We appreciate that. Thank you for
12 being here today.

13 THE WITNESS: Thank you.

14 THE COURT: Questions from anyone else other than
15 AMS?

16 Seeing none, Ms. Taylor.

17 CROSS-EXAMINATION

18 BY MS. TAYLOR:

19 Q. Good morning, Ms. Alexandre.

20 A. Good morning.

21 Q. Thank you for joining us today. I want to give a
22 personal thank you for your bucket calf program. I myself
23 got into agriculture because I leased Jersey heifers to
24 show in 4-H. That was my first in into ag. So on behalf
25 of all the other kids that you have leased a calf to say
26 thank you.

27 A. Thank you. It brings us more joy than you can
28 ever imagine. We do it for our own personal reasons, the



1 joy of doing it.

2 Q. Just a couple questions on your operation.

3 On the farm side, you sell your milk to yourself
4 and then three other plants. Do these plants all produce
5 organic product?

6 A. Yes, they do.

7 Q. Okay. And then on your creamery side, do you buy
8 any other farm milk or just bottle your own milk?

9 A. We just bottle our own milk.

10 Q. Okay. And do you know how much of your milk -- I
11 should -- I'm going out of order, and I apologize -- on
12 your farm side, how much of your milk is sold --
13 eventually sold as organic product?

14 A. Pretty much 100%.

15 Q. Okay. And you have already answered some of my
16 questions in your statement.

17 And I -- I think I know the answer to the other
18 question, but I'll ask. On the risk management side of
19 things, do you use utilize any risk management tools to
20 help you?

21 A. We greatly appreciate the Dairy Margin Coverage,
22 but we do not do any insurance or other risk management.

23 Q. Okay. Thank you.

24 A. Okay.

25 Q. And then you ship your milk to those other
26 plants -- well, my first question is, is your creamery
27 located pretty close to your farm?

28 A. It is not. It's about a seven-hour drive from our



1 farm.

2 Q. Seven hours. Okay.

3 Well, for that haul -- I would call that
4 definitely a haul -- can you talk about how your hauling
5 costs may or may not have increased over the past few
6 years?

7 A. Yeah. I -- they have definitely increased, as
8 other farmers have talked about. Fuel prices, being based
9 in California, we actually own ten of our own trucks,
10 along haul trucks or California hauls, and had to buy new
11 because of the diesel regulations and also labor costs
12 have increased considerably in California. So, yes,
13 tremendous cost increase recently.

14 Q. Okay. And your milk that goes to those other
15 employee plants, how long is that haul for you?

16 A. They are pretty close other than one of our
17 customers, Organic West Milk, that's more of a haul -- a
18 longer haul as well. But the other two, Rumiano Cheese
19 and Humboldt Creamery, are in your communities.

20 Q. Okay.

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

23 THE WITNESS: Thank you.

24 MS. VULIN: Your Honor, I'd move for the admission
25 of Exhibit 209.

26 THE COURT: Objections?

27 Seeing none, Exhibit 209, this witness' statement,
28 is entered into the formal record of this proceeding.



1 (Thereafter, Exhibit Number 209 was received
2 into evidence.)

3 THE COURT: Thank you, Ms. Alexandre.
4 Really appreciate you testifying for us today.

5 THE WITNESS: Thank you.

6 THE COURT: You may stand down from the virtual
7 witness box.

8 MS. TAYLOR: Your Honor, we have four producers
9 remaining. I'm wondering if this is a good time for a
10 break.

11 THE COURT: Yes.

12 MS. TAYLOR: Okay. And so we will -- to those
13 producers still on Zoom listening, we'll start back -- how
14 long would you like --

15 THE COURT: We'll start back at 1:50. Let's just
16 take ten minutes.

17 MS. TAYLOR: We'll start back at 1:50. And the
18 first producer up will be Nicole Barlass. Thank you.

19 THE COURT: Off the record.

20 (Whereupon, a break was taken.)

21 THE COURT: Let's come to order.

22 Who is next?

23 MS. TAYLOR: Your Honor, our first witness after
24 the break is Nicole Barlass.

25 THE COURT: Hello. My name is Channing Strother.
26 I'm the presiding judge in this matter, and my job now is
27 to swear you in. Please raise your right hand.

28 ///



1 NICOLE BARLASS,

2 Being first duly sworn, was examined and

3 testified as follows:

4 THE COURT: Your witness. Or somebody's witness.

5 MS. TAYLOR: I'll take it.

6 Good morning -- or afternoon -- Wisconsin, so it
7 is afternoon for you.

8 Can you state and spell your name for the record?

9 THE WITNESS: Sure. My name is Nicole,
10 N-I-C-O-L-E, the last name Barlass, B-A-R-L-A-S-S.

11 MS. TAYLOR: And can you give a business address
12 for the record?

13 THE WITNESS: Sure. 2763 Manitowoc Road, Suite B,
14 and that's Green Bay, Wisconsin, 54311.

15 MS. TAYLOR: And you have an exhibit. I believe
16 it is online labeled Edge-7; is that correct?

17 THE WITNESS: That's correct.

18 MS. TAYLOR: Great.

19 Your Honor, if we could hold Exhibit Number 210
20 for her exhibit?

21 THE COURT: Yes. Edge-7, when we get it, will be
22 marked for identification as 210.

23 (Thereafter, Exhibit Number 210 was marked
24 for identification.)

25 MS. TAYLOR: Ms. Barlass, if you'd go ahead and
26 read your statement in the record, and try to remember, we
27 have a court reporter here, so go a little bit slower.

28 Thank you.



1 THE WITNESS: Okay. Perfect. Thank you.

2 My name is Nicole Barlass from Dusty Lane Farms,
3 LLC, in Sheboygan Falls, Wisconsin. We -- my family and I
4 milk 130 cows and farm about 1600 acres, raising corn,
5 soybean, wheat, and hay. We employ four part-time
6 employees in addition to our four family members, on our
7 farm, and support other numerous other area businesses.

8 Our family also owns and operates a trucking
9 business that works with several local cooperatives and
10 companies to haul feed, bedding, minerals, and
11 non-agricultural products across the U.S.

12 Our milk is shipped to a local cheese manufacturer
13 where it is made into soft white cheeses like provolone.
14 Our family does qualify under the definition of a small
15 business of \$3.75 million in annual revenue.

16 In addition to my roles in the family businesses,
17 I'm a member of many organizations, including the Dairy
18 Business Association, Edge Dairy Farmer Cooperative, and
19 Sheboygan County Farm Bureau. I currently serve as the
20 president of our Wisconsin State Fair Dairy Promotion
21 Board. I also sit on the county Farm Bureau's education
22 and promotion committee, and lead sponsorship for our
23 Sheboygan County Fairest of the Fair program.

24 I have been a national finalist in the Farm Bureau
25 Discussion Meet contest back in my younger years, and in
26 the Excellence in Agriculture award. I also served as
27 Wisconsin's 59th Alice in Dairyland. I was a Wisconsin
28 State FFA officer, and also spent several years teaching



1 agriculture as an agricultural educator.

2 Outside of agriculture, I coach softball. For
3 many years, I worked full-time positions off the farm in
4 both ago education and for several dairy groups here in
5 Wisconsin.

6 Here at home, we run a very lean hands-on
7 operation from a labor standpoint from milking cows to
8 harvesting grain. I believe this strategy and our
9 diversification have kept our farm viable for all of these
10 years.

11 But as we look to the future, we know that our
12 farm size and management will dictate the need to explore
13 other options, such as robotic milking systems due to
14 labor limitations. If we do not, we may, unfortunately,
15 reach a point where we sell the cows and focus solely on
16 cash crops and the trucking business.

17 For us, risk management is an important part of
18 how modern dairy farms operate as milk prices and costs
19 can fluctuate up and down. One of the biggest hurdles
20 producer price risk management has seen over the last few
21 years has been more frequent negative PPDs, or Producer
22 Price Differentials.

23 Proposals 16 and 17 submitted by Edge Dairy Farmer
24 Cooperative aim to limit producer price risk exposure by
25 eliminating advanced pricing, one of the most popular
26 causes of negative PPDs.

27 I would like to finish today by thanking the USDA
28 for this opportunity to testify at the hearing today



1 virtually. As I stated, we are a very hands-on farm, so
2 taking time away to testify in person is not always
3 feasible. It is refreshing to have an increased emphasis
4 on the farmers' voice in this hearing. Thank you again.

5 THE COURT: Thank you for being here.

6 Any questions for this witness other than AMS?

7 Mr. Munch.

8 CROSS-EXAMINATION

9 BY MR. MUNCH:

10 Q. Hi, Nicole. My name is Danny Munch. I'm with the
11 American Farm Bureau Federation. I just wanted to thank
12 you for your involvement in Farm Bureau.

13 And I was curious, Edge co-op's Proposal
14 Number 17, which would remove advanced pricing, is
15 identical to American Farm Bureau Federation's
16 Proposal 18. The only difference is theirs includes a
17 switch back to the higher-of.

18 Were there any other AFBF proposals or Farm Bureau
19 proposals that you were able to review?

20 A. Not that I have, Danny, no.

21 Q. Okay. No worries.

22 And is there any -- when you look back at the past
23 few years and you think about disruptive market
24 conditions, what specifically did you see on your farm?

25 A. Yeah. I mean, definitely the last few years have
26 been rough from a milk pricing standpoint, obviously, why
27 we're here today. You know, I mean, the negative PPDs
28 have impacted our farm drastically. You know, I just



1 think having -- having an idea of what kind of pricing
2 we're going to face and how that can change so
3 drastically, it makes it very challenging to run and
4 operate our farms, you know, not knowing what's going to
5 be coming in. So -- so I would say, you know, obviously
6 milk pricing, again, why we're all here, has been probably
7 the biggest hurdle our farm has been faced with.

8 Q. And with that, would you -- would you characterize
9 depooling and negative PPDs as a form of disorderly
10 marketing?

11 A. Yes.

12 MR. MUNCH: Thank you.

13 THE COURT: Anyone else? Other than AMS?

14 Ms. Taylor.

15 CROSS-EXAMINATION

16 BY MS. TAYLOR:

17 Q. Thanks again for joining us today. I just have a
18 few questions for you.

19 Your statement says you support the Edge
20 Proposals 16 and 17, but I don't think it -- oh, it does
21 say you're an Edge Dairy Farmer co-op member. I just
22 wanted to double-check that that was clear.

23 A. Yep, we are. Yeah.

24 Q. Okay. And then you talked about the impact of
25 negative PPDs on risk management.

26 Could you talk a little bit about if your farm
27 utilizes risk management tools and what those are?

28 A. Yeah. So like many on the call earlier today --



1 or that testified so far, we do use DMC as our primary
2 risk management tool at this time, but have had internal
3 discussions about, you know, other options. I think
4 that's really what allows our farms to be viable right
5 now.

6 Q. Okay. But right now you only use DMC?

7 A. DMC, yes.

8 Q. Have you used others in the past?

9 A. No, primarily DMC.

10 Q. Okay. Thank you.

11 And your milk goes to a cheese plant; is that
12 correct?

13 A. Correct. Yes.

14 Q. And how long is the haul to that plant?

15 A. Yeah. So ours is actually very close. I would
16 say it's 15 to 20 miles.

17 Q. Okay. You do have a short haul, but I'll ask the
18 same questions I've asked others. Have you seen the cost
19 of that haul increase over recent years?

20 A. Yeah. So, again, contrary to others, we're
21 extremely fortunate that our private cheese plant actually
22 does cover hauling charges. But I know just in talking to
23 other Edge members, I mean, it has been crazy how much
24 hauling charges have increased for people. I think we
25 have seen between 40 to \$0.70 per hundredweight, with some
26 small farms evening seeing \$1 to \$2 per hundredweight
27 increase. So, you know, from a small farm standpoint,
28 that can really make a difference between stay in business



1 and not.

2 MS. TAYLOR: Thank you. I think that's all the
3 questions from AMS.

4 THE COURT: Okay. So the exhibit will be moved
5 into evidence when we have hard copies of it, next week
6 sometime, and thank you very much for coming to us
7 virtually today. You are excused --

8 THE WITNESS: Thank you for having me.

9 THE COURT: You are excused from the virtual
10 stand. Thanks again.

11 Next witness.

12 MS. TAYLOR: Yep. Next on the list is Christina
13 Zuiderveen. And I hope I'm saying that correctly.

14 I believe for those here in the room and watching
15 her statement is Edge-10 on the website.

16 There you are.

17 THE COURT: Hi, I'm Judge Strother. I preside
18 over this proceeding, and my job right now is to swear you
19 in. So if you would kindly raise your right hand.

20 CHRISTINA ZUIDERVEEN,
21 Being first duly sworn, was examined and
22 testified as follows:

23 THE COURT: Your witness.

24 MS. TAYLOR: Good morning -- or good afternoon, I
25 should say. Can you state and spell your name for the
26 record?

27 THE WITNESS: Christina, C-H-R-I-S-T-I-N-A,
28 Zuiderveen, Z-U-I-D-E-R-V-E-E-N.



1 MS. TAYLOR: And can you give us a business
2 address?

3 THE WITNESS: 2763 Manitowoc Road, Suite B, Green
4 Bay, Wisconsin, 54311.

5 MS. TAYLOR: Thank you. And I believe you
6 submitted a statement electronically that's marked
7 Edge-10; is that correct?

8 THE WITNESS: That's correct.

9 MS. TAYLOR: So if we could hold the next Exhibit
10 Number 211 --

11 THE COURT: Yes.

12 MS. TAYLOR: -- for that statement.

13 THE COURT: Exhibit Edge-10 will be marked
14 Exhibit 211.

15 (Thereafter, Exhibit Number 211 was marked
16 for identification.)

17 MS. TAYLOR: Thank you, your Honor.

18 All right. If you would like to read your
19 statement into the record.

20 THE WITNESS: Sure.

21 My name is Christina Zuiderveen. Two years ago
22 today, I sat before the Senate ag subcommittee to give my
23 testimony calling for changes to the milk pricing formula.
24 I'm happy to see the legislative process working and to
25 continue my efforts to create a level playing field for
26 dairymen in the Central Plains and across the country.

27 I have previously served on the Central Plains
28 Dairy Expo board and currently serve on the Iowa State



1 Dairy Association board, as well as the Edge Dairy Farmer
2 Cooperative Committee on Political Affairs. Through these
3 organizations, I have actively advocated for dairymen on
4 both the state and federal levels.

5 I am a managing partner at Black Soil Dairy in
6 Northwest Iowa and Dakota Plains and Mount Hope Dairies in
7 Southeast South Dakota. Across these three locations, we
8 milk 15,000 cows and employ approximately 100 people. My
9 husband and I and our three children live in Iowa and work
10 closely with my brother and his family, who live in South
11 Dakota.

12 The growth of dairy in the I-29 corridor has been
13 fueled by ample land available to provide feed for our
14 livestock, as well as states that have given agricultural
15 businesses fair environmental and regulatory policies.
16 These conditions made us want to start our businesses
17 here, but the supportive communities are a great place to
18 raise our family and are what keep us in the Central
19 Plains.

20 We use both owned and rented land to grow corn,
21 beans, and alfalfa, as well as a bit of cover cropping to
22 provide forage for our cattle. Our South Dakota location
23 has an operating digester while we are still in the
24 construction phase in Iowa.

25 In the last few years, we have begun to improve
26 the genetics of our cattle through an embryo program that
27 we are developing with reproductive specialists within the
28 industry. We have continually increased the net merit and



1 cheese merit of our cattle and improved our milk
2 components through this technology.

3 We are members of Edge, the third largest milk
4 cooperative in the US by total milk volume. All three
5 farm locations are within Federal Order 32 and ship to a
6 privately owned cheese processor; therefore, our milk
7 check is primarily based on Class III pricing.

8 When I testified two years ago, my family in
9 Michigan, whose milk check is based on a blend of markets,
10 including Class IV, struggled with low milk prices due to
11 government food programs, depooling, and PPDs. Since
12 then, the markets have flipped with negative PPDs
13 affecting Class III and positive PPDs within Class IV
14 markets, finally evening out into relatively equal prices
15 for both markets today. These significant differences and
16 market volatilities are one of the reasons we are pushing
17 for changes to the milk pricing formula.

18 With these things in mind, I support Edge's
19 Proposals 16 and 17, which will aid in updating the milk
20 price formula to reflect the current product mix as well
21 as creating a more predictable pricing structure for all
22 classes and orders. A more predictable pricing structure
23 is important so dairymen can effectively manage their risk
24 through hedging and programs like DRP.

25 I would consider DRP one of the best tools the
26 government has given dairymen to manage their risk.
27 Before DRP, we would sell futures to guarantee our income,
28 but we had to temper this decision with the chance that



1 the milk price would continue to rise. DRP allows us to
2 protect income for up to 15 months without missing out on
3 the upside.

4 Another positive of the DRP program is that it is
5 fair to all sizes, as there are no program caps. With the
6 size of our farm, we meet the DMC production caps in less
7 than a week, and there is not enough liquidity in the
8 market to purchase options to cover all our milk at one
9 time. Having the ability to estimate our longer-term
10 income helps us make better decisions on our farm today so
11 that we can reach our growth goals in the future. Any
12 lapse in the coverage through this program could
13 negatively affect us and many other farms.

14 My husband and I can both trace our roots to dairy
15 farmers in the Netherlands who immigrated to the United
16 States because of religious freedom and the promise of
17 greater opportunities for themselves and their families.
18 With the help of DRP and updates to the milk price
19 formula, I hope that our dairy can continue to the next
20 generation and beyond.

21 Thank you for again giving me the opportunity to
22 take part in this process as we work together as an
23 industry to continue creating safe and nutritious products
24 to feed the world.

25 THE COURT: Questions for this witness?

26 CROSS-EXAMINATION

27 BY MR. MUNCH:

28 Q. Hi, Christina. My name is Danny Munch. I'm with



1 American Farm Bureau Federation.

2 Is there any chance you are a Farm Bureau member?

3 A. We are not.

4 Q. No problem. When you think about -- you mentioned
5 negative PPDs. Would you consider that and any other
6 dynamics disorderly marketing?

7 A. Yeah. As a producer, I don't necessarily have any
8 influence on the marketing decisions that our processors
9 make, so it is hard to define exactly what disorderly
10 marketing is. However, we do see these differences in the
11 farm gate prices between us and our neighbors, and we are
12 acutely aware of the results of these actions.

13 MR. MUNCH: Thank you.

14 THE COURT: Anyone else other than AMS?

15 AMS.

16 CROSS-EXAMINATION

17 BY MS. TAYLOR:

18 Q. This is Erin Taylor with AMS. Thank you for
19 testifying virtually today.

20 A. Uh-huh.

21 Q. You mentioned you had three farms in Iowa and
22 South Dakota.

23 A. Correct.

24 Q. Would any of those farms be considered a small
25 business by the Small Business definition I provided
26 earlier and you might have heard?

27 A. While we don't qualify as a Small Business by
28 income, we are very much a family farm.



1 Q. Okay. And I'm using this opportunity during this
2 hearing to learn new things, and so you said something
3 that I didn't know what it means.

4 What is net merit in cheese merit?

5 A. The net merit and cheese merit are scores that
6 they give based on the genetics of a cow and their
7 potential to produce offspring. The cheese merit is
8 specifically for Jersey cattle, I believe, and it focuses
9 on the -- how much cream they would produce and the
10 components. So it is a way to rate your cattle
11 genetically with an embryo program.

12 Q. Okay. So it looks like DRP is your primary risk
13 management tool that you use; is that correct?

14 A. That's correct. We do keep an eye on the futures
15 market, but DRP has been in the -- since that has been
16 around, that has been our primary risk management tool.

17 Q. And your statement says you like to look for
18 protection for up to 15 months out, and I'm curious if you
19 would -- if you might expand on how much of your
20 production do you look to lock in?

21 A. It really depends on the opportunities that are
22 out there. We do look about 15 months out. What we have
23 typically purchased based on our needs is about a year
24 out. But we're not against opportunities further than
25 that. And I would say we hedge 50 to 100% of our milk
26 depending on what those options are.

27 Q. Thanks.

28 You do talk about on page 1 -- you talk about your



1 family's Michigan farm. So that's not your Iowa and your
2 South Dakota farms?

3 A. That's correct. I grew up part of my life in
4 Michigan, and my husband is also from Michigan, and we
5 still have family that dairies there. My husband and I
6 moved out to Iowa a little over ten years ago, and my
7 brother has since joined us about an hour away in South
8 Dakota.

9 Q. Okay. And so you talk about your family's
10 experience on negative PPDs. But can you talk about your
11 specific experience on your farms?

12 A. Sure. So that was sort of in reference to my
13 testimony before this subcommittee two years ago. I used
14 that as an example. At that time, we here in Iowa and
15 South Dakota were -- we were getting a great milk price,
16 partially due to the government food programs from COVID
17 purchasing a lot of cheese, which is the market that we
18 are shipping to.

19 In Michigan, my families were experiencing
20 extremely large PPDs because they do not -- they are not
21 based primarily on that Class III market.

22 Q. Okay.

23 A. And now we are seeing some of those PPDs, although
24 not as extreme as two years ago for either of us, but we
25 are seeing the negatives, and the milk price in Michigan
26 is better.

27 Q. Okay. And can you talk a little bit about how
28 your milk check is determined. Is your milk pool -- you



1 say it goes to cheese. Do you know if your milk is pooled
2 or not pooled?

3 A. Our milk will be pooled at the discretion of our
4 processors. That's not a decision I get to make.

5 Q. Right. But do you know if it is pooled or not?

6 A. I don't know what this month's pooling numbers
7 are, but they have been known to depool at their
8 discretion.

9 Q. Okay. And for the cheese plant you ship your milk
10 for, how long is that haul?

11 A. So they have -- they own three processing plants.
12 The closest one is 30 miles, and the majority of our milk
13 goes there. A few years ago before they had upped the
14 capacity there, and on occasion now when equipment is
15 down, the other two plants are about 180 miles away.

16 Q. Okay. And over the past few years have you seen
17 your hauling costs increase at all?

18 A. Yes.

19 Q. And you pay for those hauls; is that right? I
20 know we have had a producer that's testified that their
21 proprietary plant pays for that. Which is it in your
22 case?

23 A. So it's kind of a mix. We get a hauling subsidy,
24 which does not fully cover the cost, but it does cover
25 some of our hauling costs. But the -- I would say the
26 percentage that they have covered in the last few years
27 has gone down.

28 Q. Okay. Thank you. You answered my next question



1 before I asked it.

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

4 THE WITNESS: Yes, thank you.

5 THE COURT: Anything else?

6 We'll -- we've marked Exhibit 211. And I think I
7 lost some data just now. And we'll hold that for
8 admission until we have hard copies next week.

9 Thank you very much. Appreciate you coming out
10 virtually. You may stand down.

11 MS. TAYLOR: Thank you. Your Honor, the next
12 witness is Brian Hemann.

13 THE COURT: Hi, Mr. Hemann. Can you hear me?

14 THE WITNESS: Hi.

15 THE COURT: My name Channing Strother, and I'm the
16 presiding judge at this hearing. When you are settled in,
17 if you could raise your right hand, I'll swear you in.

18 BRIAN HEMANN,

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

21 THE COURT: Your witness.

22 DIRECT EXAMINATION

23 BY MR. PROWANT:

24 Q. Good afternoon, sir. Bradley Prowant on behalf of
25 National Milk.

26 Could you please state and spell your name and
27 provide a business address?

28 A. Yes. My name is Brian, B-R-I-A-N, Hemann,



1 H-E-M-A-N-N. My address is 813 8th Street, Suite 300,
2 Wichita Falls, Texas, 76301.

3 Q. Mr. Hemann, did you prepare a written testimony
4 labeled Exhibit LSMP-3?

5 A. Yes, I did.

6 MR. PROWANT: Your Honor, if we could please mark
7 that as Exhibit 212.

8 THE COURT: So marked.

9 (Thereafter, Exhibit Number 212 was marked
10 for identification.)

11 BY MR. PROWANT:

12 Q. Mr. Hemann, could you please read your statement
13 for us?

14 A. Yes.

15 Ladies and gentlemen, my name is Brian Hemann, a
16 lifelong dairy farmer from Kansas. I operate four farms
17 in Southwestern Kansas and the Oklahoma Panhandle. I am
18 president of the Board of Directors of Lone Star Milk
19 Producers, Inc. Lone Star is a member of the National
20 Milk Producers Federation (NMPF). Today, I come before
21 you representing Lone Star Milk Producers, and both Lone
22 Star and I fully support National Milk Producers
23 Federation Proposal Number 13.

24 The proposal aims to address the critical issue
25 surrounding the evolution of the current Class I mover.
26 As an organization deeply invested in the dairy industry,
27 we have witnessed firsthand the detrimental effects of the
28 current Class I mover on our cooperative and the dairy



1 farmers we represent. It is imperative that we bring
2 attention to this matter and advocate for a swift
3 resolution.

4 Federal Order Reform introduced a new Class I
5 mover based on the higher-of the Advanced Class III or
6 Class IV skim milk prices to accurately reflect milk value
7 and ensure equity among dairy farmers. It aimed to
8 prevent shifts in demand from lowering Class I prices and
9 reducing volatility.

10 However, the 2018 Agriculture Improvement Act
11 changed the formula to the average of the Advanced
12 Class III and Class IV skim milk prices plus a fixed \$0.74
13 per hundredweight differential, leading to Class I revenue
14 losses when the spread between the advanced prices exceeds
15 \$1.48 per hundredweight.

16 My farm risk management strategy is built on the
17 ability to forecast Federal Order Blend Prices and blend
18 price changes. The current formula disrupts blend price
19 forecasting due to the significant increase in the
20 incidence of depooling and hinders my effective hedging
21 against the blend price, causing instability and financial
22 vulnerability for my dairy farms. Other Lone Star members
23 also have experienced the same hedging difficulties and we
24 all have felt the impact of lower Class I prices in our
25 monthly milk checks.

26 In light of the adverse consequences that have
27 emerged from the current Class I mover formula, it is of
28 utmost importance that we take immediate action to rectify



1 the situation. The implications of the existing formula,
2 with its inherent flaws and unintended consequences, have
3 had a profound and detrimental impact on dairy farmers and
4 the stability of the industry as a whole.

5 Therefore, I and Lone Star Milk Producers
6 wholeheartedly support the proposal put forth by National
7 Milk Producers Federation to return to the original
8 Class I mover, which is the higher-of Class III and
9 Class IV skim milk formula, as initially adopted in
10 Federal Order Reform. The reasons that justified this
11 decision when it was first implemented remain valid in
12 contemporary dairy markets and will continue to hold
13 relevance moving forward.

14 In conclusion, I urge the Secretary to adopt
15 Proposal Number 13. By reinstating the higher-of formula,
16 we can accurately reflect the value of different milk
17 categories, reduce volatility in blend prices, and address
18 disorderly marketing conditions that impact my own farms.
19 The return to the highest mover formula will allow me to
20 execute the risk management strategies that suit my farm
21 operations. This amendment will also restore competitive
22 equity among dairy farmers and regulated handlers while
23 ensuring a fair and stable pricing system as a necessary
24 tool to effectively hedge against market fluctuations and
25 manage their price risk.

26 Thank you for the opportunity to present this
27 testimony, and I wholeheartedly support adopting Proposal
28 Number 13 for the betterment of our dairy industry and the



1 hardworking individuals it represents. Thank you.

2 Q. Thank you, Mr. Hemann. Just a few questions for
3 you here.

4 A. Uh-huh.

5 Q. Your testimony spoke about Proposal 13.

6 Do you support all of National Milk's proposals?

7 A. Yes, I do.

8 Q. Okay. And then my other questions you can
9 probably foresee.

10 You mentioned that you operate four farms. Do any
11 of those meet the small business definition --

12 A. No, they do not. We are all family farms, but
13 they don't meet the definition as described.

14 Q. Okay. And then you mentioned risk management
15 throughout your statement. Could you just elaborate on
16 which risk management strategies you utilize?

17 A. So currently we, basically, use DRP, and then we
18 use some options strategy against that.

19 Before DRP was available we were using both
20 futures and option callers. But just to our statement,
21 when we had -- through COVID and we've increased these
22 spreads, what was happening is we -- let's just say we
23 have used a Class III futures strategy that in all
24 purposes would have guaranteed us a certain price, but
25 when there was depooling taking place, we may have hedged
26 on the Class III market, and then our blend price didn't
27 even include a Class III because it was depooled from
28 the -- from that. So currently, most of our hedging is



1 DRP.

2 Q. All right. Thank you, Mr. Hemann.

3 MR. PROWANT: The witness is available for
4 questions.

5 CROSS-EXAMINATION

6 BY MR. MUNCH:

7 Q. Hi, Brian. My name is Danny Munch with the
8 American Farm Bureau Federation.

9 Are you by any chance a Farm Bureau member?

10 A. No, we are not right now.

11 Q. Over the past few years can you talk about some of
12 the market disruptions specific to your farm or your
13 neighbors' farms and how that impacted you?

14 A. Like I said earlier, really the increased
15 incidence of depooling, which -- which like I stated was
16 affected by the change in the Class I because it allowed
17 those differences to occur, basically made it -- made our
18 risk management much harder because we didn't -- we could
19 be anywhere from 0% to 50%, 60%, say, Class III or
20 Class IV depending on -- on the differences.

21 And so by -- by changing the Class I formula,
22 which hopefully then would limit the amount of time
23 depooling takes place, we could actually increase our
24 ability to use other market tools besides DRP as well for
25 hedging.

26 Q. Would you agree that minimizing incentives to
27 depool is a good thing?

28 A. Yes. I would totally agree.



1 Q. Because American Farm Bureau is also strongly in
2 support of NMPF Proposal Number 13, so we thank you for
3 that.

4 MR. MUNCH: Thank you.

5 THE WITNESS: Uh-huh.

6 THE COURT: Mr. Rosenbaum.

7 CROSS-EXAMINATION

8 BY MR. ROSENBAUM:

9 Q. This is Steve Rosenbaum for the International
10 Dairy Foods Association.

11 Did you utilize a combination of Class III and
12 Class IV futures to hedge the risks regarding the Class I
13 mover during the time period starting in 2018 when the
14 Class I mover became the average of those two plus \$0.74?

15 A. Yes. We would do -- we originally -- that was our
16 first foray into that, and so our initial interpretation
17 that it would make it easy to do 50% and 50%. But because
18 of depooling and then, you know, as we all know went
19 through COVID where there was -- there was unintended
20 consequences due to the government intervention, it turned
21 out that you could have 50% of your milk hedged on a
22 market that -- that did not collect from that Class III or
23 Class -- since the Class III market. I mean, it's --
24 luckily our banks didn't do it, but if they ever looked
25 into it, we actually were -- had hedges on that weren't a
26 hedge, so it turned into a speculative position.

27 Q. And that's because of the depooling you are
28 describing or --



1 A. Yes, sir.

2 Q. Okay. And -- okay.

3 And who do --

4 A. Basically more to calculate if you are going to
5 have a class -- how much -- what percent of your milk is
6 Class III and Class IV.

7 Q. All right. And who -- who are you selling to?
8 Was it --

9 A. We market our milk through the Lone Star Milk
10 Cooperative.

11 Q. And who were -- I mean, were they the -- were they
12 the handler who was deciding whether to pool or depool?

13 A. No.

14 Q. Okay.

15 A. It was our customers.

16 Q. Okay. And were they -- were they co-ops
17 themselves or --

18 A. No. Different -- different -- different Class III
19 plants and stuff. And so we even -- even within the
20 Federal Orders, so -- as you know, so within the Federal
21 Order system, if a Class III plant or a Class IV plant
22 decide to depool, that's no longer the pooling price, so
23 it changes our pool price.

24 Q. Okay. All right. But were you protecting the --
25 and to the extent you were trying to protect the Class I
26 components, you were effectively doing that, and it was
27 the depooling that was hitting you; is that what was going
28 on?



1 A. Yes. I -- I mean our total I guess would just
2 depend on our blend price. So by effect, it changes the
3 percentage of whether class -- of what Class III and
4 Class IV was in there. So the Class I component allows a
5 greater different- -- or more incentive, possibly, to
6 depool, or the higher-of that's not.

7 Q. Right. Okay. Were you involved in the
8 decision-making by National Milk to support the change
9 from higher-of to the average?

10 A. I was not directly involved. Our co-op was
11 involved in that.

12 Q. Okay.

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

14 THE WITNESS: Thank you.

15 THE COURT: Anyone else?

16 AMS.

17 CROSS-EXAMINATION

18 BY MS. TAYLOR:

19 Q. Good afternoon. Thank you for joining us to
20 testify virtually today.

21 A. Thank you.

22 Q. I know you are a member of Lone Star. Do you
23 know -- but I think I just picked up that your milk goes
24 to a proprietary plant?

25 A. No. It goes to the -- it goes wherever Lone Star
26 directs it. Certain times it can but --

27 Q. Okay. Do you know where your milk typically goes?

28 A. Sometimes it goes to the Class I market.



1 Sometimes it goes to our -- our Class IV or powder plant
2 in Texas. And sometimes it goes to a Class III plant in
3 Kansas, and then various other places.

4 Q. Okay. Thank you.

5 And so what would you say your average haul is to
6 get your milk to one of those plants, or a range --

7 A. Depending on -- oh, excuse me.

8 Well, actually, some days it can be just as few as
9 12 miles, and sometimes it can be up to 500 miles. So we
10 service different plants, and that is just based on
11 logistics of where milk needs to go.

12 Q. And have you seen your cost of hauling that milk
13 increase over the past few years?

14 A. Yes. That has affected our pay price, especially
15 servicing the Class I plants, because if we service plants
16 that are further away, that has exponentially increased
17 over the last few years.

18 Q. And is the Class I plant your milk goes to one of
19 those further away locations?

20 A. Yes.

21 Q. Okay. And I had similar questions to
22 Mr. Rosenbaum on the -- on page 2 talking about how
23 depooling impacts your risk management strategy, and I
24 just want to make sure I'm clear.

25 So you could forecast better when it was the
26 higher-of, because there was less depooling; is that
27 accurate?

28 A. Yes. And -- and so by that point, if you are



1 getting the higher-of, if you hedge -- if you hedged say
2 Class III, you know you are at least going to collect
3 Class III equivalent or better. So if Class IV becomes
4 the higher-of, you are going to get a better pay price, so
5 it is not going to negatively affect your -- your net
6 difference on -- with your hedges included.

7 Q. Okay. Okay.

8 A. Or depooling -- so I guess to better explain, just
9 for simplicity, let's just say you were 33% -- 33%
10 Class III, 33% Class IV, and 33% Class I. Well, if --
11 if -- if all the Class III in that market is depooled,
12 then all the sudden you have -- your blend price changes
13 drastically and there is very little Class III that is
14 part of your formula, except where that, say, 15 to 16%
15 that would be tied to the current Class I formula.

16 Q. Okay.

17 MS. TAYLOR: I think that's all the questions from
18 AMS. Thank you very much.

19 THE WITNESS: Thank you.

20 MR. PROWANT: Your Honor, we'd move for admission
21 of Exhibit 212.

22 THE COURT: Any objections?

23 Exhibit 212 is made a part of this hearing record.
24 (Thereafter, Exhibit Number 212 was received
25 into evidence.)

26 THE COURT: Thank you, sir. Thank you for joining
27 us virtually today.

28 THE WITNESS: Thank you.



1 MS. TAYLOR: Okay. It looks like the last
2 producer we have for today is Paul Cornette. And we'll
3 bring Paul to the virtual stage.

4 Mr. Cornette, you can hear us?

5 THE WITNESS: I can. Thanks.

6 MS. TAYLOR: We can hear you.

7 Your Honor.

8 THE COURT: I'm Channing Strother. I'm the
9 presiding judge at this proceeding. I'm here right now to
10 swear you in. So if you would kindly raise your right
11 hand.

12 PAUL CORNETTE,
13 Being first duly sworn, was examined and
14 testified as follows:

15 THE COURT: Your witness.

16 MS. TAYLOR: Good afternoon. Could you spell --
17 say and spell your name for the record?

18 THE WITNESS: Yeah. My name is Paul, P-A-U-L,
19 Cornette, C-O-R-N-E-T-T-E.

20 MS. TAYLOR: Thank you. And can you give us a
21 business address?

22 THE WITNESS: 2763 Manitowoc Road, Suite B, Green
23 Bay, Wisconsin, 54311.

24 MS. TAYLOR: Thank you.

25 And have you prepared a statement marked as
26 Edge-8?

27 THE WITNESS: Yes, I have.

28 MS. TAYLOR: So, your Honor, if we could have that



1 next exhibit number held for him. I think that would be
2 213.

3 THE COURT: Yes. Edge-8 will be marked for
4 identification as 213.

5 (Thereafter, Exhibit Number 213 was marked
6 for identification.)

7 MS. TAYLOR: Thank you.

8 And, Mr. Cornette, if you would like to go ahead
9 and give your statement.

10 THE WITNESS: I'd like to thank everyone for this
11 opportunity today, especially the virtual component. It
12 is nice to participate and be able to get my work done
13 today.

14 I apologize in advance for any possible background
15 noise. There's farming going on over my left shoulder,
16 and throughout the last two hours there have been some
17 cows who have wanted to have their voices heard today too,
18 so we'll see what happens with them.

19 My name is Paul Cornette. My brother and I co-own
20 and operate Cornette Dairy in Luxemburg, Wisconsin. Our
21 dad bought the current farmstead in 1972, making us the
22 second generation here. However, we still operate both
23 sets of grandparents' farmsteads, and through that
24 connection we are operating some land that has been in our
25 family since the late 1800s. And we're very proud of
26 that.

27 We currently milk about 425 cows with six Lely
28 Robots. In 2017, we built a new freestall barn and



1 retrofitted an older freestall and made the switch to 100%
2 free-flow autonomous milking. We raise our replacements
3 from birth until about four months, after which they go to
4 a heifer-raising farm, also here in Eastern Wisconsin, and
5 they return about two months before calving. All said, we
6 raise about 500 head here on site.

7 We farm just under 1,000 acres, raising alfalfa,
8 corn, winter wheat, and soybeans. Most years this
9 provides enough feed, forages, and enough -- all of our
10 own shell corn rather. We run our farm with just two
11 full-time employees and four retired part-timers who help
12 us with harvesting.

13 We are strong supporters of the local economy and
14 partner with many local businesses, including feed mills,
15 nutritionists, equipment dealers, veterinarians and
16 others. And we ship our milk to a privately-owned cheese
17 plant just 11 miles from our farm, where it is made into
18 award-winning mozzarella and provolone cheese.

19 Our farm also firmly believes in practicing
20 sustainability through innovative practices and
21 technology. We utilize cover cropping, no-till planting,
22 strip tillage, nitrogen fertilizers, stabilizers, and
23 more.

24 I've got the privilege of serving on the board of
25 my local farmer-led watershed conservation group,
26 Peninsula Pride Farms. And I'm the vice president of
27 Farmers for Sustainable Food, a non-profit organization
28 created to unite, inspire and empower farmer-led



1 conservation groups across the Upper Midwest.

2 For the hearing record, our farm would have
3 qualified in 2022 under the small business definition of
4 \$3.75 million in annual revenue.

5 I use DMC and DRP as price protection tools. On a
6 farm my size, the 5-million-pound tier in DMC is very
7 helpful. The high coverage level there is able to cover
8 about 40% of our production for a relatively good value.
9 And I'd consider that to be the cornerstone of my hedging
10 strategy.

11 I then add on to the coverage using DRP when a
12 consultant and I feel the timing and the value might be
13 good in that market. I think the two programs complement
14 each other quite well, at least for sort of a medium size
15 farm like we are.

16 To truly protect a dairy farm's revenue, the time,
17 in my opinion, to enroll in these programs is usually six
18 to 12 months out. That makes consistency in the
19 implementation and funding of these programs critical to
20 avoid costly lapses in coverage, missed buying
21 opportunities, or simply poor purchases that wind up being
22 wasted money. Any changes made to the Federal Order
23 program, I think, must consider the impacts on risk
24 management options for farmers.

25 I also want to testify today in support of
26 Proposals 16 and 17, submitted by Edge Dairy Farmer Co-op,
27 that further enhance a farmer's ability to effectively
28 manage price risk. Negative PPDs adversely affect the



1 farmers' ability to effectively hedge price risk. Edge's
2 Proposal Number 16, which implements the Class III Plus
3 pricing mechanism for the Class I skim milk price
4 calculation, allows us to use the dairy industry's most
5 traded commodity to set pricing. Edge advocates for this
6 because cheese is the active market in the United States.

7 In closing, I'd like to thank USDA and AMS for
8 providing these opportunities for farmers to share our
9 voices throughout this hearing, and, again, the added
10 flexibility to provide virtual testimony really saves us
11 time and money and preserves our ability to speak up on
12 issues that are important to us.

13 Thank you again, and I am available for my
14 questions.

15 THE COURT: Any questions other than AMS for this
16 witness?

17 CROSS-EXAMINATION

18 BY MR. MUNCH:

19 Q. Good afternoon, Paul. My name is Danny Munch with
20 the American Farm Bureau Federation.

21 Is there any chance you are a Farm Bureau member?

22 A. Yeah, our farm's a Farm Bureau member.

23 Q. Well, thank you for that.

24 You talked about depooling and negative PPDs.

25 Would you consider those forms of disorderly marketing in
26 your opinion?

27 A. Yes. Negative PPDs are the real wild card, and
28 they are hard to account for when you are trying to



1 predict -- or protect the downside in the milk markets, no
2 doubt.

3 Q. Thank you.

4 And AFBF's proposal is almost identical to Edge's
5 proposal to remove advanced pricing, so we appreciate your
6 support of that. Thank you.

7 MR. MUNCH: I also just wanted to put on the
8 record, I forgot to ask Steve Pierson if he was a Farm
9 Bureau member, and he is. So thank you. If you are still
10 listening, of Oregon Farm Bureau.

11 But thank you.

12 THE COURT: Any other questions for non-AMS
13 representatives?

14 Seeing none, Ms. Taylor.

15 CROSS-EXAMINATION

16 BY MS. TAYLOR:

17 Q. Thanks for joining us today to testify virtually.
18 Appreciate you taking the time.

19 A. You're welcome.

20 Q. You're supporting 16 and 17, and both of those,
21 they look at -- one is the Class III plus pricing model,
22 and one's returning to the higher-of model.

23 Do you have a preference as it relates to -- since
24 your testimony talks a bit about your ability to use risk
25 management tools, which one would be easier for you?

26 A. Well, I don't have a real intricate working
27 knowledge of 16 and 17. My -- my understanding, at least
28 of the overview of those proposals, is that 16 is a little



1 more straightforward and easy to understand. And for
2 those reasons, I would pick 16.

3 Q. It seems like a good reason. Thank you.

4 And the witness before you talked a bit about, it
5 was something that was kind of a new aspect I think that
6 hadn't been discussed yet about how depooling impacts
7 their ability to hedge.

8 Do you have a similar sentiment on that piece?

9 A. Indirectly, yes. I mean, the -- de- -- like a lot
10 of other witnesses have said today, depooling is sort of
11 out of our control as farmers. But when it winds up
12 resulting in a PPD, it's -- a negative PPD, I should say,
13 we just can't account for that in the hedging strategy, at
14 least not using DRP. It is -- yeah. It's -- it just --
15 it comes in at the last minute, and if it's -- if it's
16 negative, what you thought may have been an \$18 floor, is
17 only 17 or 17.50, and in a circumstance like that, that
18 can make all the difference.

19 Q. Uh-huh. Considering farm margins are so small as
20 it is.

21 A. Yes.

22 Q. Yeah.

23 A. Especially with rising inflation, yeah.

24 Q. I don't know if you indicated. Where does your
25 milk go now?

26 A. To the Agropur plant. It's a cheese plant nearby
27 in Luxemburg.

28 Q. So then you have a pretty short haul?



1 A. 11 miles.

2 Q. The shortest haul today, by I think a mile.

3 A. 11 -- oh, yeah, yeah. I understand you. Yeah.

4 Q. Even with that short of a haul -- do you pay for
5 the haul, or is that subsidized through your buyer?

6 A. We are on a stop charge system from the dairy
7 plant, so it's not a -- it's not a true cost of trucking,
8 but we do get a charge. That charge went up about a year
9 ago, maybe it was, and it was -- it was a substantial
10 increase above what it was before. But we're fortunate
11 that trucking is not a back breaker for us.

12 MS. TAYLOR: That's it today from AMS. Thank you
13 very much.

14 THE COURT: Anyone else have any questions?

15 Okay. With that, we have reserved Exhibit
16 Number 213 for Edge-8, and we'll mark it and move it for
17 introduction into the record when we have hard copies.

18 Thank you so much, Mr. Cornette. I appreciate you
19 coming in here virtually, and we're all grateful to hear
20 from you.

21 THE WITNESS: Thank you.

22 THE COURT: Good day, sir.

23 THE WITNESS: Good day.

24 MS. TAYLOR: Your Honor, if we could -- I think
25 that's it for today. We don't have any farmers left
26 online to testify, and I don't think there's anyone left
27 in the room. But I would like to talk a little bit about
28 who we have on Monday.



1 THE COURT: Should we go off the record for that?

2 MS. TAYLOR: I think it's pretty well set, so we
3 can stay on the record.

4 THE COURT: Okay. Go ahead and spell it out for
5 us.

6 MS. TAYLOR: I'm sure someone will tell me if I'm
7 incorrect.

8 So on Monday we'll have Mike Brown from IDFA.

9 And then we will move on to the other set of
10 proposals on yields that's being offered by Select. They
11 have a number of witnesses, and I am not sure the order of
12 those, but I'm sure we'll move into those.

13 I have the names: Chris Allen, Harmoni Campbell,
14 Cheslie Stehouwer, Steve Cooper, and Dr. Farkye, I think.
15 And I profusely apologize for mispronouncing anyone's
16 names. Those are the Select witnesses, so I'm not sure
17 the order of those. I do believe all their statements are
18 online for people to read over the weekend.

19 We will have Mr. Munch from American Farm Bureau
20 returning on Tuesday to testify, so we will get him on the
21 stand on Tuesday, so we need to all be flexible to allow
22 him to do that. He'll be coming back.

23 As for Mr. Umhoefer, who is our one Wisconsin
24 Cheese Maker witness that was unable to testify this week,
25 he will be returning to testify on September 26th, so he
26 will not be here next week. He'll be here the following
27 week on the 26th, and he would like to testify in the
28 morning, so if we could all just, if appropriately, allow



1 that to happen.

2 And we also have two USDA exhibits that still need
3 to get on the record. I don't think we'll have a witness
4 here that will be able to put those on next week, but
5 we'll do it the following week, just to keep everybody up
6 to date.

7 And that is all I have.

8 THE COURT: Very well. Just -- I'm writing things
9 down. Do you happen to have those exhibit numbers.

10 MS. TAYLOR: I do not. I do not. I'm sorry.

11 THE COURT: No need.

12 MS. TAYLOR: And next week, we are not -- we are
13 meeting Monday, Tuesday, and Wednesday. There will be no
14 hearing on Thursday and Friday. And we will not have
15 dairy farmer virtual testimony next week. So we will go
16 Monday to Wednesday, full days.

17 THE COURT: Very well. Anything else? Anyone?

18 Okay. Seeing none, with that, we're adjourned.
19 We'll see everyone on Monday at 8:00 a.m. Have a great
20 weekend.

21 (Whereupon, the proceedings were concluded.)

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1 STATE OF CALIFORNIA)
) SS
 2 COUNTY OF FRESNO)

3

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

9

10 DATED: October 14, 2023

11 FRESNO, CALIFORNIA

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16 MYRA A. PISH, RPR CSR
 17 Certificate No. 11613

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