

**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 20, 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  
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FOR THE AMERICAN FARM BUREAU FEDERATION:

Roger Cryan

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 EDGE DAIRY COOPERATIVES:

Dr. Marin Bozic

FOR LEPRINO FOODS:

Erik G. Nielsen

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

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M A S T E R I N D E X

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1 WEDNESDAY, SEPTEMBER 20, 2023 - - MORNING SESSION

2 THE COURT: On the record.

3 Let's resume the examination of this witness.

4 You are still under oath.

5 PETER VITALIANO,

6 Having been previously sworn, was examined

7 and testified as follows:

8 CROSS-EXAMINATION

9 BY MR. ROSENBAUM:

10 Q. Steve Rosenbaum for the International Dairy Foods  
11 Association. I'd like to start by discussing the  
12 development of the current Class I mover, okay? The one  
13 that's based upon the average-of the Class III and IV  
14 price plus \$0.74, all right? I'd like to start by showing  
15 you what I have marked as IDFA Exhibit 45.

16 MR. ROSENBAUM: Your Honor, could I have this  
17 marked with the next Hearing Exhibit number, please?

18 THE COURT: Yes, on the record.

19 Is the next number 232? All right. This Exhibit  
20 IDFA-45 will be marked for identification as Exhibit 232.

21 (Exhibit Number 232 was marked for  
22 identification.)

23 BY MR. ROSENBAUM:

24 Q. And, Dr. Vitaliano, Exhibit 232 is a September 29,  
25 2017, e-mail from Dave Carlin.

26 You recognize him as an officer -- well, as an  
27 executive within the International Dairy Foods  
28 Association?



1 A. Yes.

2 Q. And it is an e-mail that is shown as going to  
3 Michael Dykes.

4 You understand him to be the CEO of IDFA?

5 A. Yes.

6 Q. And then also to Mr. Mulhern who -- tell me his  
7 exact title so I get it right, at that point in time.

8 A. He was president and chief executive officer, I  
9 believe.

10 Q. Of NMPF, correct?

11 A. Yes.

12 Q. The organization for which you work, correct?

13 A. Correct.

14 Q. And it shows a carbon copy to you, correct?

15 A. Yes.

16 Q. Do you recall receiving this e-mail on or about  
17 that date?

18 A. It's been a while, but it basically has this  
19 attachment, the NMPF and IDFA dairy price risk  
20 management -- yes, it looks familiar.

21 Q. Okay. And it's the attachment that perhaps is the  
22 more important part of the document.

23 Do you recall that back in 2017 -- this is  
24 something you talked about yesterday to a certain  
25 extent -- that NMPF and IDFA got together and made a joint  
26 proposal to Congress to replace the then-existing Class I  
27 skim mover, which was based upon the higher-of the  
28 Class III or IV price, with a new approach which would



1 take the average-of the Advanced Class III and Class IV  
2 announced prices and add to that \$0.74, correct?

3 A. Yes.

4 Q. Okay. And can you confirm that the attachment to  
5 Hearing Exhibit 232 is, in fact, a -- the joint document  
6 that was developed by NMPF and IDFA?

7 A. I couldn't vouch for every piece in it from  
8 memory, but my memory is that this was drafted by IDFA and  
9 submitted to National Milk, and we agreed to it.

10 Q. All right. Thank you.

11 Now -- and were you personally involved in the  
12 review and approval of this document?

13 A. Of this document?

14 Q. Yes.

15 A. No, I was not.

16 Q. Who was?

17 A. I'm not sure who was at that time.

18 Q. So, some -- I mean, obviously --

19 A. Could have been the chief executive officer, who I  
20 believe was Mr. Jerry Kozak at that time, and probably our  
21 director of legislation.

22 Q. Okay. And in both cases you are referring to  
23 people who are executives within NMPF, correct?

24 A. Correct.

25 Q. All right. Now, the document states that the goal  
26 was to "provide tools needed to allow processors,  
27 cooperatives and dairy producers to better manage price  
28 risk on all Classes of milk regulated under" FMMOs,





1 correct?

2 A. That's what the document said. I would have  
3 characterized it slightly differently, because the  
4 producer interest in this agreement did not approach the  
5 agreement with any particular objective, other than to  
6 basically be open-minded to the desire of the processor  
7 representatives to be able to better hedge. Our position  
8 was, we were very happy with the higher-of. We had no --  
9 National Milk and Dairy Producers and their cooperatives  
10 had no desire -- no particular need to make any change.  
11 It was strictly in the interest of accommodating a request  
12 from the processing sector for a change.

13 Q. Whatever the underlying motivation -- and I don't  
14 doubt that the idea came from the processor side, not the  
15 farmer side -- nonetheless, the document does recite, and  
16 I quote in the second paragraph, "Both IDFA and NMPF  
17 support changing the Class I mover from the higher-of  
18 Class III and Class IV to the simple average-of Class III  
19 and Class IV, with an adjustment in Class I differentials  
20 based on historical relationships between the current and  
21 proposed mover," end quote, correct?

22 A. That is correct.

23 Q. And you did not respond to this e-mail from  
24 Mr. Carlin, you know, with an e-mail that said, "don't you  
25 dare say that," or anything along those lines, did you?

26 A. No.

27 Q. And the -- and the reference to the historical  
28 relationship, that is later described as being the \$0.74



1 per hundredweight, correct?

2 Do you see that later in this document?

3 A. When you say the "historic relationship," between  
4 the two movers, right?

5 Q. Yes.

6 A. The average-of and the higher-of, yes.

7 Q. Okay. So just to -- I mean, this -- this document  
8 is describing what, in fact, ended up being the Class I  
9 skim mover that is now in effect, correct?

10 A. That is correct.

11 Q. Okay. And -- and the document identifies the  
12 reasons for the proposal, and there are several bullet  
13 points, quote, "Changing the Class I mover to the above  
14 referenced price format," and that's a reference to using  
15 the average-of Class III and IV plus \$0.74, correct?

16 A. Correct.

17 Q. "Would" -- these are bullet points -- "balance  
18 processor desire for better price risk hedging with  
19 cooperative and dairy producer desire to maintain FMMO  
20 integrity."

21 Next bullet: "Eliminate the uncertain basis that  
22 occurs when a mover shifts between Class III and  
23 Class IV."

24 Next bullet: "Allow the use of existing Class III  
25 and Class IV futures and options to manage Class I price  
26 risk with minimal changes to the FMMO system."

27 Next bullet: "Provide several benefits that can  
28 result from the ability to hedge longer-term costs for



1 fluid milk products."

2 Next bullet: "Allow processors to manage price  
3 risk for dairy beverage ingredients as they currently can  
4 for non-dairy ingredients."

5 Next bullet: "Allow dairy producers to  
6 effectively hedge the Class I portion of their producer  
7 milk payments as they currently can for the other portions  
8 of their payment."

9 Next bullet: "Encourage and promote the use of  
10 dairy ingredients in new fluid milk and dairy-based  
11 beverages that meet Class I specifications."

12 Did I quote those correctly?

13 A. You quoted them correctly from the memo, yes.

14 Q. Okay. And, once again, you did not respond to  
15 this e-mail with a response saying, "don't say those  
16 things," did you?

17 A. I did not respond to this e-mail.

18 Q. Okay. And did anyone from National Milk -- I  
19 mean, let me strike that.

20 As you can see from the first page, Mr. Carlin is  
21 stating that this is a document that's going to be  
22 provided to House and Senate staff, correct?

23 A. Yes.

24 Q. And -- and obviously, a recipient of this in the  
25 House or the Senate, or their staff members, would  
26 interpret the attachment to be that both National Milk  
27 Producers Federation and International Dairy Foods  
28 Association supported this change, correct?



1 A. They did.

2 Q. And, once again, you did not respond to Mr. Carlin  
3 telling him, "don't provide this memo to the House and the  
4 Senate," did you?

5 A. No. If there was any concern -- I did not. And  
6 if there was any concern on behalf of National Milk,  
7 Mr. Mulhern, who was I guess then the CEO, would have been  
8 the one to -- to make any response --

9 Q. Okay.

10 A. -- to Mr. Dykes.

11 Q. And you don't recall having seen any e-mail from  
12 Mr. Mulhern to either Mr. Dykes or Mr. Carlin indicating  
13 that National Milk did not want this memo to be provided  
14 to Congress?

15 A. I did not see any such e-mail.

16 Q. Okay. Now, obviously -- yesterday you recited  
17 certain statements made by USDA in the 2000 Order Reform  
18 decision, correct?

19 A. That's correct.

20 Q. Where they described their reasons behind adopting  
21 the higher-of, correct?

22 A. Correct.

23 Q. Which is the Class I skim mover that this  
24 document, Hearing Exhibit 232, was proposing to replace  
25 and which, in fact, did get replaced, correct?

26 A. Correct.

27 Q. And, now, we've recited the reasons set forth in  
28 the memorandum why that change was desirable.



1           And would you agree with me that some of these,  
2 maybe most of these, related to the desire to facilitate  
3 risk management? Just characterizing the bullet points,  
4 is that a fair way to summarize it?

5           A. That whole discussion was about being better able  
6 to manage risk.

7           Q. And is it fair to say that 18 years earlier when  
8 USDA had come up with its 2000 Order Reform decision, risk  
9 management was not, fair to say, top of mind?

10          A. It was less prevalent.

11          Q. I mean, would it surprise you to know -- and I  
12 checked -- that the term "risk management" doesn't appear  
13 at all in the April 2nd, 1999, decision that put --

14          A. I have not encountered it in that document.

15          Q. Okay. But, I mean, National Milk surely was at  
16 some level aware of the considerations that had led USDA  
17 in 1999 to impose the higher-of, correct?

18          A. Yes.

19          Q. And essentially, is it fair to say that National  
20 Milk felt that if you weighed the rationales given by USDA  
21 back in 1999 and the advantages as set forth in the  
22 document that's attached to Hearing Exhibit 232 of  
23 switching over to what is now the Class I skim milk mover,  
24 that, on balance, National Milk supported the change?

25          A. National Milk supported the change, and I do not  
26 dispute the veracity of the memorandum that was, as I  
27 recall, drafted by IDFA.

28                 But I will repeat, National Milk was -- at the



1 beginning of Federal Order Reform and all the way up  
2 through 2017 when we were approached by the processors,  
3 National Milk was perfectly happy with the previous  
4 higher-of mover. We had not had any of our membership  
5 express a desire for better being able to hedge Class I  
6 prices. The growing use of risk management amongst  
7 producers was not really focusing that much on Class I.

8 And so we -- we had no interest in making a  
9 change, other than a very sincere willingness to work with  
10 the processor community to achieve an objective that they  
11 very clearly came to us and requested and which we were  
12 very open to, with the understanding that it would be  
13 revenue neutral.

14 Q. Okay. And -- and you did that with full knowledge  
15 of what benefits purportedly adhered to the higher-of  
16 approach, correct?

17 A. Right. We were aware that we would, in effect, be  
18 asked to give up something that we were -- that we were  
19 very pleased with.

20 Q. I mean, it is true that -- okay. So let me just  
21 follow up directly on that.

22 I mean, in essence, you looked at this, and for  
23 whatever precise thought process you all went through,  
24 which may well have been including accommodating your  
25 customers, who are my clients --

26 A. Yes.

27 Q. -- you thought, okay, on balance, this makes  
28 sense, and these advantages make it worthwhile to switch



1 over, correct?

2 A. Yes. And it was with the understanding that we  
3 could trust the historic record to be a reasonable guide  
4 to the future.

5 Q. And I -- and then the \$0.74 add-on was based upon  
6 an analysis of what the historical gap had been between  
7 the Class III and Class -- no, let me -- that didn't --

8 A. Between the average-of and the higher-of.

9 Q. Yes, exactly.

10 You did a historical -- you -- I mean you -- both  
11 National Milk and IDFA, presumably, did an analysis of  
12 what the difference was between -- the average between  
13 Class III and Class IV and the higher-of Class III and  
14 Class IV in coming up with the \$0.74 adder that would be  
15 added on top of the average-of the Class III and Class IV,  
16 correct?

17 A. Yes. "You" -- "you" is correct. I did that  
18 analysis.

19 Q. Okay. Good.

20 And I -- and I assume people on IDFA side did the  
21 analysis, too. You may have been the first one.

22 A. Mike Brown and I were delegated to do the  
23 analysis.

24 Q. Okay. And --

25 A. I volunteered to run the numbers working closely  
26 with Mike.

27 Q. Okay. And just to sort of be more precise, Mike  
28 did not work for IDFA yet at that point, but he was



1 involved in the process?

2 A. He was on the IDFA side of the negotiations, the  
3 discussions.

4 Q. Okay. And -- and the -- and the goal -- the  
5 belief was that the new methodology would not,  
6 month-to-month, come up with the same mover as the old  
7 methodology, but that over time it would be revenue  
8 neutral, correct?

9 A. Yes. There was a discussion at one point in the  
10 broader meetings that one of the National Milk  
11 representatives suggested that there was -- with kind of  
12 an instinct, that National Milk would have been giving up  
13 something that had a certain assuredness to us at the  
14 higher-of, and that perhaps some sort of an additional  
15 premium may need to be added to -- you know, to whatever  
16 was agreed to, to sort of compensate for that risk. But  
17 the response was, no, it had to be strictly arithmetically  
18 revenue neutral, and we did -- National Milk side did not  
19 push back against that.

20 Q. You could have walked away, but you didn't?

21 A. That's correct.

22 Q. Okay. All right. Now -- and this new approach  
23 went into effect, what was it, May 2019; is that correct?

24 A. That's correct.

25 Q. And by that, I mean that's when the Class I skim  
26 milk mover became the average-of Class III -- Advanced  
27 Class III and IV plus \$0.74, correct?

28 A. That's correct.





1 Q. Now -- and I think you testified yesterday that at  
2 first things went pretty well, correct?

3 A. Yes.

4 Q. And, in fact, for the first number of months,  
5 dairy farmers were actually being paid more under the  
6 70 -- under the average-of plus \$0.74 mover than they  
7 would have been under the higher-of, correct?

8 A. Correct. We recognized that -- that since the  
9 \$0.74 was an average, that sometimes the new mover could  
10 be higher than the old mover, and sometimes it could be  
11 lower.

12 Q. And I mean -- and I'm just looking at your chart  
13 that's been marked as Hearing Exhibit 230. I mean, if we  
14 look at just say the period through -- through the -- I  
15 mean, the first one -- the first six months farmers were  
16 paid \$100 million more than they otherwise would have  
17 been; is that right?

18 A. At the peak of three or four months in, yes.

19 Q. And I'm just -- I'm looking -- to be clear about  
20 this, I'm looking at page 2 of 2, the very last column  
21 called "All Markets." And the \$24.8 million, for example,  
22 that's listed for May 2019, that's how much more farmers  
23 were paid under the new average of Class III and IV plus  
24 \$0.74.

25 A. What document are you referring to?

26 Q. I'm sorry, this is Exhibit 330 (sic).

27 A. Oh, yeah.

28 Q. National Milk Producer Federation Exhibit 30-A,



1 and I'm looking at the back page. Let me start my  
2 question again, because you obviously didn't have it in  
3 front of you yet.

4 In May 2019, which is the very first month the new  
5 formula went into effect, farmers were paid \$24.8 million  
6 more than they would have been paid under the old higher  
7 of formula, correct?

8 A. That's correct.

9 Q. And if you just -- I'm just adding roughly as I  
10 look at it, so don't hold me to it, but if you look at the  
11 first five months, you have got basically a hundred  
12 million dollars more paid to farmers in the form of  
13 minimum Class I milk prices than they would have been paid  
14 under the higher-of formula?

15 A. Yes. And this was, again, a simple arithmetic  
16 computation that does not adjust for possible depooling  
17 under the alternative scenarios. But if you -- if you  
18 refer to Figure 1 on page 7 of Exhibit NMPF-30, that sort  
19 of does a running sum of that column on the right side of  
20 Exhibit NMPF-30A, where it does -- it does reach about a  
21 maximum of about \$100 million plus.

22 Q. To the benefit of dairy farmers?

23 A. Correct.

24 Q. Now -- all right. And then -- and then along  
25 came -- and then it did -- I mean, then it did turn  
26 negative, so to speak, for a few months at the end of 2019  
27 and into January 2020, correct?

28 A. Yes. It came back down to about zero cumulative.



1 Q. And then it went back up again through June of  
2 through April of 2020, it was -- well, never mind.

3 I'm sorry, for February and March and April -- for  
4 February, March, April, May -- sorry, February, March --  
5 let me start that again.

6 For February, March, April, once again, it turned  
7 back in the other direction and became positive for dairy  
8 farmers; is that correct?

9 A. That's correct.

10 Q. Between those three months. Okay.

11 And of course along came COVID, correct?

12 And so -- and -- and along came a government  
13 response to COVID, correct?

14 A. Correct.

15 Q. And -- and part of that response was the Families  
16 Food Box Program, correct?

17 A. Farmers to Families Food Box Program, as I recall.

18 Q. You are quite right. I didn't read that  
19 correctly.

20 A. I struggle with that, too.

21 Q. So part of the response was the USDA Farmers to  
22 Families Food Box Program, correct?

23 A. That's correct.

24 Q. All right. Let me just provide you a description  
25 of that program from the USDA website.

26 MR. ROSENBAUM: Your Honor, I would ask that this  
27 be marked with the next Hearing Exhibit number, please.

28 THE COURT: Yes. This will be marked -- well,



1 what's a good title? USDA Farmers to Families Food Box in  
2 the colorful header, so it will be marked Exhibit 233 for  
3 identification.

4 (Exhibit Number 233 was marked for  
5 identification.)

6 BY MR. ROSENBAUM:

7 Q. So you're obviously familiar with that program,  
8 I'm sure, Dr. Vitaliano. Very intimate -- very familiar  
9 with it, I'm sure.

10 A. Yes.

11 Q. And the -- the USDA website states -- and I will  
12 provide the URL before I finish -- that that program began  
13 in May of 2020 and ended in May of 2021, and distributed  
14 more than 173 million food boxes of fresh produce, milk,  
15 dairy, cooked meats, and seafood worth over \$5 billion to  
16 Americans across the country.

17 Is that consistent with your recollection of how  
18 the program worked?

19 A. Yes. The program had two particularly strong  
20 peaks, one shortly after the May 2020 initiation of the  
21 program and another one in November.

22 Q. Okay.

23 A. And you can see that reflected in the divergence  
24 of the two movers very clearly.

25 Q. Okay. And -- and that's, of course, what I'm  
26 ultimately getting to, which is cheese was a major  
27 participant in this program, correct?

28 A. Yes.



1 Q. And that is to say these food boxes had cheese in  
2 them, correct?

3 A. That's correct.

4 Q. And that caused an unexpected increase in the  
5 demand for cheese, correct?

6 A. In the consumption of cheese.

7 Q. In the consumption of cheese, right.

8 And that caused a spike in cheese prices; is that  
9 right?

10 A. Yes. That was the main explanation for why cheese  
11 prices escalated considerably with respect to nonfat dry  
12 milk prices leading to a great divergence, historically  
13 wide divergence between Class III and Class IV skim.

14 Q. Okay. So -- and that's -- that's what leads to  
15 the divergence that we see on your chart, that's the  
16 second page of Hearing Exhibit 230, the divergence between  
17 the Class III and Class IV price, correct?

18 A. Seemed to have been a major -- the major causative  
19 factor, correct.

20 Q. And that's what caused the new formula which  
21 averaged the Class III and Class IV prices adding \$0.74 to  
22 be lower than what the mover would have been under the old  
23 approach, which was based upon the higher-of Class III or  
24 Class IV, correct?

25 A. Right. As I testified yesterday, whenever  
26 Class III and Class IV advanced pricing factors diverged  
27 by more than \$1.48 per hundredweight, the average-of base  
28 mover will fall below the former higher of.



1 Q. So that's why we, in July 2020, looking at your  
2 chart, start to see a \$2.66 difference between what the  
3 new mover is and what the mover would have been under the  
4 higher-of approach?

5 A. That was -- yes. That's -- that -- that was  
6 probably the primary causative factor for that significant  
7 and historically largest divergence between the two  
8 movers.

9 Q. Okay. And that divergence continues well through  
10 essentially through the end of the 2020, correct?

11 A. That's correct.

12 Q. But I mean -- okay. So absent COVID and absent  
13 the government's response to COVID, which we certainly are  
14 not in any way, shape, or form criticizing, these -- this  
15 spike would never have happened, correct? At least not at  
16 this level, correct?

17 A. Yes. Let me --

18 Q. No, I'm asking questions. So you can --

19 A. But I want to answer your questions.

20 Q. Just that one. That this spike -- my question  
21 simply is, absent COVID and the government response to  
22 COVID, which I'm not in any way suggesting was wrong, but  
23 absent those things, the kinds of spikes you see here  
24 during the period from August through December 2020, in  
25 terms of divergence between how the old formula would have  
26 worked and how the new formula actually worked, you know,  
27 that would not have happened absent COVID --

28 A. No, that was a --



1 Q. -- and the response?

2 A. That was a historically large divergence in  
3 Class III and Class IV prices.

4 Q. Okay. So -- and so I mean, when, under normal  
5 conditions that we would not have seen that spike,  
6 correct?

7 A. Could you define "normal conditions"?

8 Q. Just absent COVID. Absent COVID and absent the  
9 government response to COVID, which obviously wouldn't  
10 have happened without COVID.

11 A. Let me answer your question as following. You go  
12 back to the history of how the agreement was made. I  
13 looked -- I did the analysis working closely with Mr. Mike  
14 Brown, led to the \$0.74. I looked at how could you choose  
15 a period to make that average, and I quickly came to the  
16 conclusion that the only possible way was to go back and  
17 use the full set of numbers going all the way back to the  
18 inception of the Class III and IV prices, January 2000,  
19 and go all the way up to August of 2017. And that period  
20 included a time when the Dairy Price Support Program  
21 was -- was keeping the price of nonfat dry milk unusually  
22 high and, therefore, boosting Class IV.

23 And I decided that -- that -- with Mike Brown's  
24 concurrence, that that full historic record, including all  
25 the different market variations, including government  
26 intervention, because I worked for an organization that  
27 lobbies the government, and the government will intervene.  
28 You can't predict how it will intervene, particularly with



1 something like the Food Box Program. But intentionally  
2 that \$0.74 analysis was done incorporating periods of  
3 government intervention anticipating that those periods  
4 would continue in the future.

5 What we could not foresee was a government  
6 intervention of the magnitude of the Food Box Program.  
7 But we did not -- we intentionally designed the \$0.74 to  
8 encompass government action, among many other market --  
9 you know, combinations of marketing circumstances, because  
10 this industry is affected by very, very many influences  
11 operating on it.

12 Q. I mean, it's -- is it fair to say that absence the  
13 extraordinary event of COVID, and the extraordinary  
14 response that the government felt it should make to COVID,  
15 the kinds of divergences between the old Class I skim milk  
16 mover formula and the new Class I skim milk mover formula  
17 would not have been experienced?

18 A. The second half of 2020 opened our eyes very, very  
19 abruptly to the fact that -- that government action, among  
20 other activities, could basically realize the downside  
21 asymmetric risk that the new average-of mover had.

22 And you will notice I pointed out in my testimony,  
23 that there have been three such downside episodes so far,  
24 and we expect them to continue. And they exhibit a  
25 ratcheting downward, so to speak, of these cumulative  
26 losses, as expressed in Figure 1.

27 Q. And just to be clear, we'll get to it in a minute,  
28 but IDFA -- I'm not standing here, nor is IDFA standing,





1 for the preservation of the current formula. You  
2 understand that?

3 A. Yes, I understand that.

4 Q. But, you know, when -- when you say -- when people  
5 say things like, farmers lost a billion dollars, this  
6 number here is \$941 million, I mean, they -- that's not  
7 money they would have gotten under normal conditions,  
8 correct? I mean, that's extra money they would get only  
9 because the government intervention with respect to COVID,  
10 which as I say, we are not criticizing, had the effect of  
11 raising the Class III price far higher than it otherwise  
12 would have been. Isn't that fair?

13 A. Well, you are suggesting that somehow this is --  
14 would have been ill-gotten money?

15 Q. I think it would have been an unexpected -- you  
16 know, an unexpected result of a government intervention,  
17 that was not --

18 A. Well, dairy farmers looked at it as if this is  
19 money we would have gotten if we had not made the  
20 agreement at the request of the processors to change the  
21 mover. And it was a very traumatic lesson imposed by the  
22 market, in its infinite wisdom, you might say, very short  
23 ly after the agreement was made to surrender the higher-of  
24 mover.

25 Q. But you agree with me, you could look at that as  
26 you -- as you would -- as some might say, from the other  
27 side of the telescope, and conclude that, well, this is  
28 money they would never have received under normal supply



1 and demand conditions, this is only money they would have  
2 received, A, had we not changed the formula; and B, given  
3 the fact that the government engaged in this extraordinary  
4 activity to deal with an extraordinary problem.

5 Isn't that a reasonable way to think it of as  
6 well?

7 A. Economists are very skilled at looking at things  
8 from many angles.

9 But -- but to sort of characterize it, again, we  
10 look -- in looking -- in researching the \$0.74, we  
11 explicitly took government action into account as a  
12 legitimate data source for researching the historic record  
13 between the average-of and the higher-of Class III and IV.  
14 We anticipated future government action would affect  
15 market prices, and that was a reasonable assumption. And  
16 I think we're going to continue to see that going forward.

17 So to characterize the -- the extraordinary --  
18 admittedly extraordinary divergence during the second half  
19 of 2020 does not mean that we consider that a one-off,  
20 black swan, never-to-happen-again anomaly. That is part  
21 of the business of the environment in which the dairy  
22 industry operates.

23 Q. And -- and of course there's another part of that  
24 environment, which is that USDA will step in to help dairy  
25 farmers directly when they feel there's a need to do so,  
26 correct?

27 A. This is a history of the government providing  
28 direct assistance to farmers of all sorts.



1 Q. Okay.

2 A. Like during the -- shortly before the pandemic,  
3 the -- there was an adjustment for some trade issues,  
4 trade mitigation payments as I recall.

5 Q. Well, let's talk about what the government did to  
6 benefit dairy farmers directly as a result of COVID and  
7 the things that happened.

8 Now, yesterday, Ms. Vulin showed you, and marked  
9 as Hearing Exhibit 231, a document indicating that the  
10 government had paid \$360 million to dairy farmers as a  
11 direct result of the impact of COVID.

12 Is that -- do you recall seeing that --

13 A. Yes.

14 Q. -- document? All right.

15 Let me -- let me mark another USDA document.

16 MR. ROSENBAUM: Your Honor, I would ask this  
17 document be marked with the next exhibit number.

18 THE COURT: Yes, document first line, "USDA  
19 Announces Improvements to the Dairy Safety Net," I won't  
20 read the whole sentence, it is marked Exhibit 233 for  
21 identification --

22 MR. ROSENBAUM: 234 --

23 THE COURT: I'm sorry. Yes, correction. That  
24 afore-described exhibit is marked 234 for identification.

25 (Exhibit Number 234 was marked for  
26 identification.)

27 BY MR. ROSENBAUM:

28 Q. Now, this document is a press release by the U.S.



1 Department of Agriculture, August 19, 2021, entitled,  
2 "USDA Announces Improvements to the Dairy Safety Net and  
3 New Pandemic Market Volatility Assistance Program."

4 Do you see that?

5 A. Yes, I see this.

6 Q. And do you see that in this two-page press  
7 release, USDA states that -- I'm looking at the second  
8 paragraph, quote, "This targeted assistance is the first  
9 step in USDA's comprehensive approach that will total over  
10 \$2 billion to help the dairy industry recover from the  
11 pandemic and be more resilient to future challenges for  
12 generations to come."

13 Do you see that?

14 A. Yes.

15 Q. And so in addition to the \$360 million payment  
16 that we have already covered, am I correct that the  
17 government engaged in something called the Dairy Donation  
18 Program?

19 A. Yes. I'm not aware that an awful lot of product  
20 is moved through that program.

21 Q. If I said it was \$400 million, would you dispute  
22 that?

23 A. I'm not sure -- I don't follow these programs as  
24 actively as other members of National Milk staff, but I  
25 don't -- I think the 400 million is basically money that  
26 was earmarked. I'm not sure that that was actually spent.

27 Q. Okay. Let me go to something that you may follow  
28 more closely.



1           Are you aware that USDA expanded the scope of the  
2 Dairy Margin Coverage Program by changing either the  
3 volume or the price at which that coverage would apply?

4           A.    The Dairy Margin Coverage Program improvements  
5 that I'm aware of were primarily lowering of the premiums  
6 for coverage Tier 1 coverage.

7           Q.    And if I were to say that the value of that was on  
8 the order of \$580 million?

9           A.    Yes, that program has been valuable.  But that was  
10 not a pandemic-related program.  That was basically  
11 dairy's Title 1 safety net that was originated in the 2014  
12 Farm Bill as the Margin Protection Program.

13          Q.    Right.  But are you aware that they made it more  
14 valuable by changing certain of the requirements for  
15 coverage?

16          A.    Yes, but I recall that that was done in the 2018  
17 Farm Bill.  I believe -- I don't consider the changes in  
18 the Margin -- the Dairy Margin Coverage Program to be  
19 pandemic related.

20          Q.    Well, are you aware that there was a retroactive  
21 adjustment to the Dairy Margin Coverage Program?

22          A.    Yes.  I can't recall the details.  But, yes.

23          Q.    And that that specifically covered the period 2020  
24 and 2021?

25          A.    I can't recall those details.  But, yes, there was  
26 a retroactive.

27          Q.    And that ended up being worth \$100 million.  Does  
28 that sound right?



1           A.    I would trust the figures in the USDA press  
2 release.

3           Q.    Okay. Well, I'm not saying that figure's in this  
4 press release. I don't want to mislead you -- oh, no, I  
5 take it back. I'm sorry, it is there.

6           A.    It is there.

7           Q.    I'm sorry. So do you see -- okay. The very last  
8 paragraph in the document, "Outside the pandemic  
9 assistance, USDA will also make improvements to the Dairy  
10 Margin Coverage Safety Net Program, updating the feed cost  
11 formula to better reflect the actual cost dairy farmers  
12 pay for high quality alfalfa." And that that change was  
13 made retroactive to January 2020 and would result in extra  
14 payments of hundred million dollars, correct?

15          A.    That's correct.

16          Q.    And that USDA estimated that going forward this  
17 would, over the next ten years, result in an additional  
18 \$800 million of payments to dairy farmers.

19                   Do those numbers appear correct to you?

20          A.    Oh, okay. I'm sorry. I wasn't aware you were  
21 asking a question.

22          Q.    Yes.

23          A.    Those are the numbers that are in this press  
24 release, yes.

25          Q.    Do you have any reason to question those as being  
26 accurate?

27          A.    No. They are forecasts. I make forecasts all the  
28 time, so...



1 Q. Well, and, in fact, do you question whether, in  
2 fact, these changes have resulted in payments of  
3 \$80 million a year?

4 A. I don't question that, and I appreciate USDA's  
5 assistance to dairy farmers.

6 Q. So let's now move on to the proposals to change  
7 the Class I skim milk mover.

8 A. Uh-huh.

9 Q. And I'll ask that -- I'll now distribute a  
10 document I have marked as IDFA Exhibit 46.

11 MR. ROSENBAUM: Your Honor, if I could have that  
12 marked the next hearing number.

13 THE COURT: Exhibit IDFA 46 is marked as Exhibit  
14 Number 235.

15 (Exhibit Number 235 was marked for  
16 identification.)

17 BY MR. ROSENBAUM:

18 Q. Exhibit 235 is a memorandum to Michael Dykes of  
19 IDFA from Jim Mulhern of the National Milk Producers  
20 Federation, correct?

21 A. That's correct.

22 Q. And I assume you are familiar with that document?

23 A. Yes.

24 Q. Did you play a role in drafting this document?

25 A. I produced the chart on page 2 of this document.

26 Q. All right. And Mr. Mulhern was the senior -- most  
27 senior executive within National Milk --

28 A. Yes, he was.



1 Q. -- at this time, and Mr. Dykes was the most senior  
2 executive within the IDFA at that time, correct?

3 A. Correct.

4 Q. All right. And this memorandum addresses the  
5 question of what should be done from National Milk's  
6 perspective with regarding the Class I skim milk mover,  
7 correct?

8 A. That's correct.

9 Q. And Mr. Mulhern recites that when National Milk  
10 and IDFA had reached agreement to seek, ultimately  
11 successfully, legislation to replace the higher-of mover  
12 with the average-of plus \$0.74 mover, the expectation was,  
13 both sides, that it would basically be revenue neutral.  
14 I'm not sure he uses the term revenue neutral, but I think  
15 that's what he's saying.

16 Do you agree with that characterization?

17 A. Yes, the expectation in the agreement was that the  
18 change would be revenue neutral.

19 Q. And -- and he recites that that did not turn out  
20 to be the case. I'm talking about Mr. Mulhern. Correct?

21 A. That's correct.

22 Q. And then on page 2 he sets forth a couple of ways  
23 to address the situation, correct?

24 A. Correct.

25 Q. And he says -- first of all, he references this  
26 matter as having been addressed by the NMPF economic  
27 policy committee, correct?

28 A. Correct.





1 Q. And there are various references to the committee  
2 in the document, and these are all references to that NMPF  
3 economic policy committee; is that correct?

4 A. Correct.

5 Q. And tell me who is on that committee. I don't  
6 necessarily mean the names, but I am just -- are they  
7 representatives from your members, or who is it?

8 A. They are representatives from our member  
9 cooperatives, both executives and dairy producers.

10 Q. Okay. And are you -- what's your role with  
11 respect to that committee?

12 A. We don't have formal staff liaisons, but I work  
13 very actively with that committee, because it involves  
14 economic policy, and my title is vice president for  
15 economic policy market research.

16 Q. Okay. And this is the economic policy committee,  
17 correct?

18 A. Yes, it is.

19 Q. All right. So in the second paragraph on page 2,  
20 you stated as follows, and I quote, "Two basic approaches  
21 to adjusting the \$0.74 per hundredweight increment were  
22 considered."

23 I assume that means considered by the committee;  
24 is that right?

25 A. Yes. It was basically, you know, staff, you know,  
26 working together with some of our, you know, counterparts  
27 amongst our member cooperatives worked on this and  
28 presented the recommendation to the economic policy



1 committee, which is the first step in our adopting policy  
2 positions.

3 Q. Okay. And so let me just finish the reading, and  
4 then I'll have follow-up questions about what you just  
5 said.

6 But let me start because I only read the first  
7 sentence and interrupted myself, quote: "Two basic  
8 approaches to adjusting the \$0.74 per hundredweight  
9 increment were considered. The first would adjust the  
10 increment based on a moving average of the difference  
11 between the average-of and the higher-of the Advanced  
12 Class III and Class IV skim milk pricing factors, with  
13 adjustments made quarterly.

14 "The second approach would adjust the increment  
15 only once every two years based on the same difference  
16 over the past 24 months of May through April, with  
17 adjustments taking effect for the following 24 months of  
18 May through April. The increment would not be set below  
19 \$0.74 per hundredweight, nor would it be increased if the  
20 calculated adjustment were nominal, e.g., less than \$0.05  
21 per hundredweight.

22 "The NMPF executive committee reviewed the  
23 discussion of the economic policy committee and concurred  
24 that the biennial adjustment mechanism would be the most  
25 balanced approach to address the existing disparities,"  
26 end quote.

27 Do you see that?

28 A. Yes.



1 Q. Okay. So obviously, this proposal went through  
2 review and approval by the NMPF economic policy committee  
3 in the first instance, correct?

4 A. Correct.

5 Q. And how does that committee govern itself? Is it  
6 a majority vote? Is it a super majority? How does it  
7 work? Consensus?

8 A. Technically it is a majority vote committee, but  
9 when there's a close majority vote, that is not  
10 practically considered to be strong enough. It usually  
11 operates by -- by consensus. Not always, but it's --  
12 National Milk's had a pretty good track record of getting  
13 unanimous agreement amongst its decision-making bodies,  
14 which it has, for example, for the package of Federal  
15 Order modernization proposals, that five of which we are  
16 bringing to this hearing.

17 Q. Back on February 1, 2021, had the National Milk  
18 Producers Federation economic policy committee reached  
19 consensus that the second approach was the appropriate  
20 way, quote, "the most balanced approach to address the  
21 existing disparities," end quote?

22 A. I cannot recall whether it was unanimous, but it  
23 was, yes, generally agreed. I don't recall. And, again,  
24 I would point out that this was very quickly in the wake  
25 of the shocking events of the second half of 2020, when  
26 producers and National Milk was reeling, I would say, from  
27 those events, and we were very quickly looking for ways to  
28 make changes.



1 Q. Okay.

2 A. We continued to -- as I mentioned yesterday, we  
3 continued to adhere to the average-of base mover and  
4 focused our attention at that time on improving the  
5 average-of base mover with a focus on producer revenue.

6 Q. And -- and you -- the committee concluded that  
7 under this approach, the biennial moving average approach,  
8 that that approach would gradually recoup -- well, let  
9 me -- let me go to something else.

10 Let me focus more on the -- the statement that the  
11 NMPF executive committee reviewed the discussions of the  
12 economic policy committee and concurred that the biennial  
13 adjustment mechanism would be the most balanced approach  
14 to address the existing disparities.

15 What is the -- who is on the NMPF executive  
16 committee? Once again, I'm not asking you for specific  
17 names.

18 A. Similar to our economic policy committee, the  
19 executive committee probably has a larger proportion of  
20 dairy farmers, board members of our member cooperatives.  
21 The economic policy committee, a little bit more of a  
22 technical leadership group that probably has more staff --  
23 cooperative staff executives on it.

24 Q. Okay. Is the executive committee -- I mean, are  
25 the executives -- do they tend to be, like, the  
26 presidents, if you will, of the various cooperatives?

27 A. They would tend to be the elected farmer  
28 chairperson or the CEO general manager.



1 Q. Okay. And can a co-op have more than one member  
2 or is it one member per co-op?

3 A. The executive committee, I think, can have  
4 proportionate representation. We have only recently  
5 reinstated an executive committee. Our ultimate  
6 decision-making body is our Board of Directors, and that  
7 membership in the Board of Directors is -- in terms of  
8 numbers of individual representatives is proportionate to  
9 the milk volume that our members have. And the executive  
10 committee mirrors that a little bit to some extent.

11 Q. How many members were there of the executive  
12 committee of as of February 1, 2021?

13 A. I can't remember, somewhere in the 20s or 30s, I  
14 believe, but I can't answer that definitively.

15 Q. And did -- was there an -- and what is their  
16 mechanism for approving things? Is it majority vote? Is  
17 it super majority? Is it consensus?

18 A. Somewhere in between. It's technically majority  
19 vote, but when there is a bare majority vote, things are  
20 looked at to see how that vote can be improved.

21 Q. I mean, you agree with me that, with some nuances,  
22 IDFA Proposal 14 and MIG Proposal 15 are essentially what  
23 you have laid -- laid out here?

24 A. They are very similar. But you recall, when,  
25 again, reeling from the events of the second half of 2020,  
26 we came back to the IDFA in the same spirit that IDFA  
27 processor representatives approached National Milk for  
28 assistance with changing the mover to make it more



1 hedgeable. National Milk came back to IDFA saying, we  
2 have a problem, and we need -- this is our suggested  
3 solution. And we proposed something very similar to IDFA  
4 proposal -- was it 15 you say?

5 Q. IDFA is 14.

6 A. 14.

7 Q. MIG is 15.

8 A. And we were very distinctly rebuffed.

9 Q. All right.

10 A. We were told we made an agreement; an agreement is  
11 an agreement; we are basically not going to react to your  
12 concerns that you are bringing to us.

13 Q. When did that happen as compared to February 1,  
14 2021? Do you know?

15 A. I don't recall when that meeting was. I was on  
16 it. But I recall either late -- it must have been after  
17 this, because this is when we formally announced. But  
18 basically it was -- it was shortly around the turn of the  
19 year 2020 to 2021, give or take a few months.

20 Q. All right.

21 A. We came to IDFA fairly quickly, and we started our  
22 investigation of how to change the mover, coming --  
23 ultimately coming up with those two recommendations that  
24 were later narrowed to one. We developed that even before  
25 the end of 2020, before the last December, you know, very  
26 strong divergence. So we got to work on this very quickly  
27 as soon as it became obvious what was happening in the  
28 second half of 2020.



1 Q. But just to be clear, the proposal in Hearing  
2 Exhibit 235, this is a proposal that was developed  
3 internally within National Milk, correct?

4 A. That's correct.

5 Q. All right. Let me mark as the next exhibit a  
6 document from the National Milk Producers Federation  
7 website. It is not there anymore. It used to be.

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

11 THE COURT: Yes. This document which has got a  
12 bold heading, "Class I Mover," will be marked Exhibit 236  
13 for identification.

14 (Exhibit Number 236 was marked for  
15 identification.)

16 BY MR. ROSENBAUM:

17 Q. All right. So I'm showing you a document that's  
18 marked as Hearing Exhibit 236.

19 So are you -- are you familiar with what's called  
20 the "Wayback Machine"?

21 A. No, I don't --

22 Q. Okay. It's pretty neat.

23 So what the Wayback Machine does, it takes a  
24 picture of the entire Internet and saves it at various  
25 points in time.

26 A. Syncs it?

27 Q. Saves it.

28 A. Saves it.



1 Q. Saves it. Saves a copy.

2 And so you can search for materials that don't  
3 appear as of today. Okay?

4 A. Is this document a result of that technology in  
5 operation?

6 Q. Exactly it is. In fact, if you look at the very  
7 last page of the document, one of the -- one of the  
8 aspects of the Wayback Machine is it will tell you the  
9 date on which it copied a particular web page, okay? So  
10 if you look at the upper right-hand corner, you see  
11 December 13, 2021, in the -- I'm sorry, you have to turn  
12 it sideways.

13 A. Is that this page?

14 Q. Yes. And if you turn it horizontally, can you see  
15 the date December 13, 2021?

16 A. Oh, yeah.

17 Q. So that's the date it took the picture, but you  
18 can -- you can look it up today and see it if you go to  
19 the Wayback Machine website, which is on the very top of  
20 the first page. Okay?

21 So this is -- this is a document obtained  
22 yesterday, on September 19, 2023, by going to the Wayback  
23 Machine archives -- that's what they call it, the web  
24 archive -- and then search for certain things.

25 And my -- and can you confirm for me that the  
26 Class I mover proposal set forth on the National Milk  
27 Producers Federation website, as displayed here, is in  
28 fact, the -- what we'll call the 24-month lookback and





1 make whole approach that had been described in Hearing  
2 Exhibit 235 as, quote, "the most balanced approach to  
3 address the existing disparities," end quote?

4 A. Yes. I testified yesterday that throughout the  
5 spring of 2021, and you will see in pages 2 and 3, many  
6 pictures here, from the -- Wayback Machine, did you say?

7 Q. Yes.

8 A. -- with dates of April and May, and for example,  
9 April 23 and May 4th, "dairy farmers to seek emergency  
10 USDA hearing on Class I mover reform."

11 We were translating that proposal you -- that the  
12 memo marked Exhibit 235 described, we were seeking to  
13 petition USDA for an emergency hearing to hear that, but  
14 then received word that the Secretary was -- was hesitant  
15 to -- to -- we did not submit it formally, but we floated  
16 a draft through USDA staff. And we got word back that the  
17 Secretary was not eager to hold a hearing on that  
18 precisely because of opposition from IDFA, is how we read  
19 the read that opposition, and instead was going to seek  
20 Congressional funding to make some restitutions, that were  
21 ultimately turned into the PMVAP program payments.

22 Q. So the Secretary ultimately approved the -- some  
23 of the payments to dairy farmers that we have been talking  
24 about this morning, correct?

25 A. Yes.

26 Q. That's what he did as a substitute for taking  
27 action on this proposal, correct?

28 A. Right.



1 Q. And do you agree, as the Wayback Machine tells us,  
2 that at least as late as December 13, 2021, this was still  
3 posted by National Milk Producers Federation on their  
4 public website as their proposal for what to do with the  
5 Class I mover?

6 A. We did not formally change our -- you know,  
7 withdraw our support for this mover because by the time --  
8 by the end of December 2021, we had started the current  
9 process that I described in my testimony, put into the  
10 record -- read into the record on Proposal 1, the -- what  
11 we call the NMPF Task Force Process, that led to, you  
12 know, our current position on Federal Order Milk Marketing  
13 Order modernization.

14 And as I described yesterday, we maintained  
15 throughout that process, up until October 2022, the option  
16 of a retaining an average-of based mover. We made changes  
17 through that task force -- the task -- the current task  
18 force process was not in place during the spring of 2021  
19 when we adopted the 24-month lookback mover documented in  
20 Exhibit 235. We modified that to a -- to an annual reset,  
21 but with the same basic mechanism, but also with an  
22 updating adjustment to the \$0.74 floor.

23 But we retained some form of a lookback and recoup  
24 option to retain the average-of based mover right up until  
25 our economic policy committee, executive committee, and  
26 board voted on the final recommendations and proposals.

27 Q. So -- I mean, so --

28 A. We did not -- we did not formally abandon an



1 average-of based mover until October 2022.

2 Q. Okay. So did -- and that proposal as -- once  
3 again, is quite similar to IDFA Proposal 14 and MIG  
4 Proposal 15, correct?

5 A. It is.

6 Q. Okay. And so did the economic policy committee  
7 itself vote against that proposal or for that proposal?

8 A. For which proposal?

9 Q. The -- it was the continued use of average-of  
10 Advanced Class III and Class IV, plus some amount with a  
11 lookback make whole.

12 A. The task force, dutifully, on its own initiative,  
13 and under the direction of our decision-making bodies,  
14 maintained in parallel on the issue of the Class I mover,  
15 one, retaining some version, which we call the best  
16 possible average-of based mover, and returning to the  
17 higher-of. That committee -- that task force did not make  
18 a recommendation. It presented both to the economic  
19 policy committee. The economic policy committee  
20 decisively rejected the average. There was no support,  
21 zero support, for maintaining any version of the  
22 average-of.

23 By that time, dairy farmers had had an entire year  
24 to make their executives, cooperative executives, aware of  
25 how they felt about it, and the feeling in the room, where  
26 I was present, was nothing besides the returning to the  
27 higher-of would even be entertained to be -- you know,  
28 from then on, from thence forward.



1 Q. Did the professional staff of National Milk itself  
2 take a position one way or the other?

3 A. No. We presented both options. What we did say  
4 was, this is our best recommendation -- if you wish to  
5 retain the average-of based fundamental mechanism, this is  
6 our recommendation for the best way to do that.

7 Q. Now, are you aware that IDFA -- I assume you have  
8 read the IDFA proposal, correct? Let me start the  
9 question again.

10 A. Yes.

11 Q. You have read the IDFA proposal.

12 And are you aware that the IDFA proposal starts  
13 out with the current approach of basing the skim milk  
14 mover on the average-of the Advanced Class III and IV  
15 prices but has a two-year lookback such that if it turns  
16 out farmers would have received more had the higher-of  
17 been in place, then that delta will be made up in further  
18 payments?

19 A. I found it very interesting that an approach that  
20 IDFA decisively rejected in early 2021 would resurface in  
21 an IDFA proposal for this hearing. By the time I saw the  
22 IDFA Proposal 14 and the MIG Proposal 15, we had long  
23 since crossed that bridge and come down decisively in  
24 favor of returning to the higher-of and no longer was were  
25 considering in any way, shape, or form retaining any  
26 version of the average-of based mover.

27 Q. But that -- that was, as you have said already, an  
28 approach that National Milk itself had developed?



1 A. Yes.

2 Q. And indeed had not only developed but maintained  
3 it as its proposal for at least a year --

4 A. Yes.

5 Q. -- correct?

6 A. We hung on to it as long as -- until the time in  
7 which our decision-making bodies needed to make a decision  
8 for how we were going to go forward.

9 Q. Let's go back, if we could, to the document we  
10 started out with, which is the joint IDFA National Milk  
11 Producer Federation recommendation to Congress, correct?

12 A. Yep. Yes.

13 Q. And that document on page 2 is listing what  
14 National Milk and IDFA both were telling Congress would be  
15 the advantages of moving away from the higher-of approach,  
16 correct?

17 A. Yes.

18 Q. Is it fair to say that your -- well, strike that.  
19 Obviously, right now, your proposal is just to go  
20 back to the higher-of approach, correct?

21 A. Yes.

22 Q. Okay. And to walk away from the these advantages,  
23 correct?

24 A. Yes. Because we have seen, both in the second  
25 half of 2020, when we immediately decided that this  
26 document, the original average-of based mover with the  
27 fixed \$0.74, we quickly came to the conclusion, even  
28 before 2020 came to an end, that was no good anymore. So



1 technically that invalidated the letter of this agreement.

2 Q. Well, it didn't --

3 A. But we continued to try to preserve the average-of  
4 based mover with this recoup provision, and we looked at  
5 various versions as the February memo that you gave out,  
6 as Exhibit 235 states.

7 Q. But -- well, but you no longer do. You're no  
8 longer preserving that as an option, right?

9 A. No.

10 Q. You are not --

11 A. The economic policy committee, in its  
12 recommendations that were approved up the line to the  
13 Board of Directors, decisively, finally, in late 2022,  
14 abandoned any support for the average-of based mover, but  
15 it -- it retained that support as long as was possible  
16 until a time to make decisions came.

17 Q. For my questions right now I just want to focus on  
18 your Proposal 13. Okay?

19 A. Yes.

20 Q. As it is now.

21 A. Right.

22 Q. Your Proposal 13 is to go back to the higher-of,  
23 correct?

24 A. Yes.

25 Q. And this document Exhibit 232, is the document  
26 that contains IDFA's and National Milk's joint rationales  
27 for why the higher-of is not the better approach, correct?

28 A. Yes. We have changed -- we have changed our mind



1 on the higher-of -- or on moving to an average-of based  
2 mover, just like IDFA has changed its mind on the  
3 average-of based mover from early 2021 of decisively  
4 rejecting it to embracing it in Proposal 14.

5 Q. As an example, if you look at the bullet points of  
6 advantages that were set forth in the joint National Milk/  
7 IDFA statement that's on the second page of Hearing  
8 Exhibit 232, one of them is, quote, "allow the use of  
9 existing Class III and Class IV futures and options to  
10 manage Class I price risk with minimal change to the FMMO  
11 system," correct?

12 A. Yes. That's right part of this.

13 Q. And that statement was made as an advantage of the  
14 then proposed, now actual, average-of Class III and IV  
15 plus \$0.74 over the then existing higher-of, correct?

16 A. Yes. This document, though, was made in 2017,  
17 shortly after the agreement, long before the pandemic,  
18 long before it -- the change was implemented, in the first  
19 flush of -- of coming to an agreement with members of --  
20 between members -- between NMPF and IDFA, following -- if  
21 I can be candid -- sort of a long stretch where relations  
22 between the two groups were not as productive as they  
23 could have been. We were very pleased to have reached  
24 agreement on something that we thought we were giving up  
25 but that we -- that it was worth it. We -- we basically  
26 had confidence in the revenue neutrality of it, and we  
27 were very pleased that the very process of coming to an  
28 agreement with IDFA, was a very positive thing.



1           And we still continue to feel that way about many  
2 things, including the recent agreement between National  
3 Milk, IDFA, and American Farm Bureau on the legislative  
4 language for the mandatory cost study. Very pleased with  
5 that.

6           But this was all before the events depicted in  
7 Figure 1 on page 7 of Exhibit NMPF-30.

8           Q. My question was narrower.

9           Do you agree with me that going back to the  
10 higher-of would eliminate the advantage set forth that I  
11 just read into the record, namely, that going away from  
12 the higher-of would, quote, "allow the use of existing  
13 Class III and Class IV futures and options to manage  
14 Class I price risk," that that will be -- that will be  
15 abandoned if your proposal is accepted?

16          A. We have --

17          Q. I'm not asking you whether on balance you think  
18 that's a price worth paying. I'm just asking you whether  
19 that's a price --

20          A. I'm not going to answer that question because I'm  
21 not that much of an expert on risk management. We have  
22 witnesses who will testify to exactly your -- the point  
23 you are making.

24          Q. And do you similarly -- you see the next bullet  
25 point, that going from the higher-of to an average plus  
26 \$0.74 would, quote, "provide several benefits that can  
27 result from the ability to hedge longer-term costs for  
28 fluid milk products," end quote.





1 Do you agree with that will be lost if your  
2 proposal is --

3 A. Yes. This document laid out the reasons for  
4 coming to an agreement. This document does not have the  
5 benefit of the experience that we have seen since 2020 in  
6 the downsides to the agreement.

7 Q. And I am not asking you whether, in your view, how  
8 the downsides and upsides weigh against each other.  
9 Obviously your proposal reflects that.

10 What I --

11 A. Yes.

12 Q. I understand that you don't see the downsides and  
13 upsides the way you did before. But I'm just trying to  
14 see whether, in fact, you would agree with me that the  
15 return to the higher-of would result in the loss of the  
16 advantages that had been identified in -- here in  
17 Exhibit 232?

18 A. But in Exhibit 232, these are general statements  
19 that are not data-backed. We do not disagree that -- that  
20 the current mover is more hedgeable, to some extent, how  
21 widely it is used, how much the benefit is, compared to  
22 what has subsequently emerged as the significant downsides  
23 for the producer community. That's a -- that's a calculus  
24 that we now are weighing and have decided, as -- as  
25 contained in Proposal 13.

26 Q. And once again, I'm not asking you to accept my  
27 view of how they should be weighted. You have made your  
28 decisions on that.



1 A. Yes.

2 Q. What I am asking you, though, is to -- is to --

3 A. There were some benefits of making the change.

4 Otherwise, we wouldn't have agreed to it.

5 Q. Exactly.

6 A. We basically accepted the processors' need to  
7 hedge and basically practice risk management for Class I,  
8 as they came and requested it. We did not question that.

9 Q. And -- okay. And -- okay.

10 And so you do not question that the return to the  
11 higher-of would make it extremely difficult to hedge  
12 Class I because you don't know -- if you are a processor,  
13 because you don't know whether the Class I price is going  
14 to be set on the Class III price or the Class IV price?

15 A. I can't agree with that statement with the word  
16 "extremely difficult" in it. It would make it -- let's --  
17 presumably, from what I understand about risk management,  
18 it would make it somewhat more difficult. How much more  
19 is something I cannot -- I cannot evaluate. There are  
20 others who know more about risk management than I do.

21 Q. And presumably, the Class I handlers who actually  
22 engaged in it since the change was made in May 2019 would  
23 have a view about that, too.

24 A. I have read all of the testimony on this issue  
25 that's been submitted so far, and I have not seen very  
26 much, other than qualitative statements, talking about the  
27 value in terms of volumes hedged, growth of volumes  
28 hedged, value to processors, and their customers of that



1 hedging ability. I would love to see that kind of  
2 information in the record.

3 MR. ROSENBAUM: That's all I have at this time.  
4 Thank you.

5 THE COURT: Okay. We have been going for about an  
6 hour and a half. Should we take a break?

7 Let's come back at 9:35.

8 (Whereupon, a break was taken.)

9 THE COURT: Back on the record.

10 Mr. Rosenbaum.

11 MR. ROSENBAUM: Your Honor, during my questioning  
12 I represented I would provide the URLs for a couple of the  
13 documents that I used, and so I would like to do that, if  
14 I could.

15 THE COURT: Yes.

16 MR. ROSENBAUM: Hearing Exhibit 233, which is the  
17 document -- USDA document entitled "USDA Farmers to  
18 Families Food Box," that is found at  
19 <https://www.ams.usda.gov/> -- and then I'll read out the  
20 words, there's a hyphen between each of these words --  
21 selling-food-to-USDA/farmers-to-families-food-box.

22 And then, for Hearing Exhibit 234, which is the  
23 USDA press release, that can be found at  
24 <https://www.usda.gov/media/press-releases/2021/08/09> --  
25 and then there's a series of words, there's a hyphen  
26 between each one --  
27 USDA-announces-improvements-dairy-safety-net-and-new-  
28 pandemic.



1 And, your Honor, at this point I would like to  
2 move Hearing Exhibits 232, 233, 234, 235, and 236 into  
3 evidence.

4 THE COURT: Any objections?

5 No objections, so those exhibits -- that was 232  
6 through 236, right?

7 MR. ROSENBAUM: 232 to 236, your Honor.

8 THE COURT: Those exhibits are entered into the  
9 record.

10 (Exhibit Numbers 232, 233, 234, 235, and 236,  
11 were received into evidence.)

12 THE COURT: Okay. Who is next with this witness?

13 MR. MILTNER: Ryan Miltner representing Select  
14 Milk Producers.

15 CROSS-EXAMINATION

16 BY MR. MILTNER:

17 Q. Good morning, Dr. Vitaliano.

18 A. Good morning, Mr. Miltner.

19 Q. Are you familiar with the concept of a black swan  
20 event?

21 A. Yes.

22 Q. And to your understanding, what does a -- what is  
23 a black swan event, so make sure we have the same  
24 understanding.

25 A. It means sort of a once -- once-only, one-off,  
26 unusual event, unexpected, usually with serious  
27 consequences. That's just off the top of my head.

28 Q. I would -- the similar characterizations I would



1 have in my mind, so that will help us with the next few  
2 questions.

3           Would the COVID-19 pandemic be a black swan event  
4 in your understanding of that phrase?

5           A.    So far, since we have not had a worldwide pandemic  
6 in my memory, they say that this may happen more in the  
7 future, which case, maybe it won't be so black when the  
8 next one happens.

9           Q.    But as to that one?

10          A.    As of right now, that is a one-off in the sense  
11 that it was an international pandemic.

12          Q.    So when -- and now were you part of the team at  
13 National Milk that helped to develop and analyze what is  
14 the current Class I mover calculation?

15          A.    Could you restate that in terms of the timing?  
16 Yes, I have been involved in the Class I mover analysis  
17 since 2017.

18          Q.    So you -- you were involved with the -- the  
19 evaluation of moving from the higher-of to the current  
20 average plus \$0.74?

21          A.    Yes.

22          Q.    And you did some -- did you do some modeling  
23 during that analysis?

24          A.    I did some calculation. I wouldn't call it  
25 economic modeling.

26          Q.    During the discussions and the work that you did,  
27 how much attention was given to the possibility of a  
28 massive disruptive event, black swan event?



1           A.     There was not so much a specific analysis on  
2 unusual events. We knew that dairy markets can -- are  
3 capable of continuing to throw surprises at us. As I  
4 mentioned, during the negotiations there was a suggestion  
5 that -- that in giving up the higher-of at the request of  
6 moving to something more hedgeable, at the request of the  
7 fluid milk processors, that we were -- again, we did not  
8 have any need or any desire to give up the higher-of, but  
9 we were willing to consider an alternative if we were  
10 comfortable enough, what we knew at the time, of the  
11 trade-off.

12                     And it was suggested at one point, well, we're  
13 giving up something with a higher degree of assurance than  
14 an average-of, which tied -- the advantage of the  
15 higher-of, as pointed out in USDA's, you know, Federal  
16 Order Reform decision, is that it -- it moves the Class I  
17 price independently by Class IV products supply/demand  
18 conditions versus Class III.

19                     My moving to an average-of, those two are tied  
20 together, and it's giving up some flexibility. And it was  
21 recognized that that was a trade-off with a potential  
22 downside. But the agreement was made that sort of an  
23 arithmetic revenue neutrality based on the available  
24 historic record would be the basis for the decision.

25           Q.     And I think maybe your answer there helps kind of  
26 drive toward the point I would like to ask about. And  
27 that is that using the higher-of Classes III and IV allows  
28 the Class I price to better respond to those market shock



1 events, those black swan events, or other substantial  
2 disruptions, doesn't it?

3 A. Yes. By definition, it can insulate against a  
4 negative shock to one of those major manufacturing  
5 segments that would -- that would drop the Class III or  
6 Class IV price if it did not affect the other.

7 Q. Now, despite what other merits or disadvantages  
8 the alternative proposals to Proposal 13 might have, do  
9 you believe that Proposal 13 best protects producers  
10 against the effects of a market shock, like a black swan  
11 event?

12 A. To the extent that that it does not protect them  
13 completely. A market shock could drop Class III and  
14 Class IV together. But given the -- given the  
15 alternatives, we are satisfied that the higher-of would --  
16 would continue to perform acceptably, as it had, you know,  
17 from 2000 to 2017. And had it continued through the  
18 pandemic, had this agreement not been made, we would have  
19 definitely become convinced that the higher-of -- given  
20 the events of the second half of 2020, we would have been  
21 convinced that the higher-of was the best possible  
22 average -- best possible Class I skim milk price mover,  
23 even if we were not convinced beforehand.

24 Q. Thank you.

25 Now, do you have Exhibit 230 in front of you?  
26 That's your data table?

27 A. Are you talking about 230-A? The one-page thing  
28 or the testimony?



1 Q. It is NMPF-30A.

2 A. Yes.

3 Q. And I believe that's Hearing Exhibit 230, but --

4 THE COURT: It is.

5 MR. MILTNER: Okay. Thank you, your Honor.

6 BY MR. MILTNER:

7 Q. Now, I'm looking at the -- what at least I think  
8 is the second page of it. It's the one that lists the  
9 monetary impacts on the right-hand column?

10 A. Yep. Yes.

11 Q. Put aside the issues that occurred in the second  
12 half of 2020, and maybe just look at 2021 through the  
13 present. The overall impacts to producers, it's still a  
14 substantial lower price than what producers would have  
15 realized under the higher-of; is that correct?

16 A. Yes.

17 Q. Does that suggest to you that even putting aside  
18 these substantially disruptive market events, that the  
19 current mover, the average mover, is not performing as  
20 NMPF and its members intended?

21 A. That's correct.

22 Q. So even if there were no Pandemic Market  
23 Volatility Assistance Payments, or Food Box Programs, or  
24 anything related to COVID, and the government response,  
25 the reality for National Milk is that the change has not  
26 performed as intended, correct?

27 A. Yes. And as I testified, there have been two  
28 subsequent episodes of divergence of -- between the two





1 movers that is more than the \$0.74 maximum advantage that  
2 the current mover has over the previous higher-of. And we  
3 can expect such called down-ratcheting episodes to  
4 continue in the future.

5 Q. And I think this has been stated in the record,  
6 it's probably in your testimony. But the move to an  
7 average-of III and IV, that was a directive in the Farm  
8 Bill, a Congressional directive, correct?

9 A. Yes.

10 Q. One that was supported by National Milk, though,  
11 correct?

12 A. Yes.

13 Q. Now, that Congressional directive also -- it  
14 locked the industry into that particular Class I mover for  
15 a period of two years, did it not?

16 A. Yes, it did.

17 Q. But by locking in for two years, it gave the  
18 industry an opportunity to see how this change performed,  
19 did it not?

20 A. That's correct.

21 Q. And then opened up the opportunity for the  
22 industry to move back to where we were or adopt a  
23 completely different option if it turned out that the 2018  
24 Farm Bill mechanism didn't perform as expected?

25 A. That's correct.

26 Q. So Congress clearly contemplated that this might  
27 or might not be the best solution, correct?

28 A. That's correct. I doubt that we would have



1 supported the legislation if it had not had that reversion  
2 after two years to the ability to change through the  
3 normal Federal Order hearing process.

4 Q. Okay. So, secondary, I wanted to ask you about  
5 related to -- or relates to your questions and answers  
6 yesterday with Ms. Vulin, and particularly your exchanges  
7 regarding pooling of milk and depooling of milk.

8 Do you recall those questions?

9 A. Yes.

10 Q. Okay. I recall the questions, and I'm having a  
11 hard time synthesizing all the answers into a position.

12 A. Okay.

13 Q. So what is National Milk's position -- or if it's  
14 not National Milk position, your opinion -- on when  
15 depooled milk represents disorderly marketing?

16 A. We don't have a position on the issue of  
17 depooling. We feel that that is a matter for individual  
18 orders and individual members of National Milk to decide  
19 whether they want to have strong depooling rules, like in  
20 Order 1, or, you know, less strong ones, and that the  
21 decisions to depool milk are individual, you know,  
22 decisions to be made by those who participate in those  
23 pools.

24 They can become destabilizing when, for example --  
25 and we'll have -- we'll have witnesses testify on that --  
26 when dairy farmers within the same cooperative or  
27 different cooperatives who are close to each other but  
28 pooling on different orders, experience significantly



1 different prices, because milk is depooled in one order  
2 and not in another order.

3 So, you know, it's a -- it is a fine line as to  
4 when it becomes disorderly. But when milk is routinely  
5 depooled and causes disparities, particularly between  
6 producers -- we represent dairy farmers and so we're  
7 particularly sensitive to those -- that then becomes  
8 disorderly.

9 Q. So it would -- there would be market disorder if  
10 producers in the same co-op in different marketing areas  
11 receive different prices because one order was pooled and  
12 one was depooled; is that -- did I get that correct?

13 A. Yes, that would -- that would -- that occurs and  
14 is distressing to dairy farmer members of our member dairy  
15 cooperatives and the leaders of those cooperatives who  
16 have to deal with the unhappiness that that generates  
17 amongst producers.

18 Q. If that depooling were the result of that  
19 cooperative's business decision to maximize returns to its  
20 overall membership, would that still be disorderly?

21 A. Our members are free to make those decisions, and  
22 they make those decisions in the best interest of their  
23 members. We would be loathe to characterize a decision  
24 made freely by any of our member cooperatives in the  
25 interest of its own members. But when the collective  
26 behavior of the various cooperatives and non-cooperative  
27 actors in the -- you know, in Federal Order pools creates  
28 that kind of disruption, then objectively, it would be



1 disorderly. But we are not pointing the finger at any one  
2 actor. They are just acting rationally.

3 Q. And I'm not trying to point fingers either. I'm  
4 trying to come up with scenarios to get a handle on your  
5 opinion on these issues. So I didn't want that to come  
6 across that way.

7 A. Yeah.

8 Q. If -- now, the decision as to whether milk gets  
9 pooled, sometimes that's a decision for the supplying  
10 cooperative, and sometimes that's a decision by the  
11 purchasing handler, correct?

12 A. I don't know how those decisions are made.

13 Q. Let me ask you about a scenario that's not  
14 involving a cooperative necessarily. But if there were an  
15 independent producer who supplied milk to a cheese plant,  
16 an independent cheese plant, proprietary cheese plant, and  
17 that farmer was paid by contract the uniform price for  
18 that order, and the proprietary cheese plant chose to  
19 depool and kept all that revenue for itself and did not  
20 share it with its supplying patron, but in full -- you  
21 know, in full compliance with its contractual obligations,  
22 would that be disorder ly?

23 A. I would assume that if the producer knew the  
24 facts, that producer would be unhappy with that. And I  
25 would recommend if I were chosen to advise that producer,  
26 he should join a cooperative, he or she should join a  
27 cooperative.

28 Q. If there were -- a different scenario now. If



1 there were two producers, both members of the same  
2 cooperative, in the same marketing order, and one of those  
3 producers was able to qualify all of its production as  
4 producer milk, and the other, because of the terms of the  
5 order, could not qualify their milk, and therefore, it was  
6 not pooled, would that be disorderly?

7 A. Well, from -- I would say it would depend on the  
8 prices that the two producers would receive, and the  
9 extent to which they are approximate to each other and  
10 compare milk checks.

11 Q. Let's assume that the prices they receive are  
12 different and that they are supplying milk to the same  
13 plant in the same order, but one is able to get their milk  
14 pooled and one can not.

15 A. That would be disruptive whether -- again, we keep  
16 talking about disorderly marketing, and it would be good  
17 to get a more precise definition of that. But this  
18 hearing -- this whole entire hearing is not really to  
19 discuss pooling regulations.

20 What we are seeking to do, including on -- in  
21 Proposal 13, is to find ways in the interest -- in the --  
22 in connection with modernizing the provisions of the  
23 Federal Order program, particularly the product price  
24 formulas, that will increase the distance between Class I  
25 prices and the manufacturing grade prices, which is a  
26 fundamental feature of Federal Orders. And by so doing,  
27 we would reduce the incentives -- or reduce the number of  
28 occurrences in which depooling is profitable to somebody



1 in a Federal Order pool.

2 That's what we can address in this hearing without  
3 getting into the business of judging whether depooling is  
4 right or wrong, or disruptive or not. We believe that the  
5 Federal Order system would be best served if depooling  
6 were less frequent.

7 Q. And so you probably are -- somehow you knew where  
8 I was headed. Because my next question was going to be  
9 how does this concept and this discussion about depooling  
10 really tie back to the Proposal 13, and I think you -- you  
11 pretty well answered that.

12 But if I could summarize and you can correct me  
13 where I'm wrong: Proposal 13 in National Milk's opinion,  
14 will decrease the occurrence of depooled milk which will  
15 contribute to more orderly marketing; is that correct?

16 A. Yes. I'm pleased that I'm developing the ability  
17 to read your mind. And you -- you're -- I agree with it.

18 Q. And I'm disturbed by it but -- and not because  
19 it's you. I just don't like letting other folks in there.

20 A. I will not abuse the privilege.

21 MR. MILTNER: Thank you very much. I don't have  
22 anything else.

23 THE COURT: Further questions for this witness?

24 Dr. Cryan.

25 CROSS-EXAMINATION

26 BY DR. CRYAN:

27 Q. Good morning, Dr. Vitaliano.

28 I am Roger Cryan for the American Farm Bureau



1 Federation.

2 A. Good morning, Dr. Cryan.

3 Q. You have talked about -- in your colloquy with  
4 Mr. Rosenbaum, you talked about market conditions changing  
5 and that leading, in some part, to a rethinking of the  
6 Class I mover. And they have been changing for some time.  
7 There's been increasing volatility over the last 30 years.

8 Is that one of the considerations?

9 A. Yes. The markets are changing. They generally  
10 seem to become more volatile. They continue to throw us  
11 surprises. And as I have testified before, the basic  
12 foundation for what -- for National Milk's package of  
13 proposals at this hearing is to update the Federal Order  
14 formulas that were in many cases fixed in place in 2000 so  
15 they would be able to catch -- keep up and keep keeping up  
16 in the future with the changes the industry is bringing to  
17 us.

18 Q. And one the challenges of Class I pricing that has  
19 changed, another one the marketing conditions that has  
20 changed, has been the smaller Class I volume which leads  
21 to a need to have more -- more closely aligned prices?

22 A. Yes. The declining utilizations of Class I in  
23 Federal Orders is making their operation more challenging.

24 Q. And one of your objectives here is to try to  
25 get -- with the higher-of, to get the Class I in better  
26 alignment?

27 A. To the extent that it's possible with that  
28 mechanism.



1 Q. And in -- when you think about disorderly  
2 marketing, there was some questions that tried to -- to  
3 get you to say that just the prices going up and down.  
4 But really the concern is a predictable relationship  
5 within the Federal Order system.

6 A. Yes.

7 Q. And I guess another thing I'd ask is that  
8 ultimately -- you represent cooperatives. They represent  
9 farmers who ultimately represent farmers. And they have  
10 pretty consistently concluded that the higher-of is their  
11 preference; is that correct?

12 A. They have emphatically concluded that, yes.

13 Q. And there was discussion about that returning to  
14 the higher-of would eliminate the opportunity to hedge  
15 Class I milk on the existing contracts on the Chicago  
16 Mercantile Exchange, what used to be called the Chicago  
17 Mercantile Exchange. But if the -- if there was a return  
18 to higher-of, it certainly would be a possibility for the  
19 CME, or for another exchange, to institute a Class I  
20 futures and options complex; is that right?

21 A. Yeah. I'm not a risk management expert, but my --  
22 my experience has been, when there's a perceived need  
23 within the industry, the industry is inventive enough to  
24 find solutions to that.

25 Q. And do you think it's appropriate for CME policy  
26 to dictate USDA policy?

27 A. I'm not aware that they are dictating policy.

28 Q. Well, in the sense that if there's not a Class I





1 futures contract, we should, therefore, just, you know,  
2 dismiss the possibility of going back to the higher-of?

3 A. I don't think in any case the possibility of  
4 reverting to the higher-of should be dismissed for any  
5 grounds.

6 Q. Very good. Thank you.

7 I don't want to ask questions I don't need to ask,  
8 so give me a moment while I -- okay.

9 So COVID had an impact. But is it your  
10 understanding that even leading into COVID there were  
11 growing gaps between block and barrel prices?

12 A. Yes. Something was causing barrel and block  
13 prices to diverge markedly starting in 2017 from the  
14 previous 16 years under -- of Federal Order Reform.  
15 Something was changing in the supply/demand relations  
16 affecting those two types of cheese, effectively making  
17 those two markets become separate markets. And we  
18 testified to that effect on Proposal 3.

19 Q. Right. And so the COVID exacerbated the problem,  
20 it wasn't the entire cause of the problem?

21 A. Seems to be. I think one of the early COVID years  
22 was the widest divergence.

23 Q. And would you say another problem that is -- or  
24 another phenomenon that has developed is the larger gaps  
25 between -- well, the growing tendency -- recent tendency  
26 for powder prices -- powder buttermilk prices -- values to  
27 be above the cheese and milk values?

28 A. Yes. Whether that's a permanent feature is hard



1 to say. But as I pointed out in my testimony in Exhibit  
2 NMPF-30, there were two recent instances in which the  
3 current Class I mover underperformed the higher-of and  
4 resulted in a further down-ratcheting of this Class I skim  
5 milk revenue to producers, in this arithmetic sense of my  
6 analysis, are due to imbalances between supply and demand  
7 for cheese versus butter/powder -- cheese and whey versus  
8 butter/powder.

9 Q. And when Class IV prices go above Class I, and  
10 presumably as a result go above uniform prices, that also  
11 creates the disorderly marketing through the depooling of  
12 Class IV milk; is that correct?

13 A. Yes.

14 Q. And the point of returning to the higher-of, as I  
15 understand it, just to clarify, is to limit the  
16 farmers' -- the farmers' downside from that change in the  
17 formula?

18 A. To eliminate that asymmetric risk that is inherent  
19 in the -- an average-of based mover, even with a recoup  
20 fe- -- revenue recouping feature.

21 Q. And that becomes worse as markets become more  
22 unpredictable and prices diverge more than they have in  
23 the past?

24 A. Anything that diverges Class III and Class IV  
25 worsens the average compared to the higher-of.

26 Q. And -- and, again, I guess this is -- so your  
27 concerns about misalignment are for both the alignment of  
28 Class I with Class III and the alignment Class I with



1 Class IV?

2 A. That's correct.

3 DR. CRYAN: That's all I have. Thank you very  
4 much.

5 THE COURT: Further questions of this witness,  
6 aside from AMS?

7 Seeing none, Ms. Taylor.

8 CROSS-EXAMINATION

9 BY MS. TAYLOR:

10 Q. Good morning.

11 A. Good morning.

12 Q. Hard to believe I have anything left to ask you  
13 after all this time. Just a few questions.

14 So first question, when -- when National Milk  
15 decided to push for the change to the Class I mover,  
16 besides the goal of risk management, did National Milk  
17 recognize that any of the other three purposes of the  
18 higher-of -- and those would be providing a good incentive  
19 to attract milk supplies away from manufacturing, reducing  
20 Class I volatility, and then minimizing price inversions,  
21 and those were listed as reasons we adopted the higher-of  
22 in reform -- did you look to see if any of those three  
23 things could be negatively impacted by the change at the  
24 time you were conducting that?

25 A. If we had -- if we had announced a surprise quiz  
26 for any of our decision-makers whether they could name  
27 those provisions, I'm not sure I could guarantee what the  
28 answers would be.



1           There was a general understanding up until that  
2 time that we were very happy with the higher-of mover. We  
3 recognized on some intuitive level, probably varying  
4 degrees -- I'm not sure that any of us could have recited  
5 all three of those at that time -- but there was a general  
6 awareness that separating -- allowing Class III and  
7 Class IV prices to independently move the Class I skim  
8 milk price was -- had a lot of benefits. And it was, you  
9 know, simply because the higher-of intuitively made good  
10 sense.

11           Whether they -- and I think there probably was an  
12 intuitive understanding that it would help reduce  
13 instances of depooling and decouple the Class I price  
14 from -- from, you know, a Class III or Class IV market  
15 that was being negatively impacted by supply/demand  
16 imbalances, whereas the other was -- was -- was not so  
17 impacted. There were -- all of those provisions were  
18 intuitively understood. Whether they could have been so  
19 completely articulated is another issue. But there was a  
20 great appreciation and great support for the higher-of.

21           Q.    Okay.

22           A.    There was no dissatisfaction with that mover on  
23 behalf of National Milk up until the time of that  
24 agreement.

25           Q.    Okay. On page 6 where you talk about the  
26 asymmetric impact and the asymmetric risk to producers, I  
27 think we at USDA just want to make sure we are very clear  
28 on what that means. We have heard that many times, even



1 before this hearing.

2 And so I want to understand if I can summarize,  
3 the risk is -- as you see the risk, is the upside to  
4 producers is capped --

5 A. Yes.

6 Q. -- at a buck 48. If the difference is more than a  
7 buck 48, kind of your --

8 A. The upside is capped at -- the mover is at \$0.74,  
9 half of \$1.48.

10 Q. Half of \$1.48.

11 But on the downside, risk to producers is much  
12 greater?

13 A. Yes. It's -- it's -- I wouldn't call it unlimited  
14 because the movers -- neither Class I -- III or Class IV  
15 is ever going to go to zero, but it -- as I say, the  
16 highest we saw was the movers diverged by, I think \$5.16,  
17 when the II, III, and IV differed by over \$11, or close to  
18 \$11 I believe it would have been, which is -- you know,  
19 \$5.16 to the negative is asymmetric when you consider a  
20 maximum of \$0.74 positive.

21 Q. All right. Thank you for that.

22 Does National Milk plan to -- or does National  
23 Milk have any evidence on whether Class I handlers  
24 actually use the risk management tools available to them  
25 after this change?

26 A. I would say that the maximum evidence that I have  
27 seen would have been reading through the IDFA and the MIG  
28 testimonies on -- on this segment of the hearing, where



1 some -- some processors have testified that they have been  
2 using it. I have not seen very much quantitative data of  
3 volumes of product that are hedged with the help of the  
4 average-of mover or -- or an economic value on having that  
5 ability compared to the abilities to hedge admittedly more  
6 limited ones under the higher-of. We have not seen that  
7 kind of data.

8 Q. And so you are not sure -- or National Milk  
9 doesn't have upcoming testimony on -- for your members  
10 that do have Class I plants, whether they are able to --

11 A. We're going to have some testimony from Class I --  
12 our members that have Class I plants --

13 Q. Okay.

14 A. -- on that issue.

15 Q. And so when you were evaluating the new mover back  
16 in 2017, 2018, did National Milk ever kind of -- you did  
17 a -- you know, you did a lookback analysis to determine  
18 the benefit of the higher-of to producers, and that's how  
19 you came to the \$0.74. So you kind of did a lookback on  
20 the -- how the change could impact producers under, at  
21 that time, normal circumstances.

22 A. Yes.

23 Q. Did you ever do a lookback analysis so see if, in  
24 fact, you know, the Class I processors did use the futures  
25 market, would they have benefitted from the change?

26 A. We did not have information at that time of any  
27 risk management hedging activity by processors. They came  
28 to us and said that they were unable to do it under the



1 current mover, so the assumption was that very little was  
2 being done.

3 Q. Okay.

4 A. I would add that Dr. Scott Brown is going to later  
5 testify on analysis -- economic analysis he's done on our  
6 proposals. He will have more information on the  
7 mechanics -- the arithmetic of the higher-of versus the  
8 average-of mover.

9 Q. All right. Thank you.

10 And on page 9 you talk -- you have a statement  
11 where you are describing the IDFA and the MIG proposals,  
12 "all effectively adopt the higher-of as the standard for  
13 generating the Class I skim milk price revenue to dairy  
14 farmers through Federal Order pools."

15 Just I want to see if you could make clear for the  
16 record what you mean by that.

17 A. Well, as you have seen in those two proposals, as  
18 with the average-of -- the modified average-of movers that  
19 National Milk has looked at, as we discussed in the  
20 cross-examination by Mr. Rosenbaum, they all adopt the  
21 higher-of and the lookback difference between the  
22 higher-of and the average-of Class III and IV -- as you  
23 know, determining on a moveable, adjustable, updatable  
24 basis.

25 So just as the \$0.74 was frozen in time, all of  
26 these modified average-of proposals -- proposals,  
27 including the two from MIF and MIG, adopt the higher-of as  
28 the standard against which to judge how far historically



1 in a lookback the average-of has fallen below that, and  
2 they have taken that difference as an adjustable mover in  
3 a way to effectively emulate the income level of the  
4 higher-of. So in that sense, the higher-of remains a  
5 shadow standard against which all future movers have  
6 been -- have been evaluated so far, and probably will  
7 continue to be so.

8 MS. TAYLOR: Okay. I think that's it from AMS.  
9 Thank you.

10 THE COURT: Other questions?

11 Redirect.

12 REDIRECT EXAMINATION

13 BY MS. HANCOCK:

14 Q. Okay. Dr. Vitaliano, I just want to see if I can  
15 summarize a couple of things and make sure that we're  
16 clear on what's transpired in your testimony throughout  
17 yesterday afternoon and this morning.

18 But this morning in particular, Mr. Rosenbaum  
19 spent a considerable amount of time walking through kind  
20 of the historical events that led us here from Order  
21 Reform all the way up until today. Is that fair?

22 A. Yes.

23 Q. Okay. And I want to see if I can just summarize  
24 it so I can make sure I understand what happened.

25 So we start with Order Reform. We have the mover  
26 is the higher-of. That's where it originated?

27 A. Yes.

28 Q. And then in 2017, IDFA approached National Milk





1 and said that they were having some risk management  
2 challenges and asked if National Milk would support a move  
3 of the mover to the average-of?

4 A. The original request did not specify an  
5 average-of, but move to something from the higher -- move  
6 from the higher-of to something that the two sides could  
7 agree would have been more hedgeable.

8 Q. Okay. And ultimately that discussion became the  
9 higher-of -- or I'm sorry -- ultimately that discussion  
10 became the average-of?

11 A. Fairly quickly that discussion settled on the  
12 average-of as the alternative mechanism.

13 Q. And just for my chronology, I just want to  
14 clarify, it was around 2017 and at the initiation of IDFA?

15 A. That's correct.

16 Q. And the goal at that time was to solve for risk  
17 management challenges that they were having?

18 A. Yes. To make Class I prices more hedgeable.

19 Q. And a key consideration from National Milk's  
20 perspective was the fact that it would be revenue neutral?

21 A. Yes. We --

22 Q. Meaning revenue neutral with respect to the impact  
23 on the dairy producers?

24 A. Yes. The producers would not lose any net -- any  
25 revenue from Class I skim milk pool values.

26 Q. And so National Milk agreed, on behalf of its  
27 members, to support what was initiated by IDFA in order to  
28 assist them with their risk management and hedging tools,



1 on the condition that it was understood to be risk  
2 neutral?

3 A. Revenue neutral, yes.

4 Q. Revenue neutral I should have said.

5 A. That's correct.

6 Q. And ultimately that was accomplished through some  
7 legislative changes?

8 A. Yes.

9 Q. And there was a two-year trial period that was put  
10 in place to make sure that everybody had a window of time  
11 within which they could see how it played out.

12 A. Yes. There were precedents for that.

13 Q. Okay. And then -- and at the end of that trial  
14 period, and in particular when the pandemic hit in 2020,  
15 it allowed you to see in realtime that there were some  
16 unintended consequences to having the average-of be the  
17 mover?

18 A. That's correct. Shortly -- not much longer than a  
19 year after the change, the market taught the industry a  
20 very severe lesson on its unpredictability.

21 Q. And is it fair to say that your producers were --  
22 were very unhappy with how the real world had taught them  
23 that lesson?

24 A. That is an understatement.

25 Q. Okay. And -- and so you come up with a proposal  
26 that was presented to IDFA sometime on or before February  
27 of 2021 that suggested, hey, if we're going to keep this  
28 average-of, can we have a new updated system that would



1 allow for a true-up or something that would get us to  
2 where we were in the higher-of, because that's what was  
3 intended all along is that this was revenue neutral?

4 A. Sometime around early 2021 we presented to IDFA  
5 something substantially similar to IDFA Proposal 14.

6 Q. Okay. And Mr. Rosenbaum gave you Exhibit 235,  
7 which was that memorandum that was sent to IDFA, Michael  
8 Dykes, from National Milk, Jim Mulhern; is that right?

9 A. Yes. Describing the proposal that was adopted by  
10 our executive committee.

11 Q. And this was intended for National Milk to say,  
12 hey, this didn't work out like we all thought it would  
13 have worked out, let's revisit this the same way that we  
14 had talked about previously?

15 A. Yes. You came to us with an express need. We --  
16 we accommodated that request. We are now coming to you in  
17 turn with a need, and we ask, you know, your support to  
18 accommodate our issues.

19 Q. And the letter in Exhibit -- or the memo in  
20 Exhibit 235, at that point in time, by February of 2021,  
21 you had estimated a cumulative loss of \$725 million in  
22 revenue that the producers have lost as a result of this  
23 change. Is that accurate?

24 A. Yes. You can -- you can kind of see that  
25 intuitively in my testimony. Figure 1, if you look right  
26 about the end of 2020, you see that it had reached 700 --  
27 that cumulative losses had reached a little more than  
28 negative \$700 million.



1 Q. And just so our record is clear, this is your  
2 testimony in Exhibit 229 on page 7?

3 A. Yes. In Exhibit 235, that red line, up until  
4 where the blue line diverges from it, was effectively an  
5 early version of Figure 1 on page 7.

6 Q. Okay.

7 A. If you compare those, you will see they are very  
8 similar. They graph the same thing. Figure 1 has several  
9 more years of data in it.

10 Q. Okay. On Exhibit 235, on that first page, in your  
11 next to the last paragraph on that page, you say, "These  
12 price disparities have resulted in a cumulative loss of  
13 about \$725 million in Class I skim milk revenues to dairy  
14 farmers during these six months."

15 Do you see that?

16 A. Yes. And I believe the 725 refers to just the six  
17 months, not the cumulative going back to May 2019.

18 Q. Okay. And then the graph that you had referenced  
19 that you included in your memo to -- or in National Milk's  
20 memo to IDFA, that showed the cumulative loss that had  
21 occurred at -- throughout the course of that average-of  
22 mover?

23 A. Yes, up until that time.

24 Q. And you even show in there that there was an  
25 initial time period where it performed better than the  
26 higher-of is that fair?

27 A. That's fair.

28 Q. You weren't trying to hide the ball or anything,



1 were you?

2 A. No. And if you look at Figure 1 in my testimony,  
3 you will see that after that second half of 2020, there  
4 was another period of sort of net recovery, modest, kind  
5 of almost mirroring the first year or so in 2019, 2020,  
6 where the net result was positive. There -- as I  
7 characterize it in the testimony, the performance since  
8 then has basically consisted of periods of modest recovery  
9 and then a significant down-ratcheting without a full  
10 recovery from those increasingly lower -- lower levels.

11 Q. Okay. So then in response to National Milk's  
12 attempt to get IDFA to work together to get back to what  
13 was intended, which was revenue neutrality in the mover,  
14 what IDFA responded, and I think when you were talking  
15 with Mr. Rosenbaum, you said IDFA rebuffed National Milk?

16 A. That is correct.

17 Q. What did IDFA do?

18 A. They said they were going to study the issue, but  
19 they did not -- unlike the way National Milk reacted to  
20 the original request from IDFA to accommodate their  
21 interest in getting a mover that was more hedgeable, they  
22 gave absolutely no indication that they would support  
23 this.

24 And they must have communicated to the Secretary  
25 of Agriculture that they, you know, would -- would not  
26 support that, to the extent that when we developed a  
27 request for an emergency hearing on the issue in the  
28 spring of 2021, we were given feedback that the Secretary,



1 quite understandably, did not want to hold a hearing on  
2 something that was as divisive as apparently that issue  
3 would have been.

4 Q. Okay. So it was your understanding that IDFA  
5 thwarted National Milk's attempts to work with the USDA to  
6 have an emergency hearing?

7 A. Yes. To institute an early version of IDFA  
8 Proposal 14.

9 Q. And then it looks like following that time period,  
10 if I look at Exhibit 230, beginning on or around February  
11 of 2022, there's another period of time that has a  
12 considerable drop in the comparison between higher-of and  
13 average-of performance?

14 A. Yes. This second one was later in 2022. If you  
15 look at Exhibit NMPF-30A, that's Hearing Exhibit 230, yes,  
16 you are right. On page 2 you will see that August -- from  
17 August '22 through November '22, those four months, we had  
18 four months in which the current mover was basically a  
19 dollar or more, one of the lowest was \$0.98 in November.  
20 But those -- those four months, the negative -- you know,  
21 the shortfall of the current mover against the higher-of  
22 was greater than the \$0.74 positive, which was the maximum  
23 possible increase the current mover could have over the  
24 higher-of.

25 Q. And -- and if we look at -- if I look, for  
26 example, at May of 2019, it looks like there was a  
27 positive impact of having the average-of at \$24.8 million;  
28 is that right?



1 A. Yes.

2 Q. And is that reflective of pretty close to that  
3 \$0.74 cap that you had talked about?

4 A. The difference -- well, as I said, the difference  
5 in the two movers was \$0.68 to the benefit of the current  
6 average-of based mover plus \$0.74. The maximum possible  
7 difference between the Class III and Class IV price for  
8 the current mover to be higher than the higher-of is \$1.48  
9 in either direction.

10 Q. Okay. I was just wondering --

11 A. So when it's below \$1.48, the number on the right  
12 column, the monthly number, will be positive on page 2 of  
13 Exhibit 230, and whenever -- whenever the two -- Class III  
14 and Class IV advance skim milk price movers are above  
15 \$1.48, the number in that column will be negative.

16 Q. Okay. So it looks like, if I'm looking up and  
17 down this column, the highest number that I can find in a  
18 positive direction, meaning that the average-of performed  
19 better than the higher-of, was around this 24.8 number,  
20 which occurred in May of 2019?

21 A. Yeah, if you go to October '21, you will find the  
22 difference is \$0.73. That's \$0.01 short of the maximum  
23 possible.

24 Q. Okay.

25 A. The -- the two Class III and Class IV fact- --  
26 skim milk price factors were almost the same, and that  
27 gave 25.5, so that's pretty close to the maximum, let's  
28 say 25.8. And, again, that varies with the -- with the



1 volume of pooled skim milk, which has been dropping every  
2 month, year to year.

3 Q. And if we look at October of 2022, the other end  
4 the spectrum, it looks like that one is a negative  
5 70.1 million?

6 A. Yes.

7 Q. And we can see that it went even higher during the  
8 pandemic at almost 200 million at times?

9 A. That's correct. If you go back to December 20th,  
10 that is the maximum, the \$5.19 -- I was referring from  
11 memory to \$5.16 -- \$5.19 was the greatest difference in  
12 the two movers to the negative of the current one, and  
13 that was \$193 million per month loss.

14 Q. And does that --

15 A. Arithmetically calculated.

16 Q. Okay. So does that arithmetically exemplify that  
17 asymmetrical discussion that you had with Ms. Taylor,  
18 showing -- quantifying what can happen, that the downside  
19 is so significant --

20 A. Yes.

21 Q. -- compared to the upside potential?

22 A. Right. The maximum positive number in that  
23 right-hand column is going to be 25 plus some -- maybe  
24 call it 26.

25 Q. And -- I'm sorry.

26 A. Go ahead.

27 Q. And so this time period when there continue to be  
28 some unintended consequences of moving to the average-of





1 mover, this continued to occur even after your  
2 February 1st, 2021, memo to IDFA in Exhibit 235; is that  
3 fair?

4 A. That's correct.

5 Q. And if IDFA said that they were going to do some  
6 further economic analysis and then maybe thwarted your  
7 efforts to try and get the emergency hearing, did they  
8 then come back to you and say, we're willing to consider  
9 this at this time because it seems to be continuing?

10 A. I did not see any IDFA -- I do not recall that  
11 IDFA came back to us with any conclusion or data or  
12 evidence on their examination of alternative movers.

13 Q. And now that we have National Milk's proposal at  
14 this hearing, which reverts to the higher-of, it's your  
15 understanding that IDFA would like to now go back and  
16 reconsider the offer that National Milk had made to -- to  
17 have a compromise position in February of 2021; is that  
18 right?

19 A. That's how I would interpret IDFA Proposal 14 and  
20 MIG Proposal 15.

21 Q. Okay. We've heard lots of questions about, but  
22 there was government assistance and -- either through the  
23 Pandemic Relief or otherwise, that might have offset some  
24 of the losses that -- that the producers felt by moving to  
25 the average-of.

26 Do you know whether the producers have been made  
27 whole for the differences that they have experienced in  
28 the prices they have received?



1 A. They have not.

2 Q. And is it National Milk's position that producers  
3 should rely on government subsidies in order to make  
4 themselves whole?

5 A. We don't think it is appropriate. We appreciate  
6 the assistance when -- when it was needed, but we don't  
7 think it's appropriate for the Federal Order program to  
8 rely on appropriated funds spent by the Secretary to  
9 make -- make whole problems with the class price formulas,  
10 when changes to those formulas can be made regulatorily to  
11 fix those problems. And that's what we're proposing now.

12 Q. All right.

13 MS. HANCOCK: Your Honor, that's all the questions  
14 I have. We would move the admission of 229 and 230.

15 THE COURT: Mr. Rosenbaum rises.

16 MR. ROSENBAUM: No objection to the admission, but  
17 this triggered questions.

18 THE COURT: You want to go ahead and put them in?  
19 All right.

20 Seeing no objections, Exhibits 229 and 230 are  
21 admitted into the record.

22 (Exhibit Numbers 229 and 230 were received  
23 into evidence.)

24 THE COURT: Mr. Rosenbaum contends the doors were  
25 open on redirect.

26 MR. ROSENBAUM: Yes.

27 RECROSS-EXAMINATION

28 BY MR. ROSENBAUM:



1 Q. First of all, you do -- do you acknowledge that  
2 IDFA Proposal 14 would achieve the revenue neutrality that  
3 was the initial intent of the move from the higher-of to  
4 the average plus \$0.74?

5 A. Over a span of time with a -- with a lag.

6 Q. And second, I don't want to get -- it is true that  
7 before proposals were submitted that led to these  
8 hearings, there were discussions between National Milk and  
9 IDFA, at which Proposal 14, or something along those  
10 lines, was raised in an effort to reach a compromise  
11 position, correct?

12 A. Yes, we had some discussions on that.

13 Q. So it's not -- okay. But in the end, the gap  
14 between the two entities' positions was not --

15 A. I'm recalling --

16 Q. -- unsurmountable?

17 A. Yeah. I recall most of those discussions occurred  
18 after the National Milk board had decisively adopted what  
19 became Proposal 13.

20 Q. Some of the proposals -- some of the discussions  
21 had already occurred; is that right?

22 A. I believe the discussions occurred after the  
23 decision -- after National Milk's board adopted  
24 Proposal -- basically the Proposal 13, and that -- that  
25 was our policy. And the discussions, as I recall, were  
26 are we willing to rethink that policy? And the answer  
27 was, no, we were not willing to -- we -- we talked -- we  
28 engaged in discussions, but we did not make any change in



1 our policy based on them.

2 Q. Is it fair to say that there were discussions  
3 between National Milk and IDFA regarding a broader set of  
4 issues, not just the mover --

5 A. Yes.

6 Q. -- and in the end, the parties simply could not  
7 reach an --

8 A. Yes.

9 Q. -- agreement?

10 A. I remember those broader discussions more vividly.  
11 There was one virtual meeting in which, you know, a --  
12 some final discussions and decisions were made -- were to  
13 be made, and after 12 minutes the meeting was adjourned as  
14 being very clearly recognized on both sides as unlikely to  
15 reach any agreement.

16 Q. Okay. But that -- there were actually meetings  
17 before that meeting, correct?

18 A. Yes. Yes.

19 Q. Okay. Now --

20 A. We -- we engaged in good faith, but to a great  
21 extent, our policy on many of these issues were -- was  
22 already decided by our Board of Directors.

23 Q. All right. Now, in terms of the calculation of  
24 farmer losses, if you want to use that term, we have  
25 already discussed the question of whether those are true  
26 losses or not --

27 A. Yes.

28 Q. -- and I'm not going to rehearse that again. And



1 we have talked about the government programs; not going to  
2 talk about that again.

3 A. Yes.

4 Q. But two other issues that I don't think have been  
5 raised, and I want to check whether or not your  
6 calculations reflect that.

7 First of all, cheese manufacturers made additional  
8 sales as a result of USDA program, correct?

9 A. Yes. Those were commercial sales paid for by --  
10 by government funds.

11 Q. Okay. And to the extent that -- strike that.

12 And both proprietary and co-op cheddar cheese  
13 manufacturers were sellers of cheese through that program,  
14 to the government, correct?

15 A. That's correct.

16 Q. And as the tracking of Class III minimum prices  
17 indicates, the selling price of cheese during that time  
18 period went up, correct?

19 A. That's correct.

20 Q. That's why the Class III price went up because, of  
21 course, the Class III price is the -- calculated, as we  
22 have been talking about for days now, based upon the sales  
23 price of cheese minus the Make Allowance, correct?

24 A. Correct.

25 Q. And so to the extent that those were sales that  
26 were made by cooperative cheese manufacturers, the value  
27 of that is not reflected in your calculation of losses,  
28 correct?



1           A.     And appropriately so.  Because don't forget, we  
2     were in a pandemic where people were losing their  
3     employment and were losing their ability to commercially  
4     buy cheese and other dairy products and other food  
5     products.  So the true, what we would call economic  
6     baseline against which to evaluate whether those were  
7     additional sales would be what would have happened without  
8     the pandemic.

9           The Food Box Program -- but I can't give an exact  
10    number, but the Food Box government-funded purchases of  
11    dairy products was intended to replace lost commercial  
12    sales.  So it was not a complete gain, it was a  
13    replacement through non-commercial channels, so to speak,  
14    of what would have been commercial sales if the economy  
15    had continued normal and employment had continued normal  
16    and had not been affected by the pandemic.

17          Q.     But the fact that the Class III milk price went up  
18    so materially was an indication that during the --  
19    certainly during the key months that that program was in  
20    effect, it -- it had a positive effect on sales prices,  
21    correct?

22          A.     Compared to what actually happened.  Comparing it  
23    to what would have happened without the pandemic is the  
24    question economists would really look at.

25          Q.     Compared to what had happened --

26          A.     Yeah.

27          Q.     -- over the previous 12 months in terms of cheese  
28    prices, correct?



1 A. It was better for milk prices than if no purchases  
2 had taken place, given the pandemic.

3 Q. Well, it was better than what the -- what the  
4 cheese price had been --

5 A. Yes.

6 Q. -- without any pandemic whatsoever, correct?

7 A. No question.

8 Q. All right. And then similarly, if you were a --  
9 let me back up and start the question over again.

10 For many cheese -- start that one more time.

11 Obviously there are proprietary plants that make  
12 Class -- start that one more time.

13 Obviously there are many proprietary plants that  
14 make cheddar cheese, correct?

15 A. Correct.

16 Q. And they can either themselves pool the plant  
17 or -- correct? They can pool their own plant, right?

18 A. Or depool their own plant.

19 Q. Yeah. I mean, or they can simply have a  
20 cooperative be the pooling entity and then sell the milk  
21 to them, correct?

22 A. Yes. The cooperative or a proprietary have the  
23 ability to depool Class II, III, and IV milk.

24 Q. I mean, a number of proprietary plants don't  
25 themselves pool, but what they do is they have a  
26 cooperative sell them the milk and -- to be used for  
27 Class III purposes, and the co-op is the one that's --  
28 that's the fueling entity?



1           A.    Yes.  I'm not that familiar with the actual  
2 workings of the orders, but whoever is responsible for the  
3 pooling decision is able to make that decision if it's not  
4 Class I milk.

5           Q.    Okay.  And obviously the Class III price went up,  
6 we have seen that.

7           A.    Very clearly.

8           Q.    And to the extent that there were cooperatives  
9 that were selling Class III milk at the Class III price to  
10 proprietary cheese plants, they benefitted from the higher  
11 Class III price, correct?

12          A.    Yes.

13          Q.    And that, once again, is not reflected in your  
14 calculation of losses, correct?

15          A.    No.  Right.  The contribution of the Food Box  
16 Program to improving Class III prices and its effect on  
17 improving all milk -- you know, prices received for milk  
18 by dairy farmers is acknowledged.  The analysis is not  
19 intended to look at the overall change on milk prices, but  
20 specifically the decision to change from the Class I  
21 movers.  It is clearly indicated.  Figure 3 is labeled  
22 "Cumulative Producer Losses Due to Change in Class I  
23 Movers," not due to pandemic activities overall.

24          Q.    And I'm not suggesting you have misled us.  I'm  
25 just asking whether or not the \$951 million of losses here  
26 does not reflect the -- the money made by cooperatives --

27          A.    Yes.

28          Q.    -- in selling Class III milk to proprietary





1 handlers?

2 A. Yes. You have correctly characterized what I have  
3 analyzed here.

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

5 THE COURT: Any further re-cross or before we wrap  
6 it up with -- no?

7 Redirect.

8 REDIRECT EXAMINATION

9 BY MS. HANCOCK:

10 Q. Dr. Vitaliano, when the board for National Milk  
11 voted and approved the decision of National Milk to  
12 proceed forward with seeking to change the mover to the  
13 higher-of, did you have members on your board that are  
14 also members of IDFA?

15 A. Yes.

16 Q. So when IDFA did come back to National Milk after  
17 you had approved the decision to go to higher-of, you  
18 understood that they were already aware you would have  
19 made that approval; is that fair?

20 A. Yes.

21 Q. And then, during the pandemic, do you recall  
22 that -- that in the early part of the pandemic that there  
23 was milk that had been dumped?

24 A. Yes. There was dumped milk in the very beginning  
25 of the pandemic. We have talked about that at other  
26 testimonies. The cooperatives, between the months of  
27 March and May 2000, beginning of the pandemic, quickly  
28 adopted standby mechanisms that they have always had and



1 put them in place in a very unified fashion, unusually so,  
2 to discourage excess production of milk, that could --  
3 temporarily could not find a productive use as the supply  
4 chains radically shifted from foodservice to retail. It  
5 was an enormous adjustment the industry made, and the fact  
6 that they made it so quickly is a testament to the  
7 flexibility of the industry. But it was not  
8 instantaneous.

9 Q. Okay. Thank you.

10 MS. HANCOCK: I have no further questions.

11 THE COURT: Seeing nothing else, thank you,  
12 Dr. Vitaliano. You may step down from the stand.

13 We have been going about an hour and ten minutes.  
14 Is now -- yeah, we would like to take a ten-minute break.  
15 Let's come back at 11:00.

16 (Whereupon, a break was taken.)

17 ROB VANDENHEUVEL,

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

20 THE COURT: Ms. Hancock.

21 MS. HANCOCK: Thank you.

22 DIRECT EXAMINATION

23 BY MS. HANCOCK:

24 Q. Good morning, Mr. Vandenheuvel. Thank you for  
25 returning to the stand.

26 Did you prepare Exhibit NMPF-102 in support of  
27 your testimony today?

28 A. Yes.



1 MS. HANCOCK: Your Honor, I don't remember where  
2 we're at in the exhibits.

3 THE COURT: I have got what would be a  
4 comprehensive list. Let me just go down to the bottom.  
5 NMPF-102 will be marked 237.

6 (Exhibit Number 237 was marked for  
7 identification.)

8 MS. HANCOCK: Thank you.

9 BY MS. HANCOCK:

10 Q. Mr. Vandenheuvel, would you proceed in offering  
11 your testimony in Exhibit 237, please?

12 A. Yes. Thank you.

13 This testimony is presented on behalf of  
14 California Dairies, Inc., hereafter CDI, and is submitted  
15 in opposition of Proposal Numbers 10, 11, and 12.

16 I'll skip down because I have already introduced  
17 CDI in previous testimony.

18 CDI strongly supports a thorough examination of  
19 all elements of the Class III and IV formulas, including  
20 the various price discovery mechanisms, Make Allowances,  
21 and product yields. National Milk's economic policy  
22 committee discussed all three of these items in the  
23 exhaustive work done over the past two years to compile  
24 our comprehensive set of proposals being considered at  
25 this hearing.

26 Unfortunately, in the absence of broad-based,  
27 industrywide data in the area of product yields, we did  
28 not pursue an update to any of the product yields as part



1 of our comprehensive package. Realizing that there were  
2 likely yield improvements that could be considered once  
3 that broad based industrywide data was available, National  
4 Milk opted instead to take a more tempered approach to the  
5 long overdue Make Allowance adjustments that was included  
6 in our proposal.

7 As I stated in my earlier testimony regarding the  
8 Make Allowance levels in Proposal Number 7, the lack of  
9 available data on product yields is one of the few  
10 specific reasons CDI is supporting a tempered  
11 Make Allowance adjustment in this hearing that is less  
12 than what the available data indicates the cost of  
13 processing could be, as estimated by Drs. Mark Stephenson  
14 and Bill Schiek.

15 Select Milk Producers, Inc., hereafter Select, has  
16 done a laudable job in their submittal of Proposals 10,  
17 11, and 12 to create a preliminary dataset in the area of  
18 yields. But given limitations in this dataset, which I  
19 will discuss in more detail in this testimony, it is the  
20 position of CDI and National Milk that this issue is best  
21 addressed in the context of a comprehensive review of  
22 Make Allowances and yields following the collection of  
23 mandatory manufacturing cost and yield data, under  
24 authority being pursued in the current Farm Bill.

25 Proposal Number 10: Butterfat Recovery.

26 CDI is not correctly engaged in the manufacturing  
27 of cheese, so I'm not prepared to provide technical  
28 testimony on this proposal. I would merely comment that



1 in the absence of broad-based, validated data from a  
2 mandatory plant cost and yield study, National Milk has  
3 indirectly addressed this potential yield improvement by  
4 proposing a tempered adjustment to Make Allowances.

5 Proposal 11: Form-to-Plant Shrink.

6 The Federal Order regulations require handlers to  
7 account to producers and the pool on the basis of farm  
8 bulk tank weights and tests. As such, it is appropriate  
9 to account for reasonable variances between milk weights  
10 at the farm and what is physically received at the plants.  
11 While the information presented in this hearing by Select  
12 provides interesting insight into how a cooperative of  
13 their size and profile has been able to manage those  
14 farm-to-plant variances, CDI has concerns with  
15 Proposal 11's intent to completely eliminate any  
16 accounting for farm-to-plant shrink in establishing  
17 product yields in the Class III and IV formulas.

18 Select is in a unique position in the marketplace.  
19 The combination of full load pickups at the farm,  
20 typically measured by an on-farm scale, and at least  
21 occasionally transported in super tankers, certainly has  
22 the potential of reducing the long-term gap between  
23 weights measured at the farm compared to weights received  
24 at the plant.

25 However, even with Select's near optimal  
26 structure, given testimony by Cheslie Stehouwer on behalf  
27 of Select, testimony given on behalf of Select noted that  
28 over the course of a year, deliveries from their own



1 member farms to their Michigan facility saw plant weights  
2 that on a weighted-average basis were 0.20% below reported  
3 farm weights. And that's from page 4 of Select Exhibit 4,  
4 or Hearing Exhibit 218.

5 Further, that same table indicates that according  
6 to Select's records, receipts of milk to their Michigan  
7 facility supplied by other cooperatives saw variances in  
8 plant weights that on a weighted-average basis were as  
9 much as 0.32% below reported farm weights.

10 Further, on the issue of whether the additional  
11 butterfat yield adjustment of 0.0150 pounds of butterfat  
12 per hundredweight of milk, Select provides no direct data  
13 comparing farm-to-plant butterfat shrink in their  
14 testimony other than the general statement that, quote,  
15 "to the extent that butterfat losses occur, they do not  
16 occur at a rate greater than overall solids loss," end  
17 quote.

18 I believe the rebuttal testimony of Alison Krebs  
19 of Leprino Foods yesterday provided a fair assessment of  
20 the potential additional butterfat losses that can occur,  
21 as butterfat clings to the walls of both the farm tank  
22 and/or the milk tankers in the process of loading and  
23 unloading tankers at the farm as well as at the plant.

24 Select's population of member farms may have  
25 unique characteristics that mitigate some of this risk of  
26 milk and component shrink, but it is the position of CDI  
27 and National Milk that a change to the current  
28 farm-to-plant shrink calculations should not be adjusted



1 based on a single -- based on single source data.

2 Select's testimony also claims that "the vast  
3 majority of milk produced in the United States is produced  
4 on farms with sufficient cows to produce a full tanker  
5 load at each pickup." In attempting to substantiate this  
6 claim, Select's testimony notes that "assuming  
7 every-other-day pickups, a farm milking 375 or more cows  
8 will fill a full 50,000-pound tanker."

9 There are some issues with this analysis. First,  
10 in order for a farm to facilitate every-other-day pickups,  
11 the farm must have the available milk storage capacity to  
12 hold 48 hours of production.

13 Second, to achieve the intended efficiencies, that  
14 on-farm milk storage must include at least one tank or  
15 silo that is capable of holding enough volume to  
16 completely fill a milk tanker. To illustrate this point,  
17 I would like to explore a sample herd with 375 milk cows,  
18 producing an average of 67 pounds per day as referenced in  
19 Select's testimony. Select Exhibit 1, or Exhibit 216  
20 overall.

21 That dairy, producing an average of 25,000 pounds  
22 per day, may currently have on-farm capacity holding 30 to  
23 35,000 pounds in order to handle the seasonal ebbs and  
24 flows of their daily milk production. Accordingly, the  
25 idea of every-other-day pickups would not work in this  
26 case without additional investment on the farm.

27 For the sake of this example, I will assume that  
28 there is adequate space within the milk house to add



1 additional on-farm capacity. Adding another tank that  
2 could hold 30 to 35,000 pounds or a second day of milk  
3 production, and may allow for better hauling  
4 efficiencies -- may allow for better hauling efficiencies  
5 as a truck could fully load their tanker in a single stop.

6           However, such an investment by the farm would do  
7 nothing to improve the farm-to-plant shrink as unloading  
8 two separate on-farm tanks back to back would likely have  
9 no improvement to shrink compared to unloading one of  
10 those tanks each day. Instead, the farm would need to  
11 replace their current on-farm holding tank with a tank or  
12 silo that could hold at least 50,000 pounds or larger in  
13 order to handle the seasonal swings in milk production.  
14 Only then, with a single hose used to completely unload  
15 the tank into the milk tanker, could the improvement in  
16 farm-to-plant shrink be realized.

17           Beyond the detailed logistics of holding up to  
18 48 hours of milk, there are also other considerations that  
19 must be taken into account. Every-other-day pickups mean  
20 that some of the milk in that tank may be up to 47 hours  
21 old at the time of pickup. While that may still meet  
22 Grade A requirements, it adds additional cost and risk to  
23 the farm. First, that milk must be held at 45 degrees or  
24 colder for up to 47 hours, resulting in higher cooling  
25 costs. Second, the longer the time between milk  
26 production and pickup, the more opportunity for any  
27 bacteria present in that milk to grow.

28           This exploration is not intended to disparage





1 efforts to improve on-farm infrastructure in order to  
2 facilitate supply chain efficiencies. CDI has recognized  
3 this opportunity and several years ago implemented a stop  
4 charge in the hauling expense charged each month to our  
5 member farms for their on-farm pickups. This stop charge  
6 applies every time a truck must arrive at the dairy to  
7 pick up milk, which in turn, directly incentivizes our  
8 milk -- our member farms to build full loads of milk and  
9 minimize the number of times the truck must stop at their  
10 farm.

11 CDI recognizes that our member farms are generally  
12 larger than the average U.S. dairy farm with a weighted  
13 average of about 2,000 milking cows per facility.  
14 However, even with that profile, and a direct financial  
15 incentive created by CDI to build full loads, an analysis  
16 of all milk pickups in 2022 indicated that only 73% of our  
17 milk pickups were full load pickups. This is despite the  
18 fact that 99% of CDI's member milk supply is produced on  
19 member farms, producing at least 25,000 pounds of milk per  
20 day or enough to build a full 50,000-pound load at least  
21 every 48 hours.

22 Incentives and Disincentives.

23 Chris Allen's testimony on behalf of Select stated  
24 that, quote, "achievable efficiencies should be promoted  
25 rather than discouraged," end quote. CDI agrees that the  
26 construct of Federal Order formulas can play a role in  
27 incentivizing or disincentivizing participant behavior.

28 However, in this particular case, it should be



1 noted that an elimination of the accounting for  
2 farm-to-plant shrink in the formula, as proposed, would  
3 place an added cost on the cooperative and other buyers of  
4 milk while the ability to improve the farm-to-plant shrink  
5 is firmly in the hands of the producer on the farm.

6 Buyers of raw milk already have an inherent  
7 incentive to minimize farm-to-plant shrink as payments to  
8 farmers are based on farm weights, so any variance between  
9 farm and plant weights contributes to plant loss.

10 However, some of the efficiencies on farm, such as  
11 investing in an on-farm scale or flowmeters, are  
12 essentially asking for the dairy to absorb at least some  
13 of the farm-to-plant shrink rather than that burden  
14 falling on the plant.

15 If Proposal Number 11 were in place, the producer  
16 would be paid as if 100% of the milk in their farm tank is  
17 delivered to the plant, whether they make that investment  
18 or not.

19 The Select witness noted that USDA could decide to  
20 modify, rather than eliminate, the current farm-to-plant  
21 shrink factors built into the Class III and IV yield  
22 factors. However, it is the position of CDI and National  
23 Milk that due to the lack of broad-based, industrywide  
24 data to support such a change, and our approach to propose  
25 a comprehensive package that takes a balanced and tempered  
26 approach in light of that available data, Proposal  
27 Number 11 should be rejected.

28 Proposal Number 12: Class IV Solids Nonfat Yield.



1           As proposed earlier -- as stated earlier in this  
2 testimony, National Milk shares an interest in a robust  
3 evaluation of all factors in the Class IV formula,  
4 including the assumed solids nonfat, or SNF, yield.  
5 However, as also noted earlier in this testimony, National  
6 Milk believes that such a reevaluation is best conducted  
7 following the collection of broad-based, validated data  
8 from a mandatory plant cost and yield study conducted by  
9 USDA.

10           The current Make Allowance and yield in the  
11 Class IV solids nonfat formula is based on nonfat dry  
12 milk, or NFDM. As noted in Select's testimony, this yield  
13 factor does not include an adjustment for buttermilk  
14 powder, a byproduct of the butter churning process that  
15 has different uses in the market, different costs of  
16 manufacturing, and different price points from NFDM.

17           Select went further in their testimony, stating  
18 that USDA's policy decision in the 2002 Final Decision was  
19 erroneous in opting to not adjust the product yield  
20 factors to include the solids that end up in buttermilk  
21 powder. However, there are multiple reasons why a more  
22 cautious approach was, and continues to be, warranted in  
23 the absence of additional data.

24           Despite both products being processed through a  
25 similar drying process, buttermilk and nonfat dry milk are  
26 two separate products, both in their component composition  
27 and their utilization in the marketplace.

28           With regard to component composition, nonfat dry



1 milk may have no more -- that should say, no more than  
2 1.25% butterfat, while buttermilk powder may have no less  
3 than 4.5% butterfat. Given this difference, the products  
4 are not interchangeable and have different demand and  
5 customer profiles. Buttermilk powder tends to be  
6 purchased for cake mixes, bakery pre-mixes, while nonfat  
7 dry milk tends to be purchased as a protein source in  
8 cheese making, confectionary, and nutrition purposes.

9 Select has testified as to the price alignments  
10 between buttermilk powder and nonfat dry milk in their  
11 experience as a marketer of both products. They have also  
12 conducted an analysis of results from Dairy Market News, a  
13 weekly publication of USDA's Ag Marketing Services.

14 While this serves as an interesting starting point  
15 for data collection in this area, there are important  
16 limitations to this data. First off, Select's own data is  
17 limited by their sample size -- by the sample size of  
18 their transactions. While Select's witness did not state  
19 the total production of butter or buttermilk powder, their  
20 data is nonetheless a single source that, based on  
21 testimony, includes some months where no buttermilk is  
22 dried due to the lack of butter churn activity.

23 Further, while Dairy Market News has its place in  
24 the market as a market information source, it falls well  
25 short of the standards set by the National Dairy Product  
26 Sales Report as a broad-based, volume-weighted, and  
27 validated source of price discovery for buttermilk powder.  
28 Weekly Dairy Market News price ranges are unaudited,



1 unweighted, and limited to those market participants who  
2 choose to participate in direct communications with USDA  
3 staff compiling those weekly reports.

4           There are no reporting standards, such as  
5 restrictions on the fixed price contracts, or  
6 specification details that would differentiate bulk  
7 milk -- bulk buttermilk powder sold for traditional bakery  
8 utilization versus buttermilk powder with a higher  
9 specification, sold for use in infant formula, as Select  
10 noted is their market of choice for their buttermilk  
11 powder.

12           These comments are not intended to disparage the  
13 Dairy Market News, which provides a good summary of market  
14 status and trends. It is simply a recognition of the  
15 limitations of this dataset.

16           Lack of Validated Processing Cost Data.

17           References to manufacturing costs for buttermilk  
18 powder, both in previous hearing records and in this  
19 hearing record, have been general at best. Select's  
20 testimony has referenced a previous estimate dating back  
21 to the 2002 Final Decision that the cost of producing  
22 buttermilk powder is \$0.02 higher than the cost of  
23 producing nonfat dry milk. However, for multiple reasons,  
24 this is not an adequate data point to justify a change in  
25 the Class IV solids nonfat calculation as a result of this  
26 hearing.

27           First, a more thorough review of the 2002 Final  
28 Decision indicates that the concept of a buttermilk powder



1 make cost equal to nonfat dry milk make cost plus \$0.02  
2 was not universally accepted. The Final Decision includes  
3 references to testimony of buttermilk powder processing  
4 costs up to \$0.03 higher than nonfat dry milk processing  
5 costs at the time.

6 Further, those references are now more than  
7 20 years old. Testimony provided by Select's witness,  
8 Steve Cooper, indicated that there are multiple efficiency  
9 losses associated with drying buttermilk when compared to  
10 the process of drying nonfat dry milk. The first is the  
11 need for additional purge time, as he stated, as a clean  
12 break is needed on those dryers that are processing both  
13 buttermilk powder and nonfat dry milk.

14 In addition, with buttermilk powder having more  
15 than three times the amount of butterfat as nonfat dry  
16 milk, Mr. Cooper noted that the need to run the dryer --  
17 noted the need to run the dryer at a slower speed. This  
18 would not -- this not only would result in higher utility  
19 costs, as noted by Mr. Cooper, which can vary from region  
20 to region, with my home state of California likely on the  
21 higher end of that cost spectrum, but also would result in  
22 other manufacturing costs, such as processing labor,  
23 increasing on a per-unit basis, as it is spread out over a  
24 smaller volume of processed milk solids per hour.

25 Minimum Prices and Other Formula Considerations.

26 It should not be ignored that we are setting a  
27 minimum price and that the largest handler impacts of  
28 these proposals would be felt by manufacturing



1 cooperatives that operate Class IV plants largely for  
2 balancing purposes. These plants play a critical role in  
3 orderly milk marketing as they unlock the potential for  
4 proprietary manufacturers to purchase milk as needed for  
5 optimal manufacturing and marketing efficiencies.  
6 However, the formulas include no specific accommodation  
7 for those balancing costs.

8           Despite this reality facing CDI and other  
9 cooperative members of National Milk, we are still  
10 collectively taking a tempered and balanced approach when  
11 it comes to adjustments to the manufacturing milk price  
12 formulas. This is intentionally done as we believe that  
13 while some adjustment to those calculated milk prices is  
14 warranted in the near term, given the challenges and cost  
15 structure over the past 15 years, a more substantial  
16 adjustment to all elements of the formula, including  
17 Make Allowances and yields, is best done with a backdrop  
18 of broad-based, industrywide, validated cost and yield  
19 data.

20           Additional considerations: All Milk Solids Are  
21 Subject to Class IV Component Prices.

22           When milk is purchased -- or more appropriately,  
23 when butterfat and solids nonfat is purchased -- for  
24 Class IV use, the handler must account for all solids  
25 purchased, not just those solids that are ultimately  
26 converted into butter or nonfat dry milk. A reasonable  
27 debate on how to properly structure the Class IV component  
28 formula is a fair exercise, particularly if additional



1 data is secured that could provide an updated industrywide  
2 validated perspective on market prices, manufacturing  
3 costs, or yield changes.

4 However, claims that the manufacturing of  
5 buttermilk powder represents, quote, "pure profits," end  
6 quote, since buttermilk powder is not explicitly  
7 referenced in the Class IV solids nonfat calculation, as  
8 referenced on at least one occasion during the examination  
9 of Select witnesses, is unfounded in light of the fact  
10 that all milk solids are purchased at the Class IV  
11 component price.

12 Also, during the redirect of Steve Copper,  
13 Select's counsel posed a question to the witness relating  
14 to the current yield factor of 0.99 in the Class IV solids  
15 nonfat formula. The question led the witness to answer  
16 that 1 pound of solids nonfat should be able to produce  
17 1.02 pounds of nonfat dry milk since nonfat dry milk has  
18 certain volume of moisture.

19 However, it should be noted for the record that  
20 the 0.99 yield factor is not applied to the Class IV  
21 solids nonfat price, but instead, to the nonfat dry milk  
22 price net of the Make Allowance. In other words, the  
23 formula does not purport to assume that 1 pound of  
24 Class IV solids nonfat would make 0.99 pounds of nonfat  
25 dry milk. But instead, that 1 pound of nonfat dry milk  
26 can be made from 0.99 pound of solids nonfat.

27 As stated earlier, a reasonable debate about yield  
28 factors is fine, including, if and how to account for





1 buttermilk powder in a regulated formula. But I do not  
2 believe Select intended to enter into the record that when  
3 looking specifically at the production of nonfat dry milk,  
4 that it would take 1.02 pounds of solids nonfat to make  
5 1 pound of nonfat dry milk.

6 In conclusion, National Milk has proposed five  
7 updates to the Federal Order milk pricing formulas for  
8 this hearing, in addition to our -- in addition to our  
9 focused effort to authorize USDA to conduct mandatory  
10 plant costs and yield studies. That comprehensive package  
11 was carefully crafted as a balanced approach, taking into  
12 account the industrywide data that we have, while also  
13 being mindful of the industrywide data that we currently  
14 lack. It is the net results of that package rather than  
15 the individual proposals themselves that garnered  
16 unanimous support from National Milk's Board of Directors.  
17 Thank you.

18 Q. Thank you, Mr. Vandenheuvel.

19 One of the -- one of the issues that you raise in  
20 your Exhibit 237 testimony is that the proposals by Select  
21 lacks sufficient data input; is that fair?

22 A. Yes.

23 Q. And it is true that you on behalf of CDI could  
24 have put some additional data into the record with respect  
25 to just CDI's experiences?

26 A. Correct.

27 Q. Would that have solved the concerns that you have  
28 and that you have raised in your Exhibit 237, if you and



1 even if the rest of just National Milk's members had put  
2 that data into the record?

3 A. It would have provided a more robust dataset. It  
4 still would have had limitations in is it truly  
5 representing what's going on industrywide, is it  
6 validated, is it being measured across the consistent set  
7 of reporting requirements. So it would not have resolved  
8 the issues that we have, which is why we took the more  
9 comprehensive approach that we did to the whole tempered  
10 balanced proposal.

11 Q. And similar to National Milk's position with  
12 respect to Make Allowance, it does not want to get the  
13 number wrong, and so it's requested its proposals  
14 dependent on and conditioned on a future adoption of a  
15 mandatory audited cost survey; is that right?

16 A. Correct.

17 Q. And National Milk supports in that request for an  
18 audited mandatory cost survey, that it would also include  
19 yield data as well?

20 A. Absolutely.

21 Q. And then once we have that comprehensive and  
22 complete information that is verifiable through the  
23 audited the process, and mandatory, meaning that it would  
24 include everyone's responses that has reportable products,  
25 that would alleviate the concerns that you have raised in  
26 Exhibit 237 with respect to the dataset?

27 A. Yes.

28 Q. Okay.



1 MS. HANCOCK: That's all I have, your Honor. We  
2 make him available for cross-examination.

3 THE COURT: Questions for this witness other than  
4 from AMS?

5 CROSS-EXAMINATION

6 BY MR. MILTNER:

7 Q. Good morning, Mr. Vandenheuvel.

8 A. Hello.

9 Q. I'm Ryan Miltner, I represent Select Milk  
10 Producers.

11 Did -- in preparing your testimony, did you read  
12 all of USDA's discussion of the testimony, the rationale,  
13 and the conclusions from the 2002 Final Decision on this  
14 issue?

15 A. Read through it. Would not like to be quizzed on  
16 remembering everything I read. But, yes.

17 Q. So in -- in broad terms, is it -- is it correct to  
18 state National Milk's position on Proposals 10, 11, and 12  
19 as not appropriate for consideration because they were not  
20 vetted through a -- what I would classify as an audited  
21 census of yields?

22 A. I would say in isolation, that would be correct.  
23 In evaluating the proposals individually or as a  
24 collection of three proposals, the lack of data provided  
25 provides concern.

26 You asked about a broader National Milk position.  
27 Our broader position is that we acknowledge there are  
28 likely valid changes to the yields that would make sense,



1 but in the absence of that data, decided to approach it  
2 more holistically in the basket of five proposals we put  
3 forth.

4 Q. And that does bring me to one of the questions  
5 here. In the basket of five proposals that National Milk  
6 has, do any of them address yield factors at all?

7 A. Not directly, no.

8 Q. In fact, on page 1 of your statement, you state  
9 that, "In the absence of broad-based, industrywide data in  
10 the area of product yields, we did not pursue an update to  
11 any of the product yields as part of our comprehensive  
12 package."

13 That's -- that's an accurate statement of National  
14 Milk's process on this issue; is that right?

15 A. Yes. During the course of that process, we had  
16 discussions of yields. I believe we inquired of  
17 Dr. Stephenson whether his analysis included yield data or  
18 could include yield data. We were not able to develop  
19 what we thought was an industrywide dataset on yields, and  
20 that led to that statement in the testimony.

21 Q. And you stated that in the absence of that  
22 comprehensive census or survey, that you did not think  
23 that CDI's data in particular would resolve your concerns  
24 about the data that Select has presented, correct?

25 A. Correct.

26 Q. So CDI does not intend to introduce any data on  
27 the farm-to-plant shrink of shipments from your  
28 cooperative, do you?



1 A. That's correct.

2 Q. Do you -- do you maintain that data?

3 A. We maintain -- yeah, we maintain general data on  
4 farm weights and how they compare to scale weights. We  
5 have the same limitations that Select witnesses testified  
6 to. Not every customer plant provides plant weights. But  
7 for -- for plants that do scale, we have that dataset.

8 Q. For CDI's plants would you be able to do a similar  
9 analysis to look at the plant side of that equation and  
10 see, for milk coming into your plants, what the difference  
11 between farm weights and plant weights would be?

12 A. A vast majority of the milk coming into CDI's  
13 plants is from our own members, so we would have clear  
14 visibility there. And a little more difficult to pull  
15 some of the non-member milk data, but not impossible.

16 Q. That did lead to one of the questions I had a  
17 little later, so we'll take it now.

18 CDI does purchase some outside milk for processing  
19 at its facilities?

20 A. We have some limited balancing agreements with  
21 fellow cooperatives, and then some limited spot purchases  
22 throughout the year.

23 Q. So on page 2 of your statement where you are  
24 talking now about, instead of general concerns about  
25 addressing yields now, about the specific proposals Select  
26 has put forth, and in Proposal 10 you state that "National  
27 Milk has indirectly addressed this potential yield  
28 improvement by proposing a tempered adjustment to



1 Make Allowances."

2 And I wonder if you could expand on how a tempered  
3 adjustment to Make Allowances addresses yield concerns.

4 A. When you are looking at the manufactured class  
5 formulas, yield and Make Allowances are two sides of the  
6 same coin. They adjust -- they are adjustments off of a  
7 product value to ultimately generate a milk value. And  
8 that's the ultimate goal here is what is the milk value,  
9 what's the value of milk sold -- the milk purchased by  
10 the -- from the farm, milk sold by the dairy.

11 When you look at the data that is out there on  
12 Make Allowances, with all the limitations that we have  
13 talked about -- or that I should say on processing costs,  
14 the data all leads to a possible conclusion that costs  
15 have gone up more substantially than what National Milk is  
16 proposing.

17 There's challenges in evaluating that data, and we  
18 have -- in discussion of Proposal 7 I went through that in  
19 more detail as to why there are a number of questions  
20 around that data that should be cleared up with a  
21 mandatory study.

22 But in setting those Make Allowances for  
23 Proposal 7, National Milk intentionally took a more  
24 conservative approach, recognizing that yields, also in  
25 the formula, also valid things to look at, we did not have  
26 data. So that and some of the questions around the -- the  
27 cost study, the processing cost study we had, led us to a  
28 proposed Make Allowance that was more conservative in



1 terms of a change than what we would have done if we had  
2 perfect data on yields.

3 Q. So when you say that Make Allowances and yields  
4 are two sides of the same coin, I think what you are  
5 conveying is that increasing the Make Allowance would  
6 decrease the resulting price in the formula; similarly,  
7 adjusting yields upward would increase the resulting price  
8 in the formula. Is that correct?

9 A. That's correct.

10 Q. And so then further what I think you are saying is  
11 that there -- there are certainly arguments from IDFA and  
12 Wisconsin Cheese Makers that the Make Allowance  
13 adjustments should be greater than those proposed by  
14 National Milk, correct?

15 A. Correct.

16 Q. Which would result in a lower price from the  
17 formula, correct?

18 A. Yes.

19 Q. And that National Milk's approach, to the extent  
20 it results in a higher output price, might also be  
21 incorporating some upward yield adjustments.

22 Does that accurately capture what you are  
23 conveying or trying to convey?

24 A. Yeah, I think that's a good summary. We've got a  
25 mix of science and art in this process. And -- and I  
26 would say we made judgment calls in the interest of the  
27 art portion, where the science wasn't there, to  
28 accommodate these considerations, when our ultimate goal



1 and USDA's ultimate goal is to establish a value for the  
2 milk, with these various levers being the things they can  
3 pull.

4 Q. Now, you have -- I think you have explicitly  
5 stated it, I hope I'm not misstating that -- this -- but  
6 there's an acknowledgement by National Milk that there are  
7 likely adjustments to the yields that could be made to  
8 make the formulas more precise; is that correct?

9 A. I would agree.

10 Q. So if that has been acknowledged, if USDA were to  
11 adopt IDFA's higher Make Allowances and there were no  
12 adjustment to yields, that would be -- that would leave  
13 the formulas rather imprecise as to the output number,  
14 wouldn't it?

15 A. It would be an interpretation of the appropriate  
16 changes coming out of this hearing, different from what  
17 National Milk's membership collectively thinks is  
18 appropriate. I'm challenged to use the word accurate in  
19 this case. That's the art part rather than the science  
20 part. But it certainly would be an interpretation of the  
21 data different than the way National Milk collectively  
22 sees the information in front of us.

23 Q. So moving on to your comments on Proposal 11. Are  
24 you familiar with the farm-to-plant shrink presumptions  
25 that are incorporated into the current formulas?

26 A. Generally speaking.

27 Q. Would you agree that they assume a quarter of a  
28 percent of all solids are lost, plus an additional





1 0.15 pounds of butterfat per hundredweight?

2 A. Per hundredweight of milk? Yes.

3 Q. Okay. And so you state that, in the middle of the  
4 second paragraph addressing Proposal 11, Cheslie Stehouwer  
5 noted that over the course of a year, deliveries from  
6 their own member farms to their Michigan facility saw  
7 plant weights that on a weighted average basis were 0.2%  
8 below reported farm weights?

9 A. Yes.

10 Q. And would you agree that that 0.2% is far less  
11 than what's presumed in the current formulas?

12 A. It's 0.20 versus .25?

13 Q. Plus the butterfat adjustment.

14 A. Plus the butterfat adjustment, which that data  
15 didn't have butterfat. That was just looking straight  
16 weights. But, yes.

17 Q. Well, I don't think that's the correct  
18 characterization. They said that they were looking at all  
19 the solids from farm-to-plant, and they -- they -- the  
20 butterfat losses were consistent with all solids.

21 A. That was a separate statement. I was just  
22 analyzing the table. But I referenced in the testimony  
23 that you also -- your witness also made that statement,  
24 correct.

25 Q. Are you asking me to answer a question?

26 A. Nope, I'm saying that is correct. Sorry.

27 Q. So --

28 A. Questions go one way, I think.



1 Q. Generally.

2 And you would -- I always feel silly asking people  
3 to acknowledge testimony that's in the record, but --

4 A. I just say yes.

5 Q. Yeah, you can go ahead and say yes.

6 Ms. Stehouwer also noted that for the plant as a  
7 whole, they realized farm-to-plant losses less than that  
8 for just Select's farms.

9 Do you remember that testimony?

10 A. I do.

11 Q. You agree with that?

12 And so as a plant, their tracked recognized losses  
13 would be less -- we can just -- less than what's in the  
14 presumed formula, correct?

15 A. I would agree, based on the testimony.

16 Q. So you also call out a cooperative that had 0.32%  
17 losses.

18 Again, that's still less than what's presumed in  
19 the formula today, is it not?

20 A. It's less if you include the butterfat without  
21 knowing all the details of that table. It's -- it's --  
22 it's less than the .625 that is accounted for if you  
23 include the butterfat.

24 Q. Does CDI know what the farm-to-plant shrink is for  
25 its plants?

26 A. CDI as an entity knows it, has that data. I don't  
27 have it here with me today.

28 Q. If you had called or e-mailed, you could have



1 requested that data to have, and CDI could have presented  
2 that at the hearing, correct?

3 A. Yep. Yes.

4 Q. Yep's fine.

5 On page 3 you're discussing some of the  
6 theoretical and nontheoretical issues with a farm that  
7 produces between 25,000 and 50,000 pounds per day.

8 Do any of CDI's producers direct load?

9 A. Yes.

10 Q. And that would be an option for the farm you  
11 describe here as well, right? They could go to a direct  
12 load setup, couldn't they?

13 A. Yes. I would -- I would argue that in most cases  
14 that would be a better option than trying to retrofit a  
15 very old milk house.

16 Q. And when you say "a better option," much more cost  
17 efficient?

18 A. Correct. It has its own downsides as well. Ties  
19 up a tanker for longer periods of time, requires more CIP  
20 of that tanker than just a tanker used to drive from dairy  
21 to dairy. So it's not the perfect solution, but it is --  
22 it is an option.

23 Q. What percentage of CDI's farms produce more than  
24 50,000 pounds a day?

25 A. I don't -- I don't have that data. What's the  
26 data that I cited?

27 Q. You cited --

28 A. 99% have at least 25,000 pounds per day.



1 Q. I mean, are the majority of your -- your loads of  
2 milk are full loads, single-farm pickups, right?

3 A. If I had to -- if I had to give a guess, and this  
4 would be a rough estimate, in terms of our number of  
5 farms, I would say that probably 80% of them are larger  
6 than 700 cows. But we still have farms in parts of the  
7 state where they are older, smaller farms, might have 600,  
8 500 cows.

9 In terms of the percentage of milk, that's a  
10 much -- it's more than 80% of the milk that is produced,  
11 of course, by farms greater than a load a day.

12 Q. And when you are trying to figure out and minimize  
13 farm-to-plant shrink, isn't it really the number of loads  
14 that are single-farm full load pickups rather than the  
15 number of farms that may fall into a category that is most  
16 meaningful?

17 A. It is, but we see that even in cases where a dairy  
18 can produce one full load or more per day, we have  
19 occasional partial load pickups. Dairy is not a perfect  
20 science. Cows do not produce exactly the same amount of  
21 milk.

22 So as an example, and I see this is not  
23 occasional, this is a common occurrence, a dairy will fill  
24 a tank, on-farm tank, 63, 6400 gallons of milk. And the  
25 truck comes in, it can't fit 6400 gallons of milk, and so  
26 it will fit 6100 gallons of milk, and it will leave some  
27 milk in that tank, and the next truck will have to pick  
28 that up.



1           So you try to build full loads every time you can.  
2 We recreate a financial incentive to do so. And even with  
3 that financial incentive to minimize the number of stops,  
4 we have 73 -- so we have, inversely, 27% of our milk  
5 pickups had some level of partial load aspect to it.

6           Q. How long have you worked for CDI now?

7           A. Seven years.

8           Q. Do you have any knowledge, generally or  
9 specifically, about the makeup of CDI's membership prior  
10 to your hire?

11          A. General, not specific.

12          Q. So generally, would you have expected that there  
13 are more single-farm full load pickups from your  
14 membership now than in 2000?

15          A. Absolutely.

16          Q. And probably the same from 2007?

17          A. Absolutely.

18          Q. Do you know if any National Milk witness will  
19 offer additional data points on the issue of farm-to-plant  
20 shrink?

21          A. I don't believe any additional witnesses are  
22 scheduled on this issue.

23          Q. Now, I want to talk about the Proposal 12, the  
24 yield for nonfat dry milk.

25                   And are you familiar with -- with this page?

26          A. Looks like a cite I might have seen on the web.

27          Q. Okay. This is -- what I have in my hand is a  
28 document that USDA provided at the beginning of this



1 hearing on the table out there, and it's titled  
2 calculating the Class IV price. It's posted on USDA's  
3 website. I don't think it's necessary to put this in as  
4 an exhibit, and quite honestly, I'd only have one copy  
5 because the copies on the table have been exhausted.

6 THE COURT: Anybody have any objections to that --  
7 I'm -- I guess we deem it -- take official notice of it.

8 MR. MILTNER: Thank you, your Honor.

9 THE COURT: You did read the title of it in.

10 MR. MILTNER: I did. And for the record, the  
11 website  
12 [www.ams.usda.gov/sites/default/files/media/  
13 classivworksheetsfinal.pdf](http://www.ams.usda.gov/sites/default/files/media/classivworksheetsfinal.pdf).

14 THE COURT: And to be clear, I guess if I take  
15 official notice of something, I'm supposed to give notice  
16 and see if there's any objections.

17 Anybody have any objections or want additional  
18 time to consider it?

19 Seeing none, official notice is taken of that  
20 document. Thank you.

21 MR. MILTNER: Thank you, your Honor.

22 BY MR. MILTNER:

23 Q. So, Mr. Vandenheuvel, I'm looking at what is  
24 labeled as 2 in that document where we calculate a nonfat  
25 solids price.

26 A. Uh-huh.

27 Q. And so based on that articulation of USDA's  
28 formula, how many pounds of nonfat solids come from a



1 pound of nonfat dry milk?

2 A. You asked from -- can you repeat that? How many  
3 pounds of nonfat -- sorry.

4 Q. How many pounds of nonfat dry milk are produced  
5 from a pound of nonfat solids?

6 A. That number is not reflected on this sheet.

7 Q. It's not reflected where it says yield?

8 A. That yield says how many pounds of nonfat solids  
9 it takes to make a single pound of nonfat dry milk.

10 Q. It doesn't -- to you, you do not interpret that as  
11 .99 pounds of nonfat dry milk per pound of nonfat solids?

12 A. No.

13 Q. Okay. Now, you stated that you had read the 2002  
14 Final Decision and its discussion -- well, did you read  
15 the discussion about how the solids contained in  
16 buttermilk were adjusted?

17 A. In the 2002 decision?

18 Q. Correct.

19 A. Yes.

20 Q. Would you agree that the value of those solids  
21 that are contained in buttermilk were removed from the  
22 calculation of the Class IV price?

23 A. They were -- yes, they were not included.

24 Q. And do you recall that the rationale for doing so  
25 was that those solids were of negligible impact to the  
26 Class IV price?

27 A. I believe I recall seeing those -- that -- those  
28 words used, yes.



1 Q. And I think I asked you this when you were on the  
2 stand before. I don't recall the answer.

3 Does CDI produce buttermilk powder at any of its  
4 facilities?

5 A. Yes.

6 Q. So if the value of the buttermilk solids had been  
7 removed from the formula, yet CDI is producing buttermilk  
8 powder, what is your raw material cost for that buttermilk  
9 powder?

10 A. Our raw material cost is based on the Class IV  
11 solids nonfat price and the Class IV butterfat price for  
12 the milk components in that buttermilk powder.

13 Q. And the components in the buttermilk powder are  
14 not priced, correct?

15 A. They are -- repeat that question?

16 Q. The components that are in your buttermilk powder  
17 have been excluded from the formula, so they are not  
18 priced, are they?

19 A. They are -- they are -- we must buy all solids,  
20 whether they end up in butter, cream, nonfat dry milk,  
21 buttermilk powder, any milk protein concentrate, milk  
22 protein isolate. Regardless of what we make, we have to  
23 pay the Class IV solids nonfat and the Class IV butterfat  
24 price for every pound of solids we use.

25 Q. For every hundredweight of milk, raw milk received  
26 by a CDI butter/powder plant, how many pounds of nonfat  
27 dry milk and buttermilk powder come out the door?

28 A. I mean, you are talking about a mass balance type





1 of calculation or more general? You said for every  
2 1 pound of milk?

3 Q. For every hundred pounds.

4 A. Hundred pounds of milk?

5 Q. Yeah.

6 A. Use a rough estimate of 4 pounds of butter and  
7 9 pounds of solids -- of nonfat dry milk, if you are just  
8 using rough numbers without an Excel mass balance.

9 Q. And buttermilk powder?

10 A. I don't have that information offhand. It's not a  
11 big-picture number I often throw out.

12 Q. So your further criticisms of Proposal 14 about  
13 the price -- establishing or finding data on the price of  
14 buttermilk powder, you are approaching this as if it were  
15 going to be a surveyed product in the NDPSR almost, aren't  
16 you?

17 A. Well, what I'm pointing out for Proposal 12 is  
18 that -- is that it's not the same product as nonfat dry  
19 milk. So in that paper that you handed me about  
20 calculating the Class IV price, everything refers back to  
21 nonfat dry milk.

22 What you are proposing, what Select is proposing  
23 in Proposal Number 12, is to adjust a nonfat dry milk  
24 yield based on what is perceived to be happening with  
25 buttermilk powder. So it's not a dry -- nonfat dry milk  
26 yield anymore, it's a buttermilk powder yield if  
27 Proposal 12 were accepted.

28 And so your question about NDPSR, we would be --



1 CDI would be supportive of collecting data on Class IV  
2 products, including byproducts, buttermilk powder being  
3 one of them. And so if that was an opportunity to collect  
4 yield and manufacturing data on buttermilk powder, we  
5 would be supportive of that. And then we would have  
6 specific costs and yield data for that product rather than  
7 trying to blend it into a nonfat dry milk yield and cost.

8 Q. And since you read the 2002 Final Decision, you  
9 would agree that USDA went through a similar yield  
10 adjustment for buttermilk powder to remove it from the  
11 formula, would you? Do you agree with that?

12 A. I recall seeing a description in the Final  
13 Decision, yes.

14 Q. Now, with respect to a \$0.02 difference between  
15 the manufacturing costs for nonfat dry milk and buttermilk  
16 powder, are you -- are you testifying that a \$0.02  
17 difference is an inadequate spread?

18 A. I'm testifying that 20 years ago there was debate  
19 about whether \$0.02 was correct. \$0.03 was referenced in  
20 the Final Decision discussion as part of the testimony.  
21 USDA, at that time, accepted that a \$0.02 difference  
22 sounded reasonable 20 years ago. That may or may not be  
23 the case today.

24 At that time, the overall cost of making nonfat  
25 dry milk was estimated to be quite smaller than what it is  
26 today. So there's been changes in the past 20 years.

27 Q. So in 2002, USDA relied upon a USDA dataset to  
28 gauge the value of buttermilk powder, and testimony from



1 individual hearing participants to gauge the cost of  
2 turning wet buttermilk into buttermilk powder, correct?

3 A. Correct.

4 Q. Do you believe that was adequate evidence at that  
5 time for USDA to make those conclusions?

6 A. I believe USDA felt it was adequate, and I'm not  
7 here to second guess whether they thought -- they should  
8 have had more or less data to make their ultimate  
9 decision.

10 Q. So on yields, you are -- again, the primary  
11 concern is that there's not a comprehensive census or  
12 comprehensive survey for the yield numbers, correct? That  
13 that's National Milk's primary concern about adjusting  
14 yields?

15 A. Correct.

16 Q. And yet National Milk's Make Allowance proposals,  
17 even though you want the same thing, you want to adjust  
18 the Make Allowances based on the data that you do have,  
19 correct?

20 A. Well, we don't have what we would call validated  
21 processing cost data, which is what we're seeking. We do  
22 have industrywide, broad-based indications that costs have  
23 gone up since the last reset. And so in my testimony I  
24 talk about industrywide, broad-based, and validated data  
25 in some cases. With yields, we don't have industrywide,  
26 broad-based, or validated data on some of these yields.

27 Q. Are you characterizing the data National Milk used  
28 to set its Make Allowances as validated?



1 A. The data that -- can you repeat the question?

2 Q. Yeah. The data National Milk relied upon to --  
3 for its proposal on Make Allowances, was that data  
4 validated, in your opinion?

5 A. There was a host of considerations going into  
6 that. I can speak specifically about CDI and how we  
7 approached Make Allowances. I did that in my testimony  
8 for Proposal 7. And I used Dr. Stephenson figures for  
9 butter and nonfat dry milk in that case. I don't believe  
10 it's validated in the sense that there was an active audit  
11 process, but it was industrywide and broad-based enough  
12 that we thought it was worth using as a baseline but  
13 tempered for all the reasons I have discussed in this  
14 hearing -- or this testimony and in previous testimony.

15 Q. And so in the -- but in the absence of the ideal  
16 census that I think everybody wants, it's appropriate and  
17 in CDI's opinion and National Milk to adjust  
18 Make Allowances in the most appropriate manner that you  
19 can establish; is that correct?

20 A. We believe that it is appropriate to make  
21 adjustments to the ultimate price of butterfat and solids  
22 nonfat for Class IV and the appropriate components for  
23 Class III.

24 We have used Make Allowance as the adjustment to  
25 achieve those prices. As I said earlier, this is as much  
26 art as it is science. We believe that the current prices  
27 are overstated based on what has occurred over the last 15  
28 years, the current milk prices are overstated. They need



1 to be adjusted. There's data that says they should be  
2 adjusted significantly lower based on work done by  
3 Dr. Stephenson.

4 We don't -- we are not willing to propose making  
5 an adjustment of 100% of what that information would show,  
6 but we do think that a change is warranted.

7 And part of the reason that we are not advocating  
8 for a 100% adjustment is the yield data we're having that  
9 we would very much like to get better information about.

10 Q. Now, Select Milk Producers is not a member of  
11 National Milk right now, are they?

12 A. "Right now" being the operative word. They have  
13 been, but have not during the course of this USDA or  
14 Federal Order exploration project.

15 Q. And so Select was not part of the task force or  
16 committee that helped to develop National Milk's five  
17 proposals, correct?

18 A. Correct.

19 Q. Now, I think you also said in response to a  
20 question from your counsel, that if CDI and all of  
21 National Milk's members were to put data into the record  
22 on yields, it would not resolve your concerns about  
23 adjusting yields. Was that correct?

24 A. Correct.

25 Q. And those same National Milk members put data into  
26 your committee process or your working group process, to  
27 come up with a change to Make Allowances, correct?

28 A. That is how some cooperatives approached it. I



1 explained how CDI approached our support for the National  
2 Milk proposal, but every cooperative had to address it in  
3 their own way. I used industrywide data, Dr. Stephenson,  
4 as I explained in my earlier testimony.

5 Q. It's -- does it seem incongruous to you at all  
6 that you're willing to take less than your ideal dataset  
7 to change Make Allowances and lower producer income, but  
8 you are not willing to address less than ideal information  
9 on yields that would perhaps enhance producer income?

10 A. I think that is one interpretation of what we're  
11 doing. I don't believe it's an accurate interpretation.

12 I believe a more accurate interpretation of the  
13 broader scope of what we're doing is we're recognizing we  
14 need better information on everything. We could go try to  
15 propose changes to yields and to Make Allowances, but in  
16 all fairness, we actually have more information on  
17 processing costs than we did have on yields at the time.  
18 We didn't have the benefit of Select's information  
19 presented at this hearing, and so we made a decision to  
20 move forward with a proposal that addressed manufacturing  
21 cost allowances, or Make Allowances, but did so in a way  
22 that we thought indirectly accounted for some of these  
23 other things that would offset a Make Allowance  
24 adjustment. An increase in yields would offset the  
25 impacts on a -- of a Make Allowance increase when it  
26 come -- when you look at the overall milk price that  
27 results.

28 And so we believe, and I continue to believe, that



1 we have indirectly accounted for the fact that there are  
2 probably yield adjustments warranted once we have that  
3 available data. We see this as a step in a longer process  
4 of having better data and more robust discussions at  
5 hearings like this based on validated industrywide  
6 information on how to appropriately value milk.

7 We are, admittedly, more art than science. We  
8 would like to get to more science than art in the future.

9 But for this proposal today, I would not agree  
10 with the observation that we are ignoring yields. In  
11 fact, we are explicitly addressing yields as a specific  
12 reason why we think a more tempered Make Allowance is  
13 warranted, even though our colleagues at IDFA and  
14 Wisconsin Cheese Makers have advocated strongly for their  
15 position that a more aggressive Make Allowance is  
16 warranted.

17 Q. Thanks.

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

19 THE WITNESS: Thanks.

20 THE COURT: Off the record.

21 (An off-the-record discussion took place.)

22 CROSS-EXAMINATION

23 BY MR. ENGLISH:

24 Q. CDI makes butter -- Grade AA butter that's  
25 reported to the NDPSR, correct?

26 A. Yes.

27 Q. You do not use whey cream to make that product, do  
28 you?



1 A. That's correct.

2 Q. And you don't because the regulations wouldn't  
3 permit it, correct?

4 A. I believe that's correct.

5 Q. Do you buy whey cream from California cheese  
6 processors?

7 A. We do not.

8 MR. ENGLISH: I'm done.

9 THE COURT: Okay. So no objection to doing lunch.  
10 We'll be back -- let's come back at 1:15.

11 (Whereupon, a luncheon break was taken.)

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1 WEDNESDAY, SEPTEMBER 20, 2023 - - AFTERNOON SESSION

2 THE COURT: Let's get started. On the record.

3 Let's continue with this witness. We had finished  
4 Mr. English, I think. Anyone before AMS have questions  
5 for this witness?

6 Seeing none, your witness, AMS.

7 CROSS-EXAMINATION

8 BY MS. TAYLOR:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. Just have a couple of questions.

12 I know you mentioned in cross-examination that CDI  
13 doesn't have data to put on the record in regards to your  
14 own plant farm-to-plant shrink?

15 A. Correct.

16 Q. I'm wondering if you could still just talk a  
17 little bit about, I don't know, its prevalence. I'm --  
18 does it still occur? You might not have data to put on  
19 there, but do you --

20 A. So we -- we don't -- we don't look at it as a --  
21 as a regular course of business from a percentage basis.  
22 What we do is -- is -- whether it's with our customers or  
23 in the milk coming into our own plants, we do evaluate  
24 other variances between the farm ticket and what the plant  
25 scale is, and we see variances on virtually every load.  
26 It'd be a very, very rare circumstance where you would  
27 have exactly the same amount of milk measured at the farm  
28 and at the plant.



1           Within 250 pounds, plus or minus, we -- you know,  
2           the pluses equal out the minuses or, you know, it's close  
3           enough. When it gets outside of that range, you start to  
4           take a look at it and see. You know, what we do is we'll  
5           analyze, is there some reason to believe -- the farm  
6           weight is the truth that we operate under, but is there  
7           some reason to believe there might have been a problem  
8           with the measurement at the plant? I mean, starting with  
9           the plant, and then a measurement at the farm. And we  
10          just look at both ends of the spectrum.

11           And things can happen. At the plant, maybe you --  
12          you know, not all four tires are on the scale perfectly,  
13          and so you will have a variance there.

14           At the farm, maybe that dipstick, you know, wasn't  
15          easy to read or maybe the chart, they moved from one line  
16          to the other.

17           So it's certainly something that our member  
18          payroll team regularly looks at as they reconcile any  
19          differences that are more than the 250 pounds. But I  
20          don't -- - you know, offhand I don't have information as  
21          to where we would fall in the 0.25% spectrum.

22          Q. But you do have a threshold, and you investigate  
23          the outliers, basically?

24          A. That's right.

25          Q. Okay. And you talked about, a little bit -- I'm  
26          on page 4 under Incentives and Decentives (sic). And you  
27          say under the first paragraph, Elimination of the  
28          accounting for farm-to-plant shrink, as proposed, would



1 place an added cost on the cooperative or other buyers of  
2 milk, while the ability to improve the farm-to-plant  
3 shrink is firmly in the hands of the producer.

4 Just wondering if you could elaborate on that a  
5 little more. And also curious is, does the hauler fit  
6 into this equation somewhere that isn't discussed?

7 A. Well, I'll start with the second part. The hauler  
8 is an important part of the process, and we place a lot of  
9 faith as an industry into that hauler's ability to  
10 properly measure the milk at the farm, to properly take a  
11 vial, two-ounce vial of milk for, you know, sampling and  
12 composition testing. So they play a role.

13 In terms of this specific farm-to-plant loss, most  
14 of the measures that were discussed in Select's testimony  
15 and most of the measures that we see in our own situation  
16 that would alleviate or mitigate against some of that  
17 shrink are things that the farm can do on their side.  
18 Some of those are structural. They can build full loads  
19 on the farm and minimize the amount of transfers and  
20 transfer hoses that Select testified on. But some of it  
21 is frankly passing the -- or absorbing on the farm some of  
22 that shrink.

23 You think about a scale dairy. The reason a scale  
24 measurement versus a, you know, dipstick measurement or  
25 site tube measurement on the farm tank, the reason the  
26 scale will have less shrink is because you are measuring  
27 the milk further along in the supply chain. You are not  
28 measuring it in the farm tank. Now you are measuring it



1 once it is already loaded. So you have taken any shrink  
2 between the farm tank and the truck, and you have put that  
3 on the farmer. They are not going to get paid based on  
4 what's in the tank on the farm, they are going to get paid  
5 based on what's in the truck.

6 So the disincentives and incentives that I  
7 reference there are, you know, the cost of if you  
8 eliminate any accounting for farm-to-plant shrink, the  
9 cost of anyone buying milk -- and granted, we are  
10 farmer-owned, so kind of got two hats, we're the farmer  
11 and we're the cooperative -- but just looking as a buyer  
12 of milk, that's now saying, if there's no accounting for  
13 shrink, you are going to pay as if 100% of the milk in the  
14 farm tank is there.

15 Some of the things that the farmer could do, and  
16 some of our members do with the scale, they're voluntarily  
17 taking some of that shrink on their own part, but it is a  
18 bit of a perverse incentive. Because, you know, if you  
19 get rid of the shrink factor, they are going to get paid  
20 as if it is all ending up on a truck. Why wouldn't they  
21 measure it at the farm tank? Why would they take the  
22 proactive step of measuring on a scale? The scale is  
23 often done out of convenience, not to impact the shrink.  
24 But that was what I was alluding to there.

25 Some of the levers to pull are not at the plant  
26 level. We can incentivize it, as CDI does, we incentivize  
27 building full loads, and I guess we could create  
28 requirements to measure by scale weight. But absent a



1 mandate like that, there's not really a direct incentive  
2 for the farm to do it.

3 Q. Okay. And then on Proposal 12, I think through  
4 the cross from Mr. Miltner what I gathered from that is  
5 CDI is not opposed to including buttermilk powder, just  
6 that if it would be done in the future, it needs to be  
7 done on a more comprehensive set of data?

8 A. We think that it's a -- it's a bigger issue than a  
9 mere change in the yield factor. Buttermilk powder is not  
10 nonfat dry milk. And so I think a discussion, when we  
11 have industrywide data to evaluate, is should we treat it  
12 as if it's just an add-on to nonfat dry milk, or maybe  
13 more appropriately should we treat it like we treat dry  
14 whey in the Class III formula, with its own yields, its  
15 own product costs, and its own manufacturing cost.

16 So I think you -- what we are open to and believe  
17 is an appropriate conversation is, is what is that  
18 structure -- as our ultimate goal is to determine a value  
19 of milk. But what is that structure that makes sense, and  
20 then what are the factors going into that structure that  
21 makes sense?

22 But I think our position is at this point, a  
23 simple tweaking of the yield factor to nonfat dry milk, a  
24 separate product with its own cost and its own price  
25 discovery mechanism, we did not believe it was adequate  
26 data to support that change in light of all other things I  
27 testified about.

28 Q. Okay. On page 6 you talk about, under the header



1 "Minimum Prices and Other Formula Considerations," you  
2 talk about how the largest impacts of these proposals  
3 would be felt by manufacturing co-ops that operate  
4 Class IV plants largely for balancing.

5 And I'm just wondering if you could expand on that  
6 a little more. I don't think anyone's asked you a  
7 question on that piece.

8 A. Well, looking at the -- the results of these  
9 changes as presented by Select, going off of memory, which  
10 is a little dangerous, but I believe the Class IV impact  
11 would have been somewhere around \$0.42, \$0.43 per  
12 hundredweight increase in the Class IV price between  
13 largely Proposal 10 and 12 -- I think I have those  
14 right -- the farm-to-plant shrink and the Class IV solids  
15 nonfat shrink would collectively raise the price by  
16 \$0.40-some-odd cents. The Class III impact was something  
17 significantly less. It would be somewhere in the teens,  
18 10, 15, \$0.17, something like that.

19 So a larger impact on Class IV prices. This is an  
20 increase -- this would be an increase to the Class IV  
21 price, at the same time that we're talking about a  
22 Make Allowance adjustment that would decrease the Class IV  
23 price. But taken on its own, this would be an increase on  
24 Class IV prices.

25 And predominantly across the country, Class IV is  
26 managed by farmer-owned cooperatives, and it's -- while I  
27 won't say its exclusive use in the marketplace, but a very  
28 significant use is for balancing purposes. Those plants



1 are not always run at optimal efficiencies. And I talked  
2 in my previous testimony about some of the swing, seasonal  
3 swing, that we see at CDI about 25% swing in milk volumes  
4 coming to our plants in the spring versus the fall. We're  
5 not here seeking an adjustment for balancing costs.

6 But what this -- this was intended to -- what this  
7 was intended to at least include as a reference in the  
8 record is that -- I talked about earlier art and science.  
9 Part of the art here is that you are not going to capture  
10 every single element. You are not going to follow every  
11 molecule of milk through the system. And we would believe  
12 that in some cases, that's okay, because there's other  
13 factors that are less easy to quantify, but they're  
14 important factors nonetheless. And in this case the fact  
15 that it's Class IV, it's farmer-owned assets largely, it's  
16 balancing assets, we think that that adds some reason for  
17 why fine tuning this thing at this point in the game with  
18 less than ideal data has validity.

19 Q. Okay. I think you sort of answered this question,  
20 but I'll kind of pose it anyways in case you want to  
21 elaborate.

22 I think what I heard from you is when -- and my  
23 question is -- my previous question about whether you  
24 oppose the use of -- the inclusion of buttermilk powder at  
25 this point or not, and I recollect what your answer was  
26 that -- from that.

27 So the original question was, can you speak to  
28 whether or not the formulas should consider every product,



1 for example, that could be made from milk going into  
2 Class IV?

3 And I think through your other answer I kind of  
4 heard, if we're going to look at other products, we should  
5 do it in the realm of dry whey where there's a separate  
6 kind of calculation and yield and make applicable to that  
7 product.

8 Would that be kind of an accurate depiction and --

9 A. We -- yeah. I mean, not having a proposal that's  
10 structured like that to look at, it's a little bit more  
11 theoretical. But -- but, yeah, you know.

12 The selection of which products to use in  
13 determining a minimum price calculation is not an easy  
14 one. We have spent a lot of time at this hearing talking  
15 about should it include this product or that product,  
16 should we divide out the products, should we have only a  
17 singular product. And so there's not one cut and dry  
18 answer that -- that answers all those issues.

19 But -- but we certainly believe that at this  
20 point, previous determinations by the Department that  
21 buttermilk should not have its own factor in this formula,  
22 that the marketplace -- market price and cost data did not  
23 warrant having a Class IV formula that included something  
24 other than butter and nonfat dry milk, we think that  
25 that's appropriate at this juncture.

26 We won't acknowledge -- we won't state that that's  
27 always going to be the case. We want to collect more  
28 data. We have an interest in -- in these formulas





1 representing the best available information and the best  
2 available assumptions going into that.

3 But at this point in history, we believe that the  
4 appropriate approach is to make more modest adjustments to  
5 the Make Allowance, to make no adjustments to the yield in  
6 light of the fact that we're making some of those -- you  
7 know, we're injecting some conservatism into the  
8 Make Allowance, and build better data for a long-term  
9 improvement to the structure.

10 MS. TAYLOR: Okay. That's it from AMS. Thanks.

11 THE COURT: Redirect.

12 REDIRECT EXAMINATION

13 BY MS. HANCOCK:

14 Q. Mr. Vandenheuvel, thank you so much for your time.

15 You previously talked about, on page 6 of your  
16 testimony, the nonfat dry milk yield versus the solids  
17 nonfat yield. I'm wondering if you have anything to  
18 update us on that section of your testimony.

19 A. I do. And Mr. Miltner provided a document, which  
20 we went through during his cross-examination of me. And I  
21 will say, you look at these formulas in Federal Order  
22 regulations enough, you will be humbled at one point or  
23 another.

24 So I would like to correct -- correct previous  
25 comments. And frankly, that section starting on page 6  
26 and into page 7, it is true that out of a pound of solids  
27 nonfat, you will make more than 1 pound of nonfat dry  
28 milk.



1           The reason for a .99 instead of a number larger  
2 than 1, to factor in the moisture, is not because you're  
3 looking at it the other way, which is what I had indicated  
4 in previous testimony. The reason is because not all of  
5 the solids nonfat in a hundredweight of milk is available  
6 to be turned into nonfat dry milk. About 5% of the solids  
7 nonfat ends up in the cream when you are separating the  
8 cream and the skim.

9           We have had a lot of discussion about the solids,  
10 the solids nonfat that are in that cream that turn into  
11 buttermilk eventually, whether that should be part of  
12 this. And I won't -- it doesn't -- none of this changes  
13 my testimony and CDI's position on that issue.

14           But it -- I wanted to correct the record that the  
15 .99 is not because of what I had stated earlier that  
16 somehow it was the pounds of solid nonfat needing to make  
17 butter. It was -- it is, instead, a reflection of the  
18 fact that not all solids nonfat are available to be turned  
19 into nonfat dry milk.

20           So I guess the only correction to prior testimony  
21 in there that would have been warranted as opposed to  
22 language in my testimony is .99 is not USDA's way in this  
23 formula of saying that 1 pound of solids nonfat makes less  
24 than 1 pound of nonfat dry milk. Instead, it's saying  
25 1 pound of solid nonfat in raw milk from the farm turns  
26 into .99 pounds of nonfat dry milk, because there is a  
27 portion of that solids nonfat that ends up in the cream  
28 and is, therefore, not available to be converted into



1 nonfat dry milk.

2 Q. Thank you for that. I appreciate your insurance  
3 that we have an accurate record.

4 MS. HANCOCK: Your Honor, I don't know if that  
5 opens up any further examination.

6 THE COURT: I think Mr. Miltner has a question.  
7 Or more than one.

8 THE WITNESS: Five?

9 THE COURT: Not critical at all. I don't know  
10 what that looks like on the transcript.

11 MR. MILTNER: I don't know that I'll limit it to  
12 five, but I'll limit it to as few as I can manage.

13 RE-CROSS-EXAMINATION

14 BY MR. MILTNER:

15 Q. So, Mr. Vandenheuvel, I appreciate you checking on  
16 that, because I was doing the same thing, and was more  
17 concerned that Mr. Cooper had gotten something wrong as  
18 well. So -- they are -- you can look at these formulas  
19 for years, and then sometimes something looks a little  
20 different than you first thought, so I appreciate that.

21 So I think your characterization is also correct  
22 that the yield factor in the Class IV price reflects  
23 USDA's assumption that some solids don't make it to nonfat  
24 dry milk.

25 And I think that's what you testified to just now;  
26 is that correct?

27 A. Correct.

28 Q. So some of those solids are incorporated in what



1 is right now a farm-to-plant shrink assumption, correct?

2 A. Correct.

3 Q. And then some of those solids are, as USDA  
4 explained in the 2002 Final Decision, captured in  
5 buttermilk, correct?

6 A. Correct.

7 Q. Now, if those solids, including those for  
8 buttermilk, are not included in this yield factor, does  
9 that change your statement that CDI and other butter  
10 manufacturers pay for the solids that end up in their  
11 buttermilk?

12 A. My answer is unchanged. Every pound of solids  
13 that come in our front door is paid for.

14 What you are referencing, if I'm understanding the  
15 question, is how USDA is determining that price, and that  
16 that price is, in your opinion, artificially lower because  
17 they are not accounting for buttermilk powder value or  
18 buttermilk value. But it would be -- we do not accept the  
19 premise that we don't pay for those solids, because we  
20 account for every pound of solids nonfat, every pound of  
21 butterfat that is received at our plants, and pay  
22 according to the Federal Order price.

23 Q. Would it then be correct to say that while you  
24 account for all the solids and they all end up in  
25 products, USDA's formulas assume that you're receiving a  
26 lower number of solids, lower quantity of solids than what  
27 you are actually accounting for?

28 A. They -- USDA's formula doesn't have any bearing on



1 the number of solids that we're receiving at the plant.  
2 They are establishing a value, a price per pound of  
3 butterfat and solid nonfat. There's a methodology of  
4 calculating that. But once that is an announced price,  
5 100% of the solids, whether they end up in butter, nonfat  
6 dry milk, milk protein concentrate, butter/powder, or down  
7 the drain, we must pay for 100% of those.

8 MR. MILTNER: Thank you.

9 THE WITNESS: Thanks.

10 MS. HANCOCK: Your Honor, at this time we would  
11 move for admission of Exhibit 237.

12 THE COURT: Objections?

13 Seeing none, Exhibit 237 is admitted into the  
14 record.

15 (Exhibit Number 237 was received into  
16 evidence.)

17 MS. HANCOCK: At this time we'll call Sara  
18 Dorland. And we'll just need a moment to get her computer  
19 set up.

20 THE COURT: Very well.

21 Off the record.

22 (An off-the-record discussion took place.)

23 THE COURT: On the record.

24 In an off-the-record discussion, we labeled the  
25 next four exhibits, 238, 239, and 240, and 241.

26 Marked for identification 238 is Exhibit NMPF-32,  
27 which is this witness Dorland's, basically, statement,  
28 narrative testimony with some charts.



1           Marked 239 for identification is NMPF-32A, the A  
2 doesn't appear in the hard copies distributed, but it is  
3 so marked as 32A on the website. This is basically a  
4 spreadsheet that's marked 239 for identification.

5           We have an oversized exhibit, which, again, was  
6 not marked with a B on the handout, but is NMPF-32B on the  
7 web page. It is oversized. It will be marked for  
8 identification 240.

9           And then we have what has been marked in the top  
10 right-hand corner as Exhibit NMPF-103, that will be marked  
11 as Exhibit 241 for identification.

12           (Exhibit Numbers 238, 239, 240, and 241, were  
13 marked for identification.)

14           THE COURT: Ms. Dorland, welcome. Raise your  
15 right hand, please.

16                               SARA DORLAND,

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

19           THE COURT: Your witness.

20                               DIRECT EXAMINATION

21 BY MS. HANCOCK:

22           Q. Good afternoon, Ms. Dorland.

23                               I'd like to start by having you state and spell  
24 your name for the record.

25           A. Sure. First name is Sara, S-A-R-A. Last name is  
26 Dorland, D-O-R-L-A-N-D.

27           Q. And what is your business address?

28           A. I have to look at that.



1           360 East Avenue, Number 300, Ketchum, Idaho.

2           Q.    Okay.  And you are here to testify today on behalf  
3 of National Milk; is that right?

4           A.    That is correct.

5           Q.    I'd like to start by asking you to provide us with  
6 an overview of your education and professional background.

7           A.    Sure.  So my education, I graduated from the  
8 University of Washington Business School.  I received my  
9 Master's of Business Administration, or MBA, from Seattle  
10 University.  I did a certificate program on strategic  
11 studies under Professor Michael Porter at Harvard -- the  
12 Harvard Business School.  I think that pretty well covers  
13 that, and there's a few other little certificates here and  
14 there.

15                   Professionally, I actually started in dairy in  
16 1999 with a dairy co-op in the Pacific Northwest,  
17 Darigold.  I was there for about ten years.  Half that  
18 time I was in charge of the finance and accounting for  
19 their ingredients division, so understanding budgets,  
20 plant accounting, all sorts of fun things like that.

21                   And then about halfway through my tenure, I  
22 switched to managing their entire risk management program.  
23 So that was everything from farm programs, all the way to  
24 working with customers.  Along the way, dealt with  
25 producer payroll, equity, kind of -- you name it, I did  
26 quite a bit there.

27                   In 2009, I started my company, Ceres Dairy Risk  
28 Management, LLC.  Since that time I worked with dairy



1 producers, cooperatives, processors, consumer products  
2 companies, pretty much everybody in the dairy supply  
3 chain, helping them understand markets, risk management,  
4 milk procurement, pretty much -- Federal Orders to the  
5 degree that they have got questions about regulation,  
6 things of that nature. So I have helped with that.

7 Wrote an industry paper commissioned by, I think  
8 it was the U.S. Dairy Export Council on Dodd-Frank and the  
9 impact to dairy derivatives and the markets that we  
10 operate under today.

11 I have done some trade missions with the Dairy  
12 Export Council to China and South Korea. I did a reverse  
13 trade mission in San Francisco. And then have had a  
14 variety of speaking engagements, papers, things of that  
15 nature, over the last 20-some years.

16 Q. Okay. And throughout the course of your  
17 professional career you have worked in milk pricing,  
18 procurement, and risk management, in all those roles that  
19 we were just talking about?

20 A. That's correct.

21 MS. HANCOCK: Your Honor, we would offer  
22 Ms. Dorland as an expert in milk pricing, milk  
23 procurement, and risk management.

24 THE COURT: No objections?

25 Yes. I find that she is qualified to testify as  
26 an expert witness on those subjects.

27 BY MS. HANCOCK:

28 Q. Okay. And you're prepared with a presentation,





1 and that offers maybe an executive summary and discussion  
2 of the more robust details that you have included in  
3 Exhibit 238, your written testimony; is that right?

4 A. Correct. I was just going to read the  
5 introduction from the written and then switch over to the  
6 presentation, if that works.

7 Q. Yeah. And the presentation is what we have marked  
8 as Exhibit 241; is that right?

9 A. I believe so.

10 Q. Okay. I just say that just so our record is very  
11 clear of the two documents that we're looking at together.

12 Would you please proceed with your introduction,  
13 and then, and then we'll take your presentation as it  
14 goes.

15 A. Sure.

16 My name is Sara Dorland. My business address is  
17 360 East Avenue, Number 300, Ketchum, Idaho. I run Ceres  
18 Dairy Risk Management, LLC, which advises dairy industry  
19 clients --

20 Q. I'm so sorry, Ms. Dorland, I forgot to remind you.  
21 So you speak very fast normally. So even when you are  
22 just talking, if you could just be mindful of your speed.  
23 But it's especially true when it comes to when you are  
24 reading, too.

25 A. Yes. I have had a couple of cups of coffee, so  
26 I'll slow down.

27 Q. Like to 50%.

28 A. Okay. Since 2009, I have provided consulting



1 services throughout the U.S. dairy supply chain, working  
2 with dairy producers and multi-national corporations,  
3 advising on topics ranging from federal and state milk  
4 marketing orders, markets, risk management, procurement  
5 and finance. I have attached my CV here, Dorland  
6 Exhibit 1.

7 Today I'm testifying to support returning to the  
8 higher-of the Advanced Class III or Class IV skim milk  
9 price to establish the Advanced Class I skim price,  
10 Proposal 13. I have reviewed and analyzed data related to  
11 the current calculation versus the proposed Class I skim  
12 milk price methodologies, and the impact on producers,  
13 processors, and retailers regarding milk pricing,  
14 depooling, and risk management.

15 The data I have been able to review indicates that  
16 the higher-of the Class III or IV skim pricing scheme  
17 (higher-of) is more effective compared to the current  
18 average-of the Class III and IV skim plus \$0.74 a  
19 hundredweight pricing methodology (average-of) for several  
20 reasons, including: One, it transmits market signals in  
21 real time; two, it doesn't detract from Class I hedging;  
22 three, it avoids the unnecessary complication of  
23 reimbursements that could disadvantage small to midsize  
24 dairy producers and further distort price signals; and  
25 four, it is designed to work within the current Federal  
26 Milk Marketing Order (FMMO) pricing, and avoid pitfalls of  
27 prolonged periods of depooling that can cause disorderly  
28 marketing.



1 I have also reviewed other proposals, including  
2 Proposals 14, 15, 16, 17, and 18, that seek to replace the  
3 current average-of with the higher-of the announced  
4 Class III or IV milk price, or Class III plus a  
5 differential or elimination of advanced pricing.  
6 Unfortunately, these price alternatives do not improve  
7 upon the current average-of price with each having  
8 idiosyncrasies falling well short of the higher-of  
9 achievements and the FMMO objectives.

10 Q. Okay. And I think at this point we are going to  
11 turn to your presentation in Exhibit 241; is that right?

12 A. That's correct.

13 Q. And we're going to do our best -- for the audience  
14 who is listening and watching, we're going to do our best  
15 to kind of track your written statement in Exhibit 238  
16 with the summary that you are providing in 241. So we'll  
17 stop along the way, and I think hopefully this will result  
18 in us not talking too fast, too.

19 Okay. Want to kick us off? You are on slide 1  
20 now in Exhibit 241?

21 A. Sure.

22 Evaluating the proposals against the FMMO --

23 (Court Reporter clarification.)

24 (An off-the-record discussion took place.)

25 THE COURT: Back on the record.

26 THE WITNESS: Evaluating the proposals against the  
27 FMMO purpose.

28 The FMMO classified pricing system has the



1 precision of a Swiss watch movement. It is intricate, but  
2 that complication is necessary to regulate a diverse  
3 system of dairy producers, processors, and consumers to  
4 avoid market disruption events caused by disorderly  
5 marketing. Times are changing, markets are moving faster,  
6 and dairies are consolidating and are different from their  
7 predecessors in size and scope.

8 Fast approaching its hundredth anniversary, the  
9 FMMO system has witnessed extraordinary change, but the  
10 most basic justifications for that system persist today.  
11 The FMMO objectives are met by encouraging pool  
12 participation and using minimum and classified prices.

13 Q. And then on the right-hand side you have  
14 justifications for the FMMO system.

15 Do you want to cover that side as well?

16 A. Sure.

17 Milk is highly perishable. There is no distinct  
18 harvest or season compared to field crops. Production and  
19 demand have noticeable seasonal patterns. Fluid milk  
20 demand is more inelastic relative to other dairy products.  
21 Excess milk must move to longer shelf life products like  
22 nonfat dry (NDM), cheese, butter, yogurt, etcetera. The  
23 dairy industry has high fixed costs from farms to  
24 processing facilities.

25 And the source of this was a Congressional  
26 Research Service report that was updated June 15th of last  
27 year.

28 Q. Okay. And this is just a backdrop against which



1 you were looking at and evaluating whether the different  
2 systems we're going to talk about today match up with the  
3 goals of the Federal Milk Marketing Order system?

4 A. Correct. While we look at modernization in dairy,  
5 a lot of the things that justified the system a hundred  
6 years ago still persist today because it's based in  
7 nature.

8 Q. Okay. And I know that everybody likes to simplify  
9 things as much as possible.

10 Do you think that it's -- this is a system that  
11 can be simplified even further than what it is now?

12 A. We're going to compromise something, and in doing  
13 so, it could be something that's pretty significant.

14 When we start looking at making modifications to  
15 this system, like today we're talking about what the --  
16 how the Class I price should function, when we look at  
17 that, changes to the Class I price don't stay within --  
18 contained within changes to the Class I price, because  
19 it's a system or a network. Like the Swiss watch analogy,  
20 it has a way of migrating through the entire system. So a  
21 change here can actually impact what happens in Class II,  
22 III, and IV products, well beyond what any of the  
23 discussions today might contemplate, but, in fact,  
24 something that's profound about this network.

25 Q. Okay.

26 A. On slide 2, the Class I primacy is vital to the  
27 FMMO system function. A higher Class I milk price  
28 relative to other milk -- other class prices sends signals



1 throughout the market to move milk to and from surplus and  
2 deficit regions to ensure adequate fluid milk supplies for  
3 the market. It acts as a governor or control.

4 Class I primacy is necessary to support the  
5 current FMMO system design and reduce instances of  
6 disorderly marketing. When depooling is allowed to  
7 persist, more than one price exists in the pool, creating  
8 an incentive for supply plants to disassociate from the  
9 order affecting Class I handlers and dairy producers.

10 Although Class I use has declined due to rising  
11 milk production and lower per capita consumption of  
12 bottled milk, Class I's ability to attract milk to the  
13 pool, one of its primary purposes, remains intact.

14 And on the right side of the slide, it's just one  
15 of the charts that I placed in the earlier report, where  
16 it tracks from 2000 all the way through last year, and the  
17 percentage of milk that's been pooled on the order,  
18 according to AMS.

19 Q. So one of the questions -- we might talk about  
20 this in further detail, but one of the questions that's  
21 come up is, what does it mean to you to have a disorderly  
22 market condition?

23 A. Disorderly markets, if we look at it from a  
24 trading perspective, that means that we have sudden bursts  
25 of unexplained volatility. Markets change, things happen,  
26 but there's not necessarily some event that we can tie it  
27 to. There's no -- no -- nothing happening.

28 That has some translation into the FMMO system,



1 specifically when we look at things like depooling. While  
2 that is a part of our system and can be codified  
3 differently by the various FMMOs, it's something that  
4 historically has been contained until the market can  
5 self-calibrate and the Class I can resume its top spot.  
6 Depooling can exist.

7 What we've found since 2019 is it can persist in  
8 perpetuity because there's no guarantee that the average  
9 of the two manufacturing classes will actually exceed any  
10 one of those prices over time, and that can create a  
11 little bit of chaos and disorder, which has implications  
12 for all classes of milk, not just Class I.

13 Q. Okay. When you say that you can codify it within  
14 the orders, are you referring to each order having the  
15 ability to make its own pooling and depooling regulations  
16 as to when -- when plants can pool or depool?

17 A. That's correct. So when we look at how the orders  
18 work, one function is the price that we're talking about  
19 today, but each of those orders also has rules as it  
20 relates to diversions and qualifications, and those vary  
21 across the system, making it either strict and difficult  
22 to depool, or where maybe we have got more manufacturing  
23 milk, it's a little bit more lax and easier to pool and  
24 depool at any given time.

25 Q. Do you believe that depooling by itself is a  
26 disorderly market condition?

27 A. I wouldn't necessarily say -- depooling, when it's  
28 contained to a number of months, we can see that coming,



1 we understand it. When it suddenly happens for prolonged  
2 periods of time, that can be more disruptive. Suddenly a  
3 bottling plant may have to compete with an international  
4 buyer of milk powder for milk. That wasn't really what  
5 the system was conceived to do, and that can create some  
6 disorder.

7 Q. Okay. So if I'm understanding you correctly, in  
8 isolation, depooling can provide somewhat of a relief  
9 valve for short-term conditions, but if it seems to  
10 persist, then that can result in disorderly market  
11 conditions?

12 A. That is correct.

13 Q. And that's some of what you said that you have  
14 observed since 2019 in the market itself?

15 A. That's correct.

16 Q. And can you elaborate on that?

17 A. Well, one thing that I have spent my career doing  
18 is trying to work with dairy producers to help them  
19 understand risk management, why it's valuable, what it can  
20 do if done in conjunction with buying feed, managing  
21 margins. It -- it ensures that they buffer their business  
22 from outside externalities that they can't control.

23 In 2020, and again in last year, what we did see  
24 is, through periods of prolonged depooling, the folks that  
25 did the right thing were actually penalized.

26 So typically what we expect to see when we do risk  
27 management on milk is, you know, a drop in the milk price  
28 could result in a futures gain, and on the same side, an





1 increase might result in a lower milk price. And those  
2 two things offset.

3 In depooling, losses in futures aren't necessarily  
4 offset by gains on milk. It just vanishes from the  
5 system, so the farm has a compounding loss.

6 Q. And when you are talking about the effect in the  
7 utilization of risk management tools, you are not saying  
8 that disorderly market conditions are only measured by how  
9 it affects risk management, are you?

10 A. No. But that's one of the effects that we tend to  
11 see. It also can drive competition. It can create issues  
12 for dairy producers where they just choose to exit the  
13 system completely.

14 Q. Okay.

15 A. The next slide was to discuss what the average-of  
16 was to accomplish. The objectives: One, the difference  
17 would be shared equally between dairy producers and  
18 processors over time; two, more stable Class I milk prices  
19 could slow bottled milk per capita consumption losses; and  
20 three, dairy producers and processors have access to  
21 Class I risk management.

22 And on the right side it's just a depiction of  
23 some of the data provided in some of those larger  
24 spreadsheets. It's just showing the price change in  
25 three -- price change in Class I milk adjusted to  
26 3.25% butterfat, and the retail change in the whole milk  
27 price reported by the USDA.

28 And what we can see is the change in the Class I



1 price is not necessarily reflected on the shelf to  
2 consumers. And that's important because a lot of the  
3 discussion about the average-of, or proposals like that,  
4 they are looking specifically at not only risk management,  
5 but the cause and effect with what it could do for  
6 launching new products, increasing consumer demand, or  
7 slowing losses.

8 And that -- this is just quickly showing that that  
9 doesn't -- the change in our Class I price doesn't  
10 necessarily fully translate to the retail shelf for  
11 consumers.

12 Q. Okay. And so the orange line on your slide 3,  
13 that's the retail market showing that there is some  
14 movement, but nowhere near the extreme spikes that we're  
15 seeing as the Class I price changes?

16 A. That's correct.

17 Q. Okay.

18 A. Slide 4, when the differences are out of sync with  
19 the market, it penalizes dairy producers.

20 An analogy for the average-of versus the  
21 higher-of, in 2022, Dallas, Texas had an average  
22 temperature of 68.2 degrees Farenheit, according to the  
23 National Oceanic and Atmospheric Administration. If  
24 contractors built homes for the annual average  
25 temperature, it could be catastrophic for the city when  
26 low temperatures reach 45.8 degrees Farenheit or high  
27 temperatures top 91.8 degrees Farenheit.

28 Q. I'm going to pause you right there.



1 A. Yes.

2 Q. So you are reading it, and I think when you read  
3 it, sometimes we kind of can lose the message.

4 So you are just, at this point, providing an  
5 example of a contractor building a house in Texas and  
6 creating a thermostat that can address the temperature  
7 ranges in Dallas, as an example, to replicate what we're  
8 talking about when we do the average-of for the milk  
9 prices?

10 A. That's correct. Yes. Basically, averages are  
11 important. They help us simplify very complicated topics,  
12 but you have to recognize the limitation of averages.

13 If we built homes in Texas for the average  
14 temperature, and didn't put insulation in them, that home  
15 would be rather uncomfortable in the winter and pretty  
16 uncomfortable in the summer. And that's really what we're  
17 looking at it is it doesn't -- averages don't deal with or  
18 address extremes.

19 Q. Okay.

20 A. That example, like the average-of, highlights the  
21 flaw of averages. Plans based on assumptions about  
22 average conditions usually go wrong.

23 And that was from the Harvard Business Review, The  
24 Flaw of Averages, an article published in November of  
25 2002.

26 This formula limitation resulted in dairy  
27 producers forfeiting more higher-of to the average-of  
28 benefit compared to processors' contributions, contrary to



1 the assumption, and most notably, during periods of  
2 greater volatility or demand resulting in distorted market  
3 signals that may have worsened rather than alleviated  
4 supply/demand imbalances in the fluid milk market.

5 Simply, average-of based formulas that anchor the  
6 calculation to the higher-of skim price have an inferior  
7 performance as they can only communicate what happened in  
8 past periods, not what is happening today by -- and  
9 failing to account for extremes.

10 And then on the right side is just, again, it's  
11 a -- one of the charts that was presented as an exhibit.  
12 It just details the observations on the differences  
13 between the higher-of and the average-of from January 2000  
14 through August 2017. Even at that time, it indicated that  
15 there could be periods where, to the point that Peter  
16 made, that difference could be more than \$1.48.

17 Q. So then you are just measuring, in that first  
18 column, which is zero to \$0.35, you have, I don't know, 64  
19 or 65 observations, somewhere in there?

20 A. That's correct.

21 Q. Okay. And so you are just charting the number of  
22 incidents when it landed within each one of those ranges?

23 A. Correct.

24 And that's the challenge, is when we look at  
25 these, we have a high instance of things where, you know,  
26 averages will work. It's those extreme points, that's the  
27 part where people get hurt, people go out of business,  
28 costs increase when we're in those extremes, and that's



1 typically what we are looking to manage against.

2 Past performance is no guarantee of future  
3 outcomes. A review of the average-of results since  
4 implementation, May 2019 through June 2023, exposed that  
5 the primary assumption was invalid, that the status quo  
6 would prevail in future years. Instead, underlying market  
7 conditions changed, altering the -- let's see -- altering  
8 average-of dairy producer and processor contribution  
9 outcome because the higher-of versus the average-of  
10 benefit exceeded the codified \$0.74 a hundredweight  
11 historical average.

12 Between May 2019 and June 2023, the mean increased  
13 from \$0.74 a hundredweight to \$1.26, and the standard  
14 deviation was \$1.375 cents, reflecting a significant  
15 spread.

16 Average-of formulas have limited ability to inform  
17 the market about the future Class III and IV skim milk  
18 price relationships, meaning that the January 2000 to  
19 August 2017 average-of and higher-of difference would not  
20 properly reflect the future without an understanding of  
21 the underlying market drivers of Class III and Class IV  
22 skim prices that could cause prices to change over time.

23 Finally, that is not isolated to 2007 and 2017  
24 period. It will repeat as averages of milk prices will  
25 underestimate the potential for extreme events. That  
26 could be detrimental to dairy producers and processors.

27 So similar to the previous right-side chart, this  
28 is just calculating the observations, again, since the



1 implementation of the average-of price through June of  
2 this year.

3 Slide 6, no mechanism relates Class III and  
4 Class IV skim milk. Some aspects of the FMMO formulas  
5 have predictive validity. For instance, with a high  
6 degree of certainty, the daily spot CME butter price  
7 informs market participants about the National Dairy  
8 Product Sales Report (NDPSR) butter price and, ultimately,  
9 the Class III and IV butterfat values.

10 Market participants can rely on the relationship  
11 between the price series for evaluation, risk management,  
12 buy-sell decisions, etcetera. The same applies to  
13 products like cheese, whey, and nonfat dry milk (NDM) and  
14 their impact on Class III and IV milk prices because the  
15 FMMO end product pricing and classified price formulas,  
16 well defined relationships exist.

17 The interplay between the Class III and IV skim  
18 milk value is more complicated. No formula or stipulation  
19 relates or binds the Class III and IV skim milk price  
20 relationship, rather a series of market drivers, like  
21 global supply/demand, stocks, policy, trade, etcetera,  
22 change the underlying commodity value.

23 That poses an issue for the Class I formula  
24 proposals that arbitrarily codify a relationship between  
25 Class III and IV skim, when one may not exist. These are  
26 two independent variables that have limited cause and  
27 effect.

28 And here, I'm just plotting on the right side, the



1 monthly change in the Advanced Class III and IV skim  
2 prices, and we can clearly see that the change in one  
3 doesn't necessarily mimic the change in the other. We  
4 have just linked the two together.

5 Q. Related to those -- related to those -- those --  
6 those drivers for changes in the price value, we heard  
7 some discussion earlier about how the pandemic was  
8 somewhat of an anomaly that impacted the prices in that  
9 2020, 2021 timeframe.

10 Do you remember that testimony?

11 A. Yes.

12 Q. And so when -- when -- when -- and I think  
13 Dr. Vitaliano talked about when they were looking back  
14 over the historical pricing, there were some anomalies  
15 that they had witnessed or observed earlier on, and they  
16 decided to build those into the averages because they felt  
17 confident that there would always be new anomalies coming  
18 in the future.

19 Do you recall him talking about that?

20 A. I do.

21 Q. I am wondering if -- and I think in your  
22 testimony, on page 7 of your testimony, so it's  
23 Exhibit 238, you have talked about some other events that  
24 have happened, and I'm wondering if you could elaborate on  
25 some of the anomalies that you have observed and whether  
26 you believe that that should be priced into -- or taken  
27 into consideration.

28 A. That's one of the challenges with averages, is we



1 have to start determining what's an anomaly. So if 2020  
2 was an anomaly, was the financial collapse in 2009 equally  
3 an anomaly? Was the Chinese buying of milk powder in 2013  
4 and 2014 an anomaly? The end of quota in Europe. We have  
5 got water restrictions, climate initiatives. The list  
6 goes on and on. That once we start listing out all of the  
7 anomalies and the exclusions, we have -- we have seriously  
8 limited our dataset, which then, on its own, begins to  
9 question the validity of the analysis.

10 Q. And each one of these anomalies that you talk  
11 about, do they affect Class III and Class IV differently?

12 A. They do. They do. And largely today Class III is  
13 still a domestic product. Most of our product is -- or  
14 cheese is consumed domestically. And then when we look at  
15 our powder, most of that product is exported. We're in  
16 the 60 to 70% of that on an annual basis tends to get  
17 exported.

18 So when we look at it, I like to say that the  
19 Class III is a reflection of domestic manufacturing, and  
20 Class IV tends to be a reflection of the international  
21 market in our milk prices.

22 Q. Okay. And then in 2022 we saw another -- at least  
23 in the -- in the -- in the -- delta -- in the net delta of  
24 what would have happened under the average-of versus the  
25 higher-of, we saw that there was some anomalies that -- at  
26 least in the pricing -- maybe I shouldn't have used the  
27 word anomalies -- but we saw that there's some differences  
28 in the pricing there.





1 Is there an anomaly to explain that even in 2022?

2 A. We have got things like Russia invading Ukraine,  
3 higher grain markets, financialization of markets. All  
4 sorts of things happen that cause those prices to move.

5 Like I said, I don't know that these are  
6 anomalies, more so than that's the operating environment  
7 we live in today. We have to consider geopolitical impact  
8 on dairy, climate, environmental change, droughts, demand  
9 shifts. All of those things find their way into our  
10 markets every day.

11 Slide 7 -- try to keep my pace. Average-of may  
12 undermine risk management. Realtime data, spot markets,  
13 and transparency are hallmarks of efficient markets,  
14 permitting futures markets to attract buyers and sellers,  
15 providing a marketplace an opportunity to manage risk.

16 The proposals' steps to recalibrate Class I prices  
17 disrupt the timely communication of market signals to  
18 participants as the information would be years in arrears.  
19 The new methodologies offer 24- to 36-month lookbacks to  
20 determine the adjustments that should be incorporated into  
21 the Class I skim calculation, a conflict with basic risk  
22 management tenets, accurate and timely data.

23 Historically, commodity markets have allowed  
24 producers, farmers, and buyers to exchange risk at a  
25 centralized market, but since the early 2000s, the impact  
26 of outside money has been present in the dairy markets due  
27 to financialization, albeit on a smaller scale.

28 The last time there was a national FMMO hearing,



1 the CME Class III futures and options markets were  
2 considerably smaller than today, approximately 36,631  
3 contracts on December 26, 2006, according to the CFTC.gov,  
4 compared to 59,347 contracts on December 27th, 2022, same  
5 website.

6 While there is a desire to evaluate dairy risk  
7 management under a pre-2006 backdrop, given the  
8 financialization of all commodity markets, including  
9 dairy, it could lead to inaccurate conclusions.

10 CME dairy futures operate in a smaller microcosm  
11 than larger commodity markets like oil, corn, and wheat.  
12 However, the concept that futures prices represent the  
13 strength of the global economy, or in the case of dairy,  
14 global demand has a profound impact on domestic pricing  
15 and policy decisions that should not be discounted when  
16 reviewing the Class I skim higher-of versus average-of  
17 pricing. Further, while this conversation focuses on  
18 Class I, modification to the system could have  
19 consequential impacts throughout the FMMO system and  
20 related risk management activity for other products.

21 The colorful chart on the right is what we  
22 typically look at. It's a commitment of traders, in this  
23 case, on the Class III contracts, from 2006 to 2022.

24 And what we can see is that blue that's on the  
25 front, the lighter of the two, represents what we would  
26 tend to say are commercials, the dairy producers,  
27 processors, co-ops, the folks that are in the industry  
28 managing risk.



1           The other colors that we're seeing, we're seeing  
2 more influence from swap dealers, and that may be related  
3 to Dodd-Frank and required reporting. But we're seeing  
4 more managed money, other reporters, which can be those  
5 categories. It's just the CFTC doesn't have a good bucket  
6 to put them in. But what we can see is the composition of  
7 our market has changed.

8           Q.    Okay. So is the takeaway from this that while the  
9 goal of changing from higher-of to average-of as the mover  
10 was intended to allow for greater risk management tools or  
11 the utilization of risk management tools, that that  
12 actually hasn't been what played out after the average-of  
13 was implemented?

14          A.    In part, that might be. And that's -- it's a bit  
15 more difficult to ascertain who is doing risk management.  
16 All we can go off is some general write-ups that say, yes,  
17 they are doing risk management.

18                What this is really to say is sometimes our  
19 markets move, not because of what's happening in dairy,  
20 but because of financialization. People are using these  
21 as investment tools and vehicles to, you know, increase  
22 401Ks or hedge fund returns, and that is in our markets  
23 today.

24          Q.    Okay. People from even outside of the dairy  
25 industry?

26          A.    People from outside the dairy industry are trading  
27 our markets.

28          Q.    Okay. And as we look at what drives consumer



1 behavior at the tail end of the supply chain, if  
2 processors are managing risk and -- in an attempt to -- to  
3 present more of a stabilized price to consumers, is there  
4 any indication that there's a driving force in consumer  
5 decision-making based on these risk management tools?

6 A. Not necessarily. And I referenced a USDA study  
7 that was released, I want to say it was October of last  
8 year, maybe the year before. And it was an excellent  
9 study on what -- basically why is Class I consumption --  
10 why is bottled milk consumption declining.

11 In part, they related it to school milk and the  
12 Healthy, Hunger-Free Kids Act, that somewhat changed how  
13 kids drink milk, or whether they drink milk in schools.

14 But also, they talked about other things:  
15 Attributes of products, high protein, low lactose, package  
16 size, convenience, lifestyle. Those are all things that  
17 also impact consumer decision-making.

18 So, yes, what the price point is, is one aspect of  
19 consumer price decisions and whether they are going to buy  
20 that product, but it's these other attributes that also  
21 carry potentially more weight.

22 Q. Okay. And do you have -- do you have your Exhibit  
23 Number 9 on page 33 of your statement? Is that --

24 A. Yes. So similar to what I showed earlier in the  
25 presentation, these are things where, even if you are  
26 managing risk, we don't necessarily know that there is a  
27 relationship between what a processor is doing and how a  
28 retailer is marketing that product on the shelf. It's a



1 pretty good size leap to say, if I make sure that I sell  
2 this product at a fixed price, that the retailer will  
3 follow in suit, and also the consumer will respond  
4 positively to that. It's a -- it's a long list of ifs and  
5 hopes to get that to happen. And there are other  
6 things -- basically USDA concluded there's other things  
7 that are motivating that purchase.

8 Q. And I think on page 31 of your written statement  
9 you have a list of consumer products that are there in  
10 Exhibit 238. It -- how does that play into your testimony  
11 here?

12 A. So when we sit down and take a look at this, there  
13 are all sorts of pricing strategies. There's national  
14 pricing strategies. There is, you know, cost per unit  
15 strategies, all sorts of things.

16 But one thing that we do notice is, some of the  
17 categories that are growing rather fast, on the next page,  
18 page 32, when we take those unit prices that I observed  
19 online and convert that to a per gallon basis, consumers  
20 are actually paying quite a bit for these dairy products.  
21 And so that's -- so, again, it kind of goes back to the  
22 discussion of price, and some of the faster growing  
23 categories, people are willing to spend quite a bit on a  
24 per-gallon equivalent.

25 Q. Would you say that that is an indication that  
26 consumers are actually looking for value add components,  
27 like protein, for example, in their Class I products?

28 A. It would. I am a consumer of Fairlife. We have



1 it in our fridge all the time. I buy that product because  
2 it has higher protein, less lactose. I like the flavor.  
3 I like the shelf life. I like the consistency. That is  
4 not -- you know, if somebody runs a two for \$2 over here  
5 on a different product, that's not necessarily going to  
6 cause me to switch. It's not the price, it's the  
7 attributes of the product --

8 Q. And the attributes -- I'm sorry.

9 A. -- and the quality. Go ahead.

10 Q. Those attributes include the milk components such  
11 as protein.

12 A. Yes.

13 Q. And I took you a little bit off. I think we're  
14 moving to slide 8.

15 A. Yes.

16 Dairy producers are less likely to hedge Class I.  
17 While the proposal suggests that dairies have equal  
18 opportunities to manage Class I risk, the data does not  
19 bear out that assertion. Dairies should undertake Class I  
20 hedging to the degree it impacts their milk price.  
21 Meaning, if Class I utilization is 30% of the uniform  
22 price, as that is the basis of payment for the dairy, it  
23 should avoid hedging more than 30% of its milk price as  
24 Class I, otherwise risk may be created.

25 Based on the number of cows needed to hedge  
26 Class I milk and USDA-ERS, "Consolidation in United States  
27 Dairy Farming," in 2017, that would have eliminated 87% of  
28 the nation's dairies from accessing hedge one -- excuse



1 me -- Class I hedging, contrary to several Class I formula  
2 proposals.

3 The change to the average-of price methodology was  
4 done to further risk management efforts. Unfortunately,  
5 it created a systematic risk that caused dairy producers  
6 to step back from all risk management or employ less  
7 effective tools in response to the losses that resulted  
8 from depooling. Most of the market's sell-side liquidity  
9 still comes from producers, suggesting changes that would  
10 cause dairy producers to reduce hedging activity across  
11 all classes of milk could be detrimental to markets.

12 And, again, this is just the other side of the  
13 chart. So we typically show the buying side activity, and  
14 we show the selling activity. Unlike the previous chart,  
15 the light blue here, where it's -- the commercial is the  
16 folks that are in the industry, that's still predominantly  
17 made up of that group, and it's pretty consistent with  
18 what we have seen throughout history.

19 So what that would say is dairy producers,  
20 cooperatives, and others are still very instrumental in --  
21 in that sell-side liquidity that our markets crave in  
22 order to function properly.

23 The issue is, is when we have depooling that can  
24 last in perpetuity, it hurt dairy producers. Their  
25 hedging was far less effective, and they stepped away from  
26 it.

27 So I think what folks have to understand is, we're  
28 not talking about just providing folks access to



1 potentially Class I hedging. It's if we disrupt that  
2 Class I price, the mechanism that keeps our entire system  
3 functioning, we run the risk that we could lose that  
4 sell-side liquidity in our markets for cheese, nonfat,  
5 butter, Class III, and Class IV milk.

6 Q. So while there are proposals that discuss Class I  
7 risk management, is that something that you look at in  
8 isolation or are there implications for other dairy  
9 products when you are using the risk management tools?

10 A. I don't think you can look at anything in our  
11 Federal Order system in isolation. It's -- it's a system.  
12 It's a network that the whole thing functions together.  
13 And when we make a change in one area, it has an impact  
14 somewhere else.

15 And that's where access to Class I risk management  
16 for dairy producers, my math says most dairy producers  
17 aren't going to entertain that because it's -- they just  
18 don't have the milk to be able to do it, when we -- and I  
19 have got a detailed example of that.

20 But on the flip side, if we allow disorderly  
21 marketing, potentially higher instances of depooling, for  
22 longer periods of time, if dairy producers start to lose  
23 money on that risk management activity, they could step  
24 away from not only hedging Class I, but Class III,  
25 Class IV, all of the other related products. And that is  
26 problematic to the entire industry.

27 Q. And so when you are talking about hedging and risk  
28 management, do you use those terms as interchangeable?





1           A.     Typically, no. Risk management is kind of a  
2     general assessment of risk. It's -- it's almost like an  
3     insurance agent. We would look at different types of  
4     risk: Collateral risk, counterparty risk, market risk or  
5     price risk, liquidity risk.

6           When we talk about hedging, oftentimes -- my  
7     background is accounting and finance. I have been trained  
8     by the account -- you know, the CPAs. That has a very  
9     specific connotation. So when we talk about hedging, that  
10    actually has a very rigorous, disciplined approach that  
11    translates into realization of gains and losses on  
12    financial statements.

13           Risk management is more of a concept and trying to  
14    trade out of risks for an organization.

15           Q.     Okay.

16           A.     There are many classifications of Class I hedging,  
17    proposals highlight one, raw milk.

18           Hedging Class I milk is like saying Ford makes  
19    trucks. Within the truck category, Ford has more than ten  
20    models, each with different engines, features, market  
21    share, etcetera.

22           Market participants would approach Class I risk  
23    management differently, suggesting use and efficacy of  
24    Class I risk management would have varying impacts on  
25    those business categories.

26           Most of the examples provided involve a processor  
27    buying raw milk from a dairy or a cooperative and the  
28    steps taken to mitigate risk.



1           However, the discussion fails to address all  
2 categories of Class I risk management that may lend  
3 themselves to over-the-counter or custom solutions.

4           Additionally, the data suggests that the higher-of  
5 or average-of risk management performance is relatively  
6 similar, meaning either can be used to mitigate risk.

7           And on the right-hand side, these are  
8 effectiveness, or regressions, of how well the Class III  
9 milk price, futures contracts, would mitigate risk under  
10 both the average-of and the higher-of scenarios. The  
11 average-of was at about 88% R-squared, and the higher-of  
12 was 91.8. I would say those two are pretty comparable  
13 results.

14         Q.    And what's the time period that you are charting  
15 there?

16         A.    I have to look at the details. I can get that  
17 back, but I'm going to have to switch off the  
18 presentation, but I'll get that for you.

19         Q.    Okay.

20         A.    Actually, I'm pretty certain I did almost  
21 everything under -- since implementation, so May 2019 to  
22 present.

23         Q.    Okay.

24         A.    Would you like me to move to slide 10?

25         Q.    Yes.

26         A.    Okay. Most proposals do not solve the current  
27 average-of shortcomings.

28           At its most basic, every proposal concedes that



1 the Class III Plus or average-of: One, cannot adequately  
2 replicate the higher-of price in future periods; and two,  
3 is not shared equally among dairy producers and others,  
4 necessitating a periodic recalibration.

5 Rather than recognizing the limitations of the  
6 average-of formula and what prevents the price from  
7 imitating the higher-of performance, these proposals  
8 suggest additional steps to align the average-of and  
9 higher-of formulas and distribute costs between processors  
10 and producers.

11 Absent a defined relationship between the Advanced  
12 Class III and IV skim milk prices, any variant of the  
13 average-of Class III plus formula will struggle to  
14 replicate the higher-of performance, resulting in a  
15 disproportionate cost to the dairy producers and the  
16 like -- and higher -- and the higher likelihood of  
17 disorderly marketing conditions.

18 And then the calculated average-of Class III and  
19 higher-of differences, this is just a summation of one of  
20 the exhibits I provided with all the details. It just  
21 demonstrates what the prices -- the differences would look  
22 like over time.

23 Class I would reflect echoes of past markets.

24 Assuming static market conditions highlighted an  
25 idealistic but unrealistic expectation of the average-of  
26 formula. A fundamental weakness of the average-of formula  
27 is that it is backward looking. It can only communicate  
28 to the market an echo of past events that influence the



1 price, but it fails to accommodate the rapid transmission  
2 of data needed in fast moving markets -- fast moving  
3 global markets. Ultimately, the average-of formula is  
4 incapable of conveying current information about the  
5 market to facilitate the movement of milk from surplus  
6 regions to deficit regions as intended, because it is  
7 grounded in historical, rather than contemporaneous, price  
8 relationships.

9 Further, every period would impact two to  
10 three years of future adjustments. For instance,  
11 January 2022, would influence Proposal 14's adder  
12 calculation in 2023 and 2024. That could obscure market  
13 signals, as past market conditions would influence current  
14 prices, making the price haphazard and potentially  
15 irrelevant, contrary to efficient markets and USDA's  
16 position on timely data.

17 In the adjacent chart, the higher 2022 and 2023  
18 Proposal 14 and 15 performance, results from including  
19 2020 and 2022 data in current Class I prices.

20 Q. So do you believe that the change going back to  
21 the higher-of would result in losing the benefits that you  
22 had talked about in the beginning of your proposal?

23 A. I think switching back to the higher-of would  
24 actually cause the system to function more reliably and  
25 predictably, that would actually allow for greater risk  
26 management.

27 Q. And on the right-hand chart here, you just charted  
28 the comparison between the different proposals based on



1 the time periods noted there?

2 A. Correct.

3 Q. And in some instances, National Milk's proposal  
4 would be less beneficial than some of the other proposals;  
5 is that fair?

6 A. That's fair. Especially in, let's say 2022 and  
7 2023. But, again, Class I primacy is important when we're  
8 looking at the contemporary prices, the Class II, III, and  
9 IV prices at that time.

10 These prices are higher because in 2020 and 2022,  
11 the prices were higher, and that's being reflected today,  
12 which arguably would send misinformation to the market and  
13 cause disorderly marketing.

14 Q. Okay.

15 A. Make whole efforts are flawed.

16 The FMMO system is incapable of restitution to the  
17 affected parties for market inefficiencies, suggesting  
18 that for Proposals 14, 15, and 16, there is a  
19 must-be-present-to-win methodology. In other words, the  
20 dairy producer adversely impacted in the two prior  
21 12-month periods from August through July must still be in  
22 business in the current period to receive the adder.

23 USDA reported that between 2020 and 2022 there  
24 were 3,720 fewer dairies. Under the higher-of formula,  
25 these dairy producers would have received timely Class I  
26 milk payments for those years. For some, it may have made  
27 a difference. Under Proposals 14, 15, and 16, different  
28 dairies would benefit from recalibration as those years



1 would not impact Class I prices until 24 to 36 months  
2 later. That undermines the made whole assertion expressly  
3 stated in all of the proposals.

4 The cost misallocation between periods is not  
5 limited to dairy producers, it can also spread between  
6 orders and processors.

7 For demonstration purposes, assume the average-of  
8 payment in the previous 12 months resulted in an adjuster.  
9 Consider that in the current period, a dairy plant closed.  
10 In that FMMO, the Class I utilization could decline should  
11 no other facilities absorb the lost processing capacity.  
12 As a result, dairy producers in that FMMO would have lower  
13 Class I utilization in the adjuster period than in the  
14 affected period, another made whole failure.

15 Similarly, if a bottling plant opened, the FMMO  
16 could experience a Class I utilization increase. If the  
17 adjuster or adder reflected a higher adjustment due to  
18 prices from several years ago, all else being equal, dairy  
19 producers in this order would disproportionately benefit  
20 from a disadvantage that may not have existed in the  
21 affected period. A new processor would be obligated to  
22 the producer settlement fund at a higher rate for which  
23 they receive no beneficial offset in a prior period  
24 resulting in market inequity.

25 Q. You want to talk about your graph on the second  
26 half?

27 A. It's a pretty simple chart. It just shows from  
28 2000 to present, the number of dairy operations, according



1 to NASS and the milk production report, and where they  
2 were last year.

3 The idea here is that something that happened two  
4 years ago will make whole all of the dairy producers. And  
5 it really needs to be clarified. Will make whole the  
6 folks that are still around, but you aren't necessarily  
7 making whole anybody who was there if they went out of  
8 business in that time.

9 Q. And do you believe that any kind of delayed  
10 payment to make somebody whole could influence or affect  
11 their ability to stay in business in current times?

12 A. No.

13 Q. You want to go on to 13?

14 A. Sure. Summation.

15 The Class I milk price is the power source of the  
16 current FMMO system, the mechanism that keeps the system  
17 functioning, implying changes to the Class I milk price  
18 should be done infrequent and done with the utmost care.

19 If the Class I milk price does not establish the  
20 price correctly, the system begins to malfunction.

21 Hindsight being 20/20, the industry found the average-of  
22 Advanced Class III and IV skim milk prices plus \$0.74 per  
23 hundredweight and the higher-of the Advanced Class III or  
24 IV skim milk prices are not the same.

25 They do not function the same, and the changing --  
26 and changing the mechanism has caused the system to stop  
27 working properly and efficiently since May 2019 -- since  
28 the May 2019 implementation, which has affected all



1 aspects of dairy producer risk management, without  
2 achieving the three goals justifying the change.

3 And on the right side I just restated the  
4 objectives again.

5 Q. Okay. And, again, just to reiterate, a move back  
6 to the higher-of mover, do you believe that it would  
7 defeat these goals that are outlined here?

8 A. No, I don't. I -- I -- I actually think it would  
9 be better. The system would function more efficiently.  
10 Depooling would be more managed. The producer sell-side  
11 liquidity that the system needs would be present because  
12 they would have confidence in the risk management tools  
13 that they use, that they wouldn't be penalized for doing  
14 the right thing.

15 Q. Do you believe that a move back to the higher-of  
16 system would make the mover more accurately reflect the  
17 current market conditions?

18 A. I do.

19 Q. Okay.

20 MS. HANCOCK: Your Honor, at this time we would  
21 make Ms. Dorland available for cross-examination.

22 THE COURT: Dr. Bozic.

23 MR. HILL: Your Honor, I think this might be a  
24 good time to take a break. It's been about an hour and  
25 25 minutes.

26 THE COURT: How long has it been?

27 MR. HILL: An hour and 25 minutes.

28 THE COURT: Oh, I see. Yes, you are right. Good





1 time for a break. All right. Time flies. Let's come  
2 back at 2:50.

3 (Whereupon, a break was taken.)

4 THE COURT: On the record. The witness is yours,  
5 Dr. Bozic.

6 CROSS-EXAMINATION

7 BY DR. BOZIC:

8 Q. Good afternoon. Marin Bozic for Edge Dairy Farm  
9 Cooperative.

10 Sara, how are you?

11 A. Good. Thank you.

12 Q. Good to see you.

13 A. Nice to see you.

14 Q. I thought we could start Mr. Rosenbaum style, "can  
15 we agree."

16 Can we agree that we are both here representing --

17 (Court Reporter interjection.)

18 BY DR. BOZIC:

19 Q. Can we agree that we are both here representing  
20 organizations that advocate for dairy producers?

21 A. I believe so.

22 Q. Can we agree that both National Milk and Edge are  
23 disgruntled to the current system for Class I mover?

24 A. That, I don't know personally.

25 Q. Do you know for National Milk?

26 A. I believe they have a new -- an alternative  
27 proposal to the current pricing scheme. So, yes, that's  
28 correct.



1 Q. Can we agree that we both tend to speak fast?

2 A. Yes.

3 DR. BOZIC: So we should -- your Honor, with your  
4 permission, I would like to insert a little bit of levity  
5 and ask madame court reporter at the end who spoke slower,  
6 and whoever did wins the race.

7 Now for the more serious part.

8 BY DR. BOZIC:

9 Q. If you could please turn to page 13 in your  
10 written testimony.

11 The last sentence on the page reads, "Fundamental  
12 to risk management, changes in the hedge price" -- excuse  
13 me -- "hedged item (milk price) should be offset by the  
14 derivative and vice versa."

15 Could we -- could you please clarify what you mean  
16 by change in the "hedged item (milk price)"?

17 A. Sure. So when we look at hedging milk, or any  
18 products, what we would expect to see is a -- is a  
19 correlation, a positively correlated event, which means if  
20 I start to make money on my milk price because the milk  
21 price has gone up, if I have, let's say, as a dairy  
22 producer, sold a futures contract against that milk, I  
23 would expect that a higher price would result in a loss.  
24 And those two things should be largely offsetting.

25 Q. So if you are hedging June 2020 milk price, would  
26 you look at a change June 2020 versus June 2019 or  
27 June 2020 versus April 2020? What change are we looking  
28 at?



1           A.     We're actually looking within that period.  So  
2     these are two events that happened.  So I - typically,  
3     when I look at hedging, there's two things that happen:  
4     There's a cash transaction and a derivative transaction.

5           Q.     Uh-huh.

6           A.     So if I'm trying to achieve, let's say, \$18 milk,  
7     and I sell a Class III futures for \$18, then if the milk  
8     price goes to 20, what I would expect to see is on my  
9     brokerage statement from -- from -- for my futures  
10    contract, I'll have an \$18 sale, \$20 market settlement,  
11    I'll lose \$2.

12                    But the offset to that is, I wanted to make \$18,  
13    and my milk price went to 20, so in the end I have a  
14    positive \$2 on my cash transaction.  In the end, I wound  
15    up exactly where I wanted to be.

16           Q.     So the change would be the actual versus projected  
17    or expected for that same month?

18           A.     That's correct.

19           Q.     So in case of June 2020, if you initiated your  
20    hedge, let's say in January, in January you would project  
21    what June 2020 would be, you would measure what June 2020  
22    ended up being, that's the change you're referring to?

23           A.     That's the change against the cash, yes.

24           Q.     Okay.  That's good.  Okay.  Thank you for  
25    clarifying.  That's also my understanding of hedging  
26    works.

27                    On page 10 you discuss the generally accepted  
28    accounting principles.  You state -- this is about -- this



1 is the middle paragraph of the page. You state that, "To  
2 address that, GAAP requires prospective and retrospective  
3 testing to validate the derivative's effectiveness to  
4 offset the identified risk, and number two, the  
5 correlation between the derivative and the underlying risk  
6 must be highly correlated, defined as 80% to 125%."

7 I have a couple of questions regarding this  
8 paragraph. Have you -- do you -- you have extensive  
9 experience working with U.S. dairy supply chain as a risk  
10 management consultant. Have you ever helped a client  
11 achieve a hedge accounting status for their hedging  
12 program?

13 A. Yes.

14 Q. Have you ever helped a Class I handler achieve a  
15 hedge accounting status for their hedging program?

16 A. Yes.

17 Q. How long does that usually take?

18 A. To achieve hedge accounting status?

19 Q. From the first call, "Hey, Sara, can you help us,"  
20 to, you know, them calling you back, "everything is  
21 approved, we have a hedge accounting status."

22 A. It depends on the organization and what they have  
23 in place. Some organizations don't have any risk  
24 policies, anything of that nature, so you need to start  
25 getting those in place.

26 But the actual correlations and things, that's  
27 just based on their historical milk pricing, so that  
28 typically companies can provide in pretty short order.



1 Q. But the full setting up of the policies,  
2 approvals, authorized signers, external auditors being  
3 located, how long is that process, all of that?

4 A. It depends. There's no cookie-cutter answer to  
5 that. Everybody's a little different. If somebody's  
6 highly motivated, we can see it done within weeks. Some  
7 groups, they can take years. It just depends --

8 Q. Years?

9 A. Yeah. It just depends on their motivation.

10 Q. And just I want to make sure that I heard you  
11 correct, multiple years?

12 A. No. Just depends -- it depends -- this -- this  
13 isn't -- this isn't something that says when you start --  
14 you know, it's not like a recipe when you start, you end.  
15 It -- it seriously depends on the company's commitment to  
16 risk management.

17 Q. Sure. Sure. Sure.

18 Also, I'm hoping that you can help me understand  
19 your sentence on 80 to 125%, you mentioned correlations  
20 there. Are you suggesting that correlation should be  
21 between 80% and 125%?

22 A. That's what the -- that's what GAAP prescribes.

23 Q. Can you illustrate a condition under which  
24 correlation would be 125%?

25 A. That is GAAP, and that I don't have -- for dairy,  
26 I don't have that.

27 Q. Do you have an example like that, in general?

28 A. I don't. That is just their prescription.



1 Q. But in general, if the correlation coefficient is  
2 125%, that will still be okay?

3 A. According to them, yes.

4 Q. So you have a business degree. I assume that you  
5 took some statistics as part of -- I hope you can  
6 apologize -- excuse me for asking some academic questions.

7 Could you tell in simple terms how is correlation  
8 between two variables measured?

9 A. It's the -- so if we take a look at the  
10 correlation, it's the -- it's the price change measured,  
11 the change in one, so basically the -- the dependent  
12 variable against the independent variable.

13 Q. So -- so from a mathematical point of view, that  
14 would be covariance between variables divided by the  
15 product of standard deviations; is that your  
16 understanding?

17 A. Yes.

18 Q. And if a correlation is zero, does that mean that  
19 two times series are independent?

20 A. Pretty typically, yes. The lower the number,  
21 the -- there's less of the price change that's reflected  
22 in the other products. So, yes. The lower the number.

23 Q. Are you aware that correlation coefficient by  
24 definition cannot be higher than 1 or 100%?

25 A. I understand that, but that is not what GAAP says.

26 Q. So GAAP says specifically about correlation  
27 coefficient being higher than 100%?

28 A. It does.



1 Q. So the language that I read yesterday is that has  
2 to be highly affecting the offsetting changes in fair  
3 value or cash flows of the derivative, which in practice  
4 is the level of 80% to 125%. Those percentages are  
5 regarding offsetting changes in one cash flow versus  
6 another, not the correlation coefficient.

7 Would you dispute that?

8 A. No.

9 Q. Even though that's contrary to what you just said?

10 A. It -- it may be.

11 Q. Okay. I want to turn everybody's attention to  
12 your organic example. And the first, if -- you still have  
13 your laptop with you? Would it be appropriate to put the  
14 Exhibit 32B on the big screen?

15 Ms. Dorland, if we could turn to the sheet,  
16 Exhibit 18, Hedge Ex - 2022.

17 A. This one?

18 Q. Doesn't look right, though. Doesn't seem like  
19 it's presenting all the columns, does it? Column F, for  
20 example, is not visible.

21 Maybe if you switched another sheet and then come  
22 back. Maybe it's just froze.

23 A. This is the one.

24 Q. 2020 is okay.

25 A. This is the one. I grabbed it from online, so  
26 this is --

27 Q. Would you please be so kind to try to close it and  
28 reopen it? It's material for my further questions that we



1 see the full sheet.

2 A. Okay.

3 Q. Did you have the PDF or the Excel file?

4 A. I have the Excel.

5 Q. That's -- there we go.

6 THE COURT: Let's go off the record.

7 (An off-the-record took place.)

8 THE COURT: Let's go back on the record.

9 We have established it's a page in Exhibit 240.

10 How did we identify this page? You said Exhibit 18, but I  
11 don't --

12 DR. BOZIC: It's a spreadsheet, your Honor.

13 THE COURT: If you guys understand, that's fine.

14 Continue.

15 DR. BOZIC: I did prepare the copies of this  
16 particular page, so I'm happy to share that with you, your  
17 Honor.

18 THE COURT: I don't know that that's necessary. I  
19 have got Exhibit 240. If it's in there, I just need to be  
20 able to find the page within.

21 MS. HANCOCK: I don't think you are going to be  
22 able to find it on that chart.

23 THE COURT: Okay. Thank you.

24 DR. BOZIC: I got some more for the audience.

25 So, Ms. Dorland, the first thing --

26 THE COURT: You want to mark this one? I guess we  
27 might as well. I'm just afraid the record -- I don't want  
28 whoever is looking over this to have as much trouble as I





1 am finding it.

2 MS. HANCOCK: I think it's already marked as 240.

3 THE COURT: But it's a subpart of 240, right?

4 We won't mark this excerpt as an exhibit. We'll  
5 assume there's enough on the record for folks to be able  
6 to find this spreadsheet that is a part of Exhibit 240.

7 BY DR. BOZIC:

8 Q. So, Ms. Dorland, the first thing that caught my  
9 attention is that you have the -- in the column N for  
10 November, row 17, which is December 2022, you have  
11 butterfat test for the order at four decimal points.

12 I'm curious where you got this number from. The  
13 uniform price report from that order presents the numbers  
14 in three digits, not four.

15 A. I would have hand-keyed the data, so I -- I'm not  
16 sure why it would have done that. But I would have  
17 hand-keyed this, so I would have to go back and look.

18 Q. Okay. The next thing I wanted to just -- I also  
19 have here the uniform price report for the Order 126, for  
20 December 2022.

21 DR. BOZIC: I'm not sure if that needs to be  
22 entered into the record or what the protocol is, your  
23 Honor.

24 May I approach the witness and --

25 MR. ROSENBAUM: I'd like for these to be marked.

26 THE COURT: Yeah, I think this is something --  
27 this is something new, right?

28 DR. BOZIC: Yes, it's a public document. I did



1 not create it.

2 THE COURT: Yes, let's mark it.

3 DR. BOZIC: Would it be okay if I proceed?

4 THE COURT: Yes, let's mark -- everyone have it?

5 Let's mark this exhibit, which is -- that's dated

6 January 10th, 2023. There's a bold heading,

7 "December 2022 Computation of Producer Price

8 Differential," and we'll mark this Exhibit 242 for

9 identification.

10 (Exhibit Number 242 was marked for

11 identification.)

12 BY DR. BOZIC:

13 Q. So, Ms. Dorland, the butterfat test presented in

14 cell N17, that's November 17 -- I used November to spell

15 the letter -- that is the butterfat test for

16 December 2022. You have it in this spreadsheet as 4.2924.

17 I just want to confirm that in the computation of producer

18 price differential report, on the second page, that number

19 is 4.292, under the table, producer milk components

20 butterfat average test.

21 Does that data correspond to what you intended to

22 present here?

23 A. It looks like I have an extra digit. I can't -- I

24 went through a lot of data. I'm not sure where the fourth

25 decimal place came from. But I can see on the report it

26 says 4.92 -- excuse me -- 4.292.

27 Q. Sure. Sure. I just wanted to make sure that

28 there is no other database that I'm unaware of. As you



1 know, I'm a voracious consumer of data feeds.

2 A. Yes.

3 Q. I was also hoping that we can just verify the  
4 other numbers in this row, starting with the -- sort of  
5 Column A, just gives the date, that's the December.  
6 That's what we are evaluating, December 2022.

7 You have a uniform price at \$22.15. Would you  
8 agree that on the second page of the published report,  
9 that's the third digit from the top under statistical  
10 uniform price of milk?

11 A. Yes, I see that on the report.

12 Q. That matches.

13 Then the Class III price, you have in column C at  
14 \$20.50. That also corresponds to Class III price on the  
15 second page, \$20.50?

16 A. That's correct.

17 Q. Producer price differential in your column D is  
18 \$1.65, and that corresponds to the first number in the  
19 second page; is that correct?

20 A. Yes.

21 Q. And so the uniform price is the sum of producer  
22 price differential and Class III price, correct?

23 Or put differently, PPD is the difference between  
24 the uniform price and the Class III price?

25 A. That is correct.

26 Q. Okay. Those two statements are equivalent,  
27 correct?

28 A. No, they are not.



1 Q. So when we say that uniform price is the sum of  
2 Class III price and PPD, why is that not equivalent to PPD  
3 is the difference between uniform price and the Class III  
4 price?

5 A. So, sorry. This is a touchy point for me because  
6 I have had to spend a lot of time with dairy producers  
7 undoing bad -- bad habits. And we have -- we have linked  
8 our Class III price to our uniform prices in most orders  
9 because of multiple component pricing. And multiple  
10 component pricing, as I'm sure everyone's aware, requires  
11 that we pay dairy producers for all the components in the  
12 milk that they deliver.

13 Q. Uh-huh.

14 A. Practically speaking, the only class of milk that  
15 an accountant could actually even conceive of doing that  
16 with is the Class III milk price, because it is the only  
17 milk price that has all three components in the  
18 calculation.

19 Q. Uh-huh.

20 A. So when we look at that, in order to practically  
21 pay a dairy producer for what they delivered to anyone, we  
22 have to actually sit down and say, here is the -- here is  
23 the Class III price. But we know that we used all sorts  
24 of other different things beyond Class III within that  
25 Federal Order system. And it varies. We use Class I,  
26 Class II, Class III, and Class IV in varying levels. So  
27 we actually calculate the uniform price based on  
28 utilization --



1 Q. Uh-huh.

2 A. -- and then we calculate the component prices.

3 And there's all sorts of little miscellaneous adjustments  
4 that come along with that --

5 Q. Uh-huh.

6 A. -- we subtract that out. That is the PPD.

7 The PPD is not Class III -- the uniform price  
8 minus Class III -- the uniform price minus Class III is  
9 the PPD, but the PPD is not just a manifestation all on  
10 its own. It is the result of the utilization in that  
11 Federal Order system.

12 Q. If somewhere, someone were to tell you that the  
13 December Class III price was \$20.50 and that the PPD is  
14 \$1.65, would you know how to calculate the uniform price?

15 A. I would not.

16 Q. You would not.

17 A. I would have to actually go through and calculate  
18 the uniform price. I could tell you what the end result  
19 was, but you would actually have to follow -- what is  
20 that, Rule 1000 -- and you would have to actually go  
21 through all of the calculations that each and every Market  
22 Administrator goes through on utilization in order to  
23 determine the uniform price.

24 I can -- I can say the uniform price is the result  
25 of Class III plus the PPD, but that is not -- that PPD is  
26 not some manifestation of basis or anything else. That  
27 connotation does not apply there.

28 It is more correct to say it's the uniform price



1 minus the Class III price, results in the producer pay  
2 price differential, which is a function of actually paying  
3 dairy producers in multiple component milk orders.

4 Q. No, I agree with you on that one.

5 My question is pure arithmetic. If Class III  
6 price is \$20.50 and producer price differential is  
7 announced to be \$1.65, then the only price -- the only  
8 value that uniform price can take that month is \$22.50; is  
9 that correct?

10 A. I would say you begin with the uniform price, you  
11 subtract out the producer components based on the  
12 Class III value, and you would arrive at the PPD. You  
13 don't work it backwards.

14 Mathematically, I understand what you are  
15 attempting to say with an equation, but that has led more  
16 producers down a path of risk management purgatory that is  
17 actually -- it does them a disservice because they believe  
18 the concept of basis applies in milk, and it absolutely,  
19 unconditionally, does not belong in milk.

20 Q. If I stipulated I'm not asking about economics,  
21 just arithmetic, can we agree that Class III Plus, plus  
22 PPD, mathematically, must equal what is published as the  
23 uniform price?

24 A. No.

25 Q. Just from arithmetic --

26 A. The PPD is the result of the uniform price minus  
27 the producer component value, plus or minus adjustments,  
28 is what the PPD is. It does not work its way in reverse.



1 You have to start with the uniform price. Otherwise, the  
2 implication is basis, and basis is dangerous.

3 Q. Ms. Dorland, if I stipulate that I'm not asking an  
4 economic question, but I'm asking an arithmetic question,  
5 if A plus B equals C, does it not follow that A must equal  
6 C minus B?

7 A. I think in this instance we're going to have to  
8 agree to disagree.

9 Q. On arithmetic?

10 A. On arithmetic.

11 Q. It wouldn't be the first time. We already  
12 disagreed on correlation coefficient, correct?

13 A. We have.

14 Q. Yes. Okay. I just want to get that on the  
15 record.

16 So how would one go about deriving the uniform  
17 price at test?

18 A. The uniform price at test?

19 Q. Yes.

20 A. Effectively, that's what the Market Administrator  
21 does. They walk through the calculation for utilization.  
22 They determine how much skim and butterfat went into  
23 Class I, how much skim and butterfat went into Class II,  
24 how much protein, butterfat and other solids went into  
25 III, and then Class IV is solids nonfat and butterfat.  
26 Based on those utilizations, you would calculate the  
27 uniform price, and that ultimately ends up at test because  
28 we're using the actual components.



1 Q. Can uniform price at test be derived  
2 mathematically?

3 A. I'm pretty certain that was derived  
4 mathematically.

5 Q. So would -- what is the difference between uniform  
6 price at test and uniform price at -- the way it's  
7 published in the Southwest marketing order, December 2022,  
8 for --

9 (Court Reporter clarification.)

10 BY DR. BOZIC:

11 Q. What is the difference, in general, in definition,  
12 of uniform price at test and statistical uniform price of  
13 milk (3.5% butterfat, Dallas) as published in this report?

14 What -- when people talk -- when you, Ms. Dorland,  
15 when you talk about uniform price at test, how is that any  
16 different than \$22.15 is published here?

17 A. The -- so at 3.5% butterfat in Dallas, that is  
18 based on the Class I differentials in that market, and  
19 then adjusted to a 3.5% butterfat test.

20 Q. And how -- how is that -- why would that price be  
21 different than a uniform price at test?

22 A. At test it would be adjusted to the actual -- the  
23 actual butterfat delivered into that market.

24 Q. And as well as the protein?

25 A. As well as the protein? I would have to look at  
26 that. Typically we refer to it as at standard butterfat.

27 Q. We refer to uniform price at test as standard  
28 butterfat?





1 A. No, not at test. Here they're referring to it on  
2 this report. Are you asking me what they're referring to  
3 on this report?

4 Q. I'm trying to understand what you mean by uniform  
5 price at test.

6 A. The uniform price at test is based on the actual  
7 components.

8 Q. Does uniform price at test, in any way -- is it in  
9 any way related, derived from, corresponds to, producer  
10 price differential?

11 A. Does the uniform price at test correspond to the  
12 differential? Not necessarily. Because the -- like I  
13 said, the differential is the difference between the  
14 actual utilization minus the producer components at the  
15 actual -- at the actual test.

16 Q. Could you please repeat that?

17 A. It's at the actual test.

18 Q. What is at the actual test?

19 A. The producer pay price differential is based on  
20 the actual components delivered in that order.

21 Q. The producer price differential is calculated  
22 based on the actual test in the order?

23 A. Yes. Because it's the difference between the  
24 components and how they were used, less the components  
25 delivered in that order.

26 Q. So the -- you established before that the producer  
27 price differential is the difference between the uniform  
28 price and the Class III price, correct?



1 A. Yes.

2 Q. So the --

3 A. No, not the Class III price. The Class III price  
4 based on the components in that market.

5 Q. I want to make sure that I understood you.

6 So you are saying that the producer price  
7 differential is calculated as a difference between the  
8 statistical uniform price of 3.5% and the Class III price  
9 of the actual component test in the order?

10 A. That's at the Class III value.

11 Q. So the question is, what is the nature of the  
12 relationship between the statistical uniform price of milk  
13 and the producer price differential?

14 A. I'm not sure I understand your question.

15 Q. How are statistical uniform price of milk and  
16 producer price differential related?

17 We're just repeating what we are argued ten  
18 minutes ago.

19 So the producer price differential is derived as a  
20 difference between the statistical uniform price of milk  
21 and the Class III milk?

22 A. That's correct.

23 Q. Both statistical uniform price of milk and the  
24 Class III price of milk are 3.5 butterfat; is that  
25 correct?

26 A. The 3.5 butterfat.

27 Q. And 2.9915 protein; is that correct?

28 A. It's 3.1 before you adjust it for skim. But, yes.



1 Q. Plus you multiply 3.1 times --

2 A. Yes.

3 Q. -- you get 2.9915?

4 A. Correct.

5 Q. And 5.6575, if I -- basically the same, right, for  
6 other solids?

7 A. Right.

8 Q. Okay. So now we have the relationship between the  
9 statistical uniform price and producer price differential.

10 My next question is, like, when you define uniform  
11 price at test, how is that price related to producer price  
12 differential? Does it take into account producer price  
13 differential?

14 A. Are you asking about this spreadsheet here on  
15 column L where it says uniform price at test?

16 Q. In general, I'm asking when you conceived of a  
17 concept uniform price at test, what were you trying to  
18 capture by that?

19 A. Basically, the value of milk paid out on the  
20 actual test that a producer delivers.

21 Q. So if a privately-pooled -- privately-held handler  
22 is pooled, the minimum price they have to pay to a  
23 producer who ships to a plant located at a principal  
24 pricing point is equal to the uniform price at test.

25 Did I say that correctly?

26 A. I believe so, yes.

27 Q. Okay. So then does it follow -- or must it follow  
28 that the uniform price at test, as you just defined, must



1 reflect fully the producer price differential, producer  
2 price differential is an essential part of the uniform  
3 price at test?

4 A. It is a component of it, yes.

5 Q. Okay. Thank you very much.

6 So, now, let's continue going down that row 17.  
7 So we defined uniform price; that's column B. Column C;  
8 that's Class III. Column D; that's producer price  
9 differentials. We're all good on all of that.

10 Now, I want to go to the Class I at test, which is  
11 column K. Could you walk us through the formula in  
12 cell K17?

13 A. Yes. That is just simply multiplying the  
14 column -- let's see here -- column N, butterfat, which  
15 apparently has an extra digit in it, times the butterfat  
16 value of the Class -- the Class III butterfat value --  
17 excuse me -- the Class I butterfat value.

18 Q. Okay.

19 A. And then it is taking the difference between,  
20 let's see, the actual butterfat test to calculate the skim  
21 value, times -- times the skim value of that milk.

22 Q. In other words, if a Class I handler receives the  
23 milk which has the butterfat test that is the same as the  
24 pool average, their handler obligation to the pool would  
25 be \$28.10?

26 A. If was the same as the average, that would be --  
27 that would be the obligation.

28 Q. Without location differentials or --



1 A. Adjustments, audit adjustments, anything like  
2 that.

3 Q. So the Class I test is the obligation to the pool.  
4 Now, would it then also follow that the column L  
5 tries to measure the draw from the pool? Of course the  
6 net will be the difference, right?

7 A. The difference, yes.

8 Q. The settlement with producer settlement fund,  
9 that's the net draw or net payment, right?

10 But the -- the uniform price at test is the price  
11 owed to the producer, the minimum regulated price owed to  
12 the producer; is that correct?

13 A. In this instance, if it was 100% Class I, yes.

14 Q. No, I'm asking now about column L, as in love.

15 A. Okay.

16 Q. Is that -- does that define the minimum regulated  
17 price to a producer which has representative component  
18 tests and ships to a plant at the principal pricing point?

19 A. Yes. That appears to be the price that would have  
20 been paid to a producer should their components match the  
21 average.

22 Q. So can we -- can you walk us through that formula  
23 now, the same way you did with column -- with column K?  
24 And please, let's just walk one cell at a time. For the  
25 benefit of the audience, that's the formula that I've also  
26 printed in the handout.

27 A. So in this case it's column H, which is the  
28 Class III butterfat price, times column N, which is the



1 butterfat value.

2 Q. Uh-huh.

3 A. And then it's 96% of the Class III protein times  
4 the true protein value. And then the 96.5% of the other  
5 solids times the other solids price, rounded to two  
6 digits.

7 Q. So can you explain why you used this correction  
8 factor, 0.965?

9 A. I believe I was correcting for skim, which should  
10 probably not have been done.

11 Q. So that part is incorrect?

12 A. That part is incorrect.

13 Q. Is the formula otherwise correct?

14 A. It would be -- you know, it looks like it's  
15 missing the PPD.

16 Q. So we have established that we have an extra digit  
17 for butterfat, that we have a correction factor that  
18 shouldn't be there, and that we are missing a producer  
19 price differential.

20 I'm wondering in this example, given these  
21 corrections that you would need to make, how much validity  
22 should we assign to your organic example?

23 A. In the organic example, while the math in this  
24 instance looks like it is off, I don't think that that  
25 would have altered the outcome. Because effectively, the  
26 example I was providing was whether an organic company can  
27 hedge the -- the change -- basically their obligation to  
28 the pool. And that would be difficult to ascertain,



1 because there's so many moving pieces, that changes in the  
2 Class III and IV price, you have to control for depooling,  
3 you have to control for changes in utilization outside of  
4 Class I. You have -- you have all sorts of things that  
5 you have to deal with that I still believe that the number  
6 might not have been as low, but it certainly wouldn't meet  
7 the qualifications for hedging.

8 Q. Ms. Dorland, what puzzles me, if you can reach  
9 that conclusion with a high degree of certainty, why go  
10 through the trouble of providing this exhibit at all? If  
11 math doesn't need to be correct and it's -- and the errors  
12 in math are immaterial, why do we need math at all?

13 A. We do need math. And I will acknowledge that is a  
14 mistake. Unfortunately I went through a lot of data, so  
15 that part I did not catch.

16 Q. I'm counting. Strike two. Okay. Let's move on.  
17 Thank you for your patience with me on this.

18 Okay. So if we could please turn to page 12 of  
19 your testimony. On page 12 you talk about the example in  
20 the Section 2.6.4, hedging 2% gallons at retail.

21 And the purpose of this paragraph, as I read it,  
22 is to evaluate whether average-of pricing improves or is  
23 materially more beneficial to Class I stakeholders than  
24 higher-of.

25 Would that be a fair summary of what you are  
26 trying to achieve here?

27 A. I'm sorry, say that again?

28 Q. Would it be a fair summary of Section 2.6.4 --



1 would it be a fair summary that we are trying to establish  
2 whether higher-of or average-of make a difference for  
3 hedging Class I exposure from a manufacturer standpoint or  
4 a grocer standpoint?

5 A. In this instance, what I was looking at was  
6 hedging actually 2% milk, not raw milk purchased from a  
7 producer to create 2% milk. This is somebody who is  
8 attempting to hedge 2% milk.

9 Q. So -- but we are trying to figure out whether  
10 higher-of or average-of can do that just as well. Is that  
11 a fair summary?

12 A. Correct.

13 Q. So my first question is 2% is different than 3.5%.  
14 In fact, 3.5% is almost twice as much, correct?

15 A. It's almost twice as much.

16 Q. So why would we not recognize explicitly that we  
17 are overhedged on the butterfat?

18 A. That is one of the issues that you have with that  
19 hedge. If somebody was to approach that without taking a  
20 butterfat offset, you are overhedged on the fat side of  
21 the equation.

22 Q. But why wouldn't you provide an example that  
23 properly accounts for the butterfat offset?

24 A. So I have actually done that for a client before  
25 who wanted to hedge 2%, and the math, it -- it -- the size  
26 of contract grows pretty quickly, and that was somewhat  
27 the point, to say that you tend to have mismatch.

28 If it was simplified to say all you have to do is





1 go out and enter a Class III or IV contract to hedge,  
2 let's say 2%, which is the most commonly consumed milk  
3 today, if you were attempting to do that, you would have a  
4 mismatch, which would result in ineffectiveness for hedge  
5 accounting purposes.

6 Q. Ms. Dorland, are you aware that omitting a  
7 relevant variable could bias the coefficient in  
8 regressions if the model is miss specified?

9 A. So if somebody -- so I think what you are  
10 attempting to do is to take this example and make it  
11 something other than what it was. If somebody said,  
12 because the way this has been displayed is that all I have  
13 to do is go out and buy one Class III contract and one  
14 Class IV contract and I can hedge, then the answer is that  
15 you might not be able to get the efficacy that you think  
16 you are going to, unless you were buying raw milk Class I  
17 milk from a producer. Anybody else, the complications  
18 with that hedging goes up exponentially.

19 Q. So this --

20 A. And here, understand for accounting, unless you  
21 have a contract that specifically says, "I'm hedging,"  
22 basically you would have to correlate the III to -- to  
23 your experience on price, and the IV to your experience on  
24 price.

25 And that's effectively what I'm doing is  
26 correlating the Class III to that example of a Class II  
27 value.

28 Q. Well, and you're sure that we cannot correlate our



1 exposure to the average-of III and IV?

2 A. Not in accounting world you cannot, unless your  
3 contract stipulates it. We have a saying in accounting  
4 that's pretty common, and that is, you cannot hedge the  
5 rubber in a rubber tire unless the contract -- which this  
6 is a new modification of the hedge accounting rules --  
7 unless the contract stipulates that you have an underlying  
8 commodity that you can tie it to.

9 So the class -- if you were to hedge 2% milk and  
10 it says you have a certain percentage of that milk that's  
11 based on Class III, Advanced Class III, and Advanced  
12 Class IV, then you can go ahead and just use the  
13 average-of.

14 If you have a contract that says, I'm buying  
15 Class I or I'm buying 2%, you are then required to  
16 correlate the Class III and then to correlate the Class IV  
17 independently.

18 Q. So for economic purposes, not hedge accounting,  
19 would it be appropriate to correlate the Class I and 2%  
20 with the average-of III and IV?

21 A. I still think it's appropriate to look at them  
22 independently. Because, again, the averages will tend to  
23 offset. And it doesn't mean that it -- it doesn't  
24 necessarily mean that your IV became more effective in  
25 2020 because -- because your III performed better. It  
26 doesn't -- one performing well doesn't -- shouldn't mask  
27 that the other underperformed. And that actually, if you  
28 look at the price change, your price change would have



1 been more effective looking at III versus IV at that time.  
2 And today, you are likely to look at it as IV versus III.

3 Q. So if I understand you correctly, to evaluate  
4 whether the average-of a IV is better hedging, we are  
5 forbidden from evaluating the strategy where we are using  
6 both III and IV because that's misleading?

7 A. No, I just think you do them independently and  
8 take a look at how they are impacting the price.

9 Q. And you believe that's more insightful than  
10 combining them?

11 A. I do. Because as I have said several times today,  
12 there is nothing that binds the Class III and IV skim  
13 values. And absent that, you should be looking at them  
14 independently.

15 Q. Are you as confident in that as you were about the  
16 coefficient correlation?

17 A. I suspect you are going to walk me through  
18 something, so --

19 Q. Well, no, I'm going to let you off the hook there.  
20 It is your opinion. You are recognized as an expert  
21 witness, so tune into my testimony on Monday.

22 So I want to talk about the prolonged periods of  
23 depooling, which is your phrase from page 2. And, also,  
24 closely related to that on your page 9, you write, "For  
25 instance, the implementation of the average-of price  
26 resulted in extended periods of depooling, which adversely  
27 impacted dairy producers that hedge milk price exposure  
28 for other classes of milk, most notably in 2020."



1 I wanted to make sure I understand the word  
2 "resulted." Is "resulted" a synonym for caused? Are you  
3 suggesting a causal relationship here?

4 A. What I'm suggesting there is that when Class I is  
5 not the highest value of milk, it affords the market to  
6 have two possible prices, the value by participating in  
7 the pool, uniform price, or the value of staying out of  
8 the market or depooling in that period.

9 And that prolonged period of manufacturing milk  
10 potentially being higher than the pool value of milk  
11 caused disruption in the market for dairy producers that  
12 hedged. Because unexpectedly, milk was removed, and it  
13 changed the utilization in those markets.

14 Q. Ms. Dorland, you said that it resulted in extended  
15 periods of depooling.

16 Are you claiming that extended periods of  
17 depooling would not have happened were it not for  
18 average-of?

19 A. That is correct. There were periods of  
20 depooling -- there would have been periods of depooling,  
21 as we have seen historically. Typically it's limited to  
22 about two months, potentially more, depending on -- you  
23 would have to look at the pandemic. But if I remember  
24 correctly, when I looked at this, you were talking about  
25 potentially two consecutive months of depooling.

26 Q. Have you done any research that would suggest how  
27 much milk would have been depooled if we had higher-of in  
28 either 2020 or 2022?



1           A.     I have not.  Although, I did look at the prices.  
2     The issue with the system is, as I said, the only way to  
3     pay dairy producers is that we have linked the Class III  
4     price to the milk check.

5                     What I did look at is all of the proposals  
6     under -- under both pooling and depooling, assuming -- I  
7     think I looked at Federal Order 32 because it was the most  
8     reflective of the national average-of utilization.  I  
9     looked at 2020 and 2022, because those are both extreme  
10    markets for different reasons.  And typically, that would  
11    not have altered depooling decisions because the markets  
12    were so extreme.  And under those scenarios, the higher-of  
13    mitigated depooling more so than any of the average-of  
14    proposals.  But under all -- for Class III.

15                    But under all scenarios, the milk prices can't.  
16    It has a difficult time tackling Class II and IV.

17           Q.     Would you qualify your reading of those reports as  
18    research into this topic?

19           A.     Yes.

20           Q.     Are you familiar with any other research on this  
21    topic?

22           A.     I -- I've read quite a few different reports at  
23    this -- to -- in order to put this information together.

24           Q.     Specifically that the existence of average-of  
25    caused extended periods of depooling?

26           A.     I think you are going to lean on my word choice.

27           Q.     It was your word choice.

28           A.     I understand.  And so I'm not certain what you are



1 looking at. But I would say the average-of, because  
2 Class I was no longer the highest milk price, provided  
3 that opportunity for prolonged periods of depooling.

4 Q. So you are not familiar with any other research,  
5 or can you point to any other specific research that  
6 demonstrated, to your satisfaction, that the average-of  
7 caused or resulted in extended periods of depooling?

8 A. If I didn't cite it, I -- I -- I might have read  
9 something, but I don't -- I don't have any specific  
10 recollection.

11 Q. Okay. So your sort of "finale" is that statement  
12 that the --

13 A. I'm sorry, what page are you on?

14 Q. Yeah. I'm about to say.

15 That the higher-of does not detract from Class I  
16 hedging. That's the way you preview your analysis on  
17 page 2. That's on the top of -- does not detract to  
18 the -- "is more effective compared to the current  
19 average," etcetera, including, number 2, "does not detract  
20 from Class I hedging."

21 I assume that "does not detract from Class I  
22 hedging," by that you mean that processors can as  
23 successfully hedge their exposure under higher-of as they  
24 can under average-of?

25 A. It depends on the tools and the processor. But my  
26 answer would be the ones I have worked with, we found  
27 different ways to manage Class I risk.

28 Q. Under higher-of?



1 A. Under higher-of, yes.

2 Q. So the change to average-of did not result in any  
3 improved strategies for the clients that you have advised?

4 A. It's -- look, it's certainly easier for what you  
5 are attempting to do. But the disorder that it causes in  
6 the entire system, that to me is more concerning and  
7 problematic than the slight improvement and ease of risk  
8 management.

9 Q. Could we -- could you help me reconcile how it  
10 could be easier if it, at the same time, does not detract?  
11 How are those two statements mutually consistent?

12 A. I think what I was saying is that -- where are you  
13 on this one?

14 Q. Page 2 of 39, top paragraph, about four lines from  
15 the top of the page.

16 A. I think the -- so I think what you are saying  
17 is -- is --

18 Q. I'm sorry, Ms. Dorland, this is you saying. I'm  
19 reading.

20 A. No, you are interpreting my statement, so I'm  
21 trying to understand what you are saying about what I'm  
22 saying.

23 So what I said is, I don't believe the average-of  
24 detracts from the ability to manage Class I risk -- or  
25 excuse me -- the higher-of does not detract from the  
26 ability to manage Class I risk.

27 Q. But "does not detract" has nothing to do with how  
28 easy it is to hedge risk.



1 A. It can be easy. It just depends on the company,  
2 the tool, and the partners that they use in order to do  
3 it.

4 Q. But there is an effective way to manage Class I  
5 risk under the higher-of, as effective as under  
6 average-of?

7 A. Yes.

8 Q. Are you familiar with the paper by Dr. Newton and  
9 Dr. Thraen from 2012, Road Block to Risk Management?

10 A. I may have read it in my past. I don't know.

11 Q. It is here --

12 A. It looks a little lengthy -- oh, okay.

13 Q. These hearings are the only way for us to get  
14 anybody to read our papers, so I'm going to distribute.

15 MR. ROSENBAUM: Your Honor, while they are doing  
16 that handout, the printout he did has the formula that he  
17 was asking questions about. You can find that in the  
18 spreadsheet, but you have to work to do it.

19 I would prefer that we have this document marked  
20 as a Hearing Exhibit so we know what it was that was being  
21 asked about.

22 DR. BOZIC: I would concur.

23 MR. ROSENBAUM: He asked her about the formula.  
24 She did not read it verbatim, which I'm not faulting her  
25 for.

26 THE COURT: Right. Right.

27 MR. ROSENBAUM: But if it's not in the record  
28 accurately, I think we need the document.





1 THE COURT: Anyone object to -- well, nobody's  
2 going to object to marking it. The question is going to  
3 be whether admitting it.

4 So does anyone object to marking and admitting  
5 this exhibit as an -- as an excerpt?

6 I'm a little confused about this whole thing, but  
7 that's just me. I don't speak economics all so well. I  
8 couldn't find this in the document.

9 So your idea is that we put -- even though this is  
10 already in as a part of the larger document -- I'm sorry,  
11 why does this need to go in again?

12 MR. ROSENBAUM: If you point your cursor at the  
13 right cell, and you look in the right place, this formula  
14 pops up. But that's -- you know, you have to go through  
15 those things.

16 And so I think, since she had the formula up as  
17 she was answering questions but did not --

18 THE COURT: She did, yeah.

19 MR. ROSENBAUM: -- she did not read -- and she  
20 started to read it. And I'm not suggesting she should  
21 have. She just didn't read the whole thing into the  
22 record.

23 THE COURT: Yeah.

24 MR. ROSENBAUM: And so I feel like there's a  
25 disconnect here, and it would be better if we have this  
26 document in so we know the actual specific formula that  
27 she was describing.

28 THE COURT: Anyone object?



1 MR. HILL: I'm not sure how -- looking at this  
2 document, how would I see what Mr. Rosenbaum is talking  
3 about?

4 MR. ROSENBAUM: You want me to show you?

5 THE COURT: Let's go off the record.

6 (An off-the-record discussion took place.)

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

8 We had an off-the-record discussion about the  
9 sheet described that we have been talking about. It's  
10 described as L17; is that right?

11 The subpart of Exhibit 240, whether it should be  
12 marked as a separate exhibit to help clarify I think the  
13 cross-examination that took place on this particular part  
14 of Exhibit 240. And nobody's got an objection to marking  
15 it, as I understand it.

16 I don't -- I think it helps the record to have it  
17 in there. The whole document's already in there. So  
18 unless people are objecting to that, I think this can go  
19 in there as a separate document.

20 AMS, I think, is concerned about this coming up  
21 again and again and having repeated exhibits that amount  
22 to the same subparts of the same exhibit, but we have had  
23 a lot on this particular one.

24 Let's mark this Exhibit 242 for identification.

25 What's the best way to describe this, again -- oh,  
26 243. I'm not keeping up at all here. Strike that.

27 All right. We're marking an Exhibit 243 with the  
28 next exhibit number.



1 And the way to describe this is?

2 MS. TAYLOR: It has a title.

3 THE COURT: NMPF-32B spreadsheet screenshot. I  
4 see, L17 is up at the top left-hand corner as well. So I  
5 take it that I can look at L17 and flip through this  
6 oversized exhibit and find this sheet within there, too.

7 But anyway, we will mark this one-page excerpt  
8 from Exhibit 240 as Exhibit 243.

9 (Exhibit Number 243 was marked for  
10 identification.)

11 THE COURT: Do we want to take a break? Let's  
12 take a ten-minute break.

13 (Whereupon, a break was taken.)

14 THE COURT: Let's go on the record.

15 Dr. Bozic, your witness.

16 DR. BOZIC: Thank you, your Honor.

17 BY DR. BOZIC:

18 Q. Ms. Dorland, the last segment of my examination  
19 this afternoon is a paper by Dr. Newton, published in  
20 Applied Economic Perspectives and Policy, ten years ago.  
21 Dr. Newton evaluated how easy it is to cover Class I risk  
22 or reduce Class I risk.

23 And on page 563, the conclusion page, Dr. Newton  
24 concludes his paper by stating, "The basis exposure  
25 prevents Class III and IV milk futures from directly  
26 managing the milk price and limits potential risk  
27 reduction and revenue stability for fluid milk  
28 participants. Removing these roadblocks to risk



1 management would provide avenues for farm processor  
2 retailer profitability in an increasing volatile market."

3 From previous page, page 562, second paragraph  
4 from the top, Dr. Newton and Dr. Thraen state, "The MSPE  
5 demonstrates that the basis still results in a  
6 considerable amount of risk exposure for the trader even  
7 when using the appropriate basis for testing technique."

8 I'll paraphrase: No matter what we do, there's  
9 only so much we can do to reduce risk to Class I hedgers.  
10 This was under higher-of.

11 Would it be fair to state that Dr. Newton reached  
12 different conclusions than you did?

13 A. So I haven't had an opportunity to read the entire  
14 report.

15 Although I would say that when we went off the  
16 record, I know Dr. Newton, I feel like I'm in good company  
17 because on page 552 he also said that the results have  
18 implications in hedge accounting since financial  
19 accounting standards for FASB requires a hedge instrument  
20 to have a correlation of 0.80 to 1.25. So that I just  
21 thought I'd point out.

22 Q. Do you mean to suggest that correlation can indeed  
23 be 1.25?

24 A. I don't want to go back there. That took us  
25 quite -- we have travelled that path. I'm just saying  
26 they used the exact same language that I did.

27 So as it relates to this, I did take a quick  
28 look -- and so I have said it a couple of times. The



1 relationship between the Class III and Class IV skim  
2 prices, we have a lot of mechanisms within our system to  
3 tie relationships together. It's what makes our risk  
4 management system and all of our markets function, is the  
5 USDA and this FMMO pricing scheme that we have.

6 We are literally the envy of other folks in the  
7 world. At least when I have travelled, that's what they  
8 have told me. We have better tools than they do. In  
9 part, it's because of the design of our system, and  
10 largely because we have codified these relationships.

11 With one exception, the Class III price, the skim  
12 price, moves based on the value of cheese and whey, and  
13 the Class IV solids nonfat price moves based on the value  
14 of nonfat dry milk.

15 I'm sure you are well aware that the economics  
16 that drive those three products are vastly different. And  
17 as a result, yes, they can move independently of each  
18 other. And if you attempt to, as we went through earlier,  
19 talk about this in terms of basis to each other, you will  
20 find that Class III is not a good cross-hedge of Class IV,  
21 and Class IV is not a good cross-hedge of Class III for a  
22 variety of reasons. That also applies if you were  
23 attempting to do that with Class I.

24 But what I would say, is in my presentation  
25 earlier I mentioned -- I'm sorry, can we pop that back up  
26 for a moment?

27 If you look at slide 7, I showed a chart of the  
28 commitment of traders in the Class III contract, and you



1 will see that bright gold area where it calls for swap  
2 dealers, and you will see that we have a lot more activity  
3 in there, in part, because of Dodd-Frank regulations in  
4 that we are required to report those swap transactions.  
5 But in part, because we have got a lot more liquidity  
6 providers than we did in 2012 and prior to that.

7 We have very creative market makers and folks who  
8 will put together customized tools. As I said earlier, I  
9 have worked with folks that when we had the higher-of, we  
10 would call up liquidity providers and ask them to provide  
11 a Class I skim or higher-of settled contract, and for a  
12 fee they would. And that's not different than anything  
13 else. If I want to do a Class III or Class IV or cheese  
14 look-alike in that category, someone's going to charge me  
15 a fee for putting that together. The idea that you can do  
16 risk management cost free doesn't make any sense.

17 So all that we're saying is, is that yes, I can  
18 still get a good correlation between Class III and the  
19 higher-of, and Class IV and the higher-of. I can also  
20 find liquidity providers that will provide me a customized  
21 solution to meet the needs that I have. If I want 2%, 1%,  
22 skim, whole fat, raw Class I milk, I can find somebody who  
23 will be more than happy to make that market for me. There  
24 are plenty of those out there, and those folks have  
25 increased, especially because we have got more money in  
26 the market, more liquidity, more capabilities than we did  
27 even, you know, 10 -- 10 short years ago.

28 Q. Ms. Dorland, would you like to answer my question?



1 The question was whether your paper reaches the same  
2 conclusion as Dr. Newton, or do you find his paper to be  
3 in contradiction with your paper?

4 A. So as I stated, I haven't been able to read the  
5 entirety of the paper and to absorb the information, and  
6 as a result, I can't answer that question in all honesty.

7 Q. So the -- that's fair point. I'm not -- I should  
8 not have said that, do you agree with his paper in  
9 entirety.

10 Specifically, the conclusion: "The basis exposure  
11 prevents Class III and IV milk futures contracts from  
12 directly managing the milk price and limits potential risk  
13 reduction and revenue stability for fluid milk  
14 participants."

15 Dr. Newton's entire paper is titled "Road Block to  
16 Risk Management - Investigating Class I Cross-Hedging  
17 Opportunities."

18 He finds, in his paper, that there are roadblocks.  
19 In your testimony you state that higher-of doesn't detract  
20 from Class I hedging. Are those two conclusions mutually  
21 consistent or contradictory?

22 A. As I stated, I haven't read the report. I can see  
23 that it has the word cross-hedging. As I just told you,  
24 Class III is not a good cross-hedge for IV, and IV is not  
25 a good cross-hedge for III.

26 Q. You don't believe that the sentence that I read  
27 from his conclusion sufficiently summarizes his finding?

28 A. What I would tend to say when it comes to Class I



1 hedging, that is a product that lends itself to a market  
2 maker, somebody who can customize that product for them,  
3 because there -- it's no different than let's say a  
4 specialty cheese, right? If I came in and said, I make  
5 Feta, I make Manchego, I make Brie, I make mozzarella. I  
6 only see a cash-settled cheese contract, or a cheddar  
7 block contract on the futures market. Well, that's too  
8 hard. My cheese make isn't the same. I have different  
9 moisture, and I have different yields, and I have  
10 different protein. You must accommodate me. We wouldn't  
11 get anywhere with our markets.

12 The benefit of our markets, and I think I  
13 mentioned this, is it's a clearing. It's a standardized  
14 contract that we can all use to manage risk. Yes,  
15 sometimes we have to do a little legwork. If I want to  
16 hedge Monterey Jack versus cheddar cheese, I have to do  
17 some work on moisture. Class I is no different.

18 And so that's why I'm saying, if I want something  
19 that's cookie cutter, Class I may be more challenging to  
20 hedge. But if I can work with somebody who will actually  
21 devise a program that works for me, I have no issues with  
22 Class I.

23 Furthermore, I'm not even aware that that many  
24 people do Class I hedging. A lot of the folks that I have  
25 dealt with on the public side of the world, they are not  
26 going to touch Class I hedging. Hedging specifically as  
27 risk management, hedging specifically defined by GAAP,  
28 because if I have hedge and effectiveness, that goes to my





1 bottom line. If I am out on the market, but everybody in  
2 my industry is out in the market, that's a heck of a lot  
3 easier, actually, when we do an earnings report than if I  
4 made a mistake because of hedging.

5 So oftentimes I'm going to look for a normal  
6 purchase, normal sale exclusion under that, and that's how  
7 I'm going to try and manage my cost my price exposure.

8 Q. In the interest of time, I'm going to wrap up  
9 here.

10 Thank you, Ms. Dorland, for your patience with my  
11 many questions.

12 THE COURT: Are we going to mark this -- what are  
13 we going do with this article? Do you want to mark it as  
14 an exhibit? Are you going to move it into evidence?

15 DR. BOZIC: Sure.

16 THE COURT: Both? I mean, let's mark it as  
17 Exhibit -- and see if I'm getting this one right this  
18 time -- 244. And I will move it in, I guess at the end of  
19 this witness' testimony.

20 Although, I do note that Drs. Newton -- I assume  
21 he's a doctor by now. He was a Ph.D. candidate when this  
22 came out in 2013, and they are not here right now, you --  
23 you retain --

24 MR. HILL: AMS does have one request. We would  
25 like to have electronic copies of these so that we can --

26 DR. BOZIC: I'll provide them in the next few  
27 minutes.

28 THE COURT: All right. When it's offered into



1 evidence, we'll talk about it then. I don't know whether  
2 it is a learned treatise, for instance? I don't think so  
3 but -- so it's marked. Exhibit 244 is marked, Newton  
4 and -- how do you pronounce that, Dr. Bozic? What's the  
5 guy's last name, the co-author of this?

6 DR. BOZIC: T-H-R-A-E-N.

7 THE COURT: How do you pronounce that?

8 DR. BOZIC: Thraen.

9 THE COURT: Okay. It's marked as an exhibit.

10 (Exhibit Number 244 was marked for  
11 identification.)

12 THE COURT: Yes.

13 CROSS-EXAMINATION

14 BY MS. VULIN:

15 Q. Good afternoon, Ms. Dorland.

16 A. Hello.

17 Q. How are you?

18 A. Good, thanks.

19 Q. Good. So I'll pick up where we left off on  
20 hedging.

21 So you agree hedging has transaction costs, right?

22 A. It does.

23 Q. You said you could call up a provider and they  
24 would provide a hedge for a fee?

25 A. Typically, yes.

26 Q. And as a consultant, you or other others in your  
27 position would also typically charge a fee, correct?

28 A. Not for -- it depends on how your consultancy is



1 set up. I personally don't charge a fee for that.

2 Q. Do you provide all your hedging services for free?

3 A. I don't charge a fee on a transaction basis.

4 Q. Oh, got it. Okay. I'm just trying to merely  
5 establish that in engaging with consultants, you -- of all  
6 sorts, right, but any consultant, yourself included,  
7 probably when setting up a hedging program would cost  
8 money for a company.

9 A. It typically does because they are going to have  
10 to work with their accountants, brokers. You're going to  
11 have potentially consultants involved. You will have  
12 information services. You may have liquidity providers  
13 that you work with, banks, lines of credit, all sorts of  
14 things.

15 Q. So it's not something you can pick up and do in a  
16 day?

17 A. That's the second time I have heard that today.

18 Typically, no, you wouldn't want to, because, like  
19 anything, you are going to want to evaluate your risk  
20 exposure. You have got to sit down and understand what is  
21 causing changes in your earnings, and is that what you  
22 want to manage? Are you more concerned about counterparty  
23 risk? Are you concerned about liquidity risk? There's  
24 quite a bit of different things that you have got to  
25 evaluate in order to make a determination as to what would  
26 be appropriate for your company and risk management.

27 Q. And you said that on -- you couldn't say how long  
28 on average setting up a hedge program would take, but it



1 could be weeks to years; is that right?

2 A. I'm going to say it depends. Okay. So if you're  
3 highly motivated, if you are saying, you know what, I want  
4 to make -- if you are highly motivated and you want to  
5 make risk management a part of your core competency as a  
6 business, then oftentimes you are going to designate  
7 somebody who is in charge of it, and you are going to move  
8 through that process.

9 How difficult is it? It's as difficult as opening  
10 a brokerage account, which is filling out some online  
11 paperwork. It's not very difficult. If you want to do it  
12 correctly, it takes a little bit of time to set up. But  
13 this isn't something that, five years hence I will have a  
14 risk management program. Typically it gets going a little  
15 bit faster than that.

16 Q. What's the shortest amount of time it's taken you  
17 personally to help a processor put together a hedging  
18 program?

19 A. I'd say, oftentimes I'm coming in because they  
20 have got some of their legwork done, so it can be as short  
21 as three months, sometimes it can take up to nine months.

22 Q. From your involvement?

23 A. From my involvement.

24 Q. And in your estimation, in your experience, how  
25 much time or legwork would they have put in before you get  
26 involved?

27 A. That really depends. It -- honestly, it's -- some  
28 companies are very complicated. They handle all sorts of



1 different products. So like when I was at a co-op, we did  
2 everything. We did whey, and cheese, and butter, and  
3 powder, and yogurt, and, at one point ice cream. Thank  
4 goodness that went away, because that's a little bit more  
5 complicated. And then fluid milk, all sorts of things.

6 But when we set up the program to when they were  
7 initiating trading, it was a matter of months.

8 Q. And you said the shortest you had been involved  
9 in, was it six to nine months? Is that what you said?

10 A. I would say some of them, it's -- it can be as  
11 short as three, because like I said, they are already off  
12 and running.

13 Q. Okay. So three to nine months is the shortest  
14 amount of time it has taken you personally to help a  
15 processor set up a hedging program on the fast end?

16 A. I would say that that probably sounds about right.

17 Q. Okay. And then the same question on the long end.  
18 What is the longest amount of time it's taken you  
19 personally to help a processor put together a hedging  
20 program?

21 A. That's difficult to answer. And the reason is,  
22 is, as -- we focus in on certain things, so that we can be  
23 successful and demon- -- basically have a demonstration of  
24 success. This is what risk management can do if we employ  
25 it.

26 From there, I look at risk management. It's kind  
27 of like yoga, it's a practice. You don't ever finish it,  
28 you just keep adding to it. So you may say, okay, we're



1 going to start hedging cheese, or Class I, then that may  
2 move into packaging, it may move into natural gas, all  
3 sorts of things. So that's where I would say it's kind of  
4 an ongoing process.

5 Q. Let's simplify it, then. From when you are  
6 brought on board to when they place their first hedge,  
7 what's the longest amount of time you have personally  
8 taken to set up a hedging program for a processor?

9 A. I honestly don't have a good answer for that,  
10 because it's not something that I track. I actually have  
11 some clients that they just like talking about markets and  
12 understanding risk management, and they don't actually  
13 ever do any transactions.

14 Q. What percentage of your overall consulting work is  
15 putting together hedging programs for processors?

16 A. I'd say probably about a third.

17 Q. Just for processors?

18 A. So processors, cooperatives, consumer products  
19 companies.

20 Q. Not just in dairy or all exclusively in dairy?

21 A. Primarily in dairy. I have done others, but dairy  
22 primarily.

23 Q. Do you think Class I processors should hedge?

24 A. My answer is going to say it depends. So if I'm a  
25 bottler and I am selling to a retailer and I am passing  
26 the costs along, if you think about this as simple as the  
27 matching game that you would play with your kids. If I  
28 have basis to basis, meaning I sell Class I and they buy



1 Class I from me, and it's a passthrough, you actually  
2 wouldn't want to do anything because you are going to  
3 introduce risk to your system.

4 If you have -- if you are buying from farms, let's  
5 say, on a Class I basis, and at the same time you are  
6 trying to fix a price, that's an area where you may  
7 actually look at it and say, Class I hedging might be  
8 appropriate because you have got a milk price that's  
9 floating and a selling price that's fixed, and that  
10 creates some sort of financial exposure.

11 Q. So for processors who are trying to sell their  
12 milk on some kind of stable or fixed price, they would be  
13 better served by hedging?

14 A. Possibly. Again, you have to look at each  
15 organization and how they do it. Some people have  
16 extraordinary margins where they can just absorb those  
17 price changes and they are content with that.

18 If you are organic, the answer changes again,  
19 because, yes, I may want a fixed price, but typically in  
20 organic it's a one- to multi-year contract with fixed  
21 price milk. So, again, fixed to fixed, my risk is  
22 managed, so I wouldn't want to introduce risk by taking on  
23 additional positions.

24 Q. So you are saying that organic processors have no  
25 risk in their financial activities?

26 A. That's not what I said.

27 Q. Okay. Can you explain for me?

28 A. Yeah. So what I'm saying is, if I'm looking at



1 putting organic milk on a shelf for a fixed price for an  
2 extended period of time, and if I'm buying fixed price  
3 organic milk from a dairy, which is pretty typical, you  
4 will see that they do multi-year contracts. If I have  
5 those two things, my Class I exposure is not eliminated,  
6 but it's certainly greatly reduced.

7 Q. But you still have exposure through your pool  
8 obligation, correct?

9 A. You may have exposure if you have a pool  
10 obligation, but there are -- if you -- there's a series of  
11 ways that you would be -- you could be excluded from the  
12 pool, and as a result, that might be a pretty small  
13 portion of your milk.

14 Q. Understood.

15 But for Class I organic processors, who are  
16 obligated to pay into the pool, they aren't able to manage  
17 their risk just because they purchase on a fixed price and  
18 sell on a fixed price, because they can't manage their  
19 pool obligation?

20 A. No, that's not correct. So a portion -- they have  
21 a portion of risk, and that is to -- on the pool  
22 obligation. But if you look at the larger piece of the  
23 Class I that's established based on the overall milk price  
24 that they have contracted, a significant portion of their  
25 milk price exposure is already managed.

26 Q. Through their own efforts.

27 A. Through their own efforts by buying milk on a  
28 fixed price, and should they choose to sell milk on a





1 fixed price, that would be the case.

2 Q. And this question of organic leads me to  
3 Exhibit 18. So I see that you cite Exhibit 18 on page 11  
4 of your testimony under the heading, "Hedge Example,  
5 Hedging the Producer Settlement Fund."

6 And this is Exhibit 18 that we just spent quite a  
7 bit of time with Dr. Bozic on, correct?

8 A. That's correct.

9 Q. In just a sentence, can you tell me what does  
10 Exhibit 18 demonstrate or establish in your testimony?

11 A. So I have to -- you know, clearly there was an  
12 error in one of the formulas, so I'll have to go back and  
13 revisit it. But what -- what they are attempting to do  
14 with that hedging of the pool obligation is to basically  
15 say I can -- I can mitigate what's -- you know, my payment  
16 in. And that's the piece that could be somewhat  
17 challenging because there are parts of that pool that are  
18 moving around outside of their control.

19 Q. Okay. So maybe just to simplify it further,  
20 Exhibit 18 is an example of an organic processor  
21 attempting to hedge?

22 A. Attempting -- theoretically, a scenario was  
23 provided to me, and that's what it was attempting to  
24 demonstrate.

25 Q. And a demonstration of what it would like look if  
26 a Class I organic processor tried to hedge.

27 A. No.

28 Q. So what is it -- tell me again, what is the point



1 of Exhibit 18 or what does it demonstrate?

2 A. It's to provide a specific hedging example, not  
3 wholesale hedging.

4 So what ends up happening with this, is we tend  
5 to -- that was the analogy I provided, Ford has trucks,  
6 and not recognizing that they are different models. So  
7 this was one of the models, okay? Under the umbrella of  
8 Class I hedging. So it's a very small -- extremely small  
9 demonstration of what may or may not happen. I'm actually  
10 personally not aware that anybody does that.

11 Q. And does this show us that Class I organic  
12 processors can hedge or can't? I mean, I truly don't know  
13 what the conclusion or the takeaway is for us.

14 A. The takeaway with that -- and honestly, I have got  
15 to go back and look at it -- but basically, the takeaway  
16 was, if you think you can use Class III and IV futures  
17 contracts to hedge your exposure into the pool, it could  
18 be challenging for you because there are many pieces that  
19 are moving that you can't account for in that hedge.

20 Q. And is that under the average-of or under the  
21 higher-of base Class I skim formula?

22 A. I believe this -- I did this under -- this would  
23 have been under the average-of, because it's present day.

24 Q. Okay. And then, again, I just want to make sure I  
25 understand what's going on here.

26 So I have Exhibit 243 in front of me. And we  
27 looked at cell L17. And we have the formula at the top,  
28 correct?



1 A. I don't have -- I don't have that document.

2 Q. Do we have -- may I approach the witness?

3 THE COURT: Yes, you may.

4 BY MS. VULIN:

5 Q. So now do you see this screenshot from your  
6 spreadsheet?

7 A. Uh-huh.

8 Q. So I just want to make sure I'm tracking the  
9 corrections that we'll make to this.

10 So the formula at the top, the equal sign, round  
11 parentheses, and then there's a formula. This N17 has an  
12 extra digit, correct?

13 A. Yes, apparently.

14 Q. And then the 0.965 is an incorrect skim adjustment  
15 or conversion, correct?

16 A. Yes.

17 Q. And then we're missing the PPD?

18 A. Correct.

19 Q. Okay. So thank you. That helps me then track  
20 Exhibit 243.

21 So --

22 THE COURT: May I -- just to be clear, please.

23 MS. VULIN: Yes.

24 THE COURT: I'm not as conversant with these  
25 things. I think I understand now.

26 When we're talking about L17 -- sorry, I'm so slow  
27 on the uptake here -- it's literally in row 17, column L.  
28 That cell up at the top of the page, the formula



1 calculating that cell is set out in that -- what would you  
2 call it, white space, just as you described. And that's  
3 how -- that describes how you get to that number. And you  
4 have gone through, and the witness says shouldn't have had  
5 the 965 in there, I should have had this other thing in  
6 there, there's a few corrections to that. But we're  
7 looking at just how you calculate that one number?

8 MS. VULIN: Correct.

9 THE COURT: Thank you, Counsel.

10 MS. VULIN: It helped me understand, too.

11 BY MS. VULIN:

12 Q. So then in thinking about Class I and hedging, you  
13 would agree with me that Class I sales are on a decline,  
14 correct?

15 A. The overall category, correct.

16 Q. And you -- which also means that Class I  
17 consumption is on a decline?

18 A. Correct.

19 Q. And you asserted in your testimony that the  
20 average-of was not successful because Class I fluid milk  
21 sales declined during the roughly four-year period that  
22 that formula was in place, correct?

23 A. I said if it was the -- so if it's conditioned, if  
24 risk management is conditioned on stemming losses or  
25 increasing consumption. So if risk management was  
26 responsible for those activities, then it didn't meet its  
27 objective.

28 Q. But you don't know, and you're not stating, that



1 it failed at stemming those losses, or otherwise that  
2 losses declined less than they would have had the  
3 average-of not been in place?

4 A. I think what I'm saying with regard to how  
5 consumers are purchasing milk, I am going to rely on that  
6 USDA report where there's a lot of other things going on.  
7 There are subcategories of growth within there, and then  
8 other categories where lifestyle changes, farming practice  
9 preference, all sorts of different attributes, higher  
10 protein, lower lactose, flavor, all of those things are  
11 playing into it, as well as the Healthy, Hunger-Free Kids  
12 Act, all of those things, according to USDA, are having  
13 some implications on that price as one of those things.  
14 But I can't actually say that more stable prices are  
15 causing consumers to change the behavior just like USDA  
16 concluded.

17 Q. Okay. So I understand your reliance on that  
18 statement from USDA.

19 But what I want to know is have you personally  
20 undertaken any analysis to say, yes, the average-of slowed  
21 the decline of Class I, or no, the average-of had no  
22 impact and it would have declined at the same rate?

23 A. It would be difficult to do because we'd have to  
24 rely on company information, and everything I have seen  
25 are anecdotes in the testimony that's been provided, all  
26 the reports that I have read. So it's difficult to  
27 ascertain if -- if that could have materially impacted the  
28 overall numbers, other than we can see the overall numbers



1 are still declining, and according to what some of the  
2 different reports were saying that have been submitted to  
3 USDA for consideration, they are saying the risk  
4 management activity has picked up. So those two things  
5 don't seem to -- they seem to ring a little bit of  
6 discord.

7 Q. And you testified, I believe, that there are not  
8 as -- not a lot of readily available Class I hedging  
9 programs; is that right?

10 A. I'm not sure the context of what you are saying.  
11 I don't remember the part of the conversation.

12 Q. I believe you said that if a Class I processor  
13 came to you and wanted to hedge, you would have to call  
14 and -- call, you know, whoever would sell the hedge,  
15 essentially, and they would have to put together a custom  
16 hedge program; is that right?

17 A. No, that's not what I said.

18 Q. Can you correct that for me, please?

19 A. Sure.

20 So -- so oftentimes there are different market  
21 mechanisms that we can use to mitigate risk. So we can  
22 use futures. We can use options. Those are exchange  
23 traded contracts. They are structured, meaning we know  
24 the -- we know the volume. We know the date. The only  
25 thing that we're really negotiating in those exchange  
26 traded derivatives is price.

27 Then we have a whole category of forward  
28 contracting. Typically, under hedge accounting that's



1 excluded as normal purchases and normal sales. But I can  
2 call up my supplier, I can call up different folks and  
3 say, hey, you know, would you be willing to do some fixed  
4 pricing with me? Sometimes that works, sometimes it  
5 doesn't, but there is a large volume of folks that  
6 actually do those transactions through just straight fixed  
7 pricing.

8 In fact, if you look at what we do in the  
9 international market, a lot of the transactions that we  
10 undertake are in that fixed pricing category.

11 Then there's the other where it's -- what we call  
12 is OTC, over-the-counter. And there we can actually work  
13 with folks to have futures or options look-alikes. I can  
14 have somebody create a Monterey Jack cheese contract for  
15 me. I can create a WPC-85 contract.

16 Q. Let's -- sorry to interrupt, but I want us to  
17 stick with Class I just because there's so much ground we  
18 could cover if we get outside of that.

19 So for Class I --

20 A. But Class I's no different than these other  
21 products. If I make WPC-85, there is not a direct futures  
22 or options contract. Just the same as if I do fluid milk,  
23 there isn't necessarily a direct contract, but I can  
24 actually work with somebody to create an over-the-counter  
25 solution for me.

26 Q. So if you want to hedge Class I, you would have to  
27 work to put together a customized hedging program.  
28 There's no over-the-counter option available?



1           A.     So a customized hedging program.  So hedging is a  
2 really big word.  It's the entirety of everything that you  
3 do in risk management.  We're talking about a derivative.  
4 So, yes, I could go talk to somebody about a Class I  
5 derivative, sure, just like I could do that for any other  
6 product.

7           Q.     And is that available over-the-counter?

8           A.     Yes.

9           Q.     And you mentioned anecdotes, and I just want to  
10 cover something.

11                     So the issue of Class I price elasticity is  
12 critical at this hearing.  And you made a comment about  
13 your purchase of Fairlife and switching to a different  
14 product if the price changed.

15                     Have you undertaken any studies or analysis of  
16 Class I price elasticity?

17           A.     Not specifically Class I.  But I buy that product  
18 actually for the protein that's labeled on it.  So let me  
19 stop you there, and I don't have the exact name of it, I'd  
20 have to go back and find it, I saw it last week.

21                     But in 2021 there was a study that was conducted  
22 that said 55% of global buyers would pay more as long as a  
23 product was labeled with enhanced protein content.  I'm  
24 one of those 55%.  That's basically the comment that I was  
25 making, that I buy that product because of the attribute  
26 that it has.

27           Q.     And do you cite that anywhere in your testimony?

28           A.     I did not.





1 Q. Okay. So you are not here to testify on  
2 elasticity?

3 A. No.

4 Q. Okay. I just want to make sure we're clear  
5 because that is critical, and we wouldn't want USDA  
6 relying on anecdotes for that.

7 A. No. We will avoid that pitfall today.

8 Q. So if you could go to page 3 of your testimony,  
9 please.

10 You say at the top that, although Class I sales  
11 and consumption has declined and that -- I'm  
12 summarizing -- Class I's ability to attract milk to the  
13 pool, one of its primary purposes remains intact.

14 Do you see that?

15 A. Uh-huh.

16 Q. So isn't the purpose of Class I to process and  
17 supply fluid milk to consumers?

18 A. So one of the purposes Class I is to ensure the  
19 function of that Federal Order system, and it is to -- to  
20 attract milk into the pool. That's where we -- you heard  
21 me talking about Class I primacy. That is part of what  
22 Class I is to do. It is to ensure that people participate  
23 in that pool.

24 Q. Class I processors, the purpose of manufacturing  
25 fluid milk is to support the FMMO pools?

26 A. The Class I pricing structure.

27 Q. Okay. And so the Class I -- this should say  
28 Class I pricing formulas' ability to attract milk to the



1 pool, one of the primary purposes of the formula remains  
2 intact. Would that be more accurate?

3 A. I think I just shortcut it because it says  
4 Class I's ability, and that was not a reference to  
5 processing or consumption, it was a reference to the milk  
6 price.

7 Q. Okay. And is the pool's purpose to create revenue  
8 or merely distribute revenue?

9 A. I don't believe the pool's purpose is to create  
10 revenue.

11 Q. The pool's purpose is to provide a mechanism for  
12 uniformly distributing the minimum value of milk used for  
13 Class I products, correct?

14 A. Sounds about right.

15 Q. And you say later on, the FMMO objectives are met  
16 by encouraging pool participation.

17 Does that sound right?

18 A. Yes.

19 Q. So encouraging who to participate in the pool?

20 A. The processors.

21 Q. All classes of processors?

22 A. Processors that qualify based on the USDA's rules.  
23 So those that service that market for that Federal Order,  
24 that's what I was referring to there.

25 Q. So do you believe that FMMOs should encourage  
26 Class I -- sorry -- you agree with me FMMOs require  
27 Class I participation in the pool?

28 A. They are mandatory, yes.



1 Q. Would you agree with -- is it your position that  
2 FMMOs should encourage Class II participation in the pool?

3 A. It is to encourage the -- those that service the  
4 market. So if it is a Class I plant with a Class II plant  
5 with processing attached, I would say, yes, that's  
6 probably what the objective is.

7 If you are solely a Class II processor that does  
8 not interact with the fluid market, no, that is not what  
9 the process -- that is not the purpose of the Federal  
10 Order system.

11 Q. Okay. So if you are not serving the Class I  
12 market, there's -- there's no reason that the FMMO should  
13 be trying to draw you into the pool; is that what you are  
14 saying?

15 A. If you are not participating in the Class I market  
16 and servicing that -- if you are not participating in the  
17 Federal Order by balancing -- being a supply plant to that  
18 system, then, no -- that's -- its objective is not to  
19 bring everybody in. Otherwise that would be closer to  
20 mandatory pooling.

21 Q. Okay. And you'd agree with me that the FMMOs  
22 don't require mandatory pooling?

23 A. They do not require mandatory pooling.

24 MS. HANCOCK: Your Honor, we're getting really far  
25 afield from what this witness is even here to testify to,  
26 and we're kind of burning out the clock for no reason that  
27 she's even been qualified as an expert for or for any  
28 purpose that she's been offered here.



1 MS. VULIN: The purpose of the Federal Milk  
2 Marketing Order pool, as testified to repeatedly by this  
3 witness, and she's stating that the formula for the  
4 Class I base skim milk price should be set at a certain  
5 level in order to draw all of these processors into the  
6 pool. And I want to walk her through why I don't think  
7 that is the purpose of FMMOs, which means the formula  
8 should not be as suggested by NMPF.

9 MS. HANCOCK: Convincing this witness what the  
10 purpose is or is not doesn't affect or change any of the  
11 testimony that she's here to offer.

12 MS. VULIN: I guess I'm not attempting to convince  
13 her, but maybe flesh out the holes in her testimony on  
14 that point.

15 THE COURT: Yeah. I mean, I think you are trying  
16 to undercut her reliance on that. She's testifying as to  
17 risk management and what the purposes are. The witness  
18 keeps answering, so --

19 MS. HANCOCK: Well, that she answers is not --  
20 doesn't mean that it is within the scope of her testimony.

21 THE COURT: Well, she has testified -- I mean, she  
22 has testified as to the purpose of the --

23 MS. HANCOCK: I would just like us to make some  
24 progress.

25 THE COURT: Well --

26 MS. VULIN: I'm making progress, I thought, but it  
27 might not be progress for all involved.

28 THE COURT: All right. Let's keep going for a



1 while, see where we go on that, with that in mind. Try to  
2 stay -- make sure we stay within the scope of this  
3 witness' testimony and expertise.

4 BY MS. VULIN:

5 Q. Do you believe that the pools need to attract  
6 participation beyond the needs of Class I fluid milk use?

7 And I think I can state that more eloquently.

8 Do you think that the pools need to encourage  
9 participation of milk beyond the amount of milk needed to  
10 serve the Class I fluid milk market?

11 A. I'm just thinking back to what I wrote, and what I  
12 would say is, I don't think I was asked to conceive of how  
13 the pools could work, just restating what the function is  
14 according to USDA's own -- and the Congressional report  
15 that I cited, what the function is.

16 Q. Okay. So page 9 you say, "Class I milk price  
17 primacy is vital to attract milk to the pool each month."

18 Right? And what we're -- what we're talking about  
19 here is should the Class I price be above the III or IV  
20 price every month, right?

21 A. Correct.

22 Q. And I want to know, do you think that the Class I  
23 price needs to be high enough to attract milk to the pool  
24 beyond the amount of milk needed to serve the fluid milk  
25 markets?

26 A. I think what you are doing there is adding words  
27 that I did not imply in there at all.

28 Q. And I want to know your opinion in response to the



1 words I have added.

2 So you have said that you think the Class I price  
3 needs to be higher than the III or IV price, correct?

4 A. What I'm saying is, is for the proper function,  
5 the Class I price does need to be higher, otherwise two  
6 prices co-exist at the same time.

7 Q. And you said so here "proper function."

8 Is the proper function of the FMMO system to  
9 attract to the pool only the amount of milk needed to  
10 serve the fluid milk market, or do you believe the proper  
11 function is to draw in more milk than that?

12 A. So can you define for me the amount of milk needed  
13 to service the Class I market?

14 Q. So do you believe -- and I -- in your testimony,  
15 would you agree with me that one of the purposes of FMMOs  
16 is to assure a sufficient supply of milk for fluid use?

17 A. Yes.

18 Q. Okay. So that's the context in which I'm using  
19 this phrase.

20 In order for the pools to properly function, do  
21 you believe that they need to attract more milk than is  
22 necessary to ensure a sufficient supply of milk for fluid  
23 use?

24 A. So what you just said a moment ago and what you  
25 just said don't match. You are not saying the same thing.

26 Q. That's right. I'm building upon the first  
27 statement with a question following up on it.

28 So FMMOs are necessary to attract milk for fluid



1 use, correct?

2 A. That's correct. The system's designed around  
3 fluid use.

4 Q. FMMOs are not designed to attract sufficient milk  
5 for cheese, correct?

6 A. That is not part of their stated objective.

7 Q. And so in order for the FMMO system to function as  
8 intended, to attract a sufficient supply of milk for fluid  
9 use, do you believe the Class I price needs to be set at a  
10 level that would attract more milk to the pool than is  
11 necessary for fluid use?

12 A. I don't think you are asking your question  
13 correctly, or I don't understand what you are saying.

14 So what I had said is, Class I has to be the  
15 highest price in order to attract milk from surplus to  
16 deficit regions. That it does.

17 So if you are assuming that all Federal Order  
18 systems are self-sufficient, you might want to take a look  
19 at a few of those orders that are -- that are deficit milk  
20 pretty routinely.

21 So you actually have to signal to the system,  
22 please pull the milk in from either the Class IV or the  
23 Class III system, and pull it in because I need it for  
24 bottling. And when I don't need it -- it needs to go  
25 away.

26 So when you are saying attract milk to service the  
27 fluid milk market, it really depends on the milk market  
28 and how the rest of the system provides that -- that



1 balancing function, that ability to surge and pull that  
2 milk back.

3 Q. Are you talking temporally or geographically?

4 A. Both.

5 Q. Okay. So let's start with geographically.

6 You'd would agree with me that the base Class I  
7 skim formula is the same across all orders across the  
8 entire country, correct?

9 A. Correct. Our prices are nationwide with exception  
10 to the Class I differential.

11 Q. And so the base Class I skim price is the same in  
12 Florida as it is in Wisconsin, correct?

13 A. Yes.

14 Q. And so raising the base Class I skim price in  
15 Florida and Wisconsin at the same rate is not going to  
16 attract milk from Wisconsin to Florida, correct?

17 A. So if you've ever tried to move milk from  
18 Wisconsin to Florida, that's not -- that's not what we're  
19 talking about.

20 What we're talking about -- so you are basically  
21 talking about two markets that may compete, so there may  
22 be cheese plants in Wisconsin that want that milk and may  
23 or may not participate in the order. It's up to them.

24 But if Florida says, I have got schools going back  
25 in, I need milk, and that Class I price is at the same  
26 level as Class III and IV, why would I put milk on a  
27 10-hour drive to Florida when I can run it through my own  
28 facility?





1           So that's where all of these different pieces of  
2 this system, even though devised years ago, they actually  
3 function quite well. Surprisingly well for a system that  
4 has changed.

5           But that piece of it that says, hey, hey, hey, I  
6 need that milk today, it causes all of that, in the system  
7 to go into motion, to move, as we say, bump that milk down  
8 to, you know, Winter Haven, Florida, because I happen to  
9 know there's a plant there, but down to Florida so that  
10 they can supply that bottled milk market.

11           I can tell you personally, I remember there was a  
12 day when I was sitting at a co-op and we were getting  
13 better pricing in the international market than our own  
14 bottling plants. And the cross thought -- you know, it  
15 crossed your mind for a moment to say, why would I give my  
16 milk to the bottling plant? I can make more money by  
17 shipping it overseas.

18           But it's because of the structure of that system  
19 that said, ah, you're here, but we're going to adjust  
20 these prices. That's what pulled that milk back in to  
21 ensure that the system had the sufficient milk that it  
22 needed.

23           But I think your definition of drawing milk in,  
24 this is a massive network that has to move milk around in  
25 order to supply it because of regional and seasonal  
26 differences.

27           And I am aware of how far that milk moves  
28 routinely in order to get that done. It does take a big,



1 you know, waving of the hands, hey, please, you know, send  
2 it this way.

3 Q. So then how can adopting the higher-of move milk  
4 to the right place if it's as complicated as you say?

5 A. Because when the price -- we all react -- the  
6 market reacts to price signals, okay? If Class III is 18  
7 and we say, okay, today, you know, that's the highest  
8 price, Class IV is 14, and we say, all right, the Class I  
9 is the higher-of those two prices, when we look at it and  
10 you say, well, I can run \$14 milk through my plant or I  
11 can move it to the bottler that's going to pay 18, you  
12 know, in addition, ignoring some of the other factors, you  
13 would -- the economics would say you move the milk.

14 Q. But why would you move it geographically if the  
15 higher-of is in place in both regions?

16 A. Geographically. I think because you're -- you're  
17 simplifying down to just one small piece of this. You  
18 know, then you have got -- you have got the Class I  
19 differentials. You have got the Class I base.  
20 Potentially when markets get tight like right now, you may  
21 have over-order premiums. All sorts of things come into  
22 play at that point.

23 Q. Okay. But you -- but I'm talking about your  
24 testimony. On page 6 you say, "The average-of formula is  
25 incapable of conveying current information about the  
26 market to facilitate the movement of milk from surplus  
27 regions to deficit regions, and that's why the higher-of  
28 should be adopted instead."



1           A.     The average-of is communicating the average of the  
2     two, which may or may not better the manufacturing value  
3     of that milk.  So why would I move milk from a  
4     manufacturing plant if I can achieve the same value in my  
5     plant versus shipping it to a bottling plant?

6           Q.     But isn't it true that the higher-of does no  
7     better at moving product geographically than the  
8     average-of?

9           A.     I'm not sure.  I think I've just spent a bit of  
10    time saying that that's actually not the case.

11          Q.     That is not what I understood your answers to be.

12          A.     So if we look at it, the concept -- this whole  
13    system was designed, remember, almost a hundred years ago,  
14    when 75% of the milk went into a bottle, and the entire  
15    system is designed around that.

16                 If you are asking about system redesign, that is  
17    not something I looked at because that's not what I was  
18    asked about.  Okay?  Which it sounds like you might be  
19    asking about that.

20                 But if I was looking at it saying, you are to  
21    support the fluid milk market, and these plants over here  
22    are designed somewhat to surge specifically, you know,  
23    powder plants are the easiest to explain, they are  
24    designed to take the surge when there's not enough milk --  
25    or when milk isn't needed, and they push the milk back  
26    into the system when it is called for.

27          Q.     And you're saying that the higher-of does a better  
28    job at that than the average-of?



1 A. Yes.

2 Q. And the reason is because the higher-of would set  
3 a higher price than the average-of?

4 A. It would set the -- it would establish the price  
5 for Class I -- the Class I base based on the higher-of the  
6 two manufacturing classes. That's what I'm saying.

7 THE COURT: I think she agrees. I'm confused.

8 Did you ever get an answer to your first question?

9 MS. VULIN: I don't think I did.

10 THE COURT: I don't think -- you do say that it --  
11 you know, "Class I milk primacy is vital to attract milk  
12 to the pool each month."

13 She asked -- when you say pool, do you mean just  
14 the fluid milk needs?

15 And then I didn't -- I didn't hear an answer to  
16 that. I don't think you are talking about -- I would read  
17 that, and say of course, it's fluid milk needs. That's  
18 what the pool is, right?

19 THE WITNESS: Okay. Part of the world of dairy is  
20 it's very complicated.

21 MS. VULIN: I think we all -- no objection from  
22 this room.

23 THE WITNESS: We're borderline rocket scientists.

24 THE COURT: I'm coming out of here thinking it is  
25 incomprehensible. I don't think that's a fact. Not  
26 with -- with smart people like you and Ms. Vulin and  
27 Ms. Hancock explaining this to me.

28 So -- okay. I mean, you said that, what you said.



1 Anyway we got to have a good price here to attract milk.  
2 You don't say sufficient milk. You say it's vital to  
3 attract milk to the pool.

4 Now I read that to say, okay, we need milk in that  
5 pool. That's kind of a high enough price to serve all  
6 the, what, fluid milk needs?

7 THE WITNESS: So I think if you were look at --  
8 yes. So, yes.

9 But I think if you were to look at the rest of  
10 this, what I'm also saying is that the system does not  
11 function properly when two prices coexist at the same  
12 time. That wasn't something that was conceived of.

13 The idea was each of these little units of Federal  
14 Orders that we have is supposed to have a uniform price  
15 for all the -- for all the producers. As soon as the --  
16 you know, when we start looking at that Class I price  
17 dropping -- which it can fall behind even under the  
18 higher-of, I have acknowledged that from time to time, we  
19 understand that to be the case.

20 But the issue that you begin to run into with  
21 that, is that when you have perpetual depooling, two  
22 prices co-exist in a system that was designed to have one  
23 price. And that's what I'm saying is, is when those two  
24 prices coexist for long periods of time, because the  
25 average-of does not necessarily transmit the current  
26 market conditions -- because keep in mind, it's not just  
27 the average-of, it's the plus \$0.74.

28 And that historic reference to that number is



1 transmitting into today's market, not only is it saying, I  
2 have got an average price less than the higher price, but  
3 that \$0.74 is saying, these were the market conditions  
4 from 2000 until, I believe it was August of 2017, and  
5 we're imposing that on the current market, which may or  
6 may not have any relevance. And what I would argue is, I  
7 don't think it does, because what created that \$0.74, at  
8 that time, doesn't exist today.

9 BY MS. VULIN:

10 Q. So you are saying that the pools have two goals:  
11 One, ensure a sufficient supply of fluid milk; and 2,  
12 ensure we don't have parallel pricing systems going within  
13 an order?

14 A. The concept of the pool was to have a uniform  
15 price. That's what they -- that's -- if you look at it  
16 all of this, it is to have a uniform price that doesn't --  
17 and that is for people who are participating in the fluid  
18 milk market.

19 If I am a cheese plant and I manufacture cheese,  
20 and I never touch a bottling plant, I am outside the  
21 order. That is not with -- of whom I speak. It is the  
22 folks within the system that can move in and out of the  
23 system because the bottler can't. The Class I handlers  
24 can't. They have to be in. But others, II, III, and IV  
25 processors, can choose to be in or out, and it's, do I  
26 take the uniform price or the other price that may exist.

27 Q. And if the market signals are being sent to cheese  
28 is that your product is more valuable outside the FMMO



1 system, you agree with me those market signals should be  
2 followed?

3 A. No. What I'm saying is, is they don't qualify to  
4 participate. You have to service the order. And that's  
5 really what we're talking about is, the milk that  
6 qualifies because it participates in the system. I'm not  
7 talking about milk that doesn't participate, because we  
8 have got a decent amount of milk that sits out the -- out  
9 of the system constantly. I'm not saying go get that milk  
10 and bring it in because that, as I said, would be a system  
11 redesign, and that's not what I was asked to talk about.  
12 I was asked to talk about the existing system.

13 And under the existing system, the rules stipulate  
14 that you have to service the Class I market in order to  
15 participate. It varies Federal Order system to Federal  
16 Order system, but that is something that's implied,  
17 because I was asked to talk about the existing system, not  
18 a concept that you have constructed.

19 Q. Are you aware of any orders where a Class I  
20 processor has asked to increase performance standards to  
21 pull more participants into the system?

22 A. I'm not personally aware of that.

23 Q. Okay. So regardless of whether or not the  
24 higher-of, or the average-of, or the average-of plus some  
25 adjuster, regardless of whichever one is best at  
26 attracting milk for Class I needs, it appears as though we  
27 don't actually need to attract any milk for Class I needs,  
28 correct?



1 A. I don't know that that is correct.

2 Q. Why not?

3 A. Well, because we have deficit markets. I don't  
4 know if you have spent any time in the Southeast. A lot  
5 of milk moves from Pennsylvania, once in awhile Wisconsin,  
6 Texas. All of that milk gets pulled into that market.

7 Q. Other than the Southeast, are you aware of any  
8 region in the country where today we have an insufficient  
9 supply of milk to meet fluid needs?

10 A. Insufficient need to meet fluid needs. No,  
11 because -- because that is not a -- okay.

12 One of the issues that the -- here -- here -- one  
13 of the issues that the Southeast has today is it doesn't  
14 have sufficient balancing capacity, and that is why it's  
15 difficult to attract milk to that market.

16 The reason you don't have problems, and whatever  
17 everyone is taking for granted, in the Pacific Northwest,  
18 California, Arizona, the Upper Midwest, wherever you want  
19 to go, it's because of this system, and it allows and has  
20 the support of those manufacturing plants. They balance  
21 the system. You are overlooking that.

22 You are assuming that if every cheese plant and  
23 every powder plant left the system tomorrow, that those  
24 bottlers would have a sufficient supply of milk, and I'm  
25 telling you, go look at the Southeast, go look at Order 5,  
26 6, and 7, and you would see otherwise. That's my personal  
27 experience.

28 So don't get it confused that you can say that the





1 Upper Midwest has more than enough milk and not a bottler  
2 is ever going to need milk. That's not the case. They  
3 have enough milk because of the Federal Order system.

4 Q. They have enough milk because the Federal Order  
5 system in place today incentivizes them in a way that  
6 ensures their fluid milk needs met in those regions,  
7 correct?

8 A. Not as it exists today. It functioned better, I  
9 would argue, under the higher-of than it does under the  
10 average-of plus \$0.74 because the data was realtime, the  
11 communication was more effective.

12 Q. Okay. And you have talked -- so -- but, again, in  
13 the last four years, when the average-of plus \$0.74 has  
14 been in place, you are not aware of any Class I processor  
15 asking to raise performance standards in order to attract  
16 more milk?

17 A. Under those conditions, no.

18 Q. Okay. And then this issue of realtime market  
19 signals. What are the market signals that you think need  
20 to be transmitted in realtime?

21 A. Price is first and foremost one of those market  
22 signals that needs to be transmitted. Price is typically  
23 a reflection of what's happening in the market. So,  
24 demand, typically, what we would expect to see, if you  
25 think about the economics, supply/demand curve, right? As  
26 demand increases, price increases along with it, in order  
27 to, A, encourage more supply to come into the system. And  
28 what we run into oftentimes is, we aren't transmitting



1 that signal properly, and as a result, it takes a while.

2 And that actually, from a processor perspective,  
3 is problematic, because when those signals get crossed and  
4 we don't transmit price information accurately and timely,  
5 we get lags. Think about last year. Prices were hitting  
6 all time highs in some of these markets. We saw  
7 extremely, historically high milk prices. And yet, our  
8 milk production was slow to respond.

9 Q. And my -- so are you talking about sending market  
10 signals to farmers about producing more or less milk?

11 A. Typically that's0, yes. That is exactly what we  
12 we'd be looking at.

13 Q. And how quickly can farmers respond to market  
14 signals to increase milk production or decrease milk  
15 product ion?

16 A. That depends on the market conditions, the price  
17 signal that's being sent, the availability of animals, all  
18 sorts of different things.

19 Q. So how -- what -- how, on average, if a farmer is  
20 getting a signal that more milk is needed, how do they  
21 address that?

22 A. Like I said, it depends. It depends on the equity  
23 and profitability the farm has. It depends on if the kids  
24 are going to come back to the farm and work on it. Like,  
25 there's so many things that that depends on. Obviously,  
26 price is something. We can typically see when price  
27 rises, we tend to see a commiserate response in milk  
28 production eventually.



1 Q. And I'm trying to track though your statement that  
2 market signals need to be transmitted immediately, and I  
3 want to know what do you want farmers to do immediately in  
4 response to those market signals. Why do you think they  
5 need to be transmitted?

6 A. So what we're looking at here is the \$0.74. If we  
7 take a look at what was happening with that number, we're  
8 pushing that into the market every single month, \$0.74,  
9 \$0.74. It's the average-of plus \$0.74.

10 And that is skewing some of the information in our  
11 markets, because what ends up happening is that is  
12 transmitting the relationship between the Class III and  
13 the -- III and Class IV milk price from 2000 to 2017.

14 And I can tell you the market conditions that we  
15 operate under today and the market conditions that we're  
16 likely to operate under the next five years don't  
17 necessarily reflect that history that we have seen, and  
18 that is creating noise in our system because it's not --  
19 it's not realtime. And it's -- I -- and I have  
20 historically been somewhat critical of the USDA with some  
21 of the lags that we have in our system. But you have to  
22 understand, there's a certain amount of time that we have  
23 to transmit it.

24 And honestly, versus anybody else, I'll take the  
25 USDA any day. Because if you have to rely on what comes  
26 out of the European Union, or China, or anybody else, the  
27 USDA does a bang-up job, and it's pretty timely.

28 The issue is, is we're telling the Class I market



1 and how we supply that market that, hey, what happened  
2 years ago is relevant today, and that's what I'm saying it  
3 is not.

4 Q. So you would agree with me then --

5 MS. HANCOCK: Your Honor, we're after 5:00.

6 THE COURT: Yeah, we're really getting after 5:00.  
7 I don't -- not sure what to do here. I mean, we're going  
8 to have to have this witness come back.

9 MS. HANCOCK: She's not going to be back on  
10 Monday. We can get her back some time after Monday next  
11 week.

12 THE COURT: Yeah, I think -- I think we better do  
13 that, right? Various of us have planes to catch and all  
14 that, and maybe, we can spend some more time on some of  
15 these things. I don't know.

16 So what do we -- we can move exhibits into  
17 evidence and all that, I think, when we come back.  
18 Ms. Vulin can continue.

19 MS. HANCOCK: We don't really have any objection  
20 to any of them. We might as well get that completed now.

21 THE COURT: Sure. Well, okay. Interesting to  
22 hear you don't have any objection, so that's always --

23 MS. HANCOCK: They are my exhibits, so --

24 THE COURT: That's not the only one, he --

25 MS. HANCOCK: Oh, the article? I mean, it meets  
26 all the other standards that we have applied, so I'm fine  
27 with it.

28 THE COURT: Well, I don't know it -- it's -- is it



1 coming in as a learned treatise? What is it coming in as?  
2 He's a doctoral candidate, and the other guys aren't here  
3 to cross-examine. What's the exception to the hearsay  
4 rule we're using for this?

5 MS. HANCOCK: I didn't know we were applying the  
6 hearsay rule. I mean, she talked about it. I thought  
7 that was the standard that we were using.

8 THE COURT: No.

9 MS. VULIN: She's also been qualified as an  
10 expert, so she can rely upon learned treatise.

11 MS. HANCOCK: She didn't rely on it.

12 (Off-the-record discussion took place.)

13 THE COURT: Back on the record. All right.

14 Any objection to Exhibit 238?

15 238 is admitted into the record.

16 (Exhibit Number 238 was received into  
17 evidence.)

18 THE COURT: Any objection to 239?

19 Exhibit 239 is made a part of this record.

20 (Exhibit Number 239 was received into  
21 evidence.)

22 THE COURT: Any objection to Exhibit 240?

23 Hearing none, Exhibit 240 is made a part of the  
24 record.

25 (Exhibit Number 240 was received into  
26 evidence.)

27 THE COURT: Any objection to Exhibit 241?

28 Hearing none, Exhibit 241 is made a part of the



1 hearing record.

2 (Exhibit Number 241 was received into  
3 evidence.)

4 THE COURT: Any objection to Exhibit 242?

5 Can't see how there could be frankly. Exhibit 242  
6 is admitted into the record.

7 (Exhibit Number 242 was received into  
8 evidence.)

9 THE COURT: Any objection to 243?

10 Seeing no objection, Exhibit 243 is entered into  
11 the record.

12 (Exhibit Number 243 was received into  
13 evidence.)

14 THE COURT: 244? That's not offered for admission  
15 as so far. Very good.

16 Anything else we need to cover on the record or  
17 off the record?

18 Off the record.

19 (Whereupon, the proceedings concluded.)

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1 STATE OF CALIFORNIA )  
 ) SS  
 2 COUNTY OF FRESNO )

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

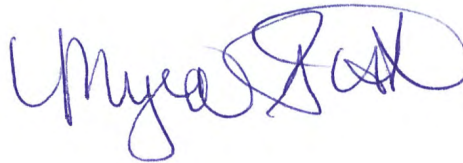
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10 DATED: November 8, 2023

11 FRESNO, CALIFORNIA

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16 MYRA A. PISH, RPR CSR  
 17 Certificate No. 11613

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