

**CERTIFIED
TRANSCRIPT**

NATIONAL FEDERAL MILK MARKETING ORDER
PRICING FORMULA HEARING

DOCKET NO.: 23-J-0067; AMS-DA-23-0031

Before the Honorable Jill Clifton, Judge

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Carmel, Indiana
September 27, 2023

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Reported by:

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20 Dr. Marin Bozic

21 FOR INTERNATIONAL DAIRY FOODS ASSOCIATION:

22 Steve Rosenbaum

23 FOR LAMERS DAIRY:

24 Mark Lamers

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



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1 WEDNESDAY, SEPTEMBER 27, 2023 - - MORNING SESSION

2 THE COURT: Let's go on record.

3 We're back on record. It is September 27th, 2023.
4 It is Wednesday. It is approximately 8:00 in the morning.

5 This is the continuation of the hearing that's
6 been going on longer than a month.

7 I'd like just a word or two from the Agricultural
8 Marketing Service before we begin with the first witness.

9 MS. TAYLOR: Good morning, your Honor. This
10 morning we're going to start with Mr. Umhoefer from the
11 Wisconsin Cheese Makers Association.

12 Then we had a request that the USDA witness put
13 on -- we had two additional data requests that came in,
14 and we have that data ready, so we'll put our USDA witness
15 on after that.

16 And then I think we have a witness from Edge that
17 needs to go today, first, and then we'll move on to our
18 Milk Innovation Group witnesses.

19 At some point there will be a dairy farmer here
20 and that person can go on when he or she arrives.

21 THE COURT: And I believe yesterday they told us
22 that would be afternoon.

23 MS. TAYLOR: Yeah.

24 THE COURT: Good. Excellent.

25 Now, the witness maybe seated in the witness
26 chair.

27 Please state and spell your name.

28 THE WITNESS: Sure. It's John Umhoefer, J-O-H-N,



1 and U-M-H-O-E-F-E-R.

2 THE COURT: Thank you.

3 Have you previously testified in this proceeding?

4 THE WITNESS: No.

5 THE COURT: I'd like to swear you in.

6 JOHN UMHOEFER,

7 Being first duly sworn, was examined and

8 testified as follows:

9 THE COURT: Thank you.

10 MR ROSENBAUM: Good morning, your Honor. Steve
11 Rosenbaum, International Dairy Foods Association.

12 DIRECT EXAMINATION

13 BY MR. ROSENBAUM:

14 Q. Mr. Umhoefer, we have placed before you two
15 documents, which is -- we have provided a copy to your
16 Honor and distributed copies to the audience.

17 The first one is Exhibit WCMA-1. Is that your
18 written statement regarding the Class III and Class IV
19 formula factors?

20 A. Yes, it is.

21 Q. And we have also placed before you a document
22 entitled Exhibit WCMA-4.

23 Is that your testimony regarding Hearing
24 Proposals 4 and 6?

25 A. Yes, it is.

26 MR. ROSENBAUM: Your Honor, I would ask that the
27 document exhibit WCMA-1 be marked with the next Hearing
28 Exhibit number, which I believe is 258.



1 THE COURT: Correct, 258.

2 (Exhibit Number 258 was marked for
3 identification.)

4 MR. ROSENBAUM: And I would ask your Honor that
5 the document marked as Exhibit WCMA-4 be marked as Hearing
6 Exhibit 259.

7 THE COURT: 259, correct.

8 (Exhibit Number 259 was marked for
9 identification.)

10 THE COURT: And Mr. Umhoefer, like "hey"?

11 THE WITNESS: Umhoefer we say.

12 THE COURT: I got too German. Umhoefer.

13 THE WITNESS: Yes.

14 THE COURT: Okay. Thank you.

15 BY MR. ROSENBAUM:

16 Q. Could you please read your testimony into the
17 record?

18 A. Yes.

19 My name is John Umhoefer, and I'm here today on
20 behalf of Wisconsin Cheese Makers Association in support
21 of Proposal 8, which seeks to update current Make
22 Allowances with a four-year phase-in implementation
23 schedule.

24 While Proposal 8 was developed in conjunction with
25 the International Dairy Foods Association, which has
26 submitted the identical proposal as its own Proposal 9,
27 Proposal 8 was subject to the Wisconsin Cheese Makers
28 Association's independent review and approval process.



1 I serve as executive director of the Wisconsin
2 Cheese Makers Association. In that role, I oversee a
3 committee of manufacturing members who discussed the
4 recommended changes for Federal Milk Marketing Orders
5 during meetings, held throughout 2021, 2022, and into
6 2023.

7 The Board of Directors of WCMA, including 17 dairy
8 manufacturers, two dairy converters or processors, and two
9 industry suppliers, accepted recommendations from this
10 committee and voted on association activities related to
11 this rulemaking and hearing.

12 WCMA as a whole includes 81 dairy manufacturers,
13 cooperatives -- excuse me -- cooperative and private
14 companies that process milk into fresh dairy products at
15 249 locations. These member dairy manufacturers have
16 headquarters in 16 states and manufacturing sites in 32
17 states. These manufacturers, as well as companies that
18 further process dairy products or sell goods or services
19 to the industry, more than 600 in total, voluntarily join
20 the association via annual payment of dues.

21 In March 28th, 2023 -- in a petition, March 28th,
22 2023, supplemented by a letter dated April 14th, 2023,
23 WCMA requested that USDA hold a hearing to amend all Make
24 Allowances in Federal Milk Marketing Orders, amend --
25 administered by USDA dairy programs. We pointed out that
26 accurate and up-to-date Make Allowances are absolutely
27 critical to a properly functioning FMMO program, given
28 that for Class III (cheese) and Class IV (butter and



1 nonfat dry milk) products, a manufacturer is legally
2 required by the FMMO to pay farmers supplying it milk the
3 money the manufacturer receives from selling its finished
4 products to customers (as determined by monthly audited
5 surveys of actual finished product prices for the core
6 Class III and IV products), minus the cost incurred in
7 making those products as set forth in the FMMO
8 regulations. And this is also known as the Make
9 Allowance.

10 Thus, it is critical that Make Allowances reflect
11 the accurate current cost of making these products. Yet
12 the current Make Allowances were set in 2007 and 2008,
13 based upon 2005 and '6 cost data. Actual manufacturing
14 and other costs considered in Make Allowances have risen
15 dramatically during the past 16 years since Make
16 Allowances were last revised. FMMO provisions have
17 effectively stopped manufacturers from covering these
18 higher costs through Make Allowances.

19 We pointed out that this is a major problem for
20 dairy manufacturers like plant operator members of WCMA
21 where the current Make Allowances are insufficient to
22 cover plant costs. These everyday losses and significant
23 cost increases are impossible to sustain. Some
24 farmer-owner cooperatives routinely return dairy farmer
25 payments with significant deductions from FMMO uniform
26 minimum prices, and proprietary members with WCMA are
27 absorbing losses, attempting to sell specialty cheeses at
28 prices designed to mitigate losses and/or are failing to



1 invest in plants and facilities. This is not sustainable
2 for the plants, nor for the dairy farmers who depend on
3 those plants as outlets for their raw milk.

4 WCMA's proposal asked that USDA take the requisite
5 regulatory action and amend the manufacturing allowances
6 for Class III and Class IV product formulas, as enumerated
7 in the 7 CFR 1000.50, in order to reflect the substantial
8 increase in-plant manufacturing costs since Make
9 Allowances were last revised in 2008.

10 THE COURT: Mr. Umhoefer, I just want to make sure
11 it's clear what regulatory section you cited.

12 Could you just read that cite again?

13 THE WITNESS: You bet. It's 7 CFR 1000.50.

14 Thank you.

15 THE COURT: Thank you.

16 THE WITNESS: WCMA indicated that the amendment
17 should be based on record evidence that will include --
18 that has already included a new cost study from Dr. Mark
19 Stephenson and a study by Dr. William Schiek.

20 Dr. Stevenson has completed his study, which is
21 entered in this hearing as IDFA Exhibit 1. This 2023
22 Stephenson survey is especially robust, relying on cost
23 data from 18 plants, cheese plants, nine dry whey plants,
24 15 nonfat dry milk plants, and 13 butter plants.

25 Dr. Stephenson's determination of the cost of
26 manufacture are comparable to -- yes -- are comparable to
27 the cost study by Dr. Schiek, who projected 2022 costs
28 based on California Department of Food and Agriculture



1 audited cost surveys performed in 2016 and changes in
2 relevant cost factors since that time. Dr. Schiek's study
3 is entered in this hearing as IDFA Exhibit 2.

4 On June 20, 2023, based on these datasets from
5 Dr. Stephenson and Dr. Schiek, WCMA asked the Secretary to
6 consider for adoption Make Allowances equal to a simple
7 average of the costs of manufacture as determined by the
8 2023 Stephenson study and the 2022 Schiek study.

9 Because Make Allowances have not been regularly
10 updated during the last 16 years, this proposal seeks to
11 adopt these new Make Allowances using a phased in -- using
12 a phase-in period to spread the impact of these Make
13 Allowance changes across a reasonable amount of time,
14 rather than installing these proposed up-to-date cost of
15 production allowances immediately in a final hearing
16 decision.

17 As the chart in my testimony indicates below, and
18 as our proposed language changes in this testimony
19 detailed below, these changes implement half of the
20 increase in each Make Allowance in the first year of
21 implementation and then implement the remaining 50% of the
22 increase spread across three equal steps in the subsequent
23 three years.

24 It was only after considerable debate that WCMA's
25 Board of Directors agreed to support this staggered
26 implementation. The current cost of manufacture would
27 come into effect in year four, and WCMA could have
28 requested the current cost be implemented and fully and



1 immediately in year one. The proposal to delay full
2 implementation for four years is intended to be an
3 accommodation to our WCMA members' dairy farmer suppliers.

4 However, I now understand that some parties at
5 this hearing are proposing a one-year or even longer delay
6 before any of the proposed Federal Order amendments are
7 implemented. WCMA strongly opposes any such delay given
8 the current Make Allowances are already so far out of
9 date. Such a delay would mean that WCMA members would
10 continue for an entire additional year to suffer the
11 financial stress currently being inflicted by today's
12 out-of-date Make Allowances. If USDA were for some reason
13 to agree to such a delay in implementation, as noted --
14 which as noted, WCMA strongly opposes -- then the year
15 four Make Allowances set forth below should be implemented
16 in year one.

17 In other words, if there is to be a one-year delay
18 in implementation, there should no longer be a staggered
19 implementation of the new Make Allowances.

20 BY MR. ROSENBAUM:

21 Q. I don't think it's necessary that you read into
22 the record the actual numbers. They are in the written
23 document.

24 A. Sure.

25 Q. And the same with the proposed order language on
26 page 4, you don't need to read that into the record since
27 the document will come in.

28 A. There are two closing paragraphs.



1 Q. If you could just go to your two closing
2 paragraphs, that would be great.

3 A. Thank you, sir.

4 So going to page 5, a third to the last paragraph
5 from the bottom, counting up one, two, three.

6 We have a proposal for a new section "r" to
7 subsection 1000.50, to provide authority for these
8 proposed Make Allowances to be supplanted by new
9 regulations that could create a new program of audited
10 dairy product cost studies executed by USDA staff of all
11 manufacturers of products used to set the Class III and
12 Class IV prices and then adopt Make Allowances from that
13 audit program.

14 WCMA fully supports the concept of USDA-led dairy
15 product cost studies executed biannually or triannually so
16 that Make Allowances can be updated on a regular basis.
17 Today's 16-year gap in updating Make Allowances in
18 Class III and IV formulas proves that a regular agency-led
19 system is needed to revisit milk price formulas.

20 My two testifiers noted have already spoken, so...

21 Q. Steve Rosenbaum.

22 Just to clarify, at the time you prepared this
23 testimony, WCMA members had not yet testified, correct?

24 A. Correct.

25 Q. But they have now testified, correct?

26 A. Yes, sir.

27 Q. So your last paragraph on page 5 that talks about
28 what WCMA and members would do, that's actually now



1 happened, correct?

2 A. That's already happened. Yes, sir.

3 Q. Okay. Thank you.

4 Could you now proceed to read your other
5 statement?

6 A. Yes, sir.

7 I think I will skip the first paragraph which is
8 redundant with my last talk. And I'll start at the second
9 paragraph.

10 At the request of the executive committee of the
11 WCMA, Wisconsin Cheese Makers Association, I seek to share
12 with you the opposition of our trade association to
13 Proposal 4 and Proposal 6 in this hearing.

14 Proposal 4 would add 640-pound cheddar cheese
15 blocks to the protein price formula. Based on feedback
16 from WCMA cheese manufacturer members who produce
17 640-pound blocks, the WCMA executive committee asked that
18 I state our opposition to this proposal in our testimony.

19 Feedback from members included the concern that
20 640-pound blocks do not have a unique price discovery
21 mechanism and, thus, add no new price information. The
22 industry uses 40-pound block prices to price their 640s,
23 and that price is already used in the protein formula.

24 Members also expressed concern that the
25 development of a 640-pound cash market would create
26 another thinly traded dairy product market with few buyers
27 and sellers. The kind of price volatility and divergence
28 seen with the use of the cheddar barrel and block price



1 series would be made even more complex and frustrating
2 with the addition of yet another price series.

3 Members also noted that a cash market for 640s,
4 would not be attractive to non-direct end users, keeping
5 the stable of buyers in a cash market pit very small.
6 Relatedly, the return of wooden or plastic structural
7 packaging would deter potential buyers. For these
8 reasons, our association opposes adoption of Proposal 4.

9 Proposal 6 would add mozzarella cheese to the
10 protein price formula. Based on feedback from WCMA cheese
11 manufacturer members who produce mozzarella, the WCMA
12 executive committee asked that I note our opposition to
13 this proposal in our testimony.

14 Feedback from members included the concern that
15 mozzarella cheese is produced in dozens, if not hundreds,
16 of shapes, sizes, weights, moistures, fats, flavor
17 profiles, and functional profiles. Members uniformly note
18 that there is no standard mozzarella cheese that could be
19 surveyed by the government or created as a cash market for
20 price discovery. The wide variety of forms and
21 functionality of each unique make of mozzarella cannot be
22 overstated. Individual manufacturers report producing
23 multiple mozzarella types throughout the year, based on
24 each customer's unique needs. For these reasons, our
25 association opposes the adoption of Proposal 6.

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

28 THE COURT: Thank you, Mr. Rosenbaum.



1 CROSS-EXAMINATION

2 BY MS. HANCOCK:

3 Q. Good morning, Mr. Umhoefer. I'm Nicole Hancock
4 with National Milk.5 Let's start at Exhibit 259, the one that you just
6 read.

7 A. Sure.

8 Q. Is it accurate to say that you oppose adding
9 640-pound blocks, in part, because, I think you state in
10 here, it would be more complex and frustrating to add
11 another product to the cheese pricing?12 A. Right. I could read that sentence again if you
13 like.14 Q. Okay. I just wanted to make sure I'm
15 understanding that that was one of the basis for opposing
16 it?17 A. The kind of price volatility and divergence seen
18 with the use of the cheddar barrel and block price series
19 would be made even more complex and frustrating with the
20 addition of yet another price series.21 Q. Okay. Meaning that we already have two components
22 going into setting cheese prices, and adding another one
23 would make it more complex and frustrating to manage and
24 deal with?

25 A. Yes. That's what that is intended to mean.

26 Q. Okay. It's -- and cheese is the only product
27 that's priced with multiple products; is that fair?

28 A. I think that's correct, yes.



1 Q. Okay. And so you're just saying keeping it simple
2 makes it less complex, less frustrating, easier to use?

3 A. Right. We don't have a position on any other
4 proposals, but that was some of the feedback I got on this
5 proposal, yes.

6 Q. Okay. Let's turn to Exhibit 258.

7 A. Uh-huh.

8 Q. Wisconsin Cheese Makers, it says you have 81 dairy
9 manufacturers, cooperatives, and private companies that
10 make up your membership; is that right?

11 A. Yes.

12 Q. Can you give us a breakdown of how many are
13 manufacturers, how many are cooperatives, and how many are
14 private companies?

15 A. That's probably more like two breakdowns. I'm not
16 sure what you need there.

17 Q. I'm just wondering of the 81, how many -- do you
18 compartmentalize them in those three categories?

19 A. Well, they are all manufacturers in the 81, so you
20 mentioned that as one of the three categories. But they
21 are all manufacturers, so --

22 Q. Okay. How many are cooperatives, then?

23 A. I don't have an exact number, but there's a large
24 percentage of, say, the production in the association is
25 cooperatives.

26 Q. Okay. Based on volume of production?

27 A. Yeah. Yeah.

28 Q. And do you know what percentage of the volume of



1 production for your membership that is made comes from the
2 cooperatives?

3 A. I don't have that as a figure that I could lend
4 right now.

5 Q. Okay. Do you think it would be more than 80%?

6 A. Do I think it would be more than 80%? Off the top
7 of my head, I'd say no.

8 Q. Okay. And then you point out, the bottom of that
9 page, going into the next page, that a manufacturer is
10 legally required to pay -- by the Federal Order, to pay
11 farmers the minimum prices in the Federal Order system; is
12 that right?

13 A. If they pool their milk, yes.

14 Q. Okay. And that was the qualifier I wanted to make
15 sure we're clear on.

16 A. Okay. Sorry.

17 Q. You are just talking about --

18 A. -- that could be in there, yes.

19 Q. Yeah. Just for the pooled milk?

20 A. Yes.

21 Q. Okay. And then on that same page 2 in the third
22 paragraph there, you state that the proprietary members of
23 Wisconsin Cheese Makers Association are absorbing losses,
24 attempting to sell specialty cheeses at prices designed to
25 mitigate losses?

26 A. Uh-huh.

27 Q. I'm just wondering if you can elaborate on what
28 you mean there.



1 A. Yeah. I was thinking about that. You know, you
2 write these things a long time ago, and then you mold them
3 as time moves on. And I was thinking of Mr. Heiman's
4 testimony, which was earlier in the hearing, and he said
5 if they were only making cheddar cheese today at his
6 midsized cheese factory, they would be out of business,
7 which were his words. I do have his testimony here if you
8 want to hear that sentence.

9 So they, like others, have had to find other
10 products where they try to make more cents per pound so
11 that they can stay in business. And that's -- we see a
12 lot of that in Wisconsin, where we have a lot of members
13 that have made Wisconsin the number one specialty cheese
14 state because of the need to be competitive and paying for
15 milk and meeting the costs to stay in business.

16 Q. Okay. So instead of just making commodity
17 cheeses, they have also -- some of your members have had
18 to diversify their product portfolio to create some
19 premium cheeses that will allow them to obtain some higher
20 margin opportunities for the success of their business.

21 Is that a fair statement?

22 A. It is. And what's interesting about that is that
23 they also will say in the same breath that there's more
24 cost associated with those high-quality cheeses.

25 When they added a feta line at Nasonville Dairy,
26 for example, they had to make an entirely different cheese
27 line costing millions of dollars to make that new cheese.
28 It's packaged differently in smaller sizes, which requires



1 more machinery and more people, and it's marketed more
2 intensely because you don't do a lot of sales and
3 marketing for a 40-pound block, but you have to get in the
4 marketplace and do advertising, you know, typical -- you
5 know, whether it's newspaper, Internet, you have to tell
6 people you are making a beautiful little cheese.

7 So there are costs associated with -- even with
8 the value-added that are beyond what USDA looks for in the
9 survey. So they -- they are not a perfect panacea, these
10 specialty cheeses, but they do get a higher price per
11 pound, and you hope that your extra costs don't then wipe
12 out that gain that you try to get by making something
13 special.

14 Q. Okay. So fair to say that it's a way to diversify
15 the portfolio, but it comes at a cost as well?

16 A. I think that's fair, yes.

17 Q. And, you know, the expectation for a business is
18 that if you invest the additional cost, you hope it will
19 bring a greater return on that investment?

20 A. I think that's fair, yes.

21 Q. And generally, these premium products come with a
22 higher profit margin than what a commodity cheese would
23 bring?

24 A. That's the hope, yes, that the costs don't
25 overwhelm the attempt at getting a higher price.

26 Q. And isn't that what all businesses have to do,
27 make sure that they maximize their opportunities and look
28 for ways to diversify their businesses in order to stay



1 successful?

2 A. Yeah. But the funny thing about dairy is
3 there's -- there's a need to move milk as well. And so a
4 lot of people are making the larger formats because those
5 are then chunked by, you know, a second processor or
6 shredded and moved into foodservice. There's a lot of
7 bulk needed in the industry, a lot of bulk product that
8 moves more readily, and trucking.

9 So I guess my point is, you can't just make
10 specialty cheese in the United States. You have to -- you
11 have to have everyone be healthy, the commodity processors
12 and the specialty cheese makers.

13 Q. And do you have any members that make just
14 specialty cheeses?

15 A. Oh, sure. Sure. Absolutely.

16 Q. So sometimes there is a market for -- for
17 businesses that will just have premium specialty cheeses
18 as their business model?

19 A. I think that's fair to say, yeah.

20 Q. And you mentioned in the bottom of that paragraph,
21 Dr. Stephenson's study and then Dr. Schiek's study.

22 Did you -- did you have any involvement in
23 retaining Dr. Schiek or Dr. Stephenson to conduct the 2023
24 studies or analysis?

25 A. When you say "retaining them," like, calling them
26 up and asking them to do it, or what do you mean?

27 Q. Yeah.

28 A. I didn't call them up and ask them to do it, no.



1 Q. Were you involved in coordinating Dr. Stephenson
2 to conduct his 2023 survey in any way?

3 A. Yes. We were in talks on a regular basis with
4 IDFA staff. And they were kind of the main voice in
5 direct communication, but we were involved in those
6 conversations.

7 Q. Did you participate in compensating him for his
8 survey?

9 A. Which one, Mr. Stephenson, Dr. Stephenson? Yes.

10 Q. And Dr. Schiek, did you participate in
11 compensating him for his economic analysis?

12 A. I actually don't know if he's being compensated
13 for that. I really don't.

14 Q. Okay. So Wisconsin Cheese didn't --

15 A. True.

16 Q. -- participate --

17 A. True.

18 Q. -- financially in that?

19 A. True. True.

20 THE COURT: Wait, wait, wait. One at a time.

21 You may ask your question.

22 THE WITNESS: Sorry.

23 BY MS. HANCOCK:

24 Q. Wisconsin Cheese didn't financially participate in
25 retaining Dr. Schiek to do his analysis?

26 A. That's true.

27 Q. Okay. Did you send out any communications to your
28 membership asking them to participate in Dr. Stephenson's



1 survey?

2 A. Yes. In our newsletter we said, there's this
3 survey, and please click this link and get involved.

4 Q. Do you know what percentage of your membership
5 participated in the survey?

6 A. I have no idea because I have no idea who
7 participated in the survey.

8 Q. Okay. Did you get any feedback from your
9 membership as to whether anyone participated in the
10 survey?

11 A. Not that I recall. I -- yeah, I can't verify. I
12 don't know if someone was going to promise they would and
13 didn't or -- in fact, I do know some that probably
14 promised they would and didn't. So I don't know who
15 participated.

16 Q. We heard from Dr. Stephenson that I think it took
17 maybe four hours or more to complete it.

18 So not a light undertaking; is that fair?

19 A. I guess it is what it is.

20 Q. Did you -- did you fill out any part of
21 Dr. Stephenson's form or go through the survey yourself?

22 A. No. I don't make cheese.

23 Q. Okay. I didn't know -- you didn't assist any of
24 your membership?

25 A. No. No.

26 Q. On -- I'm on page 3 of your testimony.

27 A. Okay.

28 Q. And you -- the first full paragraph on that page



1 you have a statement that says, "Because Make Allowances
2 have not been regularly updated during the last 16 years,"
3 and then you go onto talk about how it's time to do that
4 update.

5 Do you see where I'm at there?

6 A. Yes. Yes.

7 Q. And how long have you been at Wisconsin Cheese
8 Makers Association?

9 A. I have been executive director since 1992.

10 Q. Okay. That's the year I graduated high school.

11 A. Are we done?

12 Q. Almost. So you were at -- were you in the same
13 role in 2000 -- or 2007?

14 A. Yes. Yes.

15 Q. As the executive director of Wisconsin Cheese
16 Makers?

17 A. Correct. In 2000? Yes.

18 Q. And -- well, so then in 2000, Make Allowances were
19 last updated in --

20 A. Yes.

21 Q. -- 2007 and 2008?

22 A. Yes.

23 THE COURT: Mr. Umhoefer, pause.

24 THE WITNESS: Sorry.

25 THE COURT: Thank you.

26 THE WITNESS: Sorry.

27 BY MS. HANCOCK:

28 Q. It's a very unnatural way to have a conversation.



1 Sorry.

2 Okay. And -- and did you participate at the time
3 in the hearing that allowed the Make Allowances to be
4 changed at that time?

5 A. That's an interesting question. I did not
6 testify. I may have attended.

7 Q. Okay. Did you participate in any other way in any
8 of the studies or on behalf of your membership?

9 A. You are taxing my memory, honestly. I may have in
10 2006 asked someone to take the Stephenson survey, but
11 honestly, I don't remember.

12 Q. When did you first start hearing from your
13 membership that they felt that Make Allowances were not
14 sufficient to cover the cost of manufacturing their
15 products?

16 A. I don't remember when I first heard it. But I
17 have seen people make changes. I have seen companies go
18 out of business. I have seen companies consolidate. I
19 have seen companies move into -- you know, try to
20 diversify their product ranges. But all of that's a web
21 of years; some people earlier, some people later. I can't
22 tell when you I first heard that sort of thought.

23 Q. When did you start working on a proposal to ask
24 for Make Allowances to be updated?

25 A. We started holding meetings in 2021 to discuss
26 Federal Order reform, you might say.

27 Q. And you go on on that same page on page 3 to talk
28 about it was only after considerable debate that your



1 Board of Directors agreed to support this staggered
2 implementation?

3 A. That is true. It was an interesting discussion.

4 Q. Meaning there's a wide variety of opinions and
5 beliefs?

6 A. Yes. You know, as -- as -- if you do the math, I
7 don't know if it's math, but people like my members that
8 presented earlier this week are often presenting 2022
9 data. It's the last finished year that -- you saw that
10 data from Mr. Heiman, for example. And as he has pointed
11 out to me, even this week, by this staggered plan he
12 wouldn't see what would be, you know, a proposed cheese
13 Make Allowance here of \$0.28, \$0.284 in our proposal,
14 until 2028. So he has -- in 2022 he told you he needed I
15 believe \$0.32 to make cheddar successfully, and he won't
16 see even \$0.28 until 2028.

17 So that's a bit vexing for someone who is already
18 way behind on costs, can't cover costs on cheddar.
19 They -- there was some -- quite a bit of discussion about
20 how they will have to keep waiting and waiting and waiting
21 to get to a level that will be \$0.28, if this was
22 accepted, in 2028. And what will their costs be in 2028?
23 He assumed that they will, like inflation, continue to
24 grow.

25 Q. Okay. And continue to grow for everyone
26 throughout -- throughout the whole supply of milk; is that
27 fair?

28 A. Yeah, I think that's fair.



1 Q. And so the debate that you had at your board from
2 2021 until your vote board approved it, was that in 2023?

3 A. Yes. I believe it had to be there early part of
4 2023, just meeting the deadlines of USDA in this process.

5 Q. So throughout the course of that debate, the
6 debate was around whether it would be full -- a request
7 for the full amount now or whether it would be a staggered
8 implementation?

9 A. That was a decision they talked about and had to
10 make. Yes. That's true.

11 Q. Okay. And did -- did the board debate
12 Dr. Stephenson's -- or discuss Dr. Stephenson's 2021
13 survey?

14 A. They discussed the idea that came out of the
15 committee, and what came out of the committee that we had,
16 which was just, you know, a group of members, of what had
17 come out of the discussions with how should we best move
18 forward. So that was a look at the -- what I think we're
19 calling the 2023 Stephenson study and the 2022 Schiek
20 study, if I'm correct.

21 Q. Okay. Did you review or analyze the 2021 survey
22 results that Dr. Stephenson had performed?

23 A. We didn't. We thought that the best data would be
24 the data that was just collected.

25 Q. Okay. And you would agree with me that that data
26 that was collected was for calendar year or fiscal year
27 2022, depending on how the processor responded.

28 A. Or depending on the fiscal year of the processor,



1 yes, I think your timeframe is good. But some people have
2 a fiscal year that ends different times of the year.

3 Q. I incorporated that into my question.

4 A. Okay. Okay. Sorry. Yeah, basically they tried
5 to give their most recent data is my understanding.

6 Q. And that was either calendar year 2022 or fiscal
7 year --

8 A. Okay. Sure.

9 Q. -- 2022?

10 A. We can put it that way, sure.

11 THE COURT: Mr. Umhoefer, how will I get you to
12 stop before you answer?

13 THE WITNESS: Sorry.

14 THE COURT: You just need to let Ms. Hancock's
15 voice die down.

16 THE WITNESS: Sorry, your Honor.

17 THE COURT: No worries. You are very energetic
18 this time of day.

19 MS. HANCOCK: He's waited a long time to get on
20 the stand.

21 THE WITNESS: That's right.

22 BY MS. HANCOCK:

23 Q. And I just want to make sure that our record has
24 your response.

25 You understood that the most recent survey for
26 Dr. Stephenson was based on calendar year 2022 or fiscal
27 year 2022?

28 A. That is my understanding.



1 Q. Okay. Are you aware of any other Federal Order
2 provision that has ever locked in future increases in
3 prices as what you support in the Make Allowance proposal
4 by IDFA and Wisconsin Cheese Makers?

5 A. I don't think we're locking in price increases. I
6 think we're asking for \$0.284 on cheddar cheese, \$0.3172
7 on whey, etcetera, but then staggering the pathway there.

8 So we're asking for the year four figures. We're
9 not asking for a bunch of increases. We're asking for the
10 year four figures.

11 Q. And the proposal is, is that year one, if we take
12 cheese, for example, it would be \$0.2003; is that right?

13 A. That's the current Make Allowance.

14 Q. I'm sorry. I should say, you're asking that in
15 year one it be \$0.2422 for cheese?

16 A. That's exactly what this says.

17 Q. And is that what you are asking for?

18 A. Yes.

19 Q. And then year two it would be \$0.2561?

20 A. Yes.

21 Q. Year three it would be \$0.2701?

22 A. Yes.

23 Q. In year four it would be \$0.284?

24 A. Yes.

25 Q. So those would be, under your proposal, a
26 locked-in increase year over year until you achieve the
27 full amount in year four?

28 A. Right. Those are the prices we're asking for to



1 happen in a Final Decision from USDA. That's correct.

2 Q. Those are based on the 2023 Stephenson survey and
3 2022 Dr. Schiek's economic analysis?

4 A. Right. As noted, they had numbers that they came
5 up with, and we took a simple average of those numbers.
6 And that yielded a number, and those numbers appear in
7 year four.

8 Q. And you agree that if you had a perfect world,
9 though, or a better world, it would be better to use a
10 mandatory audited cost survey to make sure that the
11 information that we had to increase Make Allowances would
12 be accurate?

13 A. Yeah. In my testimony, I noted that when the dust
14 clears from this hearing and we get some relief for
15 16-year-old Make Allowances, then I hope a process will
16 begin in the Farm Bill, which may be more than a year
17 away, where we would have a program developed at USDA
18 where they would audit dairy plants that make the products
19 that appear in these price formulas. They would conduct
20 those audits, that they would develop Make Allowances,
21 that there would be -- who can say what the process would
22 like. It would be nice to have an expedited process to
23 move USDA's numbers into the Federal Order language each
24 two or three years, whatever all this happens. But I can
25 only imagine that that is at least five years away given
26 all the steps necessary.

27 Q. Okay. And you would agree with me, though, that
28 having that mandatory audited cost survey would be a



1 better and more accurate reflection of what the actual
2 costs are for the Make Allowances for any manufactured
3 products?

4 A. We think that would be the best way to move
5 forward after we do this fix.

6 Q. Okay.

7 MS. HANCOCK: Thank you so much for your time.

8 THE WITNESS: Thank you.

9 CROSS-EXAMINATION

10 BY MR. ENGLISH:

11 Q. Good morning, Mr. Umhoefer. My name is Chip
12 English, representing the Milk Innovation Group.

13 And as was mentioned a little earlier you have
14 waited a long time to testify. You could have testified
15 maybe a couple of weeks ago. That's telling where we are
16 with the schedule.

17 In the interim, you still have been monitoring the
18 hearing, correct?

19 A. True. Yeah.

20 Q. And after you departed when you were unable to
21 testify on schedule, there was discussion of Proposals 10
22 through 12 with respect to yield factors, correct?

23 A. Yeah.

24 Q. And --

25 THE COURT: Mr. English, with respect to yield?

26 MR. ENGLISH: Yield factors.

27 THE COURT: Thank you.

28 ///



1 BY MR. ENGLISH:

2 Q. And following that conversation, you are aware
3 that there was discussion about Select's experience with
4 respect to full tanker loads of milk, correct?

5 A. Uh-huh. Yes. Select Milk, yes.

6 Q. And the impact that that would or would not have
7 on farm-to-plant shrink, correct?

8 A. Yes.

9 Q. Did you, in the interim, having heard that
10 testimony, look into that issue with respect to your area
11 of the country?

12 A. Yes. And we have Wisconsin in our name. We have
13 a lot of Wisconsin members. It's a different world in the
14 Upper Midwest, and so that is -- that -- that testimony
15 does strike the ear.

16 And I understand the dairy industry. There's a
17 lot of -- a lot bigger farms out west and a lot of milk
18 travels the distance.

19 But in Wisconsin, we have got a range of farm
20 sizes. And if you try to find the range of farm sizes,
21 the best data -- almost the only dataset I could find was
22 the 2017 Census of Agriculture from USDA. And in there,
23 the -- in Wisconsin, in that year, there were 5,644 farms
24 that were under 99 cows. It was -- the math was it was
25 60% of the farms in Wisconsin were under 99 cows -- had
26 under 99 cows.

27 And so it's a different world in Wisconsin. We
28 don't -- you don't fill a tanker load on a farm with 50,



1 60 cows, 70 cows. You have to go from farm to farm. And
2 this is -- this is a reality everyone in Wisconsin
3 instantly understands. It happens every morning and every
4 afternoon in Wisconsin, trucks drive from farm to farm and
5 they pick up milk. And sometimes it's two farms that fill
6 up the truck, sometimes it's eight.

7 And so, yeah, that's -- it's a different world in
8 Wisconsin. We have multiple-farm pickup.

9 Q. So actually, if you think about that 60% under 100
10 cows, and you do the math based upon how many pounds they
11 are producing, is it probable that for those size farms
12 it's probably six pickups?

13 A. I mean, you'd have to find an average. I would
14 say -- yeah, I mean, it depends on the pickup, but it's
15 multiple pickups per farm. Six is quite possible.

16 Q. So in addition, there was discussion about various
17 kinds of cheese vats -- V-A-T-S, vats -- and there was
18 conversation in an expert witness's discussion about what
19 is called Double O vats, correct?

20 A. Yes.

21 Q. So what is a Double O vat?

22 A. So a Double O vat is -- it's a vat with two
23 chambers that are interlocked. They are side by side, two
24 circles interwoven like a Venn diagram. And they have
25 vertical shafts which rotate, and on those rotating
26 vertical shafts are knives that rotate like this, and
27 they -- they agitate the milk, and they cut the cheese
28 that is created inside the vat.



1 Q. And with respect, again, to Wisconsin, and having
2 heard some of that discussion from last week, do you have
3 any information regarding the number of operations that
4 you know of that are still using Double O vats in
5 Wisconsin?

6 A. I don't have exhaustive knowledge of that. But I
7 do know that there are five -- and then there may be
8 more -- plants in Wisconsin using Double O vats.

9 Q. And what relative size would those operations be?

10 A. Yeah. Those operations would range from about a
11 half a million pounds of milk received per day up to about
12 2 million pounds of milk received per day.

13 Q. And is that small? Medium? Large?

14 A. Well, 2 million used to be large, but I think now
15 you might call that range of half a million to 2 million a
16 medium-sized plant.

17 Q. Turning to a different subject briefly. One
18 follow-up on questions from National Milk's counsel.

19 You were here yesterday because you were hoping to
20 testify yesterday, correct?

21 A. Yes.

22 Q. And so you heard some discussion in
23 cross-examining, for instance, the Schreiber Foods
24 witness, that this discussion about higher-of versus
25 average-of, in National Milk's view, would not leave dairy
26 farmer whole over time.

27 Did you hear that conversation?

28 A. Perhaps. Yes.



1 Q. So let me ask, in light of the questions asked by
2 NMPF, are manufacturers going to be made whole if you're
3 going to wait until 2028 for updates on their costs?

4 A. I think it will always be a lag. Because we will,
5 as I noted, be meeting the needs of some large amount of
6 cheese manufacturing, whey manufacturing, nonfat dry milk
7 manufacturing, and butter manufacturing, when we hit 2028.
8 But it will be a different world in 2028, and there will
9 be new costs, new inflated costs of goods and services and
10 labor and -- and so, no, we'll never be made whole.

11 MR. ENGLISH: Thank you. I have no further
12 questions.

13 CROSS-EXAMINATION

14 BY MR. MILTNER:

15 Q. Good morning, Mr. Umhoefer. I'm Ryan Miltner. I
16 represent Select Milk Producers. And I thought I was
17 going to let a witness go without any questions, but
18 Mr. English scuttled those plans.

19 Of course Wisconsin has a diversity of farm sizes,
20 and many of which, you know, cannot fill a tanker.

21 Does Wisconsin Cheese Makers have any information
22 about the shrink of milk from farm to its members plants?

23 A. I don't have any for this hearing, no.

24 Q. Now, Mr. English also asked about Double O vats in
25 use with your members.

26 I believe you said there were five to six
27 manufacturers you were aware of that are using Double O
28 vats. Did I hear that correctly?



1 A. I said five that I'm aware of.

2 Q. Five? Okay.

3 And the range of their volumes, 500,000 to
4 2 million, was that pounds of milk receipts?

5 A. Yes, sir. Per day.

6 Q. Per day. Okay.

7 Would it -- would it be that those Double O vats
8 now are for the most part 30 to 40 years old?

9 A. You know, I honestly don't know when they --
10 I'm -- I don't know. I don't know if they stopped making
11 them that long ago or if you could have bought one
12 20 years ago.

13 Q. Part of the reason that Wisconsin Cheese Makers is
14 asking for an increase in Make Allowances is to increase
15 investment in plants and their equipment; is that correct?

16 A. I think it's fair to say that people are hoping
17 to -- that that would be a part of making whole their
18 books, yes. That's -- it's a chance for the industry to
19 move forward. Sure.

20 Q. Have any of your members discussed replacing old
21 cheese vats or other equipment with the additional revenue
22 they might have following a Make Allowance increase?

23 A. Not specifically. But I wouldn't say it is out of
24 the bounds to say that, you would have an opportunity for
25 plants to be renovated.

26 Q. Are you aware of any plants in Wisconsin that say
27 in the last 15 or 20 years have installed a new vertical
28 vat?



1 A. You mean a horizontal vat or vertical vat?

2 Q. No. A vertical vat, a Double O style vertical
3 vat.

4 A. Similarly to your earlier question, I don't know
5 the answer to that question.

6 Q. Okay. Do you have any information from your
7 membership regarding the butterfat recovery or butterfat
8 retention that they realize at their plants?

9 A. I don't have that today, no.

10 MR. MILTNER: Thank you.

11 I don't have any other questions, your Honor.

12 CROSS-EXAMINATION

13 BY DR. CRYAN:

14 Q. Good morning. Roger Cryan for American Farm
15 Bureau Federation.

16 Hello, Mr. Umhoefer. It's very nice to see you
17 again.

18 A. Thank you.

19 Q. I appreciate your being here to testify, and I
20 appreciate your honest and well-informed testimony.

21 So you oppose inclusion of 640s in the survey; is
22 that correct?

23 A. Yes. Speaking on behalf of my board, yes.

24 Q. Of course, when I say "you," I'm -- well, I'll try
25 to make that clear.

26 A. Okay.

27 Q. And you say you -- Wisconsin Cheese Makers
28 Association say it doesn't add to price discovery because



1 it's not traded on an exchange?

2 A. Right. When I talked with members that make 640s,
3 that was some of the feedback I received.

4 Q. Are all 40-pound blocks traded on the CME?

5 A. Are all 40-pound -- no, there's restrictions on
6 the age and on the color and so forth.

7 Q. But there are additional 40-pound blocks that are
8 priced under the survey that are -- where the price is
9 collected in the survey -- in the current NDPSR survey?

10 A. Did you say there's more than something else?

11 Q. There's more -- there are substantially larger
12 volume of blocks traded on the NDPSR -- I'm sorry, not
13 traded -- there's a substantially -- let me take a breath
14 and slow down. I think everybody will appreciate that.

15 There's substantially -- a substantially larger
16 volume reported in the NDPSR survey of 40-pound blocks
17 than are traded on the CME every month?

18 A. Well, I don't have data in front of me. I think I
19 could say that that's probably true. Yes.

20 Q. Okay. And so does that additional reporting in
21 the survey add to price discovery through the NDPSR?

22 A. The NDPSR is price discovery for the purpose of
23 setting the Class III and IV price -- Class III price.
24 And IV, excuse me.

25 Q. But there's substantially more volume in the
26 survey than there is on the exchange, and if the -- in
27 effect, those blocks are traded, they are being sold on
28 the basis of the exchange in the same way that you are



1 saying that 640-pound blocks are traded on the basis of
2 the exchange, would you advocate for using only the CME
3 price in the pricing of Class III milk?

4 A. I definitely didn't come here with any sort of
5 proposal like that.

6 Q. But is that the implication of the argument that
7 640s don't add to price discovery?

8 A. The argument that they don't add to price
9 discovery is that they are using -- when they report to
10 the government or when they sell at the CME, the industry
11 uses the 40-pound block to decide the price of a 640 -- or
12 as a basis for the price.

13 Q. The 640s are traded on the basis of those 40-pound
14 blocks?

15 A. Right. Some value related to -- not identical,
16 obviously, but it is the -- they use the 40-pound block as
17 a basis.

18 Q. Very closely related, you are saying not identical
19 but very closely related?

20 A. I don't know.

21 Q. Okay. In your discussion with Ms. Hancock you
22 suggested a difficulty in getting cheese makers to fill
23 out the survey for Dr. Stephenson's survey.

24 Are any of your members opposed to including 640s
25 in the survey, at least in part, because they don't want
26 to be bothered to complete the weekly surveys or to be
27 subject to regular review and audit for those surveys?

28 A. Well, I don't agree with the first part of what



1 you said. I didn't describe a situation where members
2 were reluctant to fill out that survey. But
3 Dr. Stephenson did. That's how he started --

4 Q. You said there were some that said they would and
5 didn't. You thought that there were.

6 A. Yeah. I don't know who ended up filling it out.

7 Q. Let's forget the first part. Let's talk about the
8 second part.

9 A. Okay.

10 Q. Did some of your members oppose the inclusion of
11 the 640-pound blocks in the -- in the NDPSR because they
12 don't want to participate in the survey?

13 A. I did not receive that feedback.

14 Q. Okay. How many of your -- of the proprietary
15 cheese plants in your membership are pooled plants?

16 A. I don't know.

17 Q. Are there many?

18 A. A pooled plant?

19 Q. Specifically a pooled plant, not receiving pooled
20 milk, but a pooled plant.

21 A. Pooled when they pool?

22 Q. Pooled as a plant. If you don't understand the
23 concept --

24 A. Sometimes they pool, and sometimes they don't.

25 Q. Sometimes they pool the milk, or sometimes they
26 pool the plant, the proprietary plants they pool --

27 A. I think a shorter answer would be that I don't
28 have that data with me today.



1 Q. Okay. Well, if -- if most of the plants are --
2 okay. You don't have an answer for that.

3 DR. CRYAN: Okay. I'm done. Thank you.

4 CROSS-EXAMINATION

5 BY MR. LAMERS:

6 Q. Mark Lamers, Lamers Dairy.

7 Good morning, Mr. Umhoefer.

8 A. Good morning.

9 Q. Hey, something that seems to be kind of not talked
10 about here, and that is with the Make Allowance proposals,
11 the concern is that it's going to reduce producers'
12 income, correct?

13 And is it true that in --

14 (Court Reporter clarification.)

15 THE COURT: Whoa, good question. When he said
16 "correct," what was your response?

17 THE WITNESS: Was that the -- it seemed like he
18 was moving on to the rest of his question.

19 THE COURT: Oh, okay. He was, but he asked one,
20 so let's get an answer.

21 THE WITNESS: Could you restate the question?

22 BY MR. LAMERS:

23 Q. The question is, the concern with the
24 Make Allowances is that it would reduce income to the
25 producer?

26 A. Some have expressed a concern like that at this
27 hearing that I have heard in testimony.

28 Q. Right.



1 So in a supply and demand market, has it been your
2 experience that when supply is tight, that the price goes
3 up?

4 A. In -- in textbook economics, sure.

5 Q. Yes. Okay. So something that hasn't been brought
6 up is, if there was some kind of supply control, is it
7 feasible to expect that the price of the cheddar market
8 could go up, that it could offset the Make Allowances so
9 that producers would see an actual return?

10 A. Supply control on --

11 Q. Fluid milk -- on fluid milk to the market.

12 A. Raw milk?

13 Q. Raw milk to the market, yes.

14 A. I am not an economist, and I do not have an
15 opinion today on supply management. If I did, I don't
16 think you would want to hear it.

17 Q. Okay. Well, there's many things that -- you know,
18 we talked about signals to the producer, you know, whether
19 the -- if the price is high, they may produce more because
20 they have more income, and if the price is too low, they
21 supply more because they need to cover their costs.

22 So if there was some kind of supply control on
23 that, that -- would that maybe help the market as a whole?

24 A. I guess I'm not going to render an opinion on the
25 supply management program today because it's -- it's not
26 in the scope of the hearing and not something our board
27 has discussed for years.

28 MR. LAMERS: Okay. Thank you.



1 CROSS-EXAMINATION

2 BY MR. SJOSTROM:

3 Q. Good morning, John.

4 A. Good morning.

5 Q. Lucas Sjostrom, Edge Dairy Farmer Cooperative.

6 Mr. Umhoefer, do any of your member plants
7 restrict how much milk they can send to the processor,
8 whether it's private or cooperative, restrict how much a
9 producer can send to your plants -- excuse me, your member
10 plants?

11 A. I don't -- I don't know if I know the answer to
12 that on a nationwide basis.

13 Q. You don't know if any of the plants whom are your
14 members restrict how much farms can send to those plants?
15 How much milk those farms can send to those plants?

16 A. That was my answer, yes.

17 Q. Regardless, are your member cheese plants that
18 would be subject to Make Allowances, are they restricted
19 in how much cheese they can make, how much that would be
20 subject to Make Allowances?

21 A. Restricted by whom?

22 Q. Anybody. Is there a limit on how much cheese they
23 can sell if they are also receiving a Make Allowance for
24 that cheese?

25 A. Imposed by whom?

26 Q. Anyone. Is there a limit, if you received -- if
27 you are a cheese plant that receives the Make Allowance,
28 is there a limit on how much of that cheese you can make?



1 A. Is there a limit on how much cheese a dairy plant
2 can make?

3 Q. Correct.

4 A. Well, there's limits based on their sales,
5 perhaps, their ability to have a market for that product,
6 their available labor on a given day, the functioning of
7 the equipment, the weather.

8 So, yeah, there are -- there are limits on what a
9 dairy plant can do on any given day.

10 If you are asking about is there a government
11 program that stops a cheese maker from producing product;
12 is that what you are asking?

13 Q. Yes. Is there -- if you want to make a bet that,
14 okay, maybe I don't have the labor, the weather's
15 terrible, I can't even get the milk trucks, but I want to
16 make a trillion barrels of cheese, or 40-pound blocks,
17 because I think next week someone's going to buy that, can
18 you make a trillion?

19 A. Not under that scenario, you can't, no.

20 Q. Could you, if all the pieces fell together? Is
21 there an upper limit of what you can make?

22 A. Yes. The available milk would be one of the
23 limits you would face.

24 Q. And would it -- would it make sense to you that
25 your members put milk supply limits on their patrons?

26 A. Again, I don't have a board discussion to bring to
27 you about what has suddenly become an interest in supply
28 management at this hearing.



1 Q. So you have heard of nothing in the industry of --
2 you know of no one in the industry, or at least of your
3 membership, who have put supply controls on their farms?

4 A. I don't have any information on that to bring to
5 this hearing today, no.

6 Q. Have you heard of base/excess plants among your
7 membership for their farms?

8 A. I don't think I was told to come here today and
9 discuss the payment programs of individual members.

10 Q. So -- so you are not answering yes or no, you are
11 just not willing to bring that information today, just to
12 be clear for the record?

13 A. I don't have knowledge of what you are talking
14 about today to bring to this hearing.

15 Q. Okay.

16 MR. SJOSTROM: Thank you for your time.

17 THE WITNESS: Thank you.

18 THE COURT: I would entertain questions from the
19 Agricultural Marketing Service.

20 CROSS-EXAMINATION

21 BY MS. TAYLOR:

22 Q. Thank you for coming back. I feel like I say this
23 to you almost every day, but I'm glad you got up this
24 morning.

25 A. Thank you.

26 Q. Just a couple questions, and I don't think it's
27 been covered yet.

28 I know you mentioned you have members -- as a



1 trade organization, you have members that are
2 manufacturers, cooperatives, and -- but you are both
3 cooperatives and private-owned companies. But I think you
4 said there's other members, two dairy converter/processors
5 and two industry suppliers on your Board of Directors.

6 Did I get that right? There's 17 -- how many
7 members are on your board? I guess --

8 A. 17 and two and two, there are 21.

9 Q. I haven't had enough coffee yet to put together a
10 coherent thought, apparently.

11 But since your board kind of spans different
12 sectors of the industry, can you just expand on how the
13 board reaches a recommendation? Does it have to be a
14 majority vote, a consensus vote? How do you --

15 A. Sure. To clarify that second group, there's a
16 tier of processors in the industry who take finished dairy
17 products and further process them. Most commonly they are
18 cutting that cheese, or they are doing something with
19 butter to further package it. They didn't make it, they
20 are just moving it forward to the consumer.

21 Q. And if I can ask one question on that piece.
22 Then --

23 A. Sure. Sure.

24 Q. -- those particular members do not buy milk from
25 dairy farmers?

26 A. That's correct.

27 Q. And are not subject to Federal Order regulation?

28 A. That's correct.



1 Q. Okay.

2 A. That's a good distinction.

3 Q. Okay.

4 A. Yes. We have a consensus model for the board. We
5 look to make unanimous decisions in the board meetings.

6 Q. Okay. Is it required or that's just the idea?

7 A. There's nothing in the bylaws to that effect, but
8 there is decades of precedent, even preceding me, that
9 it's a board that looks to find the answer that builds the
10 consensus that leads to a unanimous vote.

11 Q. Of the 17 dairy manufacturers in the board,
12 because you mention you have co-op members, are any of
13 those co-op members?

14 A. Yes.

15 Q. And I don't know if I caught the answer to this.

16 A. Yes, there are.

17 Q. I -- I think it was asked earlier, and I don't
18 think I caught the answer.

19 Of your 81 members how many are cooperative
20 members?

21 A. All right. I didn't answer that question because
22 I didn't have that data with me today. And we don't --
23 another board decision many years ago was that we don't
24 list our members publicly, so --

25 Q. Okay.

26 A. -- they asked me to honor that.

27 Q. Thank you. I would not want to you not honor
28 that. So thank you.



1 Do you know if any of the members are -- any of
2 your members are also members of National Milk?

3 A. Do I know that? I know that. I don't know if
4 that would come close to sort of divulging --

5 Q. I'm not asking -- I wouldn't want you to divulge.
6 I'm just -- we have one group of cooperative
7 representatives asking for one thing. And since you have
8 cooperative members, that's why I'm curious if there was
9 some crossover there, or they're just a distinct set of
10 cooperative members?

11 A. I think I'll stay with what I said earlier, where
12 we don't name our members, so --

13 Q. Okay.

14 A. -- I wouldn't want to --

15 Q. And I know Mr. Cryan asked some questions on the
16 plants of your members, but I'm -- since they are mostly
17 cheese plants in Wisconsin, I'm guessing most of them are
18 not pooled plants, but they might get pooled milk.

19 A. Yes.

20 Q. They might not be pooled themselves.

21 A. Some -- I think most are pooled plants.

22 Q. Okay. At some point?

23 A. Yeah.

24 Q. Okay. Can you talk about -- or has your
25 membership had any discussions on, since they are mostly
26 manufacturers, when they choose to pool and when they
27 don't choose to pool, and kind of what goes into that
28 decision-making?



1 A. Well, that is -- that's an interesting question.
2 We -- we have seen where the rising costs for labor and
3 energy and materials and so forth have put a lot of my
4 members in a position where the price they receive from
5 the marketplace for their dairy products isn't sufficient
6 to cover their costs. And so when they look at that
7 announced Class III price, sometimes they don't have the
8 money. You set a target that's too high for them, and
9 they have to depool.

10 And another exacerbating element to that is that
11 many of my members -- and this is something we have
12 written to USDA about for decades -- many of my members do
13 not produce dry whey. Many of my members do not process
14 whey. And you heard from Mr. Wills who says he got
15 pennies for his wet skimmed -- maybe skimmed -- whey.
16 Where the dry whey price might be 50, 60, 70, \$0.80 a
17 pound, he's getting -- I think he's -- he had a figure in
18 his testimony that was pennies.

19 And so that is another factor where the Class III
20 target price for a cheese maker that does not produce dry
21 whey and is facing higher costs, that's a double whammy
22 for them to -- try to meet that Class III price. They
23 just don't have the money. And that's when you see
24 depooling take place.

25 Q. So for those members who choose not to pool for
26 whatever reason, are they able to utilize forward
27 contracts? How do they -- what's -- what are some of the
28 systems they set up to pay their farmers if it's not



1 necessarily what the minimum uniform price is?

2 A. So I'll stick with my cheese maker in Wisconsin
3 who is facing some of these concerns. They do not
4 contract with farms for milk. They -- there aren't
5 contracts in Wisconsin for most of the milk between the
6 farm and the plant.

7 Q. So the farms can just move around if they can find
8 a willing buyer?

9 A. Yes.

10 Q. And the buyers can decide not to take the milk for
11 whatever reason if they so decide.

12 A. Yes. There's no binding document between them,
13 that's true.

14 Q. Do you think if the Make Allowances, as you have
15 proposed, were adopted, that your members would return to
16 more regular pooling? We have heard some -- I asked this
17 question. We have heard discussion about how some people
18 find depooling to be disorderly. So in that context of if
19 the Make Allowances were higher, would they choose to
20 return some milk to the pool?

21 A. Yes. In the scenario I laid out where it's really
22 this Make Allowance that is not now covering the costs
23 they face, if a future Make Allowance was set at a higher
24 level that helped them cover their costs, they would not
25 have to hit the panic button and depool.

26 Now, as I said, there are other reasons people
27 depool in and it's related in the -- in this instance to,
28 for example, their lack of revenue on the dry whey side.



1 But it would go a long way toward helping them
2 have a good balance sheet that would allow them to remain
3 in the pool if they could see a higher Make Allowance. I
4 think it would be healthier for their business and
5 healthier for their ability to collect milk and be
6 competitive payers.

7 Q. I forgot to ask this question. But you say all
8 your members are manufacturers. So does that mean none of
9 them are Class I bottlers? Would that be accurate?

10 A. That is accurate.

11 Q. And does WCMA market any milk or payroll any dairy
12 farmers?

13 A. No.

14 Q. Okay. On the bottom of page 2, that's where you
15 talk about the two surveys -- or the one survey and the
16 one forecast methodology, Dr. Schiek's study.

17 And I have asked this question of other witnesses.
18 You know, in the past USDA has done averages of various
19 studies that were presented on the record, but in this
20 case we're being asked to use an average of a study and a
21 forecast.

22 So can you explain why you think it's appropriate
23 for USDA to use a forecast to determine Make Allowances?

24 A. Sure. I -- when our board discussed this with --
25 what I've tried to tell them from my perspective was that
26 we come here to give you information and ideas, and then
27 you have to come up with a decision.

28 And so we saw the opportunity to give the fresh



1 data from the Stephenson study, and take the audited data
2 from California which was -- was a gold standard at the
3 time, and asked Dr. Schiek to update that using some
4 indices showing cost inflation that are readily available.
5 And that combination of data seems useful.

6 And we simply took that data, and because you
7 wanted a Make Allowance for cheddar and a Make Allowance
8 for dry nonfat dry milk, etcetera, we took a simple
9 average of those two. And now we hand those to you, and
10 you may decide what to do with them. But it's good data,
11 and it's -- it's up-to-date data, and we hope you enjoy
12 working with that data.

13 Q. I'm sure the Secretary is very much going to enjoy
14 working with this data.

15 On the implementation schedule that is being
16 proposed, so initially 50%, and then one-sixth, one-sixth,
17 and one-sixth, how did you all decide that that was an
18 appropriate -- you know, how did you come to those
19 numbers?

20 A. I can tell you that I did not come to that
21 conclusion myself. So it was -- it was -- you would have
22 to ask other people who created that particular scheme.
23 But our board agreed with that scheme, so the -- how they
24 got there may be relevant, but it's where we landed.

25 Q. Okay. And I take it, I think from questioning
26 from Ms. Hancock, that that was a particular when you talk
27 about considerable debate the board had, that
28 implementation schedule is what you are talking about, and



1 some perhaps wanted it all in the first year and...

2 A. Yes, it is true to say that some of my members,
3 you know, really feel the pain of falling behind on their
4 ability to hit these class milk targets and would like to
5 see Make Allowance relief sooner than later. That's fair
6 to say, yes.

7 Q. And I forgot to ask this. Of your members, do you
8 know how many -- because I think you mentioned that some
9 of your members just make specialty cheese?

10 A. That's fair.

11 Q. But how many -- approximately how many members
12 make actual commodity cheddar?

13 A. Well, most of the volume of cheese that my members
14 would produce would be commodity -- oh, cheddar, just
15 cheddar? You said commodity cheddar. I thought you were
16 saying commodity cheese. Most of the cheese --

17 Q. I asked -- I'm asking on cheddar since makes is
18 for cheddar, so comparable products.

19 A. Well, makes are for everything. But how much
20 commodity cheddar is made by my members, I -- I would have
21 to work up that data for you.

22 Q. Okay.

23 A. A lot.

24 Q. That is more informative than "a little," I guess.

25 On the new paragraph that you are proposing,
26 paragraph R, that talks about if there's a study done and
27 USDA has funding and conducted it earlier than when a
28 staggered implementation would hit, you just want that



1 number adopted, January 1st?

2 A. That's true. If -- if -- if that could happen,
3 that would be great.

4 Q. And so I just want to be clear then. You would
5 want that to be automatically updated and skip this lovely
6 hearing that we're having right now or it would still go
7 through the rulemaking process?

8 A. That's a great question. I think that part of the
9 discussion in the industry should have -- when we try to
10 make language, presumably in the Farm Bill, I doubt a
11 separate bill would ever pass -- that would be part of the
12 discussion, how will we do this. And I -- my members
13 would, I'm sure, get behind the idea that we want -- if
14 USDA could take over this process and create a new gold
15 standard auditing program that's national, we would want
16 the industry to look at that and say, that's the number.
17 If we have got this impartial government body with trained
18 staff, sweeping the nation, getting this data, crunching
19 the numbers, and saying, here's what the Make Allowance
20 should be, then that's what the Make Allowance should be.

21 And so you would think you could implement that
22 then as quickly as possible without a lot of debate
23 because you don't have a dog in this fight. You would
24 find a number that -- that a person that's an accounting
25 style person would say, this is what we discovered, and
26 this is what we're going to set.

27 Q. And if I can ask, on yields, there's been some
28 discussion about having this survey and it would look at



1 both manufacturing costs and yields.

2 So does that same sentiment carry over to the
3 yield side or --

4 A. For you to audit for Make Allowances are you
5 saying?

6 Q. There's been discussion that a survey that comes
7 out of the Farm Bill would allow USDA to look at
8 Make Allowances, manufacturing costs, but also look at
9 yields, so there can be some consideration of whether the
10 yield factors in the formulas would be updated. And so
11 let's just assume, for illustrative purposes, that that is
12 in the Farm Bill.

13 So then would you want this to include an
14 automated update of yields as well if we were able to, you
15 know, find those numbers out through this survey?

16 A. I guess that's a discussion that I think is in our
17 future, as an industry, as an association, as an agency.
18 What this looks like and what it includes I think is a
19 future discussion. Haven't had that discussion yet in our
20 in our group, so I would hope to defray that answer.

21 Q. Okay. I wanted to turn to your other statement
22 and opposition to Proposals 4 and 6.

23 A. Okay.

24 Q. Okay. You have a sentence in here talking about
25 the -- one of the reasons your members don't support
26 adding 640s is because basically having blocks and barrels
27 in the price series for cheddar already kind of brings in
28 a bit of price volatility and divergence, and so adding



1 640s would make that worse. I'm summarizing what your
2 sentence says.

3 A. That's a fair summary.

4 Q. I was curious if you had a position on removing
5 barrels being the case that you say that those two things
6 add volatility, since we do have that proposal in front of
7 us.

8 A. We do not, as an association, have a position on
9 that topic.

10 Q. Okay. And the last question. You have a sentence
11 on here, this is something I had not heard yet in these
12 past few weeks. Another reason was: "Relatedly, the
13 return of wooden or plastic structural packaging would
14 deter potential buyers."

15 Could you just expand on that?

16 A. Sure. I think what people were saying is you
17 might, in a cash market, have brokers and other sort of
18 middlemen willing to take product and resell it. When the
19 thought from a member was that if you -- and that pretty
20 much moves one direction, and if the truck empties, then
21 life is good.

22 When you have 640s, you have this material, that
23 is the packaging, the wood, the springs, or the stretch
24 wrap -- which I'm okay, they can throw away the stretch
25 wrap -- or the plastic box is something you don't deal
26 with with a 40-pound block. That material has to go to
27 the -- it has to be disposed of by a party to a third
28 party, which will then recondition the wood, or, you know,



1 the companies that do that, they prepare that packaging
2 for yet another use, or it has to return back to the
3 manufacturer. That's a step that doesn't exist with the
4 cardboard, 40-pound block. You just throw away the
5 cardboard.

6 So it was just seen as another deterrent to having
7 anyone, just anyone, decide they are going to speculate
8 and buy a load and resell a load of 40-pound block. It's
9 just an impediment to the ease of cash purchase.

10 Q. Okay. And then of your membership, do -- I
11 know -- I think your members that testified earlier in
12 this proceeding said they make 40-pound blocks.

13 Do any of your members make 640s?

14 A. Yes.

15 Q. And do any of your members make barrels?

16 A. Yes.

17 Q. Okay.

18 MS. TAYLOR: I think that's it from AMS. Thank
19 you.

20 THE COURT: Does anyone else have a question
21 before redirect?

22 CROSS-EXAMINATION

23 BY MR. SJOSTROM:

24 Q. Hi, again.

25 A. Hello.

26 Q. Ms. Taylor had some good questions that created
27 some good questions.

28 Lucas Sjostrom, Edge Dairy Farmer Cooperative.



1 I just wanted to get to the membership question,
2 because it's always curious when it's understandably not
3 wanting to be revealed.

4 But how -- if you are a member of the WCMA Board
5 of Directors, do you need to be a member or from a member
6 organization?

7 A. Someone on our board has to be a member of
8 Wisconsin Cheese Makers Association, yes.

9 Q. Thank you.

10 And therefore, if we can infer from your website
11 that Ellsworth Cooperative Creamery, Associated Milk
12 Producers, Inc., and Foremost Farms are all members of
13 National Milk, they would be members -- they are members
14 of your Board of Directors, they would also be members of
15 the WCMA?

16 A. Right. Our Board of Directors appears on our
17 website, and you went to our website --

18 Q. Yes, sir.

19 A. -- and found that. So you see some of our
20 members. Yes, that's correct.

21 Q. All right. Yes. And I was just noting that there
22 was some crossover to help Ms. Taylor. But I understand
23 the --

24 A. Right. I can't confirm who is a member of
25 National Milk. It sounds like you are confirming that.

26 Q. Correct.

27 A. Standing there, you are confirming that data.

28 Q. My question was, if we can affirm that they are



1 members of National Milk, then they would be crossover.

2 A. I don't know.

3 Q. We'll leave it at that.

4 Did -- and this is from earlier -- did all of your
5 members -- you mentioned a very contested conversation.

6 Did all of your members support an increase in

7 Make Allowances, and then there was a difference in

8 opinion on how far they should go up, or did some of your

9 members not support an increase in Make Allowances?

10 A. Our members supported our proposal --

11 Q. My question --

12 A. -- which has Make Allowance increases.

13 Q. Correct.

14 My question was, did all of your members support
15 some increase in Make Allowances?

16 A. Well, we have a structure with committees and a
17 board, so the committee makes recommendations to the
18 board. So there's some members on the committee and
19 there's some members on the board, so that was the pathway
20 for the decision.

21 So you said, I think you said all members. I
22 can't say what is in the mind of every single member of
23 the association, but I can tell you that's how our board
24 voted.

25 Q. Understood.

26 And so it could be possible, in other words, that
27 some of your members supported no increase or even a drop
28 in Make Allowances, as unlikely as that is?



1 THE COURT: That's too speculative.

2 MR. SJOSTROM: That is speculative. I'll
3 withdraw. That's fine.

4 BY MR. SJOSTROM:

5 Q. Ms. Taylor asked a question about written
6 contracts, and I -- that part I wasn't clear about.

7 Did you say some, none, or all have written
8 contracts?

9 A. As you probably know, there's a vast majority of
10 farms in Wisconsin that are not -- do not have a contract
11 with their milk buyer. I believe there are some farms in
12 Wisconsin that do. But I was speaking to the vast
13 majority of Wisconsin dairy farmers and milk buyers.

14 Q. And your -- your membership's much broader than
15 Wisconsin, correct?

16 A. True. I have been falling back on my Wisconsin
17 roots at times in this hearing.

18 Q. Yes.

19 And so that statement would be for beyond
20 Wisconsin, I suspect, throughout your whole membership, or
21 is that Wisconsin specific?

22 A. Right. I believe that there's a mixed bag in the
23 United States of milk that is not related to a contract
24 between buyer and seller and milk that is.

25 MR. SJOSTROM: Thank you. That's all I had.
26 Appreciate it.

27 THE COURT: I'd hear from Agricultural Marketing
28 Service.



1 MS. TAYLOR: Thank you, your Honor. I had a few
2 more questions get sent to me I didn't see while we were
3 cross-examining.

4 CROSS-EXAMINATION

5 BY MS. TAYLOR:

6 Q. We -- we had a discussion about the
7 appropriateness of using an average of Dr. Schiek's
8 forecast and Dr. Stephenson's study, both of which --
9 well, Dr. Schiek's just California plants, and
10 Dr. Stephenson's had California plants in it.

11 So your opinion on, you know, if we're asked to
12 take the average, is that somehow skewing the results in
13 some way towards California plants that would be doubly
14 counted in the average?

15 A. I don't think it's right to say they are doubly
16 counted. I think they simply appear in both, but I don't
17 think they are getting anything doubled. Like a volume
18 isn't being doubled. I think you should have perhaps
19 gotten similar data from the two surveys, or the survey
20 and the study, or the two studies, what have you.

21 But I think that this data is yours to consider as
22 you see fit. I think the value of the Schiek study is
23 that it's based in the audited data from the California
24 Department of Food and Agriculture. That was, as I said
25 earlier, the gold standard in the United States for cost
26 data. Unfortunately they didn't continue doing it, but I
27 think Dr. Schiek did a marvelous job of trying to carry it
28 forward with indices of costs.



1 And having that robust data and the data from
2 Dr. Stephenson, the most simple thing, the most fair thing
3 that we could think to do was to simply put them together
4 for you.

5 Q. But you wouldn't think that those -- that average
6 might skew the results towards the plant structure that's
7 prevalent in California or their cost characteristics
8 that's prevalent more in California and not in the rest of
9 the country?

10 A. I can tell you that I guess it must have come out
11 in the hearing where maybe Dr. Stephenson said where his
12 data came from. That would have been a revelation to me
13 during the hearing had I heard that, because I did not
14 hear that, and our board did not know that previously,
15 because we had zero information on who had participated in
16 his survey.

17 So something for you to consider, but I still
18 think that in the mix is that good, actually audited plant
19 data from California that has a key role to play in the
20 Make Allowance decision.

21 Q. Okay. And then so you do find those numbers or
22 your members find those numbers reflective in some ways of
23 the cost that they incur in Wisconsin and surrounding
24 states?

25 A. You know, there's a saying that when you pick a
26 Make Allowance, it's -- it's nobody's Make Allowance,
27 right? It's a number. And it's not Mr. Heiman's
28 Make Allowance, it's not Mr. Wills' Make Allowance, who



1 both testified earlier in the hearing. Theirs were \$0.32
2 and \$0.77 to make a pound of cheddar. But it will be a
3 number that you try to find that is just right to try to
4 keep a diversity of plants and farms thriving in the
5 United States.

6 Q. So that -- that's a good answer to lead me to my
7 next question.

8 A. Okay.

9 Q. And I appreciate the deference to USDA finding the
10 right number, but this is the industry's program, and so
11 we do try to take everyone's thoughts and advice into
12 consideration.

13 So given that, you know, for Dr. Stephenson's
14 study, we have an average, and we have a high cost number
15 and a low cost number as he breaks it out for each
16 product.

17 So you have been head of Wisconsin Cheese since
18 the '90s as you indicated. So given that, your experience
19 in the industry and -- you know, what would you say is a
20 fair Make Allowance? Where should it be set? Should it
21 cover all the high cost plants? Should it cover only the
22 low cost plants? I mean, what's your opinion on that?

23 A. Well, I think that's a great question. It comes
24 down to a goal really. Because it's going to be somewhere
25 on that spectrum. So you have to decide, what's our goal?
26 What are we trying to accomplish when we set this
27 Make Allowance?

28 And I would say that this industry and in this



1 hearing, you often hear a lot of talk about commodity
2 product, and that's because these -- we use commodity
3 product to set these prices. And I guess then by design
4 you don't hear a lot about the consumer or trying to
5 please the consumer or delight them with great dairy
6 products.

7 But part of that is having the specialty cheeses
8 and the specialty butters and whatever we can dream up in
9 the industry from Class I to Class IV to win back
10 consumers that are leaving us in some cases or are, you
11 know, growing up in a family that -- that didn't drink
12 fluid milk or have moved on from cheese. We have -- we
13 have a bigger battle here than this battle.

14 And so I advocate and have tried to advocate my
15 whole career that we have a job to face the consumer and
16 stop facing and talking to ourselves. We need to have
17 these specialty cheese plants and these gourmet products
18 that are the spear point of our marketing effort.

19 So I'm hoping USDA will keep in mind we're not
20 just trying to make a program that -- that makes cheddar
21 block. We're trying -- to have a diverse dairy industry,
22 to have a diverse set of small farms and big farms is to
23 have a diverse set of small plants and big plants. Our
24 small plants, cheese plants, for example, thrive on having
25 small farms. They can be overwhelmed by having one big
26 farm. They fear having one big farm serving them because,
27 you know, the relationship is tenuous.

28 So we want a diverse thriving industry that sets



1 the Make Allowance to let some of those specialties stay
2 afloat, and -- and we all win I think as an industry, if
3 you set them -- the Make Allowance at a place where we
4 have diversity in product, and diversity then in farm size
5 and plant size.

6 Q. So could I look at that as your kind of definition
7 of what a fair Make Allowance would be --

8 A. Sure.

9 Q. -- in coming to a fair Class III price?

10 A. Sure.

11 MS. TAYLOR: I think that's it. Thank you.

12 MR. ROSENBAUM: Your Honor, Steve Rosenbaum,
13 International Dairy Foods Association.

14 At this point I would simply like to move Hearing
15 Exhibits 258 and 259 into evidence.

16 THE COURT: Is there any objection?

17 There is none. Exhibit 258 is admitted into
18 evidence.

19 (Exhibit Number 258 was received into
20 evidence.)

21 THE COURT: Exhibit 259 is admitted into evidence.

22 (Exhibit Number 259 was received into
23 evidence.)

24 THE COURT: Mr. Umhoefer, thank you so much.

25 It's time for either -- oh, an hour and a half.

26 It's time for a ten-minute break. Please be back and
27 ready to go at 9:45.

28 (Whereupon, a break was taken.)



1 THE COURT: Let's go on record.

2 We're back on record. It is 9:46.

3 What witness will testify about the exhibits that
4 we have been handed?

5 MR. HILL: That will be Brian Riordon.

6 THE COURT: Good morning. Before I swear you in,
7 I want you to experiment with that chair and that mic to
8 see if you like, you know, your ability to read your
9 document and speak into the mic. You may have to adjust.
10 All right.

11 Please state and spell your name.

12 THE WITNESS: My name is Brian Riordon, B-R-I-A-N,
13 R-I-O-R-D-O-N.

14 THE COURT: Have you previously testified in this
15 proceeding?

16 THE WITNESS: I have, your Honor.

17 THE COURT: You remain sworn.

18 THE WITNESS: Thank you.

19 BRIAN RIORDON,

20 Having been previously sworn, was examined
21 and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. HILL:

24 Q. So since you have already testified, I'm going to
25 make this quick and easy for you.

26 THE COURT: Mr. Hill, please identify yourself.

27 MR. HILL: Brian Hill, USDA.

28 BY MR. HILL:



1 Q. So when you testified earlier, did you do so in
2 response to a data request?

3 A. I did.

4 Q. And is your testimony today made for the same
5 reason?

6 A. Yes.

7 Q. And in front of you, do you have two documents
8 that are marked in the top right corner Exhibit 60 and
9 Exhibit 61?

10 A. Yes, I do.

11 Q. And I do want to say online these are actually
12 USDA Exhibits 60 -- or USDA 60 and USDA 61. Online it is
13 identified as such on the links for those documents.

14 So the first document -- hold on one second.

15 Are these documents prepared by the USDA in
16 response to a data request?

17 A. Yes, they were.

18 Q. All right.

19 MR. HILL: I would like to mark these for
20 identification, your Honor, as I believe, actually,
21 Exhibit 260, for what's shown as Exhibit 60, and 261 for
22 what's shown as Exhibit 61.

23 THE COURT: How did you get that to come out
24 exactly like that? Excellent.

25 So Exhibit 260 is USDA Exhibit 60, and Exhibit 261
26 is USDA Exhibit 61.

27 (Exhibit Numbers 260 and 261 were marked for
28 identification.)



1 BY MR. HILL:

2 Q. So, again, these were prepared by the USDA
3 pursuant to a data request; that's correct?

4 A. Yes.

5 Q. Okay. So -- and you are the lucky person who
6 stepped forward to testify to them; is that correct?

7 A. Yes. I was the lucky person that didn't step back
8 last week, so I'm happy to be here to do this.

9 Q. You beat me to the punch line. That's where I was
10 going.

11 So if we could look at what's now identified as
12 Exhibit 260. Could you just kind of walk us through that
13 document and let us know -- share what that's about.

14 A. Yes. This document shows producer milk by state
15 and county for the Central Federal Order. This is Order
16 Number 32. The -- it shows data for all the months of
17 2002, January through December. That -- the table
18 includes the name of the state, the state code, and the
19 county code, county, and it does include the number of
20 producers in each county and the producer milk. And I
21 believe at the bottom it's -- I don't know if there's a
22 total -- yeah, there's some totals at the bottom as well.

23 Q. And so it just goes on like that for each state?

24 A. It does. For each state, each county, and then
25 each year.

26 Q. And I notice under the county, it appears at the
27 end of each state, under the county, there's something
28 that says "restricted."



1 Could you explain that for us?

2 A. Yes, I can. So the restricted line basically is a
3 subtotal of any of the counties that were restricted and
4 we couldn't show individually. So the totals for the
5 producer and the pounds were just subtotaled together and
6 shown.

7 Q. Okay. Thank you very much.

8 So let's look at Exhibit 260 -- excuse me, 261,
9 and please explain that document for us.

10 A. Okay. This is document, also at the request of a
11 proponent, was put together. It has two different tables.
12 I'll talk about the top table first.

13 The top table is Federal Order 33 producer milk
14 pounds received at pool distributing plants and partially
15 regulated distributing plants by state requested for 2015
16 and 2002 (sic).

17 We have got a footnote on "requested." That's
18 basically indicating that the states that are listed in
19 this table were specifically requested by the National
20 Milk Producers Federation (NMPF), who were the requesters
21 of this particular information. That footnote will also
22 hold for the bottom table.

23 So the first table is showing the columns for
24 year, 2015 and '22, and then columns showing Indiana,
25 Michigan, Ohio, Pennsylvania, and then a total. And then
26 the numbers inside are just reflecting the total volume by
27 pound.

28 Q. All right. Is there anything else in Exhibits 260



1 or 261 that you would like to add to your testimony?

2 A. Oh, yeah. I'll just go over the second, the lower
3 table of this Exhibit 261.

4 Q. Yes.

5 A. I was just pausing for everyone to absorb that.

6 Q. Dramatic effect.

7 A. Dramatic effect.

8 So Federal Order 33 receipts of producer milk
9 pounds by state requested for 2015 and 2022 are presented
10 in the second table. Same structure of the table, it's
11 showing year 2015 and '22, and then columns for the
12 corresponding states in the above table, Indiana,
13 Michigan, Ohio, Pennsylvania, and then a total.

14 MR. HILL: I think that's all I have, your Honor.
15 He's available for examination.

16 THE COURT: Is this moment the first time that the
17 participants who are here in person have seen the data?
18 No.

19 MR. HILL: No, it's been online, I know, for a
20 long time, yes.

21 MS. TAYLOR: For weeks, we notified them.

22 THE COURT: She said a week. You said a long
23 time --

24 MR. HILL: She said "weeks."

25 THE COURT: Oh, weeks. I just wanted to be clear.

26 MR. HILL: That's fine.

27 THE COURT: It's been online for weeks. Very
28 good. Thank you.



1 MR. ENGLISH: Chip English for the Milk Innovation
2 Group. And I confirm that it's been online for quite a
3 while, and we thank the Department.

4 CROSS-EXAMINATION

5 BY MR. ENGLISH:

6 Q. So, sir, I have a couple of questions, and we'll
7 see how far I can get.

8 So I've forgotten, how long have you been with
9 USDA.

10 A. USDA, since 2000.

11 Q. Okay. So maybe this will work.

12 So let me start with my shorter discussion, I
13 think, which is Exhibit 261. And so this information does
14 not purport to represent, for instance, how much
15 Pennsylvania milk would be received at an Order 1 pool
16 distributing plant, correct?

17 A. Yes, correct.

18 Q. Okay. And also would not reflect, for the second
19 chart, receipts of producer milk other than pool
20 distributing plants for Pennsylvania that were actually
21 received in Order 1, correct?

22 A. Correct.

23 Q. It also wouldn't reflect, to the extent that there
24 is a Central -- a portion of Central Pennsylvania that is
25 not presently subject to federal regulation, milk received
26 at those plants, unless they are were partially regulated,
27 correct?

28 A. Correct.



1 Q. And similarly, if -- if there were, for instance,
2 Indiana milk, it could just as well be pooled on Order 5,
3 correct?

4 A. There -- there could be Indiana milk pooled on
5 Order 5, yes.

6 Q. So the bottom line is this does not represent the
7 total volume of producer milk. It is literally limited to
8 those states as received at either pool -- either pool
9 distributing plants or as producer milk for Order 33
10 plants only, correct?

11 A. Correct.

12 Q. Okay. So turning to Exhibit 260.

13 Unlike Exhibit 261 -- and I apologize if -- if I
14 missed it writing my questions -- who requested this
15 information for what is Exhibit 260? Which entity?

16 A. I cannot remember who the requester is.

17 MS. TAYLOR: I think it was NMPF.

18 THE WITNESS: Was it National Milk? I think you
19 are right, I think we got it in the same letter, but I
20 don't have it in front of me. But I think I just recently
21 saw the letter, and they are both included.

22 MR. ENGLISH: And I'm going to try to keep this as
23 brief as possible, but nonetheless --

24 THE COURT: I want to make sure that that answer
25 is clear.

26 So you believe it --

27 THE WITNESS: I believe I saw the letter that --
28 I'm trying to recollect the letter. I don't have it with



1 me. But I think I saw both requests under the same
2 document, saying they were from National Milk.

3 BY MR. ENGLISH:

4 Q. Thank you, sir.

5 A. You're welcome.

6 Q. So if we could turn for a moment, as an example,
7 to February 2002, page 9, which I think is the first page
8 for February 2002. I think given the fact that this
9 document is going to be in the record, I think it is
10 important for this record to understand a few things
11 historically.

12 There is, at the very top of that page in terms of
13 the state, I think it looks like six counties listed, plus
14 a restricted for California, correct? There's producer
15 milk by state and county from California, correct?

16 A. It looks like seven counties, maybe.

17 Q. Okay. All right. Fine.

18 Nonetheless, there's a number of -- there's a --
19 there's a total of 68 million pounds of producer milk from
20 California from February 2002, correct?

21 A. Correct.

22 Q. Okay. And similarly, there is a listing
23 restricted for Idaho, correct? See Idaho as being listed
24 restricted?

25 THE COURT: Where are you?

26 MR. ENGLISH: I'm on page 9.

27 THE WITNESS: Does that go to page 10 restricted
28 for Idaho?



1 MR. ENGLISH: Well, I see it in the margin here
2 right under Colorado. Maybe I should go to a different
3 month. No, it's --

4 THE COURT: So what you are asking is what we're
5 used to seeing as the last item, might be the item at the
6 top for Idaho?

7 MR. ENGLISH: I'm on page 9, and it's -- for some
8 reason the state is actually a -- you know, listed a
9 little farther west. So I'm just seeing the word Idaho,
10 correct?

11 THE WITNESS: I do see Idaho, and then to the
12 right it does look like there's a 999 with a restricted --
13 yeah, there's a line that says that.

14 BY MR. ENGLISH:

15 Q. And that would -- in order to protect confidential
16 data, that means there was either one or two producers,
17 but not more than two producers, correct?

18 A. That the -- yes, that would be a reason to
19 restrict.

20 Q. Okay. So there was a time shortly after Federal
21 Order reform that, for reasons I do not want to dwell on
22 for the moment, that milk from California or say Idaho was
23 pooled on various Federal Orders, correct?

24 A. I don't have the data with me. I believe I may
25 remember what you are talking about, but I don't have any
26 information to reflect on.

27 Q. Well, looking at USDA's website -- that is
28 extremely valuable, thank you -- post-Federal Order



1 reform, there were a series of what we would call
2 performance standard hearings in the early 2000s, correct?

3 A. Correct.

4 Q. And, in fact, there were two such hearings in the
5 Central Order, correct? 2001 and 2004?

6 A. I don't have a clear recollection at that time,
7 but I know that there were a series of hearings that
8 addressed that.

9 Q. And do you recall whether those hearings addressed
10 the issue of, you know, distant milk that might have
11 limited relationship to the order being pooled?

12 A. That was my understanding.

13 Q. Okay. And the result of those hearings, in
14 seriatim, was that if you looked post say 2005, it's
15 highly unlikely you are going to see California milk
16 pooled anymore on Order 32, correct?

17 A. I have to look back at the data, but --

18 MS. TAYLOR: If I could just stipulate.

19 Mr. Riordon works out of our Northeast office --

20 MR. ENGLISH: All right.

21 MS. TAYLOR: -- so he will have limited
22 information on those hearings, as none of them occurred in
23 his marketing area.

24 MR. ENGLISH: Because they had real pooling
25 standards, but anyway.

26 BY MR. ENGLISH:

27 Q. Okay. All right. So I apologize, I asked the
28 wrong question. So --



1 A. And some of this was back when I was a Federal
2 Order youngling, so...

3 Q. We were all Federal Order younglings once upon a
4 time, sir.

5 So nonetheless -- and I think the Northeast
6 actually did have one of these hearings, correct?

7 A. Correct.

8 Q. Okay. But regardless, whatever historical data we
9 may be seeing from 2002 could very well be different post
10 that and that series of hearings that included one hearing
11 in the Northeast, correct? In terms of milk that's being
12 pooled that looks -- I mean, for want of a better
13 phrase -- odd to see California milk pooled under
14 Order 32?

15 A. Are you saying there was a chance there were
16 different regulations --

17 Q. Yes.

18 A. -- in place?

19 Q. Yes.

20 A. There -- between this year and after, there very
21 well may have been, yes.

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

23 THE COURT: Mr. Hill, do you have any other
24 questions for this witness?

25 MR. HILL: No further questions, and I would move
26 for admission of 260 and 261.

27 THE COURT: Are there any objections?

28 Exhibit 260 is admitted into evidence.



1 (Exhibit Number 260 was received into
2 evidence.)

3 THE COURT: Exhibit 261 is admitted into evidence.
4 (Exhibit Number 261 was received into
5 evidence.)

6 THE COURT: Thank you. You may step down.

7 THE WITNESS: And I just want to add, I'm happy
8 that I didn't scuttle Mr. Miltner's plan to have a witness
9 he didn't have to ask questions. Thank you.

10 THE COURT: Ah, so you have many things to
11 distribute.

12 MR. SJOSTROM: Yeah. So we don't an Umhoefer
13 situation, for the record, if anyone wants to go before
14 me, you certainly can, but I'm available.

15 Okay. I'll go with that.

16 THE COURT: Okay. Let's go off record. Documents
17 are being distributed among the participants who are here,
18 and then we'll go back on record and tell you what we have
19 done.

20 (An off-the-record discussion took place.)

21 THE COURT: Let's go back on record.

22 All right. We're back on record at 10:04.

23 First I would like the gentleman in the witness
24 chair to identify himself and spell his name.

25 THE WITNESS: Lucas Sjostrom, L-U-C-A-S,
26 S-J-O-S-T-R-O-M, representing the Jer-Lindy Farms, LLC, in
27 this position.

28 THE COURT: Have you previously testified in this



1 proceeding?

2 THE WITNESS: No, your Honor.

3 THE COURT: I'd like to swear you in.

4 LUCAS SJOSTROM,

5 Being first duly sworn, was examined and

6 testified as follows:

7 THE COURT: Thank you.

8 Would you identify yourself.

9 DR. BOZIC: Marin Bozic for Edge Dairy Farmer
10 Cooperative. Good morning, your Honor.

11 THE COURT: And just because your name is
12 difficult to spell, I'd like you to spell your whole name
13 for us.

14 DR. BOZIC: M, for milk, A-R-I-N; B, for boy,
15 O-Z-I-C.

16 THE COURT: Thank you.

17 DIRECT EXAMINATION

18 BY DR. BOZIC:

19 Q. Mr. Sjostrom, did you prepare the Exhibit Edge-11
20 that you have in your hands?

21 A. I did.

22 Q. And you're presenting this testimony representing
23 Jer-Lindy Farms, not Edge Dairy Farmer Cooperative; is
24 that correct?

25 A. Yes, sir.

26 Q. Would you like to read your testimony?

27 A. Will do.

28 I'm Lucas Sjostrom, and today I'll explain my



1 background and why my farm supports Proposal 1 with
2 logical outgrowth to update fat, submitted by Edge Dairy
3 Farmer Cooperative; Proposal 3, with the logical outgrowth
4 proposal to use a weighted average of blocks and barrels
5 submitted by Edge Dairy Farm Cooperative; a delay in
6 Make Allowances, increasing yields until yield factors are
7 considered, and if it increases more than \$0.40 per
8 hundredweight, all milk price equivalent divided over four
9 years; Proposal 16, Class III Plus as proposed by Edge
10 Dairy Farmer Cooperative, especially with the elimination
11 of advanced prices; and a 15.5 month or greater delay on
12 any changes affecting hedging, contracting, and federal
13 risk management programs.

14 I am here as one of four owners of Jer-Lindy
15 Farms, LLC. My parents-in-law, Gerard and Linda
16 Jennissen, both grew up on dairy farms in Stearns County,
17 Minnesota. My wife, Alise, grew up on our current farm,
18 where we currently live, and we raise our family with
19 three young children.

20 I also grew up on a Minnesota dairy farm, Sjostrom
21 Farms, LLP, in Lafayette, Minnesota. My grandparents,
22 parents, brother, and sister-in-law all continue farming
23 there today.

24 Both my current farm and home farm are co-owners
25 of Bongards Premium Cheese, where our milk is further
26 processed into many different products. However, this
27 testimony is not on behalf of our cooperative, nor my
28 parents' operation. I share those notes for transparency



1 purposes.

2 Jer-Lindy, LLC, based in Brooten, Minnesota, is a
3 200-cow dairy with a robotic milking system, feed pusher,
4 manure collectors, and activity monitors for health and
5 reproduction. We are a Minnesota Agriculture Water
6 Quality Certification program participant, which built
7 upon the Minnesota Milk Five Star Dairy Program.

8 We were recognized as a 2016 U.S. Dairy Industry
9 sustainability award winner due to our formation of an
10 on-farm cheese plant, and the International Dairy Foods
11 Association innovative dairy of the year in 2017.

12 We currently have cows making 4.4% butterfat and
13 3.3% protein on average. And that's last week, not a
14 yearly average.

15 I will go slower. Thank you, Counsel.

16 With my wife and her parents, we also own Redhead
17 Creamery, LLC, an award-winning farmstead cheese operation
18 which received first place natural rind cheddar at the
19 2023 U.S. championship cheese contest, in addition to
20 numerous other awards at the American Cheese Society and
21 Minnesota State Fair, since our operations began in 2014.
22 Our creamery has about six full-time and five part-time
23 staff making 70,000 pounds of cheese and providing tours
24 to about 10,000 people annually.

25 Because of agri-tourism, or lack thereof, we do
26 not believe our farm would or will exist without our
27 creamery, and we don't believe our creamery would or will
28 exist without our farm. And that's a future-based



1 statement.

2 Our latest venture is branded Redhead Creamery
3 Spirits. I was thrilled to learn about what we could do
4 with lactose as we split it, ferment the resulting glucose
5 and lactose, and create alcohol. I also now understand
6 how we derive whey, lactose, and various permeates and
7 retentates through that process.

8 Away from the farm I hold a Bachelor's and
9 Master's degree in animal science from the University of
10 Minnesota Twin Cities. I have completed the Young Dairy
11 Leaders Institute by the Holstein Foundation and was
12 admitted as a policy fellow at the nine-month University
13 of Minnesota program.

14 My project -- and this is in reference to graduate
15 school -- was on winter housing for an organically-grazed
16 herd, but also consisted of precision data collection on
17 pasture growth, activity monitors, milk quality, and fly
18 management.

19 I have worked in government relations and
20 communications for Holstein Association U.S.A. as an
21 associate editor with Hoard's Dairyman magazine, associate
22 editor with Dairy Herd Management magazine, and farmer
23 relations for Midwest Dairy.

24 Today, I concurrently work as executive director
25 of Minnesota Milk Producer's Association and managing
26 director at Edge Dairy Farmer Cooperative. Minnesota Milk
27 Producers Association focuses on issues affecting the
28 state capital in St. Paul and, therefore, has taken no



1 positions on any of these issues.

2 First I will provide my experience as a farmer.

3 My wife and I officially became part of the farm
4 in 2015. We had worked on the farm for hourly wages since
5 moving back into her childhood home in 2012. We were
6 pleased that trade associations like Edge and Minnesota
7 Milk have advocated for risk management programs. I
8 worked at the U.S. House Agriculture Committee as an
9 intern during the last year of the minimum \$9.90 dairy
10 price support program milk price upon expiration in 2007.
11 That is no more.

12 There was first an overlap of the milk income loss
13 contract program, begun in 2002, as the first
14 countercyclical dairy program in the modern era, followed
15 by the Margin Protection Program in 2014, and ultimately,
16 that was rebranded and reconfigured into the Dairy Margin
17 Coverage Program in 2018.

18 As support was moved from pricing, products such
19 as Dairy Revenue Protection and Livestock Gross Margin for
20 dairy were added. I have attended many sessions
21 explaining how each of these programs works, and because
22 of my other job, explaining the costs and benefits of the
23 latter three programs, not as an expert, but an effort to
24 connect farmers with resources who can help.

25 I spell out these various tools because questions
26 are being asked whether risk management should be
27 considered in this hearing. As I show above, Congress has
28 clearly signaled that dairy farmers should not plan for



1 support to continue and should rely on risk management.

2 To simplify things, there are two types of farms
3 in this country: Those with debt, and those without.
4 Obviously, this is a gross simplification, but let me
5 restate it in another way. There are farms that can't or
6 won't reinvest into their farm, and there are farms, like
7 mine, taking on debt to move our farm to a more
8 sustainable place financially.

9 My parents-in-law began their herd with a Farmers
10 Home Administration loan with a slightly negative net
11 worth at the time. They experienced a few good years from
12 1979 to 1982, before feeling the 1980s farm crisis right
13 as they took on the loan for our farm, their permanent
14 home.

15 Long story short, they felt like they recovered in
16 2002, and after 20 years of at least one of them having an
17 off-farm job, both returned as --

18 THE COURT: I'm sorry.

19 THE WITNESS: Yes.

20 THE COURT: You read off-farm.

21 THE WITNESS: Thank you.

22 THE COURT: The statement says on-farm.

23 THE WITNESS: That's both --

24 THE COURT: But they were both on-farm.

25 THE WITNESS: That's both true and not true. They
26 both held off-farm jobs while they were on-farm. That
27 should read off-farm. That's a correction.

28 THE COURT: Thank you.



1 THE WITNESS: So both having an off-farm job -- or
2 excuse me -- at least one of them having an off-farm job,
3 both returned as full-time farmers.

4 They built a freestall barn in 2002, were
5 convinced with state and federal grant money to build an
6 experimental small-scale digester in 2007, and built a pit
7 parlor in 2009. Since we moved home in 2012, we have
8 built a creamery and a machine shed, and are currently
9 converting everything within reach to automation. As we
10 do that, we try to plan our income as best we can in
11 effort to get a loan.

12 Our DMC program is locked in at 2014 rates, when
13 we had about 60 fewer cows. For those of us attempting to
14 improve our farm's sustainability, it is not a realistic
15 risk management program.

16 So we turned to DRP to have a more -- to have more
17 risk protection as we take on more projects like these.
18 We ask a broker to always look as far out as possible. As
19 a reminder, DRP trades in quarters of the year, not
20 months.

21 So you are receiving an average of the available
22 opportunity for each day of the quarter rather than a
23 monthly contract. In effect, we are always looking
24 24 months out, but as noted earlier by Dr. Bozic, 15.5,
25 15-and-a-half, months notice would be acceptable to
26 implement changes for trading purposes.

27 As such, I believe DRP, LGM-Dairy, and CME type
28 hedging is important for farms like mine more than ever



1 before, farms that fit the definition of a small business
2 for the purpose of this program. DMC is a great program,
3 but to call it ample risk management for a dairy like ours
4 with the next generation trying to dairy farm for another
5 40 years is a gross overstatement.

6 I should mention that, in 2023, things take a lot
7 longer. It took about one year to build the package loan
8 for our creamery and robotic expansion, and it is taking
9 about eight months to build everything related to it.
10 Those are probably twice as long as ten years ago.

11 In other words, not only is risk management a
12 bigger part of life for small business dairy farmers who
13 are growing into their next adventure, but you need to
14 look out longer than usual due to the supply change issues
15 caused in part by the hangover from COVID-19 disruptions,
16 as well as the breakup of globalization.

17 As a farmer, I cannot understand the rush to
18 implement things like Make Allowances or other sections
19 discussed here. In most simple terms, an increase in
20 Make Allowances lower the paycheck for farmer milk --
21 excuse me -- lowers the paycheck for farmer milk. Without
22 our diversified business and my off-farm job, I don't
23 think our farm would be worth reinvesting to, and the
24 previous generation has plainly told us many times, they
25 would have been done years ago if we weren't home.

26 But while USDA says farmers don't deserve a
27 Make Allowance for various reasons -- and I understand the
28 need for one in the current formula -- anything providing



1 comfortability eliminates risk. Without risk, there's no
2 innovation. Help us encourage but manage risk.

3 And while every dairy farm is managed by a
4 hard-working family who must know many things about
5 biology and financial management, I hope USDA pays special
6 attention to the farms who are looking to grow into their
7 next chapter, and thus, those that will take a little more
8 risk than the average.

9 I attended the October 2022 American Farm Bureau
10 Federation gathering on FMMOs and found it extremely well
11 done. However, due to harvest timing, membership, and
12 interest, only about six farmers from the Upper Midwest
13 states representing -- that should say -- over 40% of the
14 milk and farms in the country attended.

15 Like Farm Bureau's membership, attendance was
16 heavily skewed to the Southeast. I don't mean this as a
17 criticism, but rather to point out that some issues
18 weren't really debated, such as Class III Plus versus the
19 higher-of. Rather, we just all talked past each other in
20 some areas to serve our regional interests.

21 Class III Plus was certainly brought up as a
22 proposal, and at my table where we were able to discuss it
23 with members from across the country, it rose to the top.

24 As a newer proposal heard for the first time at
25 that forum by many, I don't believe you could characterize
26 that there was any vigorous debate about the different
27 proposals.

28 I fully recognize Farm Bureau has an extensive



1 resolutions process, and higher-of is their preferred
2 method of figuring the base Class I skim milk price.
3 However, to say it would -- it was unanimous would be
4 disingenuous.

5 Next I will share from our creamery's point of
6 view.

7 As a creamy taking just 12% of our farm's
8 production per year, we do not participate in the pool.
9 However, we could certainly make a 40-pound block of
10 cheese. What would that cost? Using estimates, I think
11 our costs would be around \$5.50 per pound. If USDA does a
12 mandatory survey, I hope they consider the most efficient
13 plants as their benchmark. I don't think creameries our
14 size should be included, but it sounds like we certainly
15 could be.

16 Another way to measure efficiency would be to
17 weight the average make costs by the volume.

18 A lot of talk during this hearing has focused on
19 the early days of the pandemic, whether it will happen
20 again, and how to fix Federal Orders as a result. I'm
21 sure many other cheese plants can relate to what happened
22 at our cheese plant on March 13, 2020. We received an
23 order for \$0 worth of cheese from our distributor, after
24 seeing a stable and growing market over the past five
25 years.

26 We live two hours from a major metro area. And
27 basically, we use our distributor to cover our payroll and
28 other sales to cover our other costs. The other costs and



1 employees on payroll remain part of our business, but
2 suddenly our revenue was gone.

3 We started a delivery service 24 hours later,
4 using social media to get the word out. Over the next
5 three months I distributed cheese in empty parking lots of
6 closed stores to some of our new biggest fans. Can
7 everyone pivot as quickly as a small company like ours? I
8 would argue that they could if they tried, especially if
9 they needed to.

10 Anything we do in this hearing is supposed to
11 affect minimum pricing and the formulas and data behind
12 them. I wish more would go after the maximum rather than
13 charts looking forward with supply and demand on inelastic
14 products, take a \$2 pound of cheese and turn it into an
15 experience, like Starbucks and others took a \$0.50 cup of
16 coffee and turned it into a morning drive-through lineup
17 that sticks out into traffic.

18 We have heard testimony here today that many of --
19 this was written previously -- that many of the largest
20 plants are more than covered by the Make Allowance. One
21 area where FMMOs do affect even small farmstead cheese
22 companies like ours is on grants and loans. Any drop in
23 the official FMMO minimum price for our region can mean
24 less opportunities for federal or private grants and loans
25 if a farm is borrowing or matching against milk as an
26 ongoing asset.

27 And finally, I will give my experience as a state
28 trade association executive director since 2017.



1 Although the Minnesota Milk Producers Association
2 is not focused on federal policy, we are focused on our
3 state's farmers. So as the calls come, we answer and make
4 impact with our contacts within the federal government as
5 appropriate.

6 In 2018 we began talking in our boardroom about
7 the block barrel spread and what we could do about it. In
8 2020, National Milk Producers Federation suggested
9 legislation to implement supply management, and we
10 suggested the Dairy CORE (COronavirus REcovery) program,
11 similar to what USDA ultimately rolled out. Minnesota
12 Milk and Edge have long stood against supply management.

13 I cannot imagine Redhead Creamery selling
14 500 units of cheese curds and then next week, due to,
15 quote, national demand, learning we need to cut back by 5%
16 and sell less of our sold-out cheese. But this proposal
17 keeps rearing its head every few years based on the
18 advantages and disadvantages of certain processors,
19 cooperatives, and regions of the country.

20 In 2021, our organizations helped create Class III
21 Plus in response to quick action asked for by NMPF at the
22 time. For two years we had conversations with economists
23 about the usefulness of Class III Plus, and we have
24 approved upon it with carry-forward provisions. While no
25 pricing schema setting a price for perishable product can
26 be perfect, we should use the data that most sets the
27 price for that commodity.

28 Class III milk futures carry more liquidity than



1 Class IV and, therefore, are better represented to set the
2 price. As I understand it, there's not an inherent
3 advantage for a cheese producer or disadvantage for other
4 manufacturers.

5 Most groups partnering with dairy farmers look for
6 ways to smooth out the peaks and valleys of milk prices.
7 Smoothing out the peaks and valleys invigorates demand
8 and, therefore, creates more orderly marketing.

9 At Redhead Creamy, LLC, our customers appreciate a
10 steady price. It would disadvantage both us and the
11 customers if we raised and lowered with every change in
12 the market, or our costs, week by week. Our customers
13 want to see the same price as last week. The average-of
14 was an attempt to do this, but, of course, no
15 organizations here are advocating for it to stay.

16 Class III Plus gets us back to the benefits of the
17 MW price series as we focus on the constantly traded
18 commodity. As testimony has shown, the MW price series
19 went out due to a lack of data, a lack of Grade B milk in
20 the market. We did not throw it out because basing the
21 price primarily on the vigorous cheese market of the Upper
22 Midwest was hurting anyone else around the country.

23 My most important role as executive director of
24 Minnesota Milk and managing director of Edge is to solve
25 problems for farmers. I have been in this role since
26 2016, and it is clear the industry has changed since the
27 year 2000.

28 One of the biggest changes I believe AMS needs to



1 consider is the full structure of our dairy processing
2 plants. Processors are, I would suggest, logically and
3 wisely lining up their supply with their demand. We
4 operated for about 100 years where there was nearly always
5 another market to which you could bring your milk.
6 Unfortunately, the past eight years have proven this
7 expectation no longer true, and USDA AMS should take this
8 into account.

9 As we think about minimum pricing, constantly full
10 plants means prices will stay closer to minimum pricing.
11 While many of us work in our local geographic areas to
12 increase demand and plant capacity, the dairy plant of the
13 future is more likely to ensure the cow's milk production
14 lines up with the dairy plant needs.

15 This creates a system where I have received the
16 following calls, paraphrasing, mostly over the past four
17 years:

18 1. I have 15 days to find a new milk market. My
19 private processor just sent me a letter, and I have
20 nowhere to go.

21 2. I have 30 days to find a new milk market. My
22 private processor lost their market, and I have nowhere to
23 go.

24 3. My cooperative has let a farm go for animal
25 welfare practices, which they seemed to ignore for several
26 years. That farm is now out of business.

27 4. My cooperative is insisting that my hint that
28 I might shop around for another milk buyer was my notice



1 that I was leaving the cooperative. Effectively, they
2 dropped me 20 days after I explained I would be looking
3 around, but luckily, I was talking to my milk hauler and
4 found out that he was done picking me up March 1st. I
5 hope I can get on another truck in the next ten days.

6 5. I think my plant has listed large negative
7 PPDs on my milk check without actually pooling their milk.

8 6. My cooperative gave me a contract that states
9 I can no longer speak publicly about my milk -- that
10 should say milk price. Any disparagement of the
11 cooperative results in my departure, and there's no due
12 process to fight these. I have no options but to sign the
13 contract because I have nowhere to go.

14 7. My cooperative is paying about \$3 per
15 hundredweight behind my neighbors, but although I want to
16 ask questions and make a change, I believe calling my
17 cooperative board member could result in my immediate
18 dismissal.

19 8. I have almost all my feed up for the year, but
20 my cooperative just sent me a letter that they will be
21 tripling hauling costs to true cost of hauling with
22 15 days notice. I'm so far away from a plant, along with
23 other farmers in my area, that I need to be done milking
24 cows. How could they give their own cooperative members
25 such little notice?

26 9. My cooperative thinks my milk had foreign
27 matter, but both myself and my milk hauler believe it was
28 just a gasket that had made its way into the milk tank.



1 The cooperative immediately suspended me with no
2 opportunity for appeal.

3 10. My private processor, a fluid milk bottler,
4 called last night and said they don't need my milk. I
5 have found a depooled cheese plant instead. What are the
6 protections for me getting paid?

7 About half of these calls were in 2023, and I hope
8 AMS considers it is an extremely difficult time for
9 farmers to speak out against their milk buyer.
10 Relationships are different in any situation, but I
11 believe the above situations were not supposed to exist
12 under a Federal Milk Marketing order scheme and represent
13 disorderly marketing.

14 Further, as cooperative board members often have
15 high value benefits such as company health insurance, many
16 would be incentivized to "work for" their cooperative
17 whenever needed. I'm not saying any words on stage were
18 pitched from a dishonest state, but rather we should not
19 expect to hear from all the voices that should be
20 represented with the current state of the market in 2023.
21 These situations put the integrity of both the FMMO system
22 and cooperative system at risk, and these are both systems
23 I believe should be preserved.

24 To reiterate my support for proposals, our farm
25 supports Proposal 1 with the logical outgrowth to also
26 update fat submitted by Edge Dairy Farmer Cooperative for
27 the simple fact that butterfat percentages, in even
28 Holstein herds like ours, have grown to levels not thought



1 possible 50 years ago with genetics, nutrition, and demand
2 provided by the butterfat.

3 Section 2: Our cooperative also works extensively
4 with barrels. However, we worry about their overinfluence
5 of the market. Therefore, we support Proposal 3 with the
6 logical outgrowth proposal to use a weighted average of
7 blocks and barrels submitted by Edge Dairy Farmer
8 Cooperative.

9 It is difficult for us to support any of the
10 proposals related to Class III and IV formula factors on
11 their own or as part of a package. We know that our farm
12 and cheese operation are always looking for efficiencies,
13 but receive no "Make Allowance" for milk production. Yet,
14 when it comes to the higher costs in the processing plant,
15 farms feel the same labor, fuel, and disposables impact on
16 a percentage basis.

17 With such a lag in Make Allowance updates and no
18 call for it in over 20 years, 15-and-a-half-month delays,
19 and slow step-ups over a handful of years would be the
20 best way to ensure more farms stay in business and
21 everyone can plan and manage their risk for the future, no
22 matter what the level will be.

23 We support Proposal 16, Class III Plus as proposed
24 by Edge Dairy Farmer Cooperative. We should note -- oh,
25 you can strike that last line.

26 THE COURT: All right. Tell us what you would
27 strike?

28 THE WITNESS: From "we should note that" to the



1 end of that non-sentence.

2 Finally, I would just like to thank, on behalf of
3 my farm, the Secretary and USDA for allowing us to testify
4 at the hearing.

5 THE COURT: I'd like you to read that last
6 sentence.

7 THE WITNESS: Jer-Lindy Farms, LLC, thanks
8 Secretary Vilsack and the Department for the opportunity
9 to testify at the hearing. I am fortunate to have been
10 involved in milk pricing over the past 15 years and see
11 the evolution of farming, risk management, and processing
12 opportunity for farms like mine.

13 DR. BOZIC: Marin Bozic for Edge Dairy Farmer
14 Cooperative.

15 Your Honor, we would make our witness available
16 for cross-examination.

17 CROSS-EXAMINATION

18 BY DR. CRYAN:

19 Q. Good morning. I am Roger Cryan with the American
20 Farm Bureau Federation.

21 Hello, Lucas.

22 A. Good morning, Roger.

23 Q. You're a Farm Bureau member yourself; is that
24 correct?

25 A. Yes, sir. Long time.

26 Q. I appreciate you coming to the forum in October,
27 but I have some questions about your representation of
28 that event.



1 You say here that only six farmers from the Upper
2 Midwest represented over 40% of the milk.

3 What -- what states make up 40% of the milk?

4 A. That's a great question, Dr. Cryan. I did the
5 math writing the testimony, and I don't have that at my
6 disposal right now.

7 Q. Do Minnesota and Wisconsin by themselves make up
8 40% of the milk?

9 A. No, sir.

10 Q. Would you disagree if I said there were at least
11 35 farmers there from the Midwest, including Illinois,
12 Indiana, Iowa, Kansas, Minnesota, Missouri, Ohio, and
13 Wisconsin?

14 A. Not if you include all of those states.

15 Q. Okay. How many states do you have to include to
16 get to 40% of the milk?

17 A. That's, again, a question I don't have -- or an
18 answer I don't have at my disposal.

19 Q. It's not just Minnesota and Wisconsin?

20 A. No, sir.

21 Q. Okay. Would you say that -- I appreciate that you
22 brought another idea, the Class III Plus to that meeting.

23 Do you believe that most of the farmers, most of
24 the people there were aware of that proposal before that
25 meeting?

26 A. I don't believe they were.

27 Q. Do you believe that the outcome of the program was
28 essentially an opportunity for some discussion and not



1 ultimately reflection of what -- what farmers and other
2 folks were already bringing to that meeting and the ideas
3 they already had in their conception?

4 A. Yes. But this testimony was in reference to
5 previous answer in cross-examination that there were no
6 other issues discussed other than the higher-of. So I
7 just -- I just wanted to make reference that there were
8 certainly other issues brought forward as viable
9 solutions.

10 Q. Your last sentence in that paragraph -- your
11 paragraphs about that event say it is -- to say it was
12 unanimous -- that is the higher-of -- was unanimous would
13 be disingenuous.

14 Did we ever say it was unanimous?

15 A. That's what I took from the cross-examination
16 testimony. I don't believe you or -- or Mr. Munch said
17 that.

18 Q. If I told you that we said that was the consensus,
19 would you agree with that?

20 A. Depends on your definition of consensus. Some
21 people believe --

22 Q. Would you just -- I'm sorry, finish your answer.

23 A. Some people believe consensus and unanimous mean
24 the same thing.

25 Q. Do you believe that?

26 A. I would need to look at a definition.

27 Q. Okay. And just to clarify, do you support
28 Proposal 17?



1 A. Over other options, I do.

2 Q. So are you testifying -- your testimony right now
3 is on behalf of Jer-Lindy Farms; is that right?

4 A. Yes, sir.

5 Q. You are not testifying right now on behalf of
6 Edge?

7 A. Yes, sir.

8 Q. Yes, you are, or you aren't?

9 Are you testifying right now on behalf of Edge?

10 A. I'm testifying on behalf of Jer-Lindy Farms.

11 Q. And you are not testifying on behalf of Edge right
12 now?

13 A. That's correct.

14 Q. Are you testifying on behalf of Minnesota Milk
15 Producers right now?

16 A. No, sir.

17 Q. Okay.

18 DR. CRYAN: Thank you very much.

19 CROSS-EXAMINATION

20 BY MS. HANCOCK:

21 Q. Good morning, Mr. Sjostrom. Can you hear me okay?

22 A. Yes.

23 Q. Okay.

24 THE COURT: Name, please.

25 MS. HANCOCK: Nicole Hancock on behalf of National
26 Milk.

27 BY MS. HANCOCK:

28 Q. On page 1 --



1 MS. HANCOCK: Did we give this an exhibit number,
2 262?

3 THE COURT: Yes. Correct.

4 MS. HANCOCK: Okay.

5 BY MS. HANCOCK:

6 Q. On page 1 of Exhibit 262 you identify that you're
7 one of four owners of Jer-Lindy Farms, and that's a dairy
8 farm operation that produces milk?

9 A. Yes.

10 Q. And where do you -- you sell some of that milk to
11 your own creamery, but do you -- where do you sell the
12 rest of it?

13 A. Bongards Premium Cheese.

14 Q. So you have an ownership interest in two different
15 processors?

16 A. Yes.

17 Q. One of them is Bongards that you are one of
18 multiple owners with?

19 A. Yes, about 200.

20 Q. Okay. And what products do you produce with
21 Bongards Premium Cheese?

22 A. We make raw milk, and they turn it into cheese
23 products and whey products.

24 Q. When you say "we make raw milk," do you mean
25 Jer-Lindy Farms delivers raw milk and then you turn it
26 into cheese and whey?

27 A. Correct. Yes.

28 Q. Okay. And then -- okay.



1 And then Redhead Creamery, you make cheese and --
2 out of that facility?

3 A. Yes. And now whey also.

4 THE COURT: I'm not sure "that" facility is
5 identified.

6 BY MS. HANCOCK:

7 Q. Redhead Creamery, LLC, is that the other?

8 A. Yes.

9 THE COURT: Out of which you also make?

10 THE WITNESS: Cheese and whey.

11 THE COURT: All right. Thank you.

12 BY MS. HANCOCK:

13 Q. On page 4 of your testimony under the title
14 "Experience of the Federal Milk Marketing Orders from a
15 farmstead creamery's point of view," if you want to track
16 along with me, and you said, "As a creamery taking just
17 about 12% of our farm's production per year."

18 Which creamery are you referring to there?

19 A. The Redhead Creamery, LLC, that our farm ownership
20 also has identical ownership.

21 Q. Okay. And so does the remaining 88% go to
22 Bongards?

23 A. Approximately, yes.

24 Q. Okay. And you say at the bottom of that
25 paragraph, if USDA does a mandatory survey, you would like
26 them not to include your creamery because you did not
27 believe that it's representative of what would be surveyed
28 across the nation; is that fair?



1 A. Yes. I believe that plants like ours that are
2 focused on specialty and definitely not focused on
3 producing those figures that are within the Make Allowance
4 calculations would have very distorted costs.

5 Q. Okay. Do you think that Bongards should be
6 surveyed?

7 A. I would need to know where they fit on the
8 efficiency scale.

9 Q. Okay. So do you think only the most efficient
10 plants should be surveyed for Make Allowances?

11 A. I believe it would be hard to know where the most
12 efficient line is unless you have a mandatory survey.

13 Q. Okay. And so is it fair to say then that your
14 position is you would like to have a mandatory cost
15 survey, but you would like someone with market knowledge
16 to apply some subjectivity in analyzing that data to
17 determine what the reasonable amount of a Make Allowance
18 would be?

19 A. For the most efficient plants, yes, I would agree.

20 Q. Okay. And on page 6 going into 7 of your
21 testimony, you have a list of some feedback that you have
22 received from different dairy producers; is that right?

23 A. Yes.

24 Q. And is it fair to characterize the comments that
25 you have received here as stating that the dairy farmers,
26 that their margins are so thin and the financial pressures
27 are so severe that they just have no more capacity to
28 absorb the issues that are being thrown at them?



1 A. That -- that may be part of it. However, at --
2 today, and where I sit receiving calls from mostly
3 Minnesota producers, the financial side, milk price-wise,
4 matters less than the capacity side. There is -- there is
5 a chance we could have high milk prices and full plants,
6 which is less likely. But if that were to occur and you
7 still were unable to move or change plants or be locked
8 into your supply contract, you still could feel the
9 pressure from your milk buyer, unlike years past.

10 So I think the financial considerations are
11 certainly important and relevant. However, it's more of
12 being stuck where you are, you may -- you may be paid
13 great financially, but politically, in the broadest sense
14 of the word, disagree with something that your cooperative
15 or your private processor has done. And right now you
16 don't have the opportunity to disassociate yourself unless
17 you shut down your farm.

18 Q. Okay. Somewhat you are locked into the buyer that
19 you have available to you?

20 A. Correct.

21 Q. And that's just based on proximity to plants and
22 the location of where you're at?

23 A. Yes.

24 Q. On that same page, on page 6, I'm going to move
25 back up, under the title that started on -- or the header
26 that started on the prior page, "Experience of the Federal
27 Milk Marketing Orders from a state trade association point
28 of view," in this section, this is you putting on your hat



1 working for Minnesota Milk Producers Association; is that
2 right?

3 A. Correct.

4 Q. And in that section you are stating that Class III
5 prices would "get us back to the benefits of the MW price
6 series, as we focus on the constantly-traded commodity."

7 Wondering if you could explain that a little bit
8 more.

9 A. Similar to the MW system where we were basing all
10 of our pricing off of the commodity Class B demand for
11 milk that by and large was going into cheese production,
12 with Class III as a chart -- I don't have yesterday -- I
13 don't have in my mind what it is, but as a chart showed
14 yesterday, Class III is by far the most liquid product you
15 can find in the market -- sorry for the pun -- but liquid
16 being the one most traded.

17 And so to me, that makes sense to base our -- our
18 discussion in this section, the base class -- base skim
19 Class I price on the commodity that is traded the most and
20 most liquid in the market.

21 Q. And Class IV is -- is traded every day. You are
22 just saying not to the same volume levels as Class III.

23 A. Correct. Class I and IV, as I understand it,
24 those plants are far more likely to turn on and off.

25 Q. Okay. And you would agree with me that depending
26 on the same location, that there are different markets
27 that have a different percentage of use of where that milk
28 is going and how it's used?



1 A. Yes.

2 Q. Some -- some markets are more Class I heavy, some
3 markets are more Class III or Class IV heavy?

4 A. That's true.

5 Q. Okay. And if you -- I don't know if you know this
6 or not, but does the MW price to the farms increase the
7 full amount when cheese prices went up immediately?

8 Meaning, were they reactive immediately?

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

10 Q. Does that mean you wouldn't know if when the
11 prices went down, if the MW price series was able to react
12 immediately to that as well?

13 A. I believe we used the system until it expired
14 because it was such a great, again, liquid asset, so to
15 speak, for our industry.

16 Q. Okay. And -- and -- okay.

17 MS. HANCOCK: That's all I have. Thank you so
18 much for your time.

19 CROSS-EXAMINATION

20 BY MR. MILTNER:

21 Q. Good morning.

22 A. Good morning.

23 Q. Ryan Miltner representing Select Milk Producers.

24 I'd like to ask you some questions about some of
25 the statements you have received, and you set those out on
26 pages 6 and 7 of your statement. And you suggest that
27 those situations represent disorderly marketing.

28 A. Yes, sir.



1 Q. Can you explain why you reached that conclusion?

2 A. I -- I believe that if we are going to base -- I
3 believe the rules of the Federal Order system were set up
4 at a time where we did not think these things would
5 happen. And so my fear is that we have created Federal
6 Order rules at a time when this wouldn't happen, and
7 therefore, with these things happening, we are
8 inadvertently, with Federal Order rules, creating
9 disorderly marketing.

10 These -- these situations I don't think are to be
11 expected by today's Federal Order rules, and therefore, we
12 should know that they are impacting farmers' ability to
13 market their milk.

14 Q. So I want to just quickly look at each of the
15 statements you have set forth and ask what you think a
16 Federal Order fix might be for that.

17 So with your first statement in the situation, I
18 assume that the farmer had a contract with a private
19 processor.

20 A. I don't know if -- sorry.

21 Q. No, no. Go ahead.

22 A. I don't know if there was a contract.

23 Q. Okay. Do -- do most producers that ship directly
24 to a processor that are part of either Edge or Minnesota
25 Milk Producers have a written contract?

26 A. Did you say "private" or did you say "all"?

27 Q. I think I said private.

28 A. I -- I would say I don't know if the answer is



1 most, but I would say a large percentage have no contract.

2 Q. Are you suggesting that the Federal Order needs to
3 have a requirement that there be a written contract
4 between an independent producer and its milk buyer?

5 A. No. My suggestion in this -- in all ten of these
6 statements is to ensure the Federal Order keep as much
7 power and leverage in the hands of the farmer.

8 Q. I want to talk about statement three, and in this
9 example it's a cooperative releasing a member farm,
10 correct?

11 A. Yes.

12 Q. Do you know if -- do you know if in this instance
13 this is a marketing cooperative or a service cooperative?

14 A. In this instance, "service" meaning they are
15 manufacturer?

16 Q. Well, service meaning that they don't actually
17 market the milk of the producer.

18 A. I can tell you it was a marketing and
19 manufacturing cooperative.

20 Q. Do you know if in that instance the member had an
21 a written marketing agreement with its cooperative?

22 A. I know that cooperative has agreements, but I also
23 know that not all members uniformly were given agreements.

24 Q. You understand that producers own their
25 cooperatives, correct?

26 A. Very much so.

27 Q. And that producers have a right to elect the
28 members of their Board of Directors, correct?



1 A. Yes. However, as I stated in some of the final
2 statements there, I think that power dynamic has changed.
3 Where, if this is your sole source of revenue, that
4 election process, that feedback loop may be unfortunately
5 broken, hopefully temporarily.

6 Q. Is that specific to cooperatives you have
7 experience with in Minnesota?

8 A. I don't -- yeah. I don't believe this is a
9 universal example by any means.

10 Q. Are you suggesting the Federal Order include
11 provisions that would apply to all cooperatives and their
12 contracts with their members?

13 A. Again, my hope was to ask AMS to keep as much
14 power in the farmers' hands as possible due to these
15 situations.

16 Q. Do you understand that each state has statutes
17 which govern the operation of cooperative associations?

18 A. I do.

19 Q. And do you understand that those are not uniform
20 across the country?

21 A. I do.

22 Q. Are you aware if Minnesota or Wisconsin have any
23 provisions in their state laws addressing any of the
24 concerns you outlined with respect to cooperatives?

25 A. What are my concerns?

26 Q. Well, you state that a farm was let go for animal
27 welfare practices, and they seemed to ignore those
28 practices for several years. So a concern like that.



1 A. No.

2 Q. How about a concern that a cooperative terminates
3 a member for exploring business opportunities?

4 A. Was your question Minnesota specifically?

5 Q. Yes.

6 A. I believe -- I believe there are laws related to
7 competition. However, I don't know where the co-op law
8 fits into that.

9 Q. Do you know if the producer in item 4, if their
10 marketing agreement was expiring on or about this time?

11 A. This was -- this was an example where the contract
12 had not been signed for several years and that this visit
13 spurred re-upping of the contract.

14 Q. When you say the contract was not signed, was it
15 not signed by the producer or by the cooperative?

16 A. As I understand it, some cooperatives ask their
17 members to sign yearly agreements, but they are not always
18 followed to the date. If you sign it on September 26th,
19 they would want you to sign it next year on
20 September 26th, and that had not been happening for
21 various reasons.

22 Q. Did that producer seek legal counsel to enforce
23 their contractual rights?

24 A. Luckily with about three days to spare, they found
25 another plant.

26 Q. With regard to your statement number 6, the
27 cooperative -- my cooperative gave me a contract that
28 states I can no longer speak publicly about my milk.



1 A. Price.

2 Q. It doesn't say price?

3 A. I added that in testimony.

4 Q. Got it.

5 Any disparagement of the cooperative results in my
6 departure, and there's no due process to fight these.

7 You're aware that cooperatives have, in most
8 instances, bylaws that outline the rights of members?

9 A. Yes. And I did not say in any of these ten things
10 anything was illegal.

11 Q. Do you know if the bylaws of the cooperatives you
12 are referring to outline a procedure for the expulsion or
13 termination of a membership?

14 A. We asked for several bylaws but were not given
15 them.

16 Q. Did the producer -- did you ask the producer for
17 these bylaws?

18 A. This is a specific case where the producer was
19 afraid to ask their board member for the bylaws.

20 Q. They were a member of the cooperative and did not
21 possess the bylaws?

22 A. Yes, sir.

23 Q. And you think that's an issue that the Federal
24 Order would want to address?

25 A. I think the Federal Order, especially in terms of
26 Make Allowances, but in every -- every other opportunity
27 we have here should keep as much power in the hands of the
28 farmer as possible.



1 Q. Okay. In number 7, you -- a situation where a
2 producer wants to ask about their pay price and whether
3 it's competitive, and they think that calling the co-op
4 could result in their dismissal.

5 Is that -- did that producer, in fact, ask the
6 cooperative about the pay price?

7 A. I don't know.

8 Q. When they say calling the cooperative, you stated
9 it was to call the cooperative board member.

10 Do you know if that -- that producer had other
11 people within the cooperative outside of the board member
12 to ask about their pay price?

13 A. When I get these calls, unless there's something
14 outside the law or something I can do, I'm not a milk
15 buyer or seller, I just share information. It was my
16 suggestion that they call their co-op board member. They
17 had talked to their field representative already.

18 Q. Does Minnesota Milk Producers serve as an advocate
19 for its members in helping them resolve these types of
20 issues?

21 A. Yes.

22 Q. Did you reach out to the -- did Minnesota Milk
23 Producers reach out to the cooperative to ask for
24 information on this point?

25 A. I have.

26 Q. And did you receive any information from the
27 cooperative?

28 A. No.



1 Q. Did you have an opportunity to look at the
2 members' marketing and membership agreement to figure out
3 what rights that the producer might have under those
4 documents?

5 A. Yes.

6 Q. And did those documents provide the producer a
7 right to this information?

8 A. Not explicitly.

9 Q. Are you aware whether the governing cooperative
10 law provided a member a right to that information or not?

11 A. I don't know.

12 Q. With respect to the various situations where a
13 producer was terminated from a plant or their milk was no
14 longer picked up, do you know if those events breached any
15 agreement between the producer and the handler?

16 A. The situation number 4 with the lapsed contract, I
17 think, in spirit, would have done that, since the contract
18 was lapsed and not re-signed. But legally I don't -- I
19 don't know how that would be ruled.

20 Q. Where I think this is -- this would be item one
21 and item two, and ten, do you know if the producer in
22 those three instances had a contract that entitled them
23 the right to supply those plants that was violated?

24 A. I believe in all three situations -- I believe in
25 all three situations -- I know for sure in at least two of
26 them, they bought and sold milk on a handshake agreement.
27 Like others are referencing legislation, I have personally
28 and Edge Dairy Farmer Cooperative has been working on



1 legislation to work so that farmers would have written
2 contracts. That would solve this. But again, not asking
3 within this hearing or within the Federal Milk Marketing
4 Order.

5 Q. Thank you.

6 Looking back at page 3 of your statement, and here
7 you are talking about risk management.

8 With respect to the proposals in this hearing,
9 which ones do you think should be delayed in
10 implementation for purposes of risk management?

11 A. I would have a difficult time naming the
12 proposals, however, anything that would interact with milk
13 pricing should be delayed.

14 Q. So any proposal that changes the calculation of a
15 component or class price should be delayed?

16 A. I think that's accurate.

17 Q. If those proposals were not delayed, if they took
18 effect right away, how would that negatively impact your
19 farms' existing risk management?

20 A. Yes. First it would -- I think it would take away
21 options, especially in DRP, as I think we have heard
22 previously could be frozen. And CME, I think it would be
23 hard for both sides to come to agreement on pricing, and
24 so therefore it limits options for us as we are in a major
25 building period right now and we are trying to fix as many
26 unknowns as we can because we know we will have many other
27 unknowns, and so, for us, risk management is extremely
28 important right now.



1 Q. Would it affect any contracts that you have in
2 place right now?

3 A. No.

4 Q. If it were -- let's just say it's going to take
5 effect on October 1st of 2025. Let's go 2024. Let's not
6 go out that far. And you have risk management contracts
7 in place on September 30th.

8 Would you expect that those contracts in place on
9 September 30th, would not be honored according to their
10 terms?

11 A. I'm certainly not an expert on that. I don't
12 know.

13 Q. Okay. Thank you.

14 MR. MILTNER: That's all I have.

15 THE WITNESS: Thank you.

16 THE COURT: It's 11:06. Let's get another
17 ten-minute break in. We'll be breaking for lunch, but
18 please be back and ready to go at 11:16.

19 (An off-the-record discussion took place.)

20 THE COURT: We're back on record. It is 11:18.

21 Ms. Hancock.

22 MS. HANCOCK: Thank you.

23 CROSS-EXAMINATION

24 BY MS. HANCOCK:

25 Q. You just mentioned something with Mr. Miltner that
26 prompted another question for me.

27 I think that you said that, you know, as a dairy
28 farmer you are not marketing any milk. Remember talking



1 with him about that a minute ago?

2 A. Well, can you clarify what you said or what you
3 think I said?

4 Q. Just that as a dairy farmer you are not marketing
5 any milk?

6 A. Oh, on the board, on the forward contracting, you
7 are correct, right now.

8 Q. Okay. And then you serve as the managing director
9 for Edge Dairy Cooperative?

10 A. Yes.

11 Q. How long have you served in that role?

12 A. Since November of last year.

13 Q. Of 2022?

14 A. Yes.

15 Q. Can you tell me what Edge as a cooperative does?

16 A. Yes. We are a verification cooperative. We
17 represent members who ship to private processors.

18 Q. Okay. And so does Edge buy any milk?

19 A. No.

20 Q. Does Edge sell any milk?

21 A. No.

22 Q. When you say it's a verification cooperative, what
23 does it verify?

24 A. I don't have the statute in front of me, but
25 through federal law or rule, you -- if you do not ship to
26 a cooperative, you must have your milk verified either by
27 USDA at the testing lab or by a verification cooperative
28 such as ourselves.



1 Q. Does -- and does Edge, as a cooperative, provide
2 testing services for dairy farmers?

3 A. We verify the testing services.

4 Q. Okay. So -- and then the dairy farmers pay Edge
5 for that service that it provides?

6 A. Yes.

7 Q. And so is that the totality of what Edge does is
8 provide that verification of the testing services?

9 A. Our three services that we provide are the
10 verification services, bulk tank calibrations, and then
11 political representation.

12 Q. Okay. And so when Edge -- I think that you or
13 maybe Dr. Bozic or someone had said something with respect
14 to the size of Edge being one of the largest cooperatives.

15 Is that -- do you know what I'm talking about? Is
16 that a way that you represent yourself as a Edge
17 cooperative?

18 A. Yes.

19 Q. But when you represent that, is that based on the
20 number of members that you provide those services to?

21 A. We have about 800 members. We say that we're the
22 third largest in terms of milk production cooperative.

23 Q. Okay. But you don't actually engage in any sales
24 of milk production, though, right?

25 A. No, but we certainly care about our 800 farmers.

26 Q. Okay. Yeah.

27 And do those farmers belong to other cooperatives
28 as well, in part?



1 Could you explain a little bit more of the point
2 you were trying to make in that paragraph that had
3 references to a number of different things?

4 A. Yes. I think the point was just that although
5 we're sitting here in 2023, I -- we have taken notice of
6 things that would have impact Federal Orders over the past
7 65 years based on this chronology.

8 Q. Can you say more specifically what program would
9 have required Redlands Creamery to sell 5% less of your
10 cheese?

11 A. Well, if there was any national -- any national
12 supply management program implemented, and assuming there
13 were across-the-board cuts as has been proposed by many
14 proponents many times, in theory, our farm would need to
15 cut back, our cooperative would need to cut back, and as a
16 result, since our cheese plant is directly tied to our
17 farm, the cheese plant may need to cut back just due to a
18 lack of supply.

19 Q. But you're not -- do you mean to suggest then --
20 you don't mean to suggest then that the creamery itself
21 would have a, you know, 5% quota cutback or something?

22 A. As I -- sorry to interrupt.

23 As I mentioned in previous testimony, I don't
24 believe -- or in previous questions -- I don't believe
25 there's any limit on the amount of product that need to be
26 produced.

27 Q. Okay.

28 DR. VITALIANO: Your Honor, I would like to offer



1 a correction in the record to this statement that National
2 Milk Producers Federation suggested legislation to
3 implement supply management.

4 At the beginning of 2020 -- early 2020, in the
5 early days of the pandemic when the industry was very
6 disrupted, National Milk and the International Dairy Foods
7 Association presented a joint COVID crisis plan to USDA --
8 did not suggest legislation -- that includes, urged the
9 USDA to make use of all available tools to deal with the
10 crisis, and that included a producer market balancing
11 assistance program that would have been implemented by
12 USDA, which USDA did not follow up on. But we did not,
13 National Milk did not suggest legislation.

14 MR. ENGLISH: Is there a question there somewhere?

15 THE COURT: Yes, the word legislation suggests
16 something that a legislature like a Congress might do?

17 DR. VITALIANO: Yes.

18 MR. ENGLISH: But was there a question?

19 THE COURT: Well, I just want to make sure I
20 understand what he's --

21 (Court Reporter clarification.)

22 THE COURT: I can't believe how guilty I was.

23 Mr. English, come back. Finish your thought.

24 MR. ENGLISH: I am sure it was not you, your
25 Honor, I am sure it was me -- or I.

26 I -- I did not hear a question there. I heard a
27 statement about a representation, which I think is fine,
28 but it is more appropriate to be made by someone who I



1 expect to testify at least once more at this hearing. And
2 so unless there's going to be a question to get this
3 witness to agree with that, I don't know what the purpose
4 of that statement is.

5 I understand why you are trying to do it. I just
6 don't think it's appropriate unless there is a question or
7 if you want to testify about it.

8 THE COURT: Understood.

9 Now that you have laid the background, is your --
10 is your question to the witness as to whether he is
11 certain that the word "legislation" is the proper
12 characterization?

13 DR. VITALIANO: Yes, that's an excellent way to --
14 to suggest that. While I'm up here, rather than taking
15 the time to go on the stand again, I figured I would take
16 the chance.

17 BY DR. VITALIANO:

18 Q. Do you -- do you accept the fact that your use of
19 the term "legislation" is -- was misstated?

20 A. Mr. Vitaliano, I -- I don't know what National
21 Milk wanted to do or is capable of doing. What you
22 mentioned may or may not have been in a press release or
23 public statement. I don't know if -- if -- if they would
24 have pursued legislation, if that was possible. I would
25 be happy to add "or regulation" after the word
26 legislation.

27 DR. VITALIANO: Okay.

28 THE COURT: Let's do that, and then you decide



1 whether you want to testify.

2 DR. VITALIANO: Okay. No more questions.

3 THE COURT: Well, let me ask, before Agricultural
4 Marketing Service asks its questions, should we address
5 now the changes to your statement that we may want to have
6 on the record copy?

7 THE WITNESS: Yes.

8 THE COURT: Let's -- let's do that.

9 All right. Let's -- so let's start on page 2 --
10 let's start on page 3. Page 3, the only one I noted that
11 actually would require a change on the document was in the
12 fourth full paragraph that begins "long story short," the
13 next line, the change that you suggested would be that
14 "on-farm" would be changed to "off-farm."

15 Do you want that change made in your record copy
16 of your statement?

17 THE WITNESS: Yeah.

18 And alternatively, your Honor, we could provide
19 updated written testimony. Is that an easier --

20 THE COURT: No.

21 THE WITNESS: No. I was just kidding. Let's
22 change -- let's change "on" to "off."

23 THE COURT: All right. Let's go ahead and do that
24 now. Temporarily striking O-N.

25 USDA REPRESENTATIVE: Okay. What page?

26 THE COURT: Oh, we're page 3 of Exhibit 262. And
27 we're striking O-N, and we're showing in the margin that
28 what was meant was O-F-F.



1 USDA REPRESENTATIVE: In which paragraph?

2 THE COURT: The paragraph starts "long story
3 short." It's the third full paragraph.

4 All right. So that line would read, "having an
5 off-farm job." Okay.

6 Then the next place -- some of your deviation from
7 your testimony I don't think requires any kind of a
8 document change, but I would suggest on page 4, the --
9 one, two, three -- fourth full paragraph begins, "I
10 attended the October 2022," at the beginning of that
11 paragraph. Third line down, the word "represented" was
12 changed to "representing."

13 Is that correct?

14 THE WITNESS: Sure. Yes.

15 THE COURT: So we just strike the E-D and write in
16 instead I-N-G, so that that line reads, "farmers from the
17 Upper Midwest states representing over 40% of the milk and
18 farms in the country."

19 And then the one we just made, we're on page 5,
20 and there's a heading in the middle of that page that
21 says, "Experience of FMMOs from a state trade association
22 point of view," go to the second paragraph of that
23 section. That paragraph begins, "In 2018," comma, go to
24 the next line down and find the word "legislation" and
25 insert "or regulation." So that line would read:
26 "... about it. In 2020, National Milk Producers
27 Federation suggested legislation or regulation to
28 implement supply."



1 And then the next one is on page 6. The last line
2 on that page, in number 6, the last line, instead of
3 starting "milk," comma, it will say "milk price," comma.

4 And then the last one that I noted was on page 8,
5 the second line down from the top has a partial sentence
6 that we struck. So that partial sentence that we're
7 striking the entire thing, "We should note that contrary
8 to prior testimony in an exchange between."

9 Were there any other changes that you recall that
10 I should --

11 THE WITNESS: No, your Honor.

12 THE COURT: Thank you. All right.

13 DR. BOZIC: I confirm as well, no more changes.

14 THE COURT: Very good.

15 And now I'd like to hear from Agricultural
16 Marketing Service.

17 CROSS-EXAMINATION

18 BY MS. TAYLOR:

19 Q. Good morning.

20 A. Good morning.

21 Q. Thank you for coming to testify today. I first
22 want to start off and ask you my normal Small Business
23 question.

24 Would your farm qualify as a Small Business?

25 A. The farm and the creamery both, although we hope
26 not too much longer.

27 Q. That's fair.

28 Let's see. So I want to run through on your first



1 page the specific proposals you are talking about, just to
2 make sure everything's clear on the record.

3 So for Proposal 1, what you are saying here is you
4 would like to see the -- man, this is a long time ago, I
5 have to think back from August -- the composition
6 standards updated to include the fat.

7 A. Yes.

8 Q. Okay. And Proposal 3 -- and I had a question
9 later on, but I'll ask it now. Proposal 3 looks to remove
10 barrels.

11 A. Yes.

12 Q. You are not actually -- or are you actually
13 supporting Proposal 3, or what I understand the proposal
14 that you would prefer is the weighted between the two?

15 A. Yeah, I prefer the weighted between the two, not
16 knowing if our proposal will be accepted. That's why I
17 threw them together.

18 Q. Okay. Okay.

19 And then the next bullet deals with
20 Make Allowances. And this is new to me, so I'd like to
21 see if you could explain that a little bit what you are
22 meaning by that. I don't believe I remember seeing
23 anything on -- other than what has actually been proposed
24 by IDFA and Wisconsin Cheese Makers, a delay in
25 Make Allowances.

26 So what are you looking for there?

27 A. Yeah, I could not find a proposal on this either.
28 I think we have heard testimony from many farmers that



1 \$0.50 per hundredweight would be quite a bit to take, and
2 for us it would be the same thing.

3 We are cognizant of why cooperatives, cheese
4 plants are asking for what they are asking for -- all
5 plants are asking for what they are asking for. But yield
6 factors, as -- as Edge had proposed in their initial ask
7 for yield factors to be considered, and many others had
8 asked, we don't believe -- I don't believe that
9 Make Allowances should be considered until yield factors
10 are included because of the technology that's been
11 changing those plants.

12 And once those are considered, if it's over \$0.40,
13 again, due to the testimony of many others, and we would
14 agree, that \$0.50 is a very large burden for dairy farms
15 to take on on an all-milk price basis to divide that over
16 at least four years.

17 Q. Okay. So that would be evenly 25% each year?

18 A. You can -- you can go zero for three years and
19 then 100 if you would like.

20 Q. Okay. Okay. So with that in mind then, you would
21 oppose any of the Make Allowance proposals here if the way
22 they have been characterized was they would actually
23 increase or decrease the all milk price by at least \$0.50,
24 if not more?

25 A. Yeah, I'm personally, I have a really hard time
26 supporting any -- and I think you have heard many farmers
27 say, it's really hard for me to support any Make Allowance
28 increase. But seeing that that's inevitable, this is how



1 I would do it.

2 Q. Okay. And then your next Proposal 16 supporting
3 Class III Plus. Can you explain that proposal and how it
4 would operate?

5 And I ask because this is kind of the first time
6 we have had a witness talk about this one, and -- and
7 since you are on the board, you are -- you are a staff of
8 Edge, could you explain how that would operate?

9 A. So can I wait until tomorrow?

10 Q. Sure.

11 A. Or I mean until Dr. Bozic's testimony tomorrow on
12 the subject? Would that be -- I don't want to misstate
13 anything.

14 But in general, we would be basing the skim -- the
15 base Class I skim price on Class III, and then looking
16 back three years, that difference between the higher-of
17 and average-of, and adding that difference when there is
18 one.

19 Q. Okay. And so we have had testimony from other
20 farmers about the importance of what they would term
21 getting current market signals, which is why they want to
22 return to the higher-of. We have heard other testimony
23 about how farmers would be made whole with whatever
24 rolling adjuster you want to calculate over time because
25 the adjuster is going to be updated more regularly.

26 So what's your position kind of with those two
27 diverging viewpoints on whether you would be made whole
28 under this rolling adjuster or not? I guess that's where



1 I'll start.

2 A. Yeah. I think -- I think there's -- I believe
3 Class III Plus is the best one. That's what attracted me
4 to work for Edge. That's why we have been working on this
5 in my other roles previously, as both a farmer and as a
6 trade association executive director.

7 I think having something that's hedgeable for all
8 participants in the industry is -- is something we have
9 achieved to a very large extent, and something we should
10 keep now that we have it.

11 Again, nobody here is proposing to stay with the
12 current average-of, so I think the solution we are all
13 looking for is what to do next.

14 And so me -- to me, I get probably more calls,
15 besides the recent situations that I have outlined in
16 those ten that I have talked about with a few counselors,
17 probably one of the top things I get calls about is
18 innovation in Class I.

19 And like I, as I'm trying to grow and innovate our
20 creamery business, want to be able to hedge and lock in
21 some of the unknowns. I want -- and I believe farmers
22 would love innovation. And I think the way to do that is
23 to allow them to -- allow them, meaning Class I, to lock
24 in some of their risk.

25 Q. So we have had other farmers testify about the
26 impact over, you know, the COVID period that depooling and
27 the resulting negative PPDs had on their hedge positions.

28 Can you talk a little bit about how that impacted



1 you?

2 A. It did not impact my farm. It definitely impacted
3 my phone. I got many calls from farmers who thought they
4 had locked in positions, and when they found out that the
5 PPDs were negative, they realized what they thought they
6 had hedged did not exist. And so all of a sudden, in a
7 worst case scenario, they thought, well, I have at least
8 this price locked in, whatever that price was when they
9 hedged it. And then they got their milk check, and it
10 was, 3, 4, \$5 less than what they had presumed. So our
11 farm, not; other farms, very much so.

12 Q. Can I ask because, you know, risk management --
13 how were you able to not have that -- how were you able to
14 not have those impacts of depooling as others have
15 explained it impacted their positions?

16 A. I believe -- well, I don't know. I didn't go back
17 and check. I would -- I would suspect as we ship to a
18 cheese plant, they made that decision to depool or to not
19 depool in the best interest of their patrons. And, you
20 know, I think probably the class most impacted was the
21 fluid class, so those -- those members of cooperatives and
22 proprietary plants who ship to fluid.

23 Q. So if your Class III plant depooled that you ship
24 to, they didn't -- that negative PPD wasn't reflected
25 on -- there's been talk about how even if a plant depooled
26 and they weren't required to pay minimum prices, somehow
27 that negative PPD was still reflected on their producer
28 check?



1 A. Yes.

2 Q. And what I'm gathering from you was that was not
3 your experience then?

4 A. No. I think there's a reason why I am able to
5 talk here, and I have a very high trust with my
6 cooperative, and I'm very proud of what they do
7 transparently on their milk checks. I don't think that's
8 the case for all farmers today. I hope that changes.

9 Q. Okay. And then moving down to the last bullet
10 there, you want -- are seeking a 15-and-a-half month or
11 greater delay on any changes affecting hedging,
12 contracting, and federal risk management programs.

13 And I know there's proposals to delay the
14 implementation of the component factor updates, but are
15 there any specific proposals you are talking about with
16 that delay?

17 A. Again, anything that would change milk price I
18 believe should be delayed. Anything that would affect
19 hedging, contracting.

20 Q. So any piece of the formulas. Because I ask
21 because there was a witness weeks ago who said, even if
22 the Make Allowances were changed -- there was no delay in
23 implementing any Make Allowances, they weren't seeking a
24 delay in that because of the hedging position, somehow it
25 wouldn't be affected. But you hold a different view.

26 A. Again, I -- I would -- I would consider myself
27 much closer to a farmer than an economist or lawyer, so
28 I'm not going to state it right if I try to pin it down.



1 But I don't want anyone's -- as we saw in the pandemic
2 with depooling, and as we could see if something here
3 substantially changed, the milk price farmers are getting,
4 I don't want anyone to lose ability to manage risk or
5 especially lose something they have thought they have
6 locked in and it be disrupted by regulation implemented
7 here.

8 And I think from what I have heard, you know,
9 especially from Dr. Bozic, 15-and-a-half months achieves
10 most of that.

11 Q. Okay. And I know later in your testimony you talk
12 about you're always looking 24 months out, but
13 15-and-a-half months is acceptable notice.

14 Based on your experience as a farmer and your
15 hedge positions, where do most of those contracts lie?
16 How many months out do you look? I know you look 24, but
17 that doesn't mean that you lock in 24.

18 A. Yeah. And I think you have heard here, so DRP is
19 what we use most, but we -- how we do it is we have
20 basically set up rules for our agent and said, if it's
21 here, do this; if it's here, do that. And so they are
22 constantly watching.

23 Unfortunately, I think due to the -- well -- well,
24 as we have seen, since 2020, as previous exhibits have
25 shown, trading volume has increased in dairy, and that is
26 a building situation.

27 If you want to buy oil, I believe you can go nine
28 years out. If you want to buy corn, I believe you can go



1 two years out. As we heard yesterday from the witness
2 from Nestle, they think liquidity is about six months out.

3 We can't get to a year, or a year and a half, or
4 two years until people take the risk to try to lock in
5 those positions.

6 And so, you know, back to your question, I think
7 much of the time it's hard to get much beyond that
8 15-and-a-half month point, and especially in Dairy Revenue
9 Protection the past two years, it just hasn't made
10 economic sense to lock in more than a few months out at a
11 time.

12 But that's not always the case. Sometimes as the
13 markets and futures change, it makes a lot of sense, and
14 depending on the building project on your farm, sometimes
15 it makes a lot of sense to go as far out as you can.

16 Q. And do you use any other tools other than DRP?

17 A. We have not for some time. But that's partially
18 because DRP, as previous witnesses have stated, captures
19 all the upside and eliminates most of your downside risk.

20 Q. Okay. So you said some of your -- I think 12% of
21 your milk goes to your on-farm creamery, and the rest goes
22 to Bongards; is that correct?

23 A. Correct.

24 Q. And you say you're a co-owner of Bongards.

25 Does that mean -- to make clear for the record, is
26 Bongards a cooperative?

27 A. It is.

28 Q. Okay. And does Bongards reblend?



1 A. I don't know. I assume -- I know they have the
2 ability to, but I don't know if they have a stated
3 position to do so or not do so.

4 Q. Okay. So your -- does your milk check reflect
5 that or your milk check -- if I may ask, and you don't
6 have to answer -- reflect whatever the uniform price is
7 for the month, plus or minus, you know, premiums,
8 etcetera?

9 A. I don't -- I don't think most farmers, including
10 myself, pay attention to that. On our milk check it will
11 state the Class III price, our price, and the order
12 minimum price, and those are the three things we pay
13 attention to. Whether they reblend it or not, I don't --
14 I don't believe is listed on our milk check, or I have
15 never seen it.

16 Reblending can be up or down, right? So I -- I
17 have never seen that listed on our milk check.

18 Q. Okay. And then do you know if your milk is pooled
19 or does -- do you, as a farmer, ever know whether it's
20 pooled or not pooled? Because you did state earlier that
21 during some parts of the past recent history you know
22 Bongards didn't pool all the milk?

23 A. If I call and ask, they will quickly tell me, but
24 I don't know month to month.

25 Q. Okay. And when your milk goes to Bongards, how
26 far is that haul?

27 A. It never gets there. We do swaps. We have a
28 cheese plant 20 miles away. A cheese plant 35 miles away.



1 It typically goes to the cheese plant 60 miles away.
2 Occasionally we have gone to the -- it's been a couple of
3 years now, but occasionally it's gone to the Woodbury
4 fluid plant also, which is about 120 miles away.

5 Q. Okay. And you talked a bit about how a lot of
6 producers in your area, and Mr. Umhoefer this morning said
7 the same thing, don't actually have contracts with their
8 cheese buyer.

9 But do you have a membership -- I assume you have
10 a membership agreement with Bongards?

11 A. No.

12 Q. No agreement, you are just a member?

13 A. Handshake, yes.

14 Q. I'm fascinated.

15 A. Me, too. Here I am.

16 Q. Just in general, I guess, up there that -- that --
17 and not to say that we at USDA haven't had similar
18 discussions about this, about how producers, you know,
19 don't up there have contracts with their buyers. Is it --

20 A. Is that a question?

21 Q. That's a fair question.

22 A. I'm ready.

23 Q. I'm just fascinated to why that is the market
24 dynamic up there, I guess.

25 A. So I -- I believe, again, with a lot of trust,
26 that they have very good reasons for it. But in those ten
27 examples that I have in my testimony, and I'm not sure if
28 you are asking about those, but in those ten examples,



1 some of those have resulted in banks or lenders calling me
2 and saying, what? I thought the Federal Order mandated
3 they are going to get paid no matter what at least twice a
4 month?

5 And I called some of the smart, good looking
6 people at Federal Order 30, and just try to figure out,
7 all right, what do we have promised or not promised here?
8 And there's been a lot of education, in the past 24 months
9 especially.

10 Everyone has the ability to enter into contracts.
11 There's also reasons not to. And one of the things we
12 would like to do, as Edge, wearing my other hat,
13 legislatively, is rebuild that trust.

14 Oh, sorry to the court reporter.

15 Q. I'm so fascinated, I didn't even realize you were
16 talking fast.

17 A. Yeah. It's gets me excited.

18 And I think we often in this room hear, oh, that
19 would be good for farmers. And maybe right now, based on
20 where milk prices and dairy farmer economics are, it would
21 be. But there are times in the marketplace where I think
22 that would also be very advantageous for dairy processors
23 to have written contracts knowing that their milk supply
24 can't leave at any given time and things are held from a
25 legal perspective on that end.

26 And so our -- again, outside of this hearing, but
27 our legislation we have proposed tries to build that
28 contract of trust better amongst all producers and



1 processors.

2 And within this testimony, and within the Edge
3 Dairy Farmer Cooperative packages -- package of testimony,
4 we have tried to do within Federal Orders the best
5 building of that we can. However, we think you are, as
6 AMS, very much bounded and not able to do everything I
7 would like to see you complete.

8 Q. And so for you in particular, then, since you also
9 don't have an agreement, written agreement, so do you
10 forward contract your milk?

11 A. We can.

12 Q. You can, but you don't, I guess?

13 A. We have.

14 Q. You have. Okay.

15 On the -- towards the bottom of page 3, this is
16 where you are talking about different risk management
17 tools. And you say, "DMC is a great program, but to call
18 it ample risk management for a dairy like ours is a gross
19 overstatement."

20 And I just wanted to ask you for the -- for the
21 record, you know, expand on why you think that? Why you
22 think that is?

23 A. Just because we have grown. If you add another
24 family, like we have, to your farm, typically you need to
25 grow -- in the commodity business for that 88% of our raw
26 milk that is a commodity, you typically need to get better
27 every year. Lower costs, every year. And volume is one
28 way that most of us try to overcome those higher costs



1 each year. So any growing dairy farm, which as I
2 mentioned, not all of them are, I think DMC becomes really
3 less and less effective every year.

4 Q. And I just want to make sure it's clear. And
5 that's because it has the two-tier levels of what is
6 covered?

7 A. No. No. Below 5 million pounds you are locked
8 into whatever you made in the highest of the 2012, 2013,
9 or 2014.

10 Q. Your base is locked in?

11 A. Correct.

12 Q. Okay. On page 4, in the second full paragraph,
13 you say, I see the need for one -- and here you are
14 talking Make Allowances and the current formula --
15 "anything providing comfortability eliminates risk.
16 Without risk, there is no innovation."

17 Can you expand on that thought for us what you are
18 talking about there?

19 A. Yeah. In -- in simple terms, if -- if it costs --
20 like I mentioned here, if it costs \$5.50, including
21 reinvestment, for Redhead Creamery to make a 40-pound
22 block of cheese, and we had an equivalent Make Allowance
23 where USDA ensured we were paid \$6, I don't know why we
24 would make anything besides 40-pound blocks of cheese.

25 So when there's no risk, we wouldn't go look for
26 other markets. We wouldn't create anything new or
27 different.

28 Q. So does that thought carry over to where you



1 believe eventually Make Allowances should fall? And --
2 and so I had another question later, but I'll ask it now.

3 So then what's your opinion of what a fair
4 Make Allowance is? You know, we have proposed for us
5 different numbers, and the studies have different numbers
6 themselves than what's been proposed. There's a high
7 cost, a low cost, an average.

8 So kind of what do you think is appropriate, given
9 that sentiment?

10 A. Yeah. I believe that it should be correlated to
11 the highly efficient plants. I don't work in those plants
12 or know their numbers besides what's been presented here.
13 And so I don't have a number. I don't think dairy farmers
14 who aren't on board of co-ops or proprietary plants would
15 know what number that should be pegged at, and I certainly
16 don't.

17 Q. And I'm not asking for a specific number, just
18 kind of, you know, you're a policy guy, right? What's
19 the -- what's your thought of, policy-wise as a farmer,
20 where that number should set?

21 And from what I'm getting from you, I'm taking
22 away that not necess- -- it shouldn't necessarily cover
23 the high cost plants, and maybe it shouldn't necessarily
24 be set at the average, is what I'm gathering from your
25 statement?

26 A. Yeah. Well, first, I hope "policy guy" was a
27 compliment and not a derogatory statement.

28 Q. It was.



1 A. But second, yeah, I think your statement summed it
2 up. Again, if we're eliminating risk for this entire
3 industry of people who make cheese that are subject to
4 Make Allowances, why would we expect any innovation in the
5 industry?

6 Q. And you see it as, if their makes aren't fully
7 covered, then that will make force them to innovate?

8 A. Yeah, or exit. Unfortunately, the same thing that
9 happens to dairy farmers.

10 Q. Right. Okay. On page 5 you -- in the paragraph
11 above the heading that's in the middle, here you are
12 talking about how Federal Orders even do affect farmstead
13 cheese companies like yours who don't participate in the
14 pool, because it affects your grants and loans. And I'd
15 just like -- this is the first of that we have heard, so
16 if you could expand on that statement.

17 A. Yeah. We have been beneficiary of some USDA grant
18 and loan resources, and the easiest way for us to make the
19 case of assets, future assets, revenue, is to say, here,
20 here is a federal document that represents our area that
21 says this is what our milk is worth.

22 Q. Okay. And down below you talk about -- and you
23 had some discussion with Dr. Vitaliano, and you talked
24 about your Dairy CORE program that you all, as Minnesota
25 Milk Producers, had put together, and that it's similar to
26 what USDA ultimately rolled out.

27 Can you be more specific? Because there were a
28 lot of programs that were rolled out. What you are



1 talking about there?

2 A. I'm hoping my counsel can recall the acronym or
3 name of what -- what ultimately it was, but I can't
4 remember the name of it.

5 Q. And given that, can you describe what your Dairy
6 CORE program would have been?

7 A. Yeah. Essentially it would -- rather than a
8 supply management program, it allowed -- I'm not going to
9 go into it. That was a long time ago, so I bet counsel
10 can ask me a question that recalls that.

11 Q. Okay. I understand a long time ago. I feel like
12 six weeks was a long time ago, so that was three years
13 ago.

14 On page 6, you have a statement, "Class III Plus
15 gets us back to the benefits of the MW price series as we
16 focus on the constantly traded commodity."

17 And I'm wondering if you can expand on how that --
18 how that proposal does that and why you think that's
19 beneficial.

20 A. Yes. Cheese, and therefore whey, as I understand
21 it -- and I think as testimony has been provided here --
22 are plants that are meant to run as close to 24/7, as
23 close to 365 days a year, as they can, aside from
24 maintenance and staffing shortages and all the other
25 things that interrupt your work flow. But of the four
26 classes, Class III would be most represented of plants
27 that are built to always demand raw milk and, therefore,
28 are built to always be producing the product that they are



1 intended to make over the other categories.

2 Q. And so you think it's beneficial to go back to
3 something more like what the MW used to be?

4 A. I think it's beneficial to go to something that is
5 constantly made, constantly traded.

6 Q. Okay. And the next question, you talk about --
7 and this goes on to your -- what you just mentioned about
8 plants always running full these days.

9 And as we think about it, minimum pricing -- "As
10 we think about minimum pricing, constantly full plants
11 mean prices will stay closer to minimum values."

12 I just wanted you to expand on that. And I think
13 you make that statement and you're trying to talk about
14 kind of how the market is different now.

15 A. Yeah. Again, I think the last time orders were
16 evaluated, these ten situations that I get to after the
17 following paragraph wouldn't have happened because the
18 plants, the physical processing plants, were not full.
19 And so when they aren't full, even in a supposedly
20 competitive market like the Upper Midwest, there would be
21 no reason to pay higher premiums, there would be no reason
22 to solicit milk with those premiums, and so therefore,
23 when milk can't move, it doesn't make as much sense for
24 plants to pay above what they need to, because that is
25 what the market is telling them, pay what you need to, and
26 you are not trying to entice more vendors, I guess, in
27 this case, if you call the farms vendors.

28 Q. Okay. So in that case, the minimum price is all



1 they need to pay is what you are saying?

2 A. I think that's what we have seen, or lower.

3 Q. So you do list some information on different calls
4 you got, and I don't really want to get into that any more
5 than what you have already had to discuss.

6 But I do ask the question -- want to ask the
7 question as kind of what do you see as that -- how do you
8 see Federal Orders providing for orderly marketing? That
9 is their policy objective. And so as a farmer, what do
10 you interpret that to be for you?

11 A. Yes. So, again, Federal Orders providing orderly
12 marketing, I believe we should have regularly updated
13 numbers at a set time, make them as mandatory as possible,
14 as low Make Allowances as feasibly possible, because
15 again, otherwise, I believe plants will be marketing
16 products that maybe don't actually have a real life
17 market, and allowing -- allowing farmers to know what some
18 hedging forward contracting, OTC, some -- some device of
19 their choosing, that they will have based on current time
20 and current information, an idea of what their milk price
21 is as far out as possible.

22 Today, some countries have that, and we do not.

23 Q. So if I could summarize. That's, you know,
24 transparency, market information, and I would probably
25 guess enforcement of some of those prices?

26 A. Yeah. And no overstatements of any fixed -- fixed
27 costs or fixed prices like Make Allowances.

28 Q. Okay.



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

2 THE COURT: Thank you.

3 Is there any other cross before we have redirect?

4 No. Let's go to redirect.

5 REDIRECT EXAMINATION

6 BY DR. BOZIC:

7 Q. Marin Bozic for Edge Dairy Farmer Cooperative.

8 Lucas, did your creamery in any way, assist,
9 review, provide input, or otherwise collaborate with you
10 in writing of your testimony?

11 A. Bongards Creamery? No. The others at Redhead
12 Creamery? Also, no.

13 Q. So -- so it's fair to say that they are really --
14 they were not aware in any way of the -- any words
15 regarding the -- or any statements that you made about
16 other incidents in our broader milk shed?

17 A. No, they were not.

18 Q. I believe at one point you said that you used DRP.
19 Just to make sure that it is on the record, you
20 also do use DMC regularly?

21 A. Yes.

22 Q. Okay. In discussing briefly -- and this goes to
23 Ms. Taylor's question in discussing Proposal 16, I think
24 you refer to the lookback as the difference between the
25 higher-of and the average-of.

26 Did you mean the difference between the higher-of
27 and the appropriate variable related to Class III?

28 A. Yes.



1 Q. Okay. On page 4, first full paragraph, you write,
2 "In simple terms, an increase in Make Allowances lowers
3 the paycheck for farmer milk."

4 Dr. Stephenson seems to be of the opinion that
5 it's not a big deal if we set the allowances rather high
6 because that will be compensated for by the over-order
7 premiums.

8 Do you share his confidence that that will happen?

9 A. Based on the current markets, absolutely not. I
10 don't see a future based on farm structure and plant --
11 processing plant planning where over-order premiums
12 return.

13 Some of the ten examples, like I shared, many of
14 them -- many of them were the last six months. And in
15 several cases, hearing about this in the industry, the
16 first call came from cattle jockeys, and they weren't
17 looking to sell the cows to a harvesting plant, they were
18 looking to sell the cows to another farm.

19 When prices are low, farmers are trying to
20 increase their volume and -- with base/excess plans and
21 supply management plans, which make a lot of sense at the
22 plant level many times, I don't see economically how --
23 how we would see such a return to over-order premiums.

24 Q. So I believe you stated somewhere in your
25 testimony you have about 200 cows.

26 A. Yes, sir.

27 Q. If you were to just go from 200 to 2,000 cows and
28 then call your field rep, I have more milk, would they be



1 happy that you have more milk to provide, and would they
2 take that additional milk with no questions asked?

3 A. They would not take it, and I don't think my wife
4 would take it, either.

5 Q. Yeah. So -- so then it's fair to state that in
6 your milk shed there are producers who would be willing to
7 supply more milk at current mailbox prices than farms
8 are -- than the plants are willing to take?

9 A. Yeah. I gave ten examples here. I have many more
10 examples of miscommunications, misunderstandings, I
11 thought we agreed I could add a thousand cows, I have
12 taken out the loan, now what? I thought we agreed -- the
13 list goes on and on.

14 So, yes, I have received many calls from farmers
15 in our area to do just that, expand so that they can
16 better cash flow and manage their families' financial
17 future.

18 DR. BOZIC: I have no further questions.

19 And I have been taught the last few days by other
20 professionals in the room that this is the time where I
21 need to move the testimony into evidence.

22 Did I say that correctly?

23 THE COURT: And you notice the witness refers to
24 you as counsel, so --

25 DR. BOZIC: I keep thinking of Robert Duval in
26 Godfather.

27 THE COURT: Is there any objection to the
28 admission into evidence of Exhibit 262?



1 There is none. Exhibit 262 is admitted into
2 evidence.

3 (Exhibit Number 262 was received into
4 evidence.)

5 DR. BOZIC: Thank you, your Honor.

6 THE COURT: Thank you, both.

7 It's time for lunch. Do we want to talk about who
8 the next witness will be when we come back from lunch?

9 MS. VULIN: Ashley Vulin with the Milk Innovation
10 Group.

11 We'll have Sally Keefe after lunch, and then
12 potentially a dairy farmer at some point this afternoon I
13 understand for NMPF. We will also have Jacob Schuelke
14 with Crystal Creamery, and then Mike Newell with HP Hood.

15 THE COURT: You won't run out.

16 MS. VULIN: No.

17 THE COURT: Excellent. All right.

18 Please be back and ready to go back on record at
19 1:10. We now go off record at 12:08.

20 (Whereupon, the lunch recess took place.)

21
22 ---o0o---



1 WEDNESDAY, SEPTEMBER 27, 2023 - - AFTERNOON SESSION

2 THE COURT: We're back on record at 1:11.

3 MS. VULIN: Ashley Vulin with the Milk Innovation
4 Group.

5 We would call Sally Keefe to the stand, please.

6 THE COURT: Would you state and spell your name.

7 THE WITNESS: My name is Sally Keefe, S-A-L-L-Y,
8 K-E-E-F-E.

9 THE COURT: Have you previously testified in this
10 proceeding?

11 THE WITNESS: Yes, I have.

12 THE COURT: You remain sworn.

13 THE WITNESS: Thank you.

14 SALLY KEEFE,

15 Having been previously sworn, was examined
16 and testified as follows:

17 THE COURT: Counsel, you may proceed.

18 MS. VULIN: I have distributed three copies of
19 exhibits entitled MIG-9, MIG-9A, and MIG-9B. I believe
20 everyone should have a copy, but please let me know if you
21 don't.

22 THE COURT: Our previous exhibit before lunch was
23 262. So how do you want to number the ones that we now
24 have?

25 MS. VULIN: I would ask that MIG-9 entitled
26 Testimony of Sally Keefe, Part 2, be labeled with
27 Exhibit 263.

28 I would ask that Exhibit MIG-9A, which is a



1 spreadsheet that says Proposal 15, Base Class I Skim Price
2 Computation, be given Exhibit 264.

3 And that MIG-9B, which is a copy of the PowerPoint
4 presentation Ms. Keefe will give, be given the number
5 Exhibit 265.

6 THE COURT: They have been so marked.

7 (Exhibit Numbers 263, 264, and 265 were
8 marked for identification.)

9 MS. VULIN: Thank you.

10 DIRECT EXAMINATION

11 BY MS. VULIN:

12 Q. Good afternoon, Ms. Keefe.

13 A. Good afternoon.

14 Q. We have already put your business address in the
15 record, so I think that's all of our preliminaries.

16 But can you please remind everybody who you are
17 and who you are speaking on behalf of today?

18 A. Absolutely.

19 So my name is Sally Keefe, and I am a consultant
20 for the Milk Innovation Group. The Milk Innovation Group
21 has ten members. They are: Anderson Erickson, Aurora
22 Organic Dairy, Crystal Creamery, Danone North America,
23 Fairlife, HP Hood, Organic Valley/CROPP Cooperative,
24 Shamrock, Shehadey Family Foods, and Turner Dairy Farms.

25 Q. Okay. Thank you, Ms. Keefe.

26 And can you just remind us a little bit about your
27 professional experience and role on behalf of the group?

28 A. Sure. I do -- I'm a consultant for the group. I



1 have helped the group develop the proposals, and have
2 provided analysis in support on their work here for the
3 hearing.

4 Q. And I understand you are here to present MIG's
5 Proposal 15, correct?

6 A. Yes. That's correct.

7 Q. Thank you.

8 So if you could please open the PowerPoint that
9 you have prepared, which is Exhibit 265.

10 So I understand that all of the MIG members are
11 Class I processors, correct?

12 A. Yes. The MIG members are largely Class I
13 processors or handlers of Class I fluid milk.

14 Q. And can you tell us, what's the current state of
15 Class I, particularly in contrast to where it was during
16 Federal Order Reform in 2000?

17 A. So, at the time of Federal Order Reform in 2000,
18 Class I was nearly 40% of FMMO milk utilization. Today,
19 Class I is less than 30% of FMMO milk utilization. For
20 2022, we were at just a titch over 27% in Class I.

21 Q. And so what's the trend you have seen, then, from
22 2000 to present?

23 A. It's Class I milk utilization has been decreasing.
24 The peak of Class I utilization on the Federal Orders
25 happened shortly after order reform in 2004, at just over
26 43.6%.

27 Q. And have you seen any other trends in the
28 marketplace, or differences between what the market looked



1 like in 2000 and present, particularly in regards to
2 exports or other things in the marketplace?

3 A. Sure. There's a lot more milk being used for
4 products that are exported, as well as for cheese. So the
5 amount of milk utilization within the Federal Orders and
6 in total is much higher in Classes III and IV today than
7 it was at the time of order reform.

8 Q. And just at a high level, can you describe to us
9 what are the factors that go into the Class I price?

10 A. Sure. When I think about the Class I price, I
11 think about three kind of big buckets. We have got the
12 base Class I skim milk price, which is what we're here
13 talking about in issue 4. We have got the advanced
14 butterfat price. And then we add on to that the Class I
15 differentials, which will be coming up in our next topic.

16 Q. Okay. And we have been here, as you said, talking
17 about the base Class I skim price.

18 What's the purpose of the base Class I skim price
19 in the formula?

20 A. So I see that the purpose of the base Class I skim
21 price is that we need to attract a sufficient supply of
22 milk for fluid use.

23 Q. And do you see any aspect of that relating to a
24 relationship between Class I and other classes?

25 A. Sure. The base Class I skim price fundamentally
26 is a relationship. It's the relationship between Class I
27 and the manufacturing classes to the Class III and IV
28 prices.



1 Q. And is the Class I -- the base Class I skim price,
2 is that derived from any other -- any processing costs or
3 production costs, is it discovered in the same way as we
4 talk about Make Allowances, or how does that work?

5 A. No. The -- it's -- the Class -- the base Class I
6 skim price is not a formula that uses Make Allowances
7 related to fluid milk processing. It's price relationship
8 driven. It's the relationship between Class I and
9 Classes III and IV.

10 Q. And in your opinion, what type of relationship
11 should the base Class I skim price have with the
12 manufacturing classes III and IV?

13 A. It should reflect a big picture value for skim
14 milk, so it should reflect the value of skim milk.

15 Q. Why?

16 A. You know, because ultimately farm milk can be used
17 in any of the four classes. So, you know, the orders are
18 designed to ensure that we have enough milk for fluid use,
19 but not so much that we're drawing milk away from
20 Class III or Class IV when a manufacturing use would be
21 highest and best value.

22 Q. And I understand that you are here on behalf of
23 MIG's Proposal 15, which is a proposal with a formula for
24 the base Class I skim price; is that right?

25 A. Indeed.

26 Q. And at the beginning of your testimony we had
27 marked as Exhibit 263 your written testimony in support of
28 Proposal 15, correct?



1 A. Yes.

2 Q. Okay.

3 A. And so on page 7 of my written testimony, you can
4 find a description of how MIG's Class I, base Class I skim
5 milk price formula works.

6 Q. Just in a big picture kind of summary form, can
7 you walk us through how that formula works?

8 A. Sure. So much like the current formula today,
9 which is an average-of Class III and IV plus \$0.74, MIG's
10 formula is an average-of Class III and IV plus an
11 adjuster. MIG is proposing to update the adjuster and to
12 make the adjuster a 24-month rolling average that has a
13 12-month lag.

14 Q. And why did MIG develop this proposal as opposed
15 to advocating to keep the current average-of formula in
16 place?

17 A. Well, from a practical perspective, you know,
18 we -- the members of the group wanted to put forth a
19 proposal that reflected the concerns that they had heard
20 expressed from the producer community, from cooperatives,
21 throughout industry, regarding the current average-of
22 formula, but they wanted to -- they also felt strongly
23 about protecting risk management opportunities for
24 Class I.

25 Q. And was the intent that Proposal 15 result in
26 roughly revenue neutral -- revenue neutrality?

27 A. Yes. So much like the current formula, the idea
28 was to come up with a formula that was roughly revenue



1 neutral to the higher-of.

2 Q. So beyond the practical perspective of reflecting
3 concerns heard from farmers and cooperatives, and then
4 MIG's goal of preserving the right to hedge, are there any
5 other policy goals that MIG's Proposal 15 fulfills?
6 Policy goals meaning goals of FMMOs generally, or of that
7 factor in particular.

8 A. Uh-huh. So we -- MIG wanted to maintain that
9 the -- MIG wanted to put forth a proposal with a formula
10 for the base Class I skim price that maintained the
11 competitive relationship between the classes. And because
12 we -- and we don't want to stop milk from going to
13 manufacturing if that is where it needs to go.

14 And then, you know, like I mentioned before, we
15 wanted to facilitate risk management. Members of the
16 group have a lot of concerns about managing volatility
17 within their business.

18 Q. Okay. And do you believe that the base Class I
19 skim price should be in a formula that prevents any type
20 of price inversion from ever occurring?

21 A. No, not necessarily. I mean, price inversions can
22 provide a valuable market signal. You know, when it
23 happens, when a Class III or IV price exceeds the Class I
24 price, that's sending a signal that milk is valued more
25 highly for cheese and powder in that particular moment.

26 Q. We have heard more about hedging in this hearing
27 than I had ever heard before, and it's clearly -- it's
28 clearly a big deal.



1 Can you tell us, why does hedging matter so much
2 to Class I?

3 A. You know, given -- given the declining utilization
4 share for Class I, the downward trends in per capita
5 consumption, absolute volume, our group thinks that it is
6 very important to preserve risk management, that hedging
7 is an incredibly valuable tool to manage price risk, and
8 that if you can effectively manage your price risk, you
9 can provide more stable prices to your customers and to
10 consumers and, you know, ultimately, you know, stem the
11 declines in fluid milk.

12 Q. And are you aware of any --

13 THE COURT: I'm sorry, what was the last part?

14 THE WITNESS: Stem the declines in fluid milk.

15 THE COURT: Thank you.

16 BY MS. VULIN:

17 Q. Are you aware of any Class I processors who are
18 hedging today?

19 A. Yes, I am. We have heard from some yesterday, and
20 I believe we'll hear from more today and tomorrow. So,
21 yes.

22 Q. Are you an expert in hedging?

23 A. I am not an expert in hedging. That is not my
24 area of expertise.

25 Q. But you are aware of its importance within the
26 industry?

27 A. Absolutely. I mean, you know, I work in
28 agriculture. I work in dairy. Like, it is -- I recognize



1 that risk management is incredibly valuable and incredibly
2 important. But, you know, I am not constructing hedges.
3 I'm not buying futures options, swaps, all of those sorts
4 of things.

5 Q. And we haven't had 100% adoption of this, of this
6 risk management tool across Class I, correct?

7 A. No, definitely not. I mean, the different parts
8 of Class I have adopted this tool more than others. You
9 know, I think that -- I think that it's important to
10 remember that this is a relatively new change.

11 The 2018 Farm Bill put the change into motion, and
12 it became effective in May of 2019. The Farm Bill
13 language included a two-year review period and, you know,
14 round about -- and then we have 2020 with a global
15 pandemic. We also have, you know, the review period
16 coming up and -- at that time. And then by the winter,
17 you know, late winter of -- by, like, December 2020,
18 January, February of 2021, you know, you were already
19 seeing, you know, significant voices within the producer
20 community requesting a reversion to the higher-of. And so
21 that creates a situation with regulatory uncertainty.

22 As we have heard witnesses testify about, it takes
23 time to set these programs up. It takes resources. It
24 takes knowledge, like -- and, you know, when -- when you
25 are thinking about the priorities within your business,
26 you know, you can't necessarily do everything at once.

27 And so, you know, not everyone has had the time to
28 integrate this change and move to a system -- move to



1 adopt hedging and other risk management strategies to
2 manage their Class I price risk.

3 Q. And in your experience in Class I, do you think
4 this risk management tool could be adopted more broadly
5 within that segment of the industry?

6 A. Absolutely. I really think it could be adopted
7 much more broadly. I -- I think that it is a -- that it
8 is very valuable in terms of stabilizing the price at the
9 shelf for consumers. And I -- I think that moving to that
10 sort of a system where you can provide a more stable price
11 for consumers at the shelf is very valuable.

12 Q. You say "very valuable." In terms of competition
13 for fluid beverages -- we lost the screen for a second,
14 but we're back.

15 So you said that it could be "very valuable." In
16 terms of its value, is there anything about Class I's
17 ability to compete in the marketplace that you think price
18 stability and risk management could bring value to?

19 A. Yes. I think that one of the things that's very
20 different today than in 2000 is how many more beverages,
21 beverage substitutes, just how many more things fluid milk
22 competes with, and many of those things are priced on a
23 more stable basis to consumers. And we need to be mindful
24 of that competitive set that's out there and, ideally, you
25 know, put our best foot forward with an offering that can
26 compete in many different facets on the shelf.

27 Q. And then in terms of consumers, you mention that
28 in your testimony, and you have mentioned it just a bit



1 now.

2 Do you have any observations about consumers and
3 price stability?

4 A. So most of my observations are that price
5 stability and -- and staying away from a roller coaster of
6 prices are desirable traits in products that people are
7 buying in the grocery store, particularly stuff that you
8 are buying routinely. You don't want to go in and be
9 faced with a dramatic change in price between shopping
10 trips.

11 Q. Okay. And that's based on your experience in the
12 industry?

13 A. That's based on my experience in the industry.

14 And I have been in the industry for a long time.
15 Most of my experience, much of it has been on the organic
16 side of things, which frankly does tend to price this way,
17 so I will just put that bias out there. Like, it's, you
18 know, a lot of my experience has been on that end of the
19 business.

20 Q. Do you think Class I, organic Class I's ability to
21 offer more stable pricing has been a piece of the success
22 of that sector?

23 A. I think it has been. I mean, it's -- you know,
24 there's many different parts of it. It's not going to --
25 like I mentioned before, it's multi-faceted. It's not
26 just a stable price. Like, you also have to have a
27 product that consumers want, and you have to be putting
28 it -- there's -- there's a lot of aspects to getting the



1 consumer to pick it up and take it home, and then come
2 back and do it again next week.

3 Q. And you think price stability could be a part of
4 that.

5 A. Price stability is a part of that. It's not the
6 only thing, but it's an important part of it.

7 Q. And we have heard a lot about depooling so far in
8 the hearing.

9 And if you could go to the next slide, please. I
10 just want to talk about a little bit of that.

11 So this observation of depooling occurring, in
12 your experience, is this a new phenomenon based on the
13 average-of being adopted as the Class I base skim formula?

14 A. No. I -- if you -- you know, way back six weeks
15 ago when we were at the beginning of the hearing, you
16 know, one of the exhibits is Exhibit 30, and it's looking
17 at milk eligible to be pooled that was not pooled. And,
18 you know, that data goes back to the beginning. It goes
19 back to the year 2000. Depooling has been part -- has
20 been a practice within the system for a very long time.

21 Q. And in your opinion, is depooling necessarily a
22 bad thing?

23 A. I don't think depooling is necessarily a bad
24 thing. I think depooling is the market at work. I think
25 depooling is a way that market participants respond to the
26 value of their products and milk, and it's -- it's
27 rational economic behavior, for lack of a better way to
28 put it.



1 Q. And I understand that you have looked at some time
2 periods over the course of the last 23 years and have some
3 observations about the rates of depooling.

4 Can you tell us about those?

5 A. Sure. So, you know, depooling happens. It
6 depends on where the prices are at. And so, you know,
7 just looking at one order, Order 32, and, you know, back
8 in the 24-month period of January 2012 to December 2013,
9 first there was a period in late 2012 where there were six
10 months of Class III depooling, and then we had a situation
11 in late 2013 that was followed by Class IV depooling
12 because of where the prices were at.

13 And then, you know, after the pandemic, you know,
14 recently here with the new formula, with the average-of
15 formula for Class I, you have got seven months of
16 Class III depooling, and you have got 13 months of
17 Class IV depooling. So it -- it happens.

18 Q. And you -- did you pick a time period meant to
19 reflect under the higher-of and under the average-of?

20 A. Yeah, I just wanted to compare a time period
21 before and after and, you know, roughly -- roughly apart
22 from each other. And then also, to be quite candid, I did
23 not want to include 2020 because that was just so, the
24 events were so extraordinary at that time.

25 Q. And we do observe slightly more depooling in the
26 later time period under the average-of in your example,
27 right?

28 A. Uh-huh.



1 Q. How do you know that wasn't caused by the move to
2 the average-of formula?

3 A. Well, a lot of things in addition to the formula
4 have changed over that ten-year time period. So the --
5 the trend of Class I utilization moving down was happening
6 then. We also had -- we have heard testimony during the
7 hearing about that depooling can sometimes -- that
8 depooling can be related to inadequate Make Allowances.

9 And so I would -- in my view, ten years ago the
10 Make Allowances were not as out of date as they are today.
11 And then we also have heard a lot about the widening
12 spread between the prices for Class III and Class IV, and
13 that is definitely -- the spread between III and IV is
14 wider now than it was at that prior period.

15 Q. And can USDA control or set the spread between III
16 and IV?

17 A. No. And USDA also doesn't, like, control the
18 utilization rate of Class I milk. Like, the only factor
19 there that I mentioned that's sort of like within the
20 realm of control of the regulation is the Make Allowance
21 thing and --

22 Q. And you mentioned utilization as well.

23 Tell me, how does utilization going down impact
24 depooling or the frequency of depooling?

25 A. Well, ultimately, you know, Class I, as -- as we
26 all know, is the class that's here all the time. Class I
27 is the required participant. And as Class I's share of
28 the total volume has gone down, and as their absolute



1 volume has gone down, that means that there is frankly
2 less Class I dollars being spread over more and more and
3 more milk.

4 Q. And as we saw before with the utilization going
5 down, is that utilization uniform between orders?

6 A. No. There's a lot of regional variation in
7 Class I utilization. You have orders that are very high,
8 like Florida; orders that are very low, like the Upper
9 Midwest; you have got orders that are more, you know,
10 typical, like, the Northeast, Central, the Southwest,
11 places like that. So it's not -- Class I utilization is
12 not a uniform situation across the country.

13 Q. So I want to go back to the proposals.

14 So tell me again about the formula that MIG is
15 proposing and how it's either similar to or different from
16 the current average-of formula.

17 A. So the primary difference between MIG's proposal
18 and the current formula is that MIG is proposing to
19 replace the static \$0.74 adjuster with a dynamic rolling
20 adjuster. The adjuster would be updated monthly, like
21 other monthly price changes that happen within the system.
22 And then the -- and then the adjuster would be lagged by a
23 year to facilitate hedging.

24 Q. And how is MIG's -- we have -- so we have got the
25 average-of formula currently in place --

26 A. Uh-huh.

27 Q. -- we have MIG's average-of formula under
28 Proposal 15, and then I know we have an average-of formula



1 under IDFA's Proposal 14.

2 How does that differ from MIG's proposal?

3 THE COURT: I do think it would help the record
4 when you are acknowledging that what counsel is saying is
5 correct, you would utter "yes."

6 THE WITNESS: Thank you for the reminder.

7 THE COURT: You're welcome.

8 MS. VULIN: Likewise.

9 BY MS. VULIN:

10 Q. Okay. So we have the average-of formula under the
11 current formula. We have MIG's Proposal 15.

12 And then tell us how IDFA's Proposal 14 is similar
13 to, and different from, MIG's Proposal 15.

14 A. So IDFA's Proposal 14, like -- like MIG's
15 proposal, preserves the ability for Class I processors to
16 hedge.

17 MIG's proposal is -- MIG's -- IDFA's Proposal 14
18 puts a floor on the adjuster of \$0.74; MIG's proposal does
19 not have a floor.

20 And then MIG's -- MIG's adjuster changes every
21 single month. And so every month, a month rolls on, a
22 month rolls off. And IDFA's adjuster changes every year.

23 Q. And why does MIG -- why did MIG propose a similar
24 but slightly different proposal with the average-of but an
25 adjuster that is dynamic each month?

26 A. MIG's members felt that the dynamic rolling
27 adjuster better reflects market conditions than changing
28 once a year. So changing monthly was aligned with the way



1 that other prices work within the system.

2 And then the -- with an adjuster that changes just
3 one time per year, you can get large changes at once. And
4 so by moving gradually, by doing a rolling 24 months with
5 the drop, putting on and falling off the -- you get a more
6 gradual change over time.

7 Q. Does MIG's proposal have any kind of ceiling?

8 A. No, there's no ceiling.

9 Q. Does MIG's proposal have any kind of floor?

10 A. And there's also no floor. And so the -- the
11 members of MIG felt strongly that -- feel strongly that
12 floors and ceilings can create price distortions, and we
13 wanted to present something that we felt was market --
14 reflected the market.

15 Q. And you -- and you do have, I believe, a slide
16 that compares the proposals. Thank you.

17 So talking about these proposals out in action. I
18 know you have done some proposal comparisons between MIG's
19 proposal, the current proposal, and NMPF's Proposal 15.

20 Is that math found in your Exhibit MIG-9A, which
21 has been marked as Exhibit 264?

22 A. Yes. So Exhibit 264 shows the computation of
23 MIG's Proposal 15 in action. It's a "what-if." It
24 pretends that the formula had been in place during this
25 period. And because the proposal is designed to maintain
26 that same higher-of price relationship, NMPF's Proposal 13
27 is necessarily there. It is the -- it says Proposal 13,
28 and then underneath there's a little -- it's the sixth



1 column across, not including the date.

2 Q. And this is where you did the calculations that we
3 can see in page 4 out of 5 of your PowerPoint.

4 A. Yep.

5 Q. Thank you.

6 So let's look at a couple of your comparisons. I
7 know you said 2020 was a pretty extraordinary year, so
8 let's talk about the other years.

9 Tell me, what you do see or what are your
10 observations about the impact of the different formulas in
11 2018, '19, '21, and '22?

12 A. The main thing that I notice is that they are
13 roughly -- they are roughly equivalent. They are roughly
14 equal. They are not exactly equal, they're not going to
15 be exactly equal, unless they are the exact same formula.
16 I mean, that the -- you know, so in 2018 we're looking at
17 the current formula would have had -- the 12-month average
18 would be \$6.56, MIG's proposal would have been at \$6.54,
19 and the higher-of actually would have been lower than
20 those two at that time, it would have been \$6.23.

21 In 2019, the average plus the \$0.74 would be at
22 \$8.40, and then you wind up with MIG's rolling adjuster at
23 \$8.29, and the higher-of being \$8.31 for average for the
24 year. So not exactly the same, but very close together.

25 Q. And we observed previously the fact that MIG's
26 Proposal 15, at times, generates a higher price than
27 NMPF's Proposal 13.

28 So what does that say to you about the importance



1 of risk management to Class I, that they would put forth a
2 proposal that could generate a higher price for the base
3 Class I skim than NMPF's proposal?

4 A. It says to me that risk management is very
5 important to Class I processors, that Class I processors
6 are -- are willing and ready to preserve the higher-of
7 price relationship, but they need risk management. They
8 need to be able to hedge. And so here we are.

9 Q. And so we had set aside 2020, so let's circle back
10 to that year.

11 We do see a bit more divergence in these formulas
12 in that year, right?

13 A. Oh, for sure.

14 Q. So what's driving that?

15 A. You know, what's driving that, in large part, is
16 there was a tremendous spread between Classes III and IV,
17 and in the back half of 2020. And so what -- you know, so
18 what we're going to see there is that the average plus
19 \$0.74 is \$11.13, MIG's proposal would be at \$10.89, and
20 then the higher-of would be higher, it would be \$12.89.

21 Q. And why or why wouldn't we want this base Class I
22 skim price to ride the swing with these huge shifts or
23 divergences between III and IV?

24 A. Those huge shifts, the roller coaster there that
25 was happening in 2020, doesn't accurately reflect the
26 fundamentals related to supply and demand for Class I
27 fluid milk. It has a lot more to do with many other
28 things that were happening in the market at that time.



1 And so designing a Class I price formula, we want to think
2 about things that can reflect the big picture, but not
3 necessarily have us ride a month-to-month roller coaster.

4 Q. Okay. And I know you have some other averages
5 here over a time period. So if we could look at the first
6 one, the five-year, 2018 to 2022, tell us about how the
7 formulas work in that timeframe.

8 A. Yes. So that would be the 60-month average for
9 that period. So five years, 60 months, the current
10 formula, the average was \$9.99, Proposal 15 would be
11 \$10.10, and then the higher-of would have been \$10.36.

12 And, you know, what happens is, as you expand your
13 time horizon and as you have more months in the analysis,
14 things begin to converge, and they wind up roughly neutral
15 to each other over time. They are not necessarily the
16 same in any particular month. They are not necessarily
17 the same, even in a relatively short time period.

18 Q. And we have talked a lot about 2020 where these
19 swings are kind of raising the price and lowering the
20 price. But given that it averages over time, does that
21 also mean you could have short-term prices that would be
22 problematic or undesirable on the farmer end, right? If
23 it's going to be too high sometimes; it could also be too
24 low other months. And with this price stability, do you
25 see any benefits on the farmer side?

26 A. I do think that stability is good for all the
27 market participants. I think -- I'm a big fan of price
28 stability from the consumer, to the customer, the



1 processor, the producer, all the way along the chain.

2 Q. Now, looking at that 20-year, we see they are all
3 kind of roughly converged around each other.

4 Given that similarity and given that we did have
5 the higher-of for nearly 20 years, what would you say to
6 someone who thinks, well, it sure worked then. We still
7 have a dairy industry. The world will not come crashing
8 down over our heads if we adopt it again, so let's go back
9 to something that's familiar?

10 A. The world has changed in 20 years, and risk
11 management is a lot more important to market participants
12 today than it was 20 years ago. And I think that it is
13 not -- I don't think that it is a good idea to design a
14 price formula -- or to adopt a price formula that cuts a
15 core part of our industry out of risk management.

16 Q. And you say "a core part of the industry." Aren't
17 they the only part that has to stay within the order?

18 A. Class I is -- Class I processors are the mandatory
19 participants.

20 Q. And so it seems fairly significant if they are
21 saying that these risk management tools are core to their
22 company?

23 A. I believe so.

24 Q. So let's go to the last slide, if we can, please.
25 I want to talk a bit about the adjuster and how the price
26 kind of works as a whole.

27 So can you explain to us what -- what this chart
28 is showing about the base Class I skim price under MIG's



1 formula?

2 A. Sure. So this is just looking at the 60-month
3 period from January 2018 to December 2022, and it is the
4 percent, the share, that the adjuster is of the total
5 price. And so what you see is the adjuster is making up
6 about 5 to 15% of the total base Class I skim price.

7 Q. Okay. So when we talk about MIG's Proposal 15 and
8 the formula, the overwhelming majority of that price is
9 going to be made up by the average-of calculation,
10 correct?

11 A. Yes. That's right. Most of the price is the
12 simple average-of Class III and Class IV for that month.

13 Q. Okay. And this adjuster is an addition to that,
14 that tracks the historical averages we discussed, but --
15 but really is a much more minor part of that overall
16 formula?

17 A. It is the smaller part. It is -- there's two
18 things here. We have the average and we have the
19 adjuster. And most of the price is the average, less of
20 the price is the adjuster.

21 Q. And we have heard some discussion about the
22 adjuster being outdated or too historical looking because
23 of the year lag and the time period it averages.

24 So why don't you tell us just to start, why did
25 MIG pick an adjuster that has a two-year average with a
26 one-year lag?

27 A. So first I'll talk about the lag.

28 Our members felt strongly that the lag was very



1 important for actually hedging, that they would like to be
2 able to get to the point where they are able to stake
3 their positions in the market 12 months out.

4 Today, as I understand it, the liquidity in the
5 market, most people are not hedging on that time horizon
6 today, but we thought that we should put something out
7 there that would facilitate getting there.

8 The next part of it would be the 24 months. And
9 the 24 months was not too long and not too short. So we
10 looked at longer periods of time, and we looked at shorter
11 periods of time. As the adjuster is shorter, if it's less
12 than 24 months, it creates more volatility. And then when
13 the adjuster is longer, it does not transmit market
14 signals as well over time.

15 Q. On the lag, you said the one year allows Class I
16 processors to set up their hedge more accurately or
17 effectively.

18 And -- and is my understanding is that's because
19 there's more predictability of one of the components of
20 their formula for their price; is that right?

21 A. Yes. So -- so when they are constructing their
22 hedge, the adjuster will be known, and so the basis risk
23 would be reduced, if not eliminated, on the adjuster part
24 of the formula. There are obviously a lot of other risks
25 that have to be considered when you are doing that.

26 Q. And why do you think that Proposal 15 is better
27 than the current formula?

28 A. I think the Proposal 15 is better than the current



1 formula because I think that the fatal flaw of the current
2 formula is that the adjuster is static. It's fixed. It
3 doesn't change.

4 And, you know, at the hearing we have heard a lot
5 about things that don't keep up in realtime, and so
6 structuring something that is self-correcting that, you
7 know, keeps up over time, that changes on its own, I think
8 is a good thing. It is -- the chances that you can have a
9 fixed adjuster and that you can get the number right
10 strike me as very small.

11 Q. And why do you think Proposal is -- why do you
12 think Proposal 15 is better than other proposals that have
13 been presented on this factor, at this hearing?

14 A. There are tradeoffs here. And, you know, from my
15 perspective, the higher-of is also flawed. The higher-of
16 is -- makes Class I risk management very difficult.

17 And so what we're asking USDA to consider are the
18 tradeoffs. It's the tradeoff between a -- the pure
19 higher-of formula that you see in Proposal 13 and
20 facilitating risk management for the FMMO's mandatory
21 participants for Class I.

22 Q. And given that the proposals are roughly revenue
23 neutral, that's not a tradeoff USDA would have to make
24 between MIG's Proposal 15 and the higher-of because they
25 are roughly revenue neutral, right?

26 A. That's correct.

27 Q. And so when looking beyond that, it sounds like
28 your testimony is that the next big tradeoff we want USDA



1 to think about is this opportunity to manage risk?

2 A. Yes. We would like USDA to consider the need for
3 Class I to have access to the risk management tools that
4 are widely used throughout the dairy industry and
5 throughout agriculture as a whole.

6 Q. Thank you.

7 MS. VULIN: Nothing further.

8 CROSS-EXAMINATION

9 BY MS. HANCOCK:

10 Q. Good afternoon, Ms. Keefe. Thank you for your
11 time today. All right.

12 THE COURT: Did you say Nicole Hancock yet?

13 MS. HANCOCK: I did not. I'm Nicole Hancock. I
14 just assumed that the court reporter has a shortcut key
15 now.

16 THE COURT: How about the people that might be
17 just tuning in remotely, can they even see you on the
18 screen?

19 MS. HANCOCK: That's more considerate than I was
20 being. Thank you.

21 BY MS. HANCOCK:

22 Q. Okay. Ms. Keefe, I would like to start with
23 Exhibit 265, your presentation, and just -- I'll just walk
24 through the questions that I have, if you have that in
25 front of you.

26 A. Sure.

27 Q. Okay. Let's turn to page 2.

28 And as I understand it, on page 2, what you are



1 comparing here, it is just -- or maybe what you are
2 showing here is just that Class I utilization as a
3 percentage of the total amount that's pooled under the
4 orders has just decreased?

5 A. Yes. That's correct.

6 Q. Okay. And do you know if in that decrease, there
7 has been any -- well, strike that. Let me say this
8 different.

9 I think one of the areas that you talked about
10 with Ms. Vulin was to -- to -- whether Class I or the
11 other classes of milk could be responsive to market
12 conditions and land in the places where they should land
13 at the right times; is that fair?

14 A. Yes. When we were talking about depooling and
15 other things.

16 Q. Okay. And you were concerned that you didn't want
17 there to be a draw of -- to Class -- or of the Class I
18 milk away from the manufacturing if the need was in the
19 manufacturing classes; is that accurate?

20 A. That's accurate. And I do note that this is the
21 FMMO pool utilization on this chart, so it's not going to
22 include milk that wasn't pooled. This is only pooled milk
23 here.

24 Q. Okay. And did you -- are these average numbers or
25 is there a strike date within the calendar year that's
26 noted there?

27 A. It's the total for the year. It's a weighted
28 av- -- it's weighted across all the orders, but there's



1 other differences between 2000 and 2022. In 2000,
2 California was a state order; now California is a Federal
3 Order. So, like, California wouldn't be part of the 2000
4 column. And then, in 2000 we still had the Western Order,
5 and now we don't have the Western Order, and so, like,
6 that's not part of the 2022 column. This is just FMMO
7 pool milk. The data source is down there at the bottom of
8 the table.

9 Q. Okay. And -- and this wouldn't take into account
10 any kind of ebbs and flows in market needs in -- on a
11 daily or weekly, or even monthly basis, would it?

12 A. Oh, no. Definitely not.

13 Q. So, for example, if we look at what we have heard
14 testimony on in -- in, you know, August, September, of any
15 year, where there's a greater need for Class I milk in
16 those time periods, that wouldn't be reflected in what we
17 see in your table here, would it?

18 A. No. This table is a comparison of the entire year
19 for 2000 and 2022. Certainly the data exists to compare
20 it on a monthly basis and to do it by order over time.

21 Q. Okay. And you would agree with me that one of the
22 tools that -- that the order is designed to do is to allow
23 milk to move in the moment that it's needed; is that
24 accurate?

25 A. Yes. We want the orders -- we want fluid
26 processors to have their needs met on -- kind of hesitate
27 on daily -- but weekly, monthly, annually, like, we want
28 to make sure that fluid processors are getting the milk



1 they need so that consumers have the milk they need.

2 Q. And there are very real seasonal circumstances,
3 especially with respect in the Class I market, that affect
4 the need for milk on a weekly or monthly basis throughout
5 the year; isn't that true?

6 A. Yes. The milk sales are seasonal. It is not --
7 the demand is not the same in every month of the year.

8 Q. So if we look at the middle of August to the
9 middle of September, historically, that's been a time
10 period when -- when Class I is needed to be called away
11 from the manufacturing plants; is that right?

12 A. The middle -- you know, so when school is starting
13 back up in mid-August to mid-September, Class I demand
14 would be higher than it was the month before in the middle
15 of summer.

16 Q. And using the higher-of mover is a way that you
17 could respond to the immediacy of that need, isn't it?

18 A. The higher-of mover is going to -- the higher-of
19 mover is going to respond to whichever is the maximum of
20 Class III and Class IV. It -- it is -- it's just the
21 higher of the two.

22 Q. Yeah. It's going to let Class I compete with the
23 most expensive manufacturing product, isn't it?

24 A. Yes.

25 Q. Let's take a look at page 3. And as I understand
26 it, in this slide you are comparing the time period of
27 January 2012 to December of 20- -- I'm sorry, to 2013.

28 And so if I look at Class III, that was six months



1 of depooling that you had noted there; is that right?

2 A. Yes. Six months of depooling for that in that
3 24-month period, on -- on Order 32. And in that
4 particular case, they happen to be a consecutive six
5 months.

6 Q. And so I guess where I was struggling in how to
7 ask the question was, is -- is it -- I mean, not -- I
8 mean, six months, how did you measure that?

9 A. So every month I reviewed the uniform price
10 announcements. And so the uniform price announcements
11 include the amount of milk in the pool. And so, you know,
12 one of the things that I track and look at is the volume
13 of milk in each class by order.

14 Q. And so do you know what the maximum waterline is
15 for that order that you should expect to see in that year?

16 A. Yes.

17 Q. And so you are saying if it dropped down from that
18 high waterline, high watermark line, then you would
19 consider that to be a month in which there was depooling
20 that occurred?

21 A. Yes.

22 Q. Okay. And is that -- and you said that you were
23 looking at it -- well, what was the source that you said?

24 A. I was using the -- for the table, it's the
25 Order 32 uniform price announcements.

26 Q. And that's reported in volume of milk?

27 A. Oh, the uniform price announcements have a wealth
28 of information on them, and so -- including the volume.



1 Q. But that's what you were saying, it was the volume
2 amount that you used to set that high watermark line?

3 Is that a "yes"?

4 A. Yes.

5 Q. Okay.

6 A. Thank you.

7 Q. Okay. And so is that reported in pounds?

8 A. You know, I don't have one of them in front of me
9 right now. I believe it's pounds, but it might be
10 hundredweights.

11 Q. One or the other.

12 A. Yes. Definitely pounds or hundredweights.

13 Q. Okay. And -- and so how much would it have had to
14 dip down under that volume level for you to have indicated
15 that that was a month in which you observed depooling?

16 A. So -- so in -- so in my spreadsheet where I track
17 this, I have conditional formatting set up so that it --
18 it triggers on the -- on the -- on the volume. And I --
19 there's no way that I can remember the number and the
20 formula sitting here without looking at the spreadsheet.

21 Q. Okay. Some threshold amount where it would
22 indicate to you that it -- there's enough of a volume
23 movement that it would indicate that there's some
24 depooling that occurred?

25 A. Yes. And my threshold for that is relatively --
26 my threshold for that is relatively lax. It takes a lot
27 to trigger my conditional format. The -- someone else
28 could look at the same data series, and for the 24 months



1 of January 2012 to December 2013, and would be like -- and
2 could easily make an argument that there should be more
3 months. I don't think that somebody would look at my
4 threshold and say that there should be fewer months.

5 Q. Okay. So you have erred on the side of being
6 conservative in the number of months that you estimated
7 depooling occurred?

8 A. I believe so, yes.

9 Q. Okay. And do you think it's greater than a 20%
10 deviation?

11 A. I have not been in the weeds of that formula this
12 week, so I -- I really -- I don't want to speculate about
13 that.

14 Q. Okay. And you didn't provide that to us, did you?

15 A. No. I did not provide the threshold. This is --
16 this is meant to just be directional. It's just -- it's
17 not meant to -- there are 11 orders. There's 20 years. I
18 mean, if we wanted to go through all the entire time
19 periods and all the orders, like that would -- that's a
20 lot.

21 Q. Okay. I just want to make sure I'm clear on what
22 we have.

23 But your spreadsheet that you used to track this,
24 you do just on a regular basis as a consultant in the
25 industry?

26 A. Yes.

27 Q. And that spreadsheet that you used for your
28 consultancy work is actually tracked in volumes, whether



1 it be pounds or hundredweight?

2 A. Yes.

3 Q. Why didn't you give us the volume in this
4 spreadsheet?

5 A. Honestly, because I didn't think that would be of
6 quite as much interest. And the -- the -- you know, I was
7 trying to present this information in, you know, just a
8 straightforward kind of fashion, you know. And there is a
9 lot of information about depooling in the record in
10 Exhibit 30, and that information that is in Exhibit 30 is
11 for all of the orders kind of together. But because of
12 California coming in and out, when you look at the
13 volume -- it's, you get an apples-and-oranges problem.
14 And so --

15 Q. But it's fair that you could still do a comparison
16 of the percentages of the volume lost as compared to the
17 high amount of the volume; is that right?

18 A. Can you repeat that?

19 Q. Yeah. Maybe better.

20 You could, if you had the volumes like you track
21 on your spreadsheet for your work, even with California
22 historically not being part of the order, you could still
23 compare a percentage of the amount of volume that was
24 depooled as it compared to when the pool is at its maximum
25 capacity or at its high waterline?

26 A. Yes. You could do that with the monthly data in
27 Exhibit 30.

28 Q. Okay. And then, nonetheless, the point of what



1 you were showing here is that while there is a -- there --
2 that there is a change, at least in this Federal Milk
3 Marketing Order, between the original time period 2012 to
4 2013 as compared to 2021 to 2022?

5 A. Uh-huh. Yes. Thank you.

6 Q. And so if I look at Class IV, the difference there
7 is 2.6 times more depooling had occurred, or more months
8 of depooling had occurred under the average-of?

9 A. Yes. During the time period after the average-of
10 formula was in place, so January 2021 to December 2022,
11 there were 13 months of depooling then in Order 32 with
12 Class IV milk. You know, the -- some of that from -- from
13 my perspective, is likely related to, still related to the
14 pandemic, with those more storable products and longer
15 periods of time and stuff like that. But, you know, I
16 wanted to present information that was before and after
17 the change.

18 And these -- and -- but you are quite right, like,
19 there is more depooling with Class IV in the later period
20 than the earlier one.

21 Q. Why didn't you look at the period of 2016 to 2017
22 as the higher-of comparator months?

23 A. The -- I was trying to get further -- I -- I like
24 the ten-year thing. I just picked the ten-year thing. It
25 wasn't -- there wasn't -- it wasn't very calculated at
26 all. It was just what I picked.

27 Q. Okay. So if we just stay on the subject of
28 depooling for a second. If we were under a higher-of



1 system again, like we were in this 2012 to 2013 time
2 period, it's true that the amount of money paid into the
3 pool on a regular basis would be higher than what's paid
4 into the pool under the average-of mover?

5 A. Can you repeat that? I'm sorry, I wasn't
6 tracking.

7 Q. That's okay.

8 It might take me a second, but I want to -- if
9 we're under a higher-of mover as compared to an average-of
10 mover, if we are under the higher-of mover system, it is
11 true that more money would be paid into the pool on a
12 day-to-day basis than under the average-of system?

13 A. Not necessarily. Because there are some months
14 where the average-of plus the adjuster will exceed the
15 higher-of. So it's not always one or the other.

16 Q. I knew the flaw was that I didn't give you a time
17 period.

18 If we look at the -- let's look at 2022, for
19 example. In 2022, if we were under the higher-of system,
20 there would have been more money paid into the pool on a
21 day-to-day basis, or a monthly basis, than there was under
22 the average-of; is that right?

23 A. So looking at Exhibit 264, on page 3, so if we
24 look at January 2022, we see the higher-of, and there's a
25 kind of gray with Proposal 13 there of \$12.21, and then we
26 see Proposal 15 of \$13.04. And so there would be more
27 money going into the pool in January of 2022 with
28 Proposal 15 than Proposal 13.



1 Q. Okay. And then we, at some point -- maybe I got
2 the wrong year. Let's use 2020 then, as an example.

3 In 2020, for example, then, we see in January of
4 2020, we see the opposite happening, right?

5 A. That's right.

6 Q. We have \$12.65 under the higher-of, \$11.50 under
7 what would have been MIG's proposal if it had been in
8 place at the time?

9 A. Yes.

10 Q. But then if we look at the current, it was at
11 \$11.71?

12 A. Right.

13 Q. Okay. If we look at page 4 of -- and I'm back on
14 Exhibit 265, I think what -- this is a way that you have
15 tried to chart or characterize a comparison on an annual
16 basis, the difference between the current MIG's proposal
17 and National Milk's proposal; is that right?

18 A. Yes, that's right. I was -- so this comparison
19 table, which is on page 4 of my PowerPoint, which is
20 Exhibit 265, and it is also found on page 3 of
21 Exhibit 263, is a summary for the time periods indicated
22 of the monthly information that is found in Exhibit 264.

23 Q. Okay. And then did you just average them out on
24 an annual basis?

25 A. Yes. So -- so for 2018 to 2022, those are
26 12-month averages for those years. Then we have a
27 60-month, and 120-month, 15 years -- I can't do that math
28 in my head -- and then we have 20 years, so -- and it's an



1 average of the monthly data.

2 Q. So if we look at, on 265, page 4, if we look at
3 2020, the average under the current average-of plus \$0.74
4 is \$11.13?

5 A. Yes.

6 Q. And if we were under MIG's proposal, it would be
7 \$10.89?

8 A. Yes.

9 Q. And -- and so I want to make sure that I
10 understand how your calculation, the rolling calculation,
11 works there, so I want to pause for just a second.

12 It's -- you look back 24 months --

13 A. Yeah. So there's a 24-month rolling adjuster that
14 has a 12-month lag, and so it would be the preceding 13 to
15 36 months.

16 Q. Okay. So in January of 2023, for example, you
17 would look back and --

18 A. January of 2023 would be January of 2021 to
19 December of 2022.

20 Q. And then you would have the additional 12-month
21 lag, and it would be implemented in January of 2023, based
22 on the 2021 to 2022 timeframe.

23 A. Right. And then the next month in February, it
24 would start in February of 2021, and it would end in
25 January following one -- it's very hard --

26 Q. January of 2023.

27 A. Yeah.

28 Q. So that one month drops off as the new one is



1 picked up.

2 A. Yes.

3 Q. But you are always really looking back to the
4 two-year window, three years ago.

5 A. Yes. You are.

6 Q. And so -- and is it dependent on vol- -- changes
7 in volume of milk that was produced three years ago in any
8 way?

9 A. No. It's just looking at the price relationship.
10 Now, I mean, I'm not enough of -- I'm a consultant, not an
11 economist. And so like, going from, like, the impact of
12 the volume, how that circles into the price is, like,
13 that's what -- it's the price relationship from that prior
14 period, yes.

15 Q. Okay. So it's your understanding that you are
16 just taking what would have been the higher-of as averaged
17 for the month that you are looking back, or for the time,
18 the 24 months that you are looking back to, and applying
19 it in the current timeframe?

20 A. Yes.

21 Q. Okay. And so without regard, if -- if the volume
22 of milk increased or decreased, it wouldn't matter?

23 A. No, it's not weighted. It's not volume-weighted
24 or anything like that.

25 Q. And -- okay. And then if we go back to this
26 comparison in 2020, what we can see is that under that
27 kind of rolling adjuster, MIG's for 2020, the average
28 Class I price would have been \$10.89 for the year?



1 A. Yes. The 12-month average for the year 2020 would
2 be \$10.89.

3 Q. And that would have been set based on calendar --
4 if we looked at January in 2020, that would have been set
5 based on January of 2017 and '18, with '19 being the
6 one-year lag?

7 A. Right.

8 Q. Okay. And then -- and then if we compare that in
9 your spreadsheet under your calculation under -- under
10 National Milk's proposal, it would be \$12.89 for the
11 Class I price average for calendar year 2020?

12 A. Right. Just the 12-month average of the higher-of
13 for those 12 months.

14 Q. And so for calendar year 2020, the difference
15 between the average-of what would have been paid to
16 Class I producers on hundredweight basis would have, for
17 Class I milk, would have been \$2 less per hundredweight
18 under MIG's proposal than under National Milk's proposal?

19 A. Yes, that's correct.

20 Q. And then if we go to the next year, the difference
21 in comparison between MIG and National Milk is that under
22 National Milk's proposal, it would be \$0.11 per
23 hundredweight difference?

24 A. Uh-huh. Yes.

25 Q. And in 2022, it would be, under National Milk's
26 proposal, \$0.30 less than under MIG's proposal; is that
27 right?

28 A. Yes, for 2022.



1 Q. And if the volumes had stayed the same between
2 2020, 2021, and 2022, it wouldn't have netted a
3 positive -- if we just compare all of those, it's still
4 net positive more favorable under National Milk's
5 higher-of proposal; is that right?

6 A. So those three years?

7 Q. Yeah.

8 A. Those three years together, National Milk would be
9 higher for that 36-month period.

10 Q. Okay. But at what point, where -- where did that
11 extra \$2 that we -- that wasn't paid out on the higher-of
12 for 2020, who would have received that difference? Who
13 would have reaped the benefit of that difference?

14 A. Can you repeat that?

15 Q. Yeah. If we're comparing in a, if we're looking
16 at revenue neutrality, who -- who wins in that scenario
17 of, if you are trying to get to a higher-of, but under --
18 under MIG's proposal you don't ever make up that \$2
19 difference from 2020, is it the processors for Class I
20 milk that just paid less for that milk?

21 A. So because of the 12-month lag, to make up for
22 2020, you are going to have to go all the way into --
23 because it's a 24-month rolling average, you are going to
24 have to go into 2022 and 2023, so you have to keep going.

25 Q. Okay. So what happens to the dairy farmer who
26 went out of business in the meantime? Who gets the
27 true-up from that adjuster for the milk that that dairy
28 farmer produced in order to get to revenue neutrality for



1 the milk that he -- that he delivered?

2 A. Your question -- your question is there, like --
3 to me, it's as if you are thinking about revenue
4 neutrality as like an escrow account and, like, you are
5 paying it in all the time and then you are going to pull
6 it back out.

7 And the thing with any of these price formulas is,
8 that's just it, they are the price formula. They are
9 not -- this is -- the difference wasn't paid by anybody to
10 anybody. It's -- it is a formula difference. It's --
11 it's a -- it's a spreadsheet difference.

12 Q. Okay. So it's not that the dollars actually go
13 anywhere, they just never existed?

14 A. The dollars -- that price -- if MIG's proposal had
15 been in place, that higher-of price would not have been
16 the price that was obligated to be paid as the minimum.

17 Q. And the adjuster under MIG's proposal is not
18 designed to be revenue neutral for the dairy farmer that
19 set that price three years ago, it's only designed to set
20 the price for today; is that what you mean?

21 A. I mean that it is designed to be roughly revenue
22 neutral over time, and it's not going to be perfectly
23 revenue neutral at any instance.

24 Q. And you have been very careful, and Ms. Vulin has
25 as well, to use the word "roughly" when you are saying
26 "roughly revenue neutral." And I want to quantify that.

27 When you say "roughly revenue neutral," what is
28 the deviation that is acceptable to you to get to "roughly



1 revenue neutral?"

2 A. I haven't thought about the question that way.
3 The reason why I say roughly revenue neutral is because
4 I'm trying to acknowledge that they are not equivalent,
5 that they are not exactly the same. And so I haven't
6 tried to quantify "roughly" with a number.

7 Q. Between 20- -- between 2019 and 2022, do you know
8 how many fewer dairy herds there were reported to USDA?

9 A. I don't know. I am not familiar with the herd
10 data information like that, no.

11 Q. Okay. If I told you that USDA's Exhibit 28, if I
12 calculate the difference in the dairy herds, it's over
13 6,000 fewer -- over 6,000 fewer dairy herds between 2019
14 and 2022, would that sound right to you?

15 A. It sound reasonable to me, and I would trust your
16 math on that.

17 Q. So for those 6,000 dairies that -- that went out
18 of business or stopped dairy farming during that -- that
19 time period, MIG's proposal would not ever have a way for
20 them to get to the higher-of, would they? Would it?

21 A. Dairy farms and dairy processors exit for lots of
22 different reasons. And if you -- if you exit, then you --
23 then you're not going to be there at the time that -- that
24 MIG's members are buying Class I milk in the future.

25 Q. So is that a "yes"?

26 A. I'm trying to express that there's a lot of
27 reasons why dairy farms exit. And it's certainly price
28 and profitability are a big part of why any business would



1 exit. But there -- there are a number of factors that go
2 into it, beyond just the Class I milk price.

3 And one thing that I would add, that when it comes
4 to the Class I price, you have to think about how much of
5 the milk is actually being used in Class I. Class I is
6 only about -- it's a little less than 30% of the pool
7 volume today. So you take this difference, and then you
8 put it into the pool, and you apply that, and that's going
9 to be the change on the uniform price. And so it's -- I
10 mean, we -- it is not -- it's not -- it's not quite as
11 simple as a yes or no to me.

12 Q. Okay. That's fair.

13 Is it correct to say that for those dairy farmers
14 who go out of business before they can receive the
15 higher-of amount that would be calculated under MIG's
16 adjuster, that this is -- MIG's proposal is not revenue
17 neutral with respect to those dairy farmers?

18 A. With respect to somebody who exited, it would not
19 be roughly revenue neutral.

20 Q. And for those who do stick around, you never
21 achieve revenue neutrality either, because at some point
22 when you leave the industry, whether you pass away or you
23 retire or you sell your farm, you didn't get to realize
24 that adjuster during your lifetime for the milk that you
25 have produced?

26 A. No. Because -- so the adjuster flips both ways.
27 So there are periods of time when, I mean, you could exit
28 on the high note. You could exit having been, frankly, on



1 the high side of the adjuster. So it -- both things could
2 happen. I mean, there is a -- there's a timing difference
3 here.

4 Q. And I'm not talking about just profitability. All
5 I'm talking about is revenue neutrality. It's correct to
6 say that you never get -- whether it's positive or
7 negative, if the goal is revenue neutrality, it is
8 impossible for anyone to receive revenue neutrality,
9 because you never have the overlap in the exact same
10 timing between when the adjuster is -- is used and when
11 somebody's actually producing the milk?

12 A. The adjuster will always have a timing difference.

13 Q. So that means you can never have 100% revenue
14 neutrality under MIG's proposal; is that true?

15 A. And I would not claim that MIG's proposal would
16 ever be 100% equal to the higher-of.

17 Q. And is that why you characterize it as "roughly
18 revenue neutral?"

19 A. Yes, that's part of it. And -- and honestly, as
20 you can see in my testimony, that was also the way that
21 the \$0.74 adjuster was characterized when -- when that
22 change was made. So it's -- it's -- no adjuster will ever
23 be equal to the higher-of. If you want it to be equal to
24 the higher-of, it has to be the higher-of.

25 Q. Okay. If we look at Exhibit 263, which is your
26 written testimony, you talked about the use of risk
27 management tools to help organic farmers.

28 Do you remember that?



1 A. I -- could you remind me of where that is in my
2 testimony?

3 Q. I don't have the page number. Maybe I'll just
4 step back from your testimony then and ask it this way.

5 Do you believe that organic farmers, it is
6 important to them to utilize risk management tools?

7 A. I do actually believe it's important for organic
8 producers, for all producers, to utilize risk management
9 tools. Within organic, that tends to happen a little bit
10 differently. Within organic, it tends to be long-term
11 fixed price contracts between the producers and their
12 buyer.

13 Q. And so most of the clients that you work with that
14 are in the organic farming arena, they enter into fixed
15 price contracts to sell their milk; is that right?

16 A. Typically, yes.

17 Q. And are those 12 to 24 months, generally?

18 A. Often longer. The -- the timeline for transition
19 to organic is lengthy, and so it's very frequent to have
20 multiple-year contracts, not just 12 or 24 months.

21 Q. And do they use any other risk management tools to
22 lay off the risk of their forward fixed price contracts?

23 A. Some do. There is a lot of issues within organic
24 around the basis risk, because it's the -- you are not
25 going to be able to -- you are not going to be able to
26 hedge your feed in the same way on a conventional -- as
27 you would if you were a conventional operation, so it's --
28 it's not the same construct.



1 Q. What tools do they use, then, to lay off the risk
2 of their forward milk price contracts?

3 A. Some producers participate in the Dairy Margin
4 Coverage Program. And then the -- and then it's a modest
5 thing, but people -- you know, energy, fuel, things like
6 that. There's other -- you know, there are other things
7 besides just the milk and the feed.

8 Q. What about swaps and OTC products?

9 A. I'm not aware of people using that, but -- I'm not
10 aware.

11 Q. Okay. Futures?

12 A. Again, I'm not aware of organic producers using
13 those sorts of --

14 Q. And I think you said that you are not an expert in
15 risk management when you were talking with Ms. Vulin; is
16 that right?

17 A. That is correct.

18 Q. Do you provide advice and counsel to your
19 customers and clients about risk management?

20 A. My advice and counsel to my customers and clients
21 around risk management is that they should do it, and that
22 they should seek the advice of an expert, who is not me.

23 Q. Fair enough.

24 But I think you testified, when you were talking
25 with Ms. Vulin, that risk management is of critical
26 importance, or very important, and that's why even when
27 MIG's proposal can sometimes show that it's not going to
28 be as financially beneficial to processors, they are still



1 willing to support it in order to preserve that tool of
2 utilizing risk management; is that accurate?

3 A. Yes, that is accurate.

4 Q. Okay. And -- and I think you also said it has
5 evolved over time in a way that it is still continuing to
6 bring in more people who are willing to engage and utilize
7 risk management tools.

8 A. Yes. I think the use of risk management tools
9 throughout the industry is growing and changing
10 continuously.

11 Q. And it's fair to say that -- and we have seen some
12 of the testimony this week even, that as that liquidity
13 grows on the market and the ability -- the ability for
14 people to actually have tools available to them for risk
15 management, that grows as well?

16 A. Yes. The tools that are out there change over
17 time, I would imagine, and -- but please understand that
18 I'm not an expert in this -- that different -- different
19 products have different prices, and so the transaction
20 costs associated with something that is new, different,
21 custom, bespoke, is likely not the same as something that
22 is more run of --

23 Q. Tried and true?

24 A. -- the mill.

25 THE COURT: I'm sorry?

26 THE WITNESS: Yes, tried and true is nice. Thank
27 you.

28 THE COURT: Okay. Thank you both.



1 BY MS. HANCOCK:

2 Q. And just to be clear, risk management is its own
3 business; is that right?

4 A. Risk management is indeed its own business, and it
5 is not my business.

6 Q. Okay. But you understand that at least that it
7 comes with a price if somebody wants to engage in
8 utilizing risk management tools?

9 A. It is not free.

10 Q. And so, like, even, you know, like Dr. Bozic sells
11 products to different -- well, people in this room.

12 A. And I -- I believe we have heard from a number of
13 experts here who provide -- Dr. Bozic, Ms. Dorland --
14 people provide these services, I do not.

15 Q. Okay. And those are the people to whom you refer
16 your clients, that when they do decide to utilize risk
17 management tools, to go find people who are like that,
18 that are experts and who can sell those products or help
19 them understand the use of those products?

20 A. I suggest that they go to experts, and I also
21 frequently recommend that they start within their own
22 financial network. Like, if you bank at Wells Fargo, go
23 talk to Wells Fargo, see what they can do to help you.

24 Q. And I think you said just a couple minutes ago
25 that these tools change with time as well, and that it's
26 an evolving industry where the products will change
27 depending on what's happening in the market?

28 A. Yes. And so staying current is another reason why



1 you may seek expertise from a consultant.

2 Q. And so you would agree with me then, that even
3 between when higher-of moved to average-of with a goal of
4 allowing more hedging opportunities, that additional
5 products have come on the market that would be tools that
6 could be used even under a higher-of mover?

7 A. My understanding from our members is that the
8 higher-of formula is very difficult to construct a
9 cost-effective hedge, and so I think that it is the sort
10 of thing that is possible, but I also -- my understanding
11 that it is -- that it can be quite expensive and rather
12 risky, so...

13 Q. And new products can come on the market, like
14 there could be a Class I product that could respond to the
15 market need or the importance that the market has placed
16 on wanting to have a Class I contract?

17 A. There could be something new in the future. I'm
18 not aware of something that's out there today that is
19 addressing their concerns. If their concerns were being
20 addressed, we would not be putting this proposal forward
21 like this.

22 Q. And when there's a business out there, if somebody
23 has money to spend, there's oftentimes somebody willing to
24 try and find a product that will work; is that fair?

25 A. I would hope that somebody would come up with
26 something. It's not likely to be me.

27 Q. Okay. And yesterday you were here when Nestle --
28 when the representative from Nestle testified?



1 A. Yes, I was.

2 Q. And you recall her saying that they were one of
3 the biggest milk purchasers in the country, or maybe even
4 in the world?

5 A. Yeah. I recall her talking about it in terms of
6 the world, globally, as opposed to the country.

7 Q. Okay. And did you hear her also say that she
8 hedges -- or her company hedges 100% of the milk, the
9 Class I milk that they buy?

10 A. I believe so, but --

11 Q. Well, let me ask the next question then, which is
12 really where I'm going.

13 And you would agree, then, that if you have the
14 biggest Class I milk purchaser in the entire world wanting
15 to hedge 100% of their milk, that that's going to create a
16 market for a product that somebody might want to sell
17 them; is that fair to assume?

18 A. I'm not sure if it's fair to assume. Because
19 nobody had created that product for them in 2018. I mean,
20 I believe things have changed. Maybe somebody's going to
21 make it for them now, but it didn't exist then.

22 Q. Did you hear her also say in 2018 they weren't
23 doing that?

24 A. I believe she said that they did not start doing
25 it until the formula change.

26 Q. Okay.

27 MS. HANCOCK: That's all I have. Thank you so
28 much.



1 MS. VULIN: I think we're due for a break.

2 THE COURT: Oh, my goodness. I was oblivious.

3 Let's take ten minutes.

4 Come back at 2:52. That's 2:52. We go off record
5 at 2:42.

6 (Off the record.)

7 THE COURT: Let's go back on record.

8 We're back on record at 2:55, and I would like to
9 be advised of how we're going to proceed.

10 MS. HANCOCK: Your Honor, thanks to IDFA's
11 counsel, Ms. Vulin, she's agreed to allow us to put on our
12 dairy farmer who is here, Brittany Nickerson Thurlow, and
13 then we will resume, when she's done, we'll resume
14 Ms. Keefe's testimony.

15 THE COURT: Excellent.

16 Would you state and spell your name, please?

17 THE WITNESS: Yes, ma'am.

18 My name is Brittany Nickerson-Thurlow. That's
19 spelled, B-R-I-T-T-A-N-Y, N-I-C-K-E-R-S-O-N, hyphen,
20 T-H-U-R-L-O-W.

21 THE COURT: All right. Do it one more time for
22 me.

23 THE WITNESS: B-R-I-T-T-A-N-Y, N-I-C-K-E-R-S-O-N,
24 hyphen, T-H-U-R-L-O-W.

25 THE COURT: Thank you so much. Have you testified
26 previously in this proceeding?

27 THE WITNESS: No, ma'am.

28 THE COURT: I'd like to swear you in.



1 BRITTANY NICKERSON-THURLOW,
2 Being first duly sworn, was examined and
3 testified as follows:

4 THE COURT: Thank you.

5 DIRECT EXAMINATION

6 BY MS. HANCOCK:

7 Q. Good afternoon, Ms. Nickerson-Thurlow. Thank you
8 for being here today.

9 Did you prepare what we have identified as Exhibit
10 NMPF-83 as part of your testimony?

11 A. Yes, I did.

12 MS. HANCOCK: Your Honor, I don't remember where
13 we are in the number, but if we would assign an exhibit
14 number.

15 THE COURT: So let's see. We had 265 last, and
16 this should be 266. This will be 266.

17 (Exhibit Number 266 was marked for
18 identification.)

19 BY MS. HANCOCK:

20 Q. So I'd ask you at this time to read your
21 testimony.

22 We have just asked all of our witnesses to be very
23 mindful that we have a court reporter here, so if you can
24 try and speak at a moderated pace, it will help her ensure
25 that we capture everything.

26 A. Okay.

27 Q. Thank you.

28 A. Thank you.



1 Good afternoon. My name is Brittany
2 Nickerson-Thurlow, and I'm honored to be here to present
3 my testimony today on behalf of my family, my fellow
4 dairymen and women throughout the Southeast.

5 I'm a fifth generation dairy farmer from Zolfo
6 Springs, Florida, which is in the south central region of
7 our state. I farm with my dad and brother on a
8 pasture-based dairy, where we milk approximately 2,000
9 Holstein cows twice each day. We have 17 employees on our
10 team, and farm on about 1700 acres. Our farm is a member
11 of Southeast Milk, Inc., or SMI, a farmer-owned
12 cooperative of about 120 farms in the Southeastern United
13 States.

14 I have had the honor of being elected to serve as
15 the Vice President of SMI for the past year-and-a-half,
16 and I have learned a tremendous amount about our milk
17 market, our customers, and the impact proceedings like
18 today have on our businesses.

19 I also serve --

20 Q. I'm so sorry to interrupt, but if you just can go
21 a little bit slower.

22 A. Sure.

23 Q. Okay. Thanks.

24 A. I also serve as a board member of Dairy
25 Cooperative Marketing Association, or DCMA, which is an
26 agency composed of nine dairy cooperatives primarily
27 located in the Southeast.

28 I feel the pressure of the Southeastern dairy



1 industry on my shoulders today, but I hope that this
2 testimony and our story are useful to you and the
3 important decisions that you have before you, especially
4 those pertaining to the Class I mover calculation and the
5 update to the differentials, which is critical to the
6 survival of dairy farming in the Southeastern United
7 States. I truly appreciate the Secretary holding this
8 needed hearing, as it's been a long time since such a
9 hearing has occurred.

10 My story is a bit different than most dairymen.
11 While I was raised on the farm and worked on the farm from
12 childhood through college, I did not return to work
13 full-time on the farm until 2017.

14 After college, I began a career in Corporate
15 America, where I spent almost a decade as a financial
16 analyst. My husband and I returned to the farm after the
17 birth of our son because we wanted to raise our kids to
18 know the lifestyle and values the family farm provides.

19 Since my return to the farm, I have lived through
20 what has seemed like a losing battle at the farm level,
21 the cooperative level, and the industry level as a whole.
22 As a producer in the highest Class I utilization market in
23 the country, I have watched as more than half of the 110
24 Florida dairy farms that were in business when I came back
25 in 2017, shut down their farms.

26 Our family has also come face to face with this
27 question, should we keep going? And have since listed our
28 farm for sale just a few months ago. If sold, it will be



1 the 61st dairy farm to close in six years, leaving only 49
2 dairies in the state of Florida.

3 I can assure you our farm is not the only one who
4 is contemplating selling or exiting the dairy business.
5 Quite frankly, the last few years have felt like an uphill
6 battle wearing rubber boots full of cement while wearing a
7 parka on a hot August day in Florida. The past seven
8 years have been difficult on our industry, to say the
9 least.

10 As a Florida producer, we market our milk in
11 Federal Order 6, or the Florida Milk Marketing area. Over
12 the ten-year period from 2013 to 2022, this Federal Order
13 has averaged an 83.8% Class I utilization rate. This
14 means that about 84% of the milk in my Federal Order is
15 used for Class I or beverage milk.

16 Our high Class I market has been the lifeblood of
17 the dairy industry in Florida and the Southeast. High
18 production costs in the Southeast have been historically
19 tolerable only because of this high-value Class I milk
20 market.

21 However, in recent years that has not been the
22 case, and instead, we have in many instances lost value
23 because of issues in the Federal Order that have brought
24 negative price implications on the Class I milk markets.
25 That is why these two important issues, the Class I mover
26 calculation and the update to differentials, are very
27 important to my family and the SMI dairy farmers, and will
28 be a major determining factor of whether the Southeastern



1 dairy farm attrition rate continues or slows.

2 SMI is supporting all five of the NMPF proposals,
3 but today, I would like to specifically testify my
4 advocating for the dire need to change the Class I price
5 surface, Proposal 19, and to revert to the higher-of mover
6 calculation, Proposal 13. I'm implore USDA to adopt both
7 of these two proposals as soon as possible.

8 First I'd like to address the Class I differential
9 update. Most Federal Order Class I differentials have not
10 been updated since the Federal Order reform, with the
11 exception of the differentials in the Appalachian,
12 Florida, and the Southeastern Orders, which were only
13 modestly updated in 2008. I'm sure I'm not alone in my
14 experience that virtually nothing is the same as it was in
15 2008.

16 In 2008, my feed cost was \$10.52 per
17 hundredweight. Today, my feed cost is \$18.18 per
18 hundredweight.

19 THE COURT: Could you re-read that sentence?

20 THE WITNESS: Yes, ma'am.

21 In 2008, my feed cost was \$10.52 per
22 hundredweight. Today, it is \$18.18 per hundredweight.

23 In 2008, the Florida minimum wage was \$6.55 per
24 hour. This year it will increase to \$12 per hour. And
25 the cost of hauling milk has almost tripled since the
26 current Class I differentials were established. I could
27 go on and on with these comparisons, but those three,
28 feed, labor, and hauling, are the largest costs we have on



1 our farm, and there is a clear disconnect between reality
2 and the economics the differentials were designed to
3 complement.

4 Next I would like to address the Class I price
5 mover calculation. This calculation, as you well know,
6 was changed this 2018. As I recall, having just come back
7 to the farm the prior year, the conversation around this
8 change that it was going to be negative -- or revenue
9 neutral to farmers and a tool to assist processors with
10 hedging on their end.

11 Unfortunately, that has not been the case. This
12 change has caused significant negative price impacts at
13 the farm level. Some of those were certainly exacerbated
14 by extraordinary events like COVID. However, even still
15 three years after the pandemic, we are still seeing
16 negative price impacts to our pay price today because of
17 this change.

18 I would like to submit my farm's case specifically
19 to give you a real life example of how big of an issue
20 this really is. I have done the math to quantify the
21 impact that this calculation change has cost us. If I
22 change -- if I compare the current calculation to the
23 previous calculation from 2019 to June of 2023, and use
24 the standardized 3.5% butterfat, my family's farm has
25 personally lost almost \$600,000 over a four-year period.
26 While that may sound small in the grand scheme, that's a
27 lot of money for a family farm.

28 Furthermore, if we use the same formula to



1 estimate the total impact to the Federal Order 6 market,
2 it totals nearly \$43 million farmers have lost because of
3 this change. A \$43 million loss is in no way revenue
4 neutral to farmers.

5 In closing, I would like to say that -- I would
6 like to summarize by saying this. This Federal Order
7 hearing will change the future of the dairy industry. I
8 encourage each of the decision-makers in this process to
9 think back to the farm first. Without our farms, there
10 are no processors, there are no checkoff organizations,
11 there are no Federal Orders, and the economic impact to
12 suppliers, employees, and rural economies is lost. The
13 farms are who feeds the supply chain from top to bottom
14 and from left to right.

15 Our farms should have the opportunity to thrive
16 just as much as anyone in that chain, but that role has
17 been reversed, or at minimum, highly compromised. The
18 Federal Order was established to provide an orderly market
19 for Class I milk. Without significant changes in the
20 dairy industry, especially in updating the pricing
21 formulas in Federal Orders, we will have more dairy farm
22 attrition.

23 Our Southeastern dairy farms have been
24 economically hindered by both the outdated Class I
25 differentials and the Class I mover calculation change.
26 If continuing to ensure an orderly market for Class I milk
27 and keeping a local food supply remain the intent of the
28 Federal Order, we need meaningful changes and we need them



1 as soon as possible.

2 I want to thank you all again for the opportunity
3 to be here today to testify. Thank you all for the time
4 and effort you are allocating to our dairy industry during
5 this important Federal Order hearing. I believe I speak
6 on behalf of all U.S. dairymen and women when I tell you
7 how much it really means to us.

8 Thank you very much.

9 BY MS. HANCOCK:

10 Q. Thank you. I just want to follow up on a couple
11 of questions.

12 You talk about the high Class I utilization in
13 your market. I'm wondering if you have observed whether
14 there has been enough milk to service the Class I markets
15 where you live?

16 A. In Federal Order 6, we do import a significant
17 amount of milk into that Federal Order. There's a large
18 milk shed for sure in Georgia in that Federal Order. And
19 a lot of milk -- I would say a majority of months out of
20 the year, we are importing milk from other Federal Orders
21 into Federal Order 6.

22 Q. So as those dairies that you talked about going
23 out of business, as that occurs, does that make it more
24 difficult for you to attract the Class I milk that you
25 need in your market to service those plants?

26 A. Yes.

27 Q. What about in the -- I'm sorry.

28 A. It certainly adds to the balancing costs, for



1 sure. As we lose local farm -- local farm milk
2 production, that adds to the cost that dairy farmers have
3 of balancing that market. So that means we have to go
4 source that milk from whatever other geographic area, and
5 then import it in.

6 Q. And when you say "we have to source that milk,"
7 are you talking about on behalf of your cooperative?

8 A. The cooperative, yes, ma'am.

9 Q. And what about in the stores, what have you
10 observed in the stores where you live?

11 A. Well, I'm a mom in addition to a dairy farmer, so
12 I do frequent the grocery stores. In our -- especially in
13 the Central Florida area, we have a serious problem with
14 not just a shrinking dairy farm population, but we don't
15 have milk on the shelves in a lot of places. Especially
16 during -- you know, it's very bad during holidays and
17 hurricanes, those types of things. But even regular
18 day-to-day, especially in convenience store settings,
19 there's just not milk there.

20 Q. Okay. And if we had moved the Class I mover back
21 to a higher-of, do you think that that would have an
22 effect on the ability of the Southeast market being able
23 to attract Class I milk to that area?

24 A. I think you would have a stronger dairy farmer
25 population, absolutely.

26 Q. Okay. And you gave us some, what I think is
27 pretty personal information about you and your family's
28 farm and the history. And I think you say in here that



1 you are a third -- third-generation dairy farmer?

2 A. Fifth generation.

3 Q. Oh, fifth. I'm sorry.

4 A. That's okay.

5 Q. Fifth-generation dairy farmer.

6 But you also talk about that you have recently put
7 your farm up for sale. Would you be willing to share some
8 of your reasoning for that?

9 A. Sure. It doesn't take long not making money for
10 you to have to start evaluating your business and whether
11 or not you should continue doing what you are doing.

12 I think that you will find most dairy farmers love
13 what they do. We love it. We are not trying to make, you
14 know, historical returns. We're not trying to, you know,
15 make boatloads of money. We just want to make return on
16 our investment and a good living.

17 And I can tell you without a doubt that since I
18 have been back to the farm, over the last seven years we
19 have barely made a return on our investment, much less a
20 reasonable return on our investment.

21 So at some point, you know, we have to look at our
22 operation and say, is our farm more valuable as real
23 estate for another use, or should we continue? And the
24 answer is absolutely not when we look at should we
25 continue dairying in the economic environment we are here
26 today.

27 Q. And you quantified if you had received the
28 higher-of for your Class I milk since 2019, you would have



1 an additional \$600,000 over those four years of time; is
2 that right?

3 A. Yes, ma'am.

4 Q. If those dollars had gone into your family's dairy
5 farm, would that have changed the economic analysis that
6 you did in order to decide if you wanted to sell your farm
7 or not?

8 A. Yeah. Absolutely. Because it's not just a
9 \$600,000 loss in the calculation change, it's the interest
10 that I have carried on that money over all of that period,
11 because, you know, if we're not generating that cash out
12 of operating, we're borrowing it from a line of credit,
13 and that comes at a cost as well.

14 Q. And does it also impact your confidence in the
15 future about whether this is a viable option for you and
16 the next generations to come?

17 A. Yes, ma'am. I can tell you that if there's not
18 something done about the differentials -- for sure about
19 the differentials, and I would prefer the higher-of as
20 well -- there will be less dairy farms in Florida. Like I
21 said in my testimony, our farm is not the only one. There
22 is a -- probably at least another 10% of the number of
23 farms that are on the edge right now for the state of
24 Florida, which, as we all know, is, you know, one of the
25 highest population growth states in the country. We're
26 right there amongst all of the people. We should have the
27 opportunity and the ability to continue to operate and
28 service our neighbors with a fresh, local, wholesome



1 product, but the economics are just not there for us to
2 continue to do that.

3 Q. I think in your testimony you said that over a
4 period of time you have observed personally that there's
5 61 fewer dairy farms in your area that have gone out of
6 business or sold.

7 A. Uh-huh.

8 Q. Is that a "yes"?

9 A. Yes, ma'am. Sorry.

10 Q. I just want to make sure our record is clear.

11 And of those farms that have gone out of business,
12 what's the primary reason that you see that they are going
13 out of business?

14 A. Lack of profitability is a driving factor. Sure,
15 you have some situations where, you know, farms have sold
16 because of, you know, high real estate opportunity, real
17 estate value opportunity. But, you know, if someone were
18 making money milking cows, they are going to sell that
19 real estate and they are going to go milk cows somewhere
20 else. That's not happening at all.

21 We also have the generational piece, where, you
22 know, we have got a more tenured farmer demographic. They
23 may not have a son or a daughter there that can take over
24 the farm. That may be by virtue of they don't have kids,
25 but in a lot of cases it's they can't afford to pay their
26 children a competitive wage to come back to the farm and
27 continue doing what the family legacy has been.

28 Q. And so then you lose that pipeline --



1 A. Yes, ma'am.

2 Q. -- of not having that next generation trained up
3 and already in the industry, ready to take over?

4 A. Yes. Yes.

5 Q. Okay. I really appreciate your willingness to
6 being able to share all of this with us.

7 MS. HANCOCK: Your Honor, at this time we would
8 make Ms. Nickerson-Thurlow available for
9 cross-examination.

10 CROSS-EXAMINATION

11 BY DR. CRYAN:

12 Q. Roger Cryan with the American Farm Bureau
13 Federation.

14 Good afternoon.

15 A. Hi there.

16 Q. It's nice to see you again.

17 A. Yes, sir.

18 Q. You were at our forum last October.

19 A. Yes, sir.

20 Q. And you are a Florida Farm Bureau member; is that
21 correct?

22 A. Yes, sir. And I'm a board member of my county
23 Farm Bureau.

24 Q. Fantastic.

25 A. Yes, sir.

26 Q. I'm very sorry about the circumstances that have
27 forced you to make the decision to put the farm up for
28 sale. I -- I went to school in Florida. And are you a



1 Gator?

2 A. I'm not.

3 Q. I'm sorry. I'm sorry.

4 THE COURT: Well, ask her if she's a Seminole. I
5 mean, do something.

6 DR. CRYAN: No, no, no.

7 THE WITNESS: I'm not that, either.

8 DR. CRYAN: No, no. No, ma'am.

9 THE WITNESS: I'm a Bull.

10 DR. CRYAN: Oh, very good. Very good.

11 BY DR. CRYAN:

12 Q. So you were at the forum. And was it -- it was
13 pretty clear that farmers from across the country were
14 there; is that correct?

15 A. Absolutely. Yes.

16 Q. And there was pretty much a consensus in favor of
17 the higher-of?

18 A. Absolutely.

19 Q. This is not a Southeastern issue.

20 A. Correct. Yeah. The setting of -- or the way that
21 the tables were set up, you guys did a great job of
22 putting together farmers from different areas, different,
23 you know, markets, whether Class I, Class III whatever.
24 And so it -- no matter what the table was comprised of, I
25 think on every one of our flip charts where we listed out
26 the consensus of the group, that was certainly one for
27 sure.

28 Q. I appreciate that.



1 Was there anything else you wanted to -- that you
2 took away from that in terms of producer interests or your
3 own learning?

4 A. I learned a lot, absolutely. Especially hearing
5 from fellow dairy farmers from across the country. I
6 think there was a lot of learning between all of us, you
7 know, for -- for a lot of the folks who came from other
8 market areas, they didn't really understand the situation
9 with how some of the things impacted Class I markets
10 because they -- they have such a small Class I market.

11 Federal Order 6 is so unique because we have such
12 a high utilization rate. I think that was a great
13 opportunity for them to learn about, you know, how we have
14 been impacted. And, likewise, myself for other groups,
15 where something like a Make Allowance, I don't really have
16 a lot of familiarity with that because that's not an issue
17 in my Federal Order. So I think it was a great exercise.

18 But the consensus was that dairy farms across the
19 country are struggling and we all need modernization of
20 the Federal Orders to be able to improve all of our
21 situations.

22 Q. Very good. I appreciate your -- your thoughtful
23 comment, your testimony. Appreciate you being here,
24 coming all the way to present to us. And, again, good
25 luck.

26 A. Thank you.

27 DR. CRYAN: Thank you.

28 THE COURT: Is there other examination before I



1 invite the Agricultural Marketing Service to ask
2 questions?

3 I would call on the Agricultural Marketing
4 Service.

5 MS. TAYLOR: Thank you.

6 CROSS-EXAMINATION

7 BY MS. TAYLOR:

8 Q. Good afternoon.

9 A. Hi.

10 Q. Thank you for coming to testify today. You came
11 quite a long ways.

12 A. Yes, ma'am. I'm going back tonight.

13 Q. A few questions I have been asking all our dairy
14 farmer witnesses is if your farm would qualify as a small
15 business, which the official definition is one that makes
16 \$3.75 million in gross revenue or less annually.

17 A. No, we would not.

18 Q. And I'd also like to express my -- sorry to hear
19 that you guys have put your farm up for sale.

20 A. Thank you.

21 Q. I did have a question in the past -- and maybe
22 currently at the moment -- is, do you all utilize any risk
23 management tools?

24 A. Yes, ma'am, we do. We utilize Dairy Margin
25 Coverage. We do produce a good bit more than the minimum
26 pounds. So that tool has certainly been useful,
27 especially this year. But to bridge the gap, we also
28 utilize Dairy Revenue Protection.



1 Q. And when you use DRP, how far out do you look to
2 lock in positions?

3 A. It depends on what the numbers look like --

4 Q. Sure.

5 A. -- right? Yeah.

6 So we just recently, in the last couple years,
7 started using DRP. The question was asked, well, why did
8 you all of a sudden start using it? Because that's when
9 we learned about it.

10 Back prior to, I want to say even prior to 2020,
11 it just wasn't something that was popularly used amongst
12 farmers in my geography.

13 But when I book out presently, typically I'm just
14 booking out to the next quarter or two, mostly because of
15 the premiums are so high as I go beyond that. Not to
16 mention, in my current circumstance, if I book out and I'm
17 no longer making milk, I still have to pay the premium.

18 Q. Right. Okay. Thank you.

19 A. Yes, ma'am.

20 THE COURT: I didn't quite catch the name of that
21 third option for protecting yourself.

22 THE WITNESS: There was just two: Dairy Revenue
23 Protection and Dairy Margin Coverage.

24 THE COURT: Okay. So the one that you started
25 using when you learned about it is the more recent one,
26 the Dairy Revenue Protection?

27 THE WITNESS: Yes, ma'am.

28 BY MS. TAYLOR:



1 Q. You mentioned being in Florida. Obviously, most
2 of your milk goes to Class I.

3 About how far does your milk go to find a plant?

4 A. So I'm in Central Florida. I'm very closely
5 located to a couple of plants. My closest plant is about
6 60 miles away. The plant that I probably service second
7 most frequently is about 80, 85 miles away. Depending
8 upon the time of year, whether or not, we're -- you know,
9 Florida production is seasonal. Whenever -- in the hot
10 months we tend to shift milk south, so sometimes my milk
11 may go into that South Florida milk shed at that time of
12 year.

13 Q. Okay. And you mentioned that over the past --
14 since the differentials were established, so is that since
15 2000?

16 A. Yes, ma'am.

17 Q. Not the '08 change, but the 2000.

18 A. Right.

19 Q. So your hauling costs have tripled. And you're a
20 member of SMI. So is it correct that SMI is charged with
21 marketing your milk, and picking it up, and moving it to
22 one of those plants?

23 A. Yes, ma'am. Southeast Milk has a transportation
24 division that hauls our milk for certain geographies.

25 Q. Okay. And you talked about in response, I think,
26 to Ms. Hancock, about how in Florida you're a deficit
27 market, so your co-op has to look to bring milk in.

28 And so I was wondering if you could talk about,



1 since you're a member of the co-op and you are on the
2 board, how are those costs accounted for amongst the SMI
3 members, or are those?

4 A. Yes. So it depends on the agreement that we would
5 have with whatever supplemental supplier. Supplemental
6 supplies aren't always from far-off supplies. You know,
7 we may have an agreement with a local competitive co-op
8 where, you know, we may do a milk swap or whatever it is,
9 just to reduce the number of miles.

10 But anything that comes at the cost of importing
11 milk, that becomes a marketing expense. And typically, a
12 marketing expense is something that's taken out on a per
13 hundredweight basis from the pool prior to producers being
14 paid. So, you know, marketing expenses, whatever gross
15 revenue, minus whatever your marketing expenses are,
16 checkoffs, those types of things, and then, you know, your
17 net dollars to the farmers.

18 Q. And so is that cost for bringing in that
19 supplemental supply then, that marketing cost, is that
20 spread amongst all the members?

21 A. Yes, ma'am.

22 Q. In addition to your own cost to haul?

23 A. Yes.

24 Q. And how have you seen those marketing cost
25 deductions over the past few years, then? What do they
26 look like?

27 A. It really varies, you know, depending on what the
28 availability of local milk supply is. But, you know,



1 marketing costs have been substantial over the last few
2 years. It's an initiative that our cooperative management
3 has certainly taken to reduce those marketing costs as
4 best that...

5 Q. Okay. On the second page you talk about some
6 specific feed costs and -- well, input costs: Feed,
7 labor, etcetera. And you put those on a per hundredweight
8 basis. And when you talk about, on the next page, how
9 much your farm has lost that you calculated on the mover
10 change in the last four years, that's on a total basis
11 \$600,000.

12 I was just curious if you could talk, kind of put
13 one or the other on the same unit, in a way, like,
14 \$600,000 accounts for what per hundredweight, whereas you
15 look at your total input cost increases, what are you
16 looking at on a year average increase in total?

17 A. They are on the same cost. Even though I gave you
18 a total number for what we have lost in the Class I mover
19 change, that's based on a monthly calculation of, if I
20 take the per hundredweight change in price, old formula
21 versus new formula, and then apply that to my monthly
22 production, then I have a monthly amount that I either
23 lost or gained based off of whatever that Class I
24 calculation was.

25 The total over that period was, I think it was
26 \$580,000-something, so nearly 600,000. On a feed cost
27 side, it's the same. It's monthly. It depends on
28 whatever the feed price is, because that changes every



1 15 days for us as well. So cumulatively, I mean, I would
2 have to check some P&Ls to give you a real precise answer.

3 Q. That's okay. I appreciate the -- I appreciate
4 your thoughts on it, though.

5 A. Yes, ma'am.

6 MS. TAYLOR: I think that's it from AMS. Safe
7 travels home tonight.

8 THE WITNESS: Thank you. I appreciate it.

9 THE COURT: Are there other questions before
10 redirect?

11 MS. HANCOCK: Thank you so much for your time and
12 for making the trip out here.

13 Your Honor, we would move for admission of
14 Exhibit 266 at this time.

15 THE COURT: Are there any objections?

16 Exhibit 266 is admitted into evidence.

17 (Exhibit Number 266 was received into
18 evidence.)

19 THE COURT: Ms. Nickerson-Thurlow, I -- I have
20 been fighting back tears during your entire testimony, and
21 I just wish you well.

22 THE WITNESS: Thank you. I appreciate it.

23 THE COURT: So Sally Keefe resumes?

24 MS. VULIN: Yeah, if we could maybe just go off
25 the record for a minute so she could get set up.

26 THE COURT: Certainly.

27 MS. VULIN: Thank you.

28 THE COURT: Let's take five-minute stretch break



1 right here in the room.

2 MS VULIN: Thank you.

3 (An off-the-record discussion took place.)

4 THE COURT: Let's go back on record.

5 We're back on record at 3:31.

6 Where are we in the questioning? I have lost my
7 page.

8 Mr. Miltner.

9 SALLY KEEFE,

10 Having been previously sworn, was examined
11 and testified as follows:

12 CROSS-EXAMINATION

13 BY MR. MILTNER:

14 Q. Ryan Miltner representing Select Milk Producers.

15 Good afternoon, Ms. Keefe. How are you?

16 A. Good afternoon, Mr. Miltner. I'm well, thanks.

17 Q. Great.

18 So during your presentation with Ms. Vulin, you
19 made a statement that price inversions provide an
20 important signal to dairy farmers.

21 Can you elaborate on that just a bit?

22 A. I see that price inversions are a market signal.
23 So I would say that the signal is beyond just dairy
24 farmers, it's for the entire market, that the value of
25 milk for a non-fluid use would be higher than the value of
26 milk for fluid use at that moment in time.

27 Q. And does that signal get distorted at all, at
28 least to the producer, because of the timing of price



1 announcements for Class I milk versus Classes III and IV?

2 A. Certainly there are a lot of things that lead to
3 depooling, and that information and research that I have
4 reviewed has suggested that advanced pricing is one of --
5 is a contributor to depooling.

6 Q. And for the life of me I can't remember who said
7 it this week, but there was a witness who testified that
8 using an average of III and IV added to both the frequency
9 and the magnitude of negative PPDs.

10 Did you hear that testimony?

11 A. I believe somebody has said that, but who that
12 person is and when it happened is a little muddled in my
13 mind at this point.

14 Q. Do you agree with that analysis?

15 A. No. I think it's far more complicated than that.
16 The average-of is one contributor to negative PPDs. But
17 negative PPDs have a number of causes. And that's, as I
18 understand it, not even the number one cause.

19 Like, the biggest thing I believe with negative
20 PPDs is going to be just the overall -- the range, the
21 spread that's happening between III and IV is going to be
22 a very big factor, and then you are also going to have
23 just the overall utilization mix. There's a number of
24 things. And I would point you to Exhibit 76 in the
25 record.

26 Q. Okay. Do you have an opinion as to whether the
27 spread between the Class I mover -- let me rephrase that.

28 Does utilizing an average-of Class III and IV plus



1 some sort of adjuster rather than the higher-of mute or
2 distort the price signals that producers should be
3 receiving from the market?

4 A. I don't think that it does. I think that most of
5 the price that we have got there is simply the average.
6 And so the bulk of what -- of the information that we're
7 being -- trying to transmit is being transmitted by that
8 average-of III and IV.

9 Q. And so, for instance, a rapidly rising cheese
10 market, which wouldn't be reflected in the mover for up to
11 36 months, you believe that with that signal would still
12 be effectively communicated to producers through their
13 prices?

14 A. I believe that the overall big picture signals
15 that we're trying to send through the price with the
16 adjuster over time will get it right over time, be roughly
17 neutral, roughly equal.

18 Q. So if we were just to think about MIG's proposal
19 for the mover versus National Milk's, is the main argument
20 for adopting the MIG proposal over the others, that it
21 allows Class I handlers to better manage their price risk?

22 A. That is its primary advantage. The nature of the
23 rolling average adjuster also provides -- does dampen some
24 volatility on the base Class I skim price.

25 Q. And are you testifying also that a secondary
26 benefit is that the customers of Class I handlers will be
27 better able to offer their products at a flat or more
28 stable price?



1 A. They could. If -- but they need to -- they need
2 to utilize all the tools that are out there in the risk
3 management world to be able to take advantage to be able
4 to do that. The -- the formula facilitates it, the
5 formula doesn't make that happen.

6 Q. So you had a lot of -- you made some statements in
7 your testimony, you had some questions also from
8 Ms. Hancock about the net income to producers over time
9 under the MIG proposal versus returning to the higher-of.

10 And would you agree that over time, the MIG
11 proposal, which does not cap or floor the add-on to the
12 average, the net difference between the National Milk
13 proposal and the MIG proposal will be relatively small,
14 however we quantify that?

15 A. Yes.

16 Q. So if we looked at any particular month, so for
17 instance on your Exhibit 264, for the last month reported
18 on there, which is August of '23, the higher-of is \$0.95
19 higher than MIG's Proposal 15. But if you then looked at
20 January of '23, that relationship is almost reversed,
21 right? So any individual month it's going to go one way
22 or the other, correct?

23 A. In any individual month it will go one way or the
24 other. On the average --

25 Q. Right.

26 A. -- they are going to come together. But any
27 particular month, they are -- they are not going to be the
28 same. There might be one month out there where they are



1 the same, but --

2 Q. I wonder if -- I'm now looking at Exhibit 265,
3 page 4. And so I'm looking at the five-, ten-, 15, and
4 20-year averages, looking at the comparisons of
5 Proposal 15 and 13.

6 And I wondered if you had any thoughts about why
7 the higher-of is consistently higher than 15 over those
8 various spans?

9 A. So a little bit of it will be related to the lag
10 nature of the adjuster. The differences for 2022 will not
11 have fully rolled on to Proposal 15 yet.

12 I'd also note that they are not remarkably far
13 apart. It's -- we're talking -- it's \$0.08 a
14 hundredweight.

15 Q. Right.

16 Do you happen to recall any decisions of USDA that
17 found that a \$0.01 difference was meaningful?

18 A. You know, Ryan, I think I do, actually.

19 Q. Okay. I recall that as well.

20 Do you have familiarity with USDA's retail --
21 retail price reports on gallon milk?

22 A. I'm familiar with them. I don't -- they are not
23 one that I read -- like, the uniform price announcements,
24 those I read very religiously. The gallon thing is more
25 of like a skim or a scan when I can touch down on it.

26 Q. Okay. And are you aware of Class I handlers
27 hedging their milk costs prior to the adoption of an
28 average-of mover?



1 A. I am not. To the best of my knowledge, it wasn't
2 really being done. I'm sure there was somebody out there
3 doing something that I'm not aware of, but I'm not aware
4 of that.

5 Q. And I forget, you probably know better than I
6 which month that change took place. Was it May of '19?

7 A. Yes, May of 2019 is when the formula changed.

8 Q. Okay. So using USDA's data, I did some
9 comparisons. And would you be good enough to accept my
10 math for purposes of argument?

11 A. Sure.

12 Q. If for all markets, the Class I raw milk price in
13 2018 had a variance from high to low of 18%, but the
14 retail whole milk price reported by USDA had a volatility
15 of 3.2%, and in 2022 the volatility of the raw milk price
16 was 27.4%, and the volatility of the retail price was
17 15.6%, does that suggest that Class I handlers are
18 effectively hedging their costs?

19 A. To the best of my knowledge today, the number of
20 participants, there are folks within Class I who are using
21 these tools, but it -- as we have heard from other
22 witnesses, this -- this is -- this sort of risk management
23 and using -- constructing hedges to be able to collar your
24 price for retail is not -- has not been widely adopted
25 within the HTST market. And most of that price survey
26 that you are looking at is going to be the HTST market. I
27 mean, that's the bulk of what's out there for sale today.

28 Q. Is that difference in the ESL market, in your



1 experience?

2 A. In my experience, the ESL market is much more
3 likely to be hedging and trying to set a more stable
4 price.

5 Q. And so the HTST market in 2020, the average 2%
6 gallon was \$1.48, which is -- for a gallon, which is the
7 same price that Nestle's charging for 14 ounces of their
8 ESL product.

9 So they are very, very different markets, correct?

10 A. They are -- they are very different markets. And
11 a gallon jug is really different than a small bottle of
12 Nesquik. They are -- they are very different products.

13 Q. Right.

14 And the hedging that is done is very, very
15 different in your experience?

16 A. So in my experience with the HTST market, it's
17 much more like -- it's -- the HTST market, the terms of
18 trade, people very much rely on the advanced pricing. And
19 advanced pricing -- and there are routinized monthly price
20 changes that are going from the processors of all types,
21 so cooperative processors, fluid processors,
22 retailer-captive processor -- sorry -- cooperative fluid
23 processors, proprietary fluid processors, and the retailer
24 captives. And that monthly price change dynamic related
25 to advanced pricing is a very routinized part of the HTST
26 terms of trade today.

27 Q. I'm curious if you have an opinion about -- about
28 that HTST market and reasons why the volatility and the



1 raw milk price wouldn't necessarily translate to the
2 retail price, then.

3 A. Boy, that's a big question. I mean, there's a lot
4 that goes into setting -- there's a lot that goes into
5 what the price winds up at the shelf. So you've got, you
6 know, some retailers like an everyday low price, some
7 retailers like a high/low strategy with promotions.
8 There's a lot there. And then you have the dynamic of the
9 raw milk costs changing every month and that being passed
10 through. So there's -- there are a lot of different
11 reasons why. But, you know, it -- it's important to
12 consider the retailer in that conversation and discussion,
13 too.

14 Q. So for a cooperative with members that might
15 really feel comfortable with the higher-of mechanism that
16 they are familiar with, but not certain about what the
17 future -- what the proper path for the future might be is,
18 other than risk management for the handler, what reasons
19 might you offer to them to endorse the MIG proposal?

20 A. There is also the benefit of the adjuster does
21 slightly dampen the price volatility. It would be
22 slightly more stable, but I wouldn't want to oversell it
23 as -- because you -- once you go from the HTST processor
24 to the retailer, you are going to have to get buy-in at
25 that next step along the way for your pricing strategy.

26 Q. Thanks.

27 MR. MILTNER: That's it.

28 CROSS-EXAMINATION



1 BY DR. BOZIC:

2 Q. Marin Bozic for Edge Dairy Farmer Cooperative.

3 So producers could rightfully ask, why should we
4 care about private handlers' -- mostly private handlers,
5 in your group -- ability to hedge and manage risk? So I'm
6 going to tease out the answers to that a little bit.

7 Is it correct that the witness from Nestle
8 suggested that ability to hedge increased the sales of
9 their product?

10 A. Yes, I recall her testifying that they attribute a
11 portion of that sales growth to the ability to hedge the
12 product, the raw material cost there.

13 Q. And -- and if there are more Class I sales, how
14 does that affect the relative utilization of various
15 classes within a Federal Order?

16 A. So more Class I sales will increase the Class I
17 utilization, which will ultimately increase the producer
18 uniform price or the blend, because the Class I processors
19 are the mandatory participants, they are there all the
20 time.

21 Q. So higher Class I sales ultimately lead to farmers
22 getting paid more?

23 A. Ultimately, yes.

24 Q. So therefore, does it follow that enabling private
25 handlers, private Class I handlers to hedge, leads to
26 higher dairy farmer prices long-term through the higher
27 sales of Class I products?

28 A. That's certainly the hope.



1 Q. Okay. My next topic is on the HTST versus ESL
2 plants.

3 And my understanding, based on the secondhand
4 data, is that there's been a lot of HTST plants closing
5 since the higher-of started, and that we had about a
6 dozen -- just short of a dozen new ESL plants coming up.

7 Do you think I'm close with that?

8 A. Yes, I do.

9 Q. And why is that? Why are we seeing more ESL
10 plants coming up?

11 A. I think there's a number of different reasons, but
12 I think that ultimately the -- the ESL processing format
13 lends itself to products that are gaining wider consumer
14 acceptance today. There's also benefits related to
15 managing your business with, like, how you work with
16 inventories, lots of different things. But ultimately
17 it's -- the ESL products have proven themselves to be
18 better able to compete on the shelf with non-dairy
19 alternatives.

20 Q. Would you anticipate the ESL trend to continue,
21 the growth in ESL market share to continue?

22 A. I think that ESL will continue to be a growing
23 share of the market. I've -- when I started in the dairy
24 industry, I primarily worked with HTST fluid processors,
25 and -- and in the late '90s was my first experience with
26 working with an ESL plant.

27 Today, virtually none of the plants that are in
28 our -- in the Milk Innovation Group were processing ESL



1 milk at that point in time when I was -- when I had first
2 started.

3 Q. Would it be fair to say that if innovation is
4 going to happen anywhere in the fluid sector, that it is
5 more likely to happen within the ESL space rather than
6 the -- when I say "ESL," I also include aseptic -- rather
7 than the HTST space?

8 A. I think that you are likely to see more innovation
9 in the ESL, the aseptic space, you know. I also think
10 that there's some cool fun stuff in HTST, too.

11 Q. Sure. Sure. I didn't mean exclusively, just more
12 likely.

13 A. Yeah.

14 Q. And is it fair to say that hedging is more
15 important to the ESL than HTST manufacturer?

16 A. Yes. And one big reason for that is that your
17 extended shelf life products, your aseptic products are
18 held in inventory by that processor for a much longer
19 period of time, and so that is another part of their risk
20 that they are looking to manage.

21 Q. That wasn't my reaction. I apologize.

22 So now putting all of this together, does it not
23 follow then that if we go back to higher-of, which is
24 unhedgeable, that that could slow down the innovation and
25 modernization of the fluid sector?

26 A. I think that it -- it -- yes, it could slow it
27 down. It -- it puts up another challenge.

28 Q. Okay. Thank you very much.



1 My next topic is regarding the famous organic
2 example in Ms. Dorland's testimony.

3 And to your knowledge, is anyone among organic
4 processors wishing that they could do the kind of hedge
5 that Ms. Dorland attempted to illustrate?

6 A. I am not aware of anybody within organic that has
7 attempted to hedge their producer settlement fund
8 obligation in the way that that example was constructed.

9 Q. So can we derive from Ms. Dorland's example any
10 insights to help decide between the alternative proposals
11 for Class I mover?

12 A. I don't think so. I don't think it -- that
13 example provides a lot of -- it shows what's really hard
14 to do or what can't be done.

15 Q. Under either proposal?

16 A. Under either proposal. It's -- hedging -- trying
17 to hedge the producer settlement fund obligation is a
18 fruitless task.

19 Q. Which nobody is even wishing they could do,
20 really?

21 A. I am -- no one is wishing they could do it in
22 organic or conventional that I am aware of. That is a
23 fruitless task.

24 Q. Thank you very much.

25 My next topic is regarding advanced pricing. So
26 reading the materials from MIG that have been previously
27 submitted as exhibits, I understand that you have concerns
28 about Proposals 16 through 18, partially because they



1 would remove advanced pricing; is that fair?

2 A. Yes, that's fair.

3 Q. And my understanding is that your concerns stem
4 from the fact that not all of the fluid milk members need
5 to hedge because they have a natural hedge under the
6 current policy set up; is that fair?

7 A. Yes. With the advanced pricing, like what
8 Mr. Miltner and I were talking about, the HTST processor
9 has some built-in risk management there through the
10 advanced pricing.

11 Q. But for those fluid milk handlers, mostly ESL, who
12 do hedge, would you agree that pricing based on announced
13 prices would help their hedging easier?

14 A. If you are hedging and only having one time
15 series, like, instead of the advanced with the two weeks
16 and then the other one that's every week, it would, in my
17 opinion, be easier to do it with just one series. But you
18 have to be -- for that to be effective, you have to be
19 using the tools, like --

20 Q. In other words, if we do away from advanced
21 pricing, but we don't have, you know, an average-of or
22 something similar to that that would facilitate hedging,
23 removal of advanced pricing on its own is not going to cut
24 it, it's not going to help?

25 A. No.

26 Q. But when combined with something like average-of,
27 removal of advanced pricing for those that do hedge would
28 help?



1 A. If you are hedging, it would -- it would work.
2 But you have to be doing that, like --

3 Q. Right. Right.

4 To -- what is your understanding, would removal
5 off advanced pricing help reduce the incidence and the
6 magnitude of depooling?

7 A. Yes. I believe it would.

8 Q. And I apologize for being repetitive. I think
9 Mr. Miltner asked some of these questions. I'd like to
10 put everything in the record in one bundle, if you will.

11 A. That's okay.

12 Q. So to your understanding, and I understand this is
13 not your area of core expertise, but would removing --
14 would not using advanced pricing help or hurt
15 producers' -- dairy producers -- ability to manage risk?

16 A. Can you repeat that one more?

17 Q. If I'm a dairy producer and I want to stabilize my
18 revenue, is it easier for me to do that if the Federal
19 Orders use advanced pricing or if the Federal Orders are
20 designed in a way that there no advanced pricing, there's
21 only announced prices?

22 A. No matter which market participant you are talking
23 about, the hedging is going to be easier with just
24 announced prices.

25 Q. Thank you for your answer.

26 Now, you represent Milk Innovators. Presumably
27 you really do care to be able to attract sufficient
28 reserve supply of milk for your members' needs?



1 A. Absolutely.

2 Q. Does your proposal, in your opinion, hurt your
3 ability to attract sufficient milk?

4 A. Definitely not. If we thought that our proposal
5 would, in any way, impact our ability to attract the milk
6 we need, we would -- that would not be the proposal.

7 Q. And speaking of market signals and delayed market
8 signals, you know, how high do you believe the chances are
9 somebody may find the Class I milk price to be too high
10 and just leave a trailer overnight in front of a fluid
11 milk plant, even if you don't need that milk?

12 A. I don't think that's how the real world works.

13 Q. So there's no -- there's no --

14 DR. BOZIC: Thank you, your Honor, for allowing me
15 to be a little facetious here.

16 BY DR. BOZIC:

17 Q. So there is no danger of having "too much milk"
18 being pushed to Class I?

19 A. I don't think so.

20 DR. BOZIC: That's all I have.

21 DR. BOZIC: Thank you very much.

22 CROSS-EXAMINATION

23 BY MR. LAMERS:

24 Q. Mark Lamers, Lamers Dairy. Just a couple things
25 for you.

26 Have you ever looked at what hedging or risk
27 management would look like if there was no depooling?

28 A. I have not, no.



1 Q. Could you give us your opinion of what it might
2 look like?

3 A. I think that without depooling, the utilization
4 within the orders is easier to predict. But that is --
5 like I said before, that's not my area of expertise.

6 Q. Potentially, it could help, though?

7 A. I would agree that it certainly has potential to
8 make it easier.

9 Q. Okay. I just want to touch on advanced pricing a
10 little bit.

11 Being a fluid handler such as ourselves, we need
12 to know what advanced pricing is going to be so we know
13 what to charge our customers, so that when we get our pool
14 bill, we don't have to wait for the money, you know, in
15 order to make that pool obligation.

16 That's correct?

17 A. Absolutely. That is correct.

18 Q. So eliminating advanced pricing would not help the
19 Class I handler?

20 A. Eliminating advanced pricing would be very
21 difficult for a lot of Class I handlers.

22 Q. Okay. Then the last thing I just want to touch
23 on.

24 Ms. Hancock had mentioned about the number of
25 producers going out of business because of potentially not
26 receiving the benefit of the higher-of.

27 Could not the same be true in the months where
28 milk is depooled because of the lower revenue farms



1 receive because of that milk being depooled?

2 A. Well, it depends on -- when milk is depooled, it's
3 not like the milk wasn't sold. Someone still bought the
4 milk. The milk was still used. And the idea there is
5 that the dairy farmer should be receiving a market-based
6 price for that milk, for what it was used for. And so --

7 Q. Correct.

8 A. -- you know, I don't know if depooling -- I don't
9 know if you can link depooling with farm exits. I'm not
10 sure about that.

11 Q. Just the same way you can't link using the
12 higher-of for a producer exiting the market?

13 A. That's correct.

14 Q. Okay.

15 MR. LAMERS: Thank you.

16 THE COURT: Are there further cross-examination
17 questions of Ms. Keefe before I invite the Agricultural
18 Marketing Service to question?

19 I do invite the Agricultural Marketing Service to
20 question.

21 MS. TAYLOR: Thank you. I accept your invitation
22 this afternoon.

23 CROSS-EXAMINATION

24 BY MS. TAYLOR:

25 Q. Good afternoon.

26 A. Good afternoon.

27 Q. I know you have testified before, and I shouldn't
28 ask you repetitive questions, but I forget. So can you



1 remind me how many members there are of MIG?

2 A. Yes. MIG has ten members. Would you like me to
3 state them for the record again?

4 Q. No, that's on the record, and I will be able to
5 look that up.

6 A. Okay.

7 Q. But I did have a question about, for those ten
8 members, do you have any idea how much of the Class I
9 volume they represent?

10 A. No, I do not.

11 Q. Okay. Do you have any idea of what -- of their
12 ESL versus HTST production?

13 A. You mean do I know which are processing ESL and
14 which are processing HTST?

15 Q. Yeah. Or of them -- yeah, I mean, I don't -- you
16 know, four of them make both, two of them make just ESL.
17 You know, some kind of breakdown of that. However you
18 want to define it is fine.

19 A. So of the ten: Four are HTST only; three are
20 both; and three are nearly exclusively ESL.

21 Q. Thank you.

22 On page 3, the sentence where you have it
23 underlined, that when you compare 15 and 13, each would
24 return roughly the same amount of money to farmers. And
25 so you make that statement, and your chart below is what
26 leads you to that conclusion.

27 A. Yes.

28 Q. Okay. I have a couple questions on your rolling



1 adjuster. Intuitively, I would think, a constant rolling
2 adjuster would be better for hedging, but you're proposing
3 a rolling adjuster. And granted, that's intuitively from
4 someone who doesn't do risk management, so I'm probably
5 wrong.

6 But my question is, why is that most likely wrong,
7 and how does your rolling adjuster, you know, impact the
8 ability to hedge?

9 A. So -- so MIG's members who participate in hedging
10 helped with the design of the rolling adjuster. And so
11 the first thing would be, the lag, and so you know what
12 the adjuster is when you're -- when you're putting your
13 hedge on.

14 The -- the constant rolling period allows it to
15 stay current. And there it was trying to get away from
16 the static nature of the \$0.74, which is the way that we
17 have been trying to keep it roughly revenue neutral.
18 Because we recognize that that static \$0.74 does not --
19 it -- it -- it doesn't reflect the ups and downs in a way
20 that dairy producers find equitable over time,
21 particularly the ups.

22 Q. And so if we look at your rolling adjuster, if I
23 think back in terms of risk management to the risk
24 management discussions and how that works, that would be
25 the basis risk for each month.

26 Is that how one would, we should look at that?

27 A. Yeah. It is -- I believe that you would want to
28 think about it as part of the basis risk there.



1 Q. And as to the lag piece, am I correct then, as
2 your members see it, since, you know that 12 months in
3 advance, and as you spoke to their goal was eventually to
4 do hedging a year in advance, they would know that number,
5 and could enter into contracts each month that they choose
6 to do that?

7 A. Yeah.

8 Q. Okay.

9 A. So they would constantly be stair-stepping
10 forward.

11 Q. Okay. And how many of your MIG members do
12 hedging?

13 A. I'm going to let them speak for themselves on
14 that, and so you are going to hear from some who are here
15 who do that. Not all of them do it, but you're about to
16 hear all about it. Let's let them speak for themselves.

17 Q. Okay. Is it a correct assumption if they do ESL
18 or do both, they probably do hedging on the ESL portion?

19 A. Yeah. Although we do have some members who are in
20 both -- in the ESL category who are organic, and their
21 primary method of managing of risk is through, like, the
22 long-term fixed price contracts that Ms. Hancock and I
23 were talking about.

24 Q. Okay. I wanted to talk a bit about Agricultural
25 Marketing Agreement Act.

26 A. Oh, boy, Erin.

27 Q. You know that's what I like to talk about. I
28 don't think there's a meeting I have had or I don't try to



1 remind people about what we're here to do.

2 So at the bottom of page 4, before your header
3 "Base Class I Skim Milk Price," you write, "This reduced
4 volatility" -- from your rolling adjuster proposal --
5 "helps support the growth of the dairy industry as a whole
6 and makes the cost of milk more stable and consistent for
7 retailers and consumers."

8 And the -- going back to the Act, the policy
9 objective is orderly marketing conditions, and we do that
10 through prices that reflect current market conditions,
11 etcetera, and uniform payments -- or prices to -- to
12 producers.

13 So I just wondered if you could just kind of touch
14 on whether consideration -- how consideration of risk
15 management should be prioritized -- or if that's the right
16 word -- or considered, in helping meet the policy
17 objective of Federal Orders?

18 A. I think that in today's world we need to consider
19 it, and I think that it is important to structure the
20 price formulas and other aspects of the orders so that
21 they don't get in the way of risk management, because risk
22 management is an important part of the market today. And
23 I do think that that is something that is very different
24 than 20 years ago, 20, 25 years ago at Order Reform, and
25 certainly really different than 1937, like, for sure.

26 And -- and fundamentally, one of the things with
27 the orders is orderly marketing, but not getting in the
28 way of the market. And I think that with risk management,



1 under a non-hedgeable formula for Class I, that that's
2 getting in the way of the market.

3 Q. MIG is looking for a 12-month implementation lag,
4 and we have had other -- we have other proposals in front
5 of us with a 15 -- 15-and-a-half month lag.

6 A. Uh-huh.

7 Q. So I was just wondering if you had thoughts on
8 that additional length of time.

9 A. So MIG as a group is supportive of the 12-month
10 implementation lag. I testified about that on -- back on
11 Issue 1. And, you know, the -- if the additional
12 three-and-a-half months is important to other market
13 participants, you know, I don't think that we would have a
14 problem with that. You know, we think that 12 months is
15 adequate here.

16 I mean, quite frankly, the risk management
17 activities in Class I are honestly a bit more limited than
18 what's happening in other parts of our dairy markets, and
19 so I don't know if Class I is necessarily the best place
20 to look for the perfect right implementation timeline of
21 that aspect of the changes you are considering. I think
22 you got to -- I think that it's important to think broadly
23 about the needs of all of the market participants there.

24 Q. Okay. On page 6, that first full paragraph,
25 the -- one of the sentences reads hedging is a vital tool
26 to reduce price risk and provide stable prices to
27 customers.

28 And I think you touched on it. I mean, my



1 question I wrote down is, is stable price to customers a
2 policy objective of the Federal Orders? I'm not sure.

3 So I'll ask that question. I wrote it.

4 A. So I think that it's kind of funny, because with
5 the orders, like we talk about the producers, and then we
6 talk about the consumers. And we regulate the processor,
7 and then the customer, the retailer, it's just magic.

8 Q. Tangled web.

9 A. Yeah. And so ultimately, to me, stable prices to
10 customers is related to meeting stable prices for
11 consumers and consumer needs. You know, I frequently see
12 the customer, the retailer, most often, you know, also
13 foodservice -- there's other things for Class I milk
14 besides just the grocery store, but the grocery is very
15 important for Class I. I often see that as, in some ways,
16 a bit of a proxy for the consumer.

17 Q. Okay. Later in that paragraph you talk about how
18 processors have had limited time to integrate this change
19 into their risk management efforts. I'm thinking you are
20 saying this change is the current Class I mover and the
21 ability to hedge.

22 A. Yeah. I mean we're talking about -- so Ms. Vulin
23 and I talked about that timing some. I mean, this started
24 in May of 2019, and I don't think it's unusual when you
25 hear about that organizations of different sizes and
26 scales with different resources have been able to -- have
27 been able to use the tools that the new formula
28 facilitates.



1 And so it doesn't surprise me that, you know, a
2 global dairy leader like Nestle is, you know, hedging all
3 of their milk purchases in the U.S., and, you know, other
4 people that you will hear from within our group are doing
5 some of theirs.

6 And so it's -- it takes time, and it takes
7 resources. Like, you know, there is a learning curve
8 here. It is -- you know, it's not easy, like, and -- and
9 honestly, you know, like, you need help. If you haven't
10 done it before, you are not -- you're -- you have a
11 responsibility to your cooperative members, to your -- to
12 your shareholders, to your employees, to your business,
13 like -- and getting this wrong could -- could be the sort
14 of thing that could be very detrimental to your business.
15 You need to undertake a risk management program in a
16 considered and well-thought out fashion.

17 Q. How long do you think it took some of your MIG
18 members to start?

19 A. Fastest would be like months, and longest would be
20 like years. So it's a wide range with our members that
21 I'm aware of. And that would -- yeah. It's a range for
22 sure.

23 And the other thing I just hit on there, is that
24 this talk about changing the formula back has been going
25 on for a while now, and whether you undertake to do it
26 when this proceeding is open with proposals that could
27 change it, you know, is that where you are going to put
28 your resources right now? I'm not sure.



1 Q. And the bottom of the paragraph there on page 6
2 you talk about the rolling adjuster continuously updates
3 and provides dynamic market signals.

4 And I think what I had heard in other
5 cross-examination was you tried to find a balance between
6 providing dynamic market signals to producers, but still
7 finding a way to allow Class I processors to hedge, and
8 that's where the 24 months --

9 A. Yes. That's correct.

10 Q. Okay. I'm curious if you have thought about --
11 and I know there's been some discussion of depooling, but
12 I want to ask it in a different way -- how would MIG's
13 proposal impact instances of price inversion and depooling
14 that results?

15 A. I have done some analysis of this. I haven't done
16 extensive analysis of this.

17 What I -- I agree with the research and the
18 literature that's -- that says that the average-of, an
19 average-of type of formula can -- can -- can be a
20 contributing factor on depooling and negative PPDs and the
21 like. But it's rarely -- it's not the -- it's not the top
22 of the stack in terms of the causes there.

23 And so I -- I -- I don't see it moving the needle
24 a lot, honestly. I think that I -- I think that the
25 underlying spread and the volatility in Class III and IV
26 themselves is going to be driving that bus a lot more
27 than -- than this formula.

28 Q. I want to turn to page 8, at the bottom. Oh, let



1 me start in the middle.

2 You have a sentence that reads, "The fluid milk
3 industry, and especially traditional fluid milk retail
4 customers, are not yet using hedging sufficiently to
5 permit this regulatory change."

6 Which I'm guessing is to change back to the old
7 way; is that what you are talking about there?

8 A. So what I was talking about there was, was a --
9 the regulatory change of eliminating advanced pricing,
10 which is in Proposals 16, 17, and 18.

11 Q. Okay. So are -- would you -- is there some point
12 that hedging would be prevalent enough, that you would
13 say, yeah, it might be worth looking at removing advanced
14 pricing, since many people, including yourself, have
15 discussed some of the issues they think it causes?

16 A. Yeah. I -- yes. And like you were asking me
17 about depooling, like advanced pricing is another thing
18 that contributes to depooling. And so I do think that --
19 that there could possibly be a point in the future where
20 it could make sense to make a change like that. I don't
21 think we're there today. And -- and at this point, I
22 don't even think I necessarily know what the threshold is.
23 It feels like we're very far away from the threshold right
24 now.

25 Q. At the bottom on your paragraph, where you support
26 14 as an alternative to 15, although kind of said if USDA
27 found 15 was okay, you would be okay with that.

28 A. That's correct.



1 Q. But, you said, "We believe that our proposed
2 moving average without a floor is more consistent with
3 Federal Order concerns over an adequate supply of milk for
4 fluid use and orderly marketing."

5 I was wondering if you could just expand on that
6 thought.

7 A. Sure. I'd be happy to.

8 The IDFA adjuster has a \$0.74 floor, and price
9 floors can be a price distortion. And they tend to
10 enhance prices. And so if you are enhancing prices, then
11 that is going to send signals to the marketplace that more
12 milk is desired than there's truly a market for.

13 That said, the IDFA floor at \$0.74 is -- it's --
14 it's not a tremendously high floor, and so my analysis
15 does not show huge differences between Proposals 15, 14,
16 and 13. Just they are not -- it's not -- IDFA's floor is
17 not triggered very often, but when it is triggered, my
18 view is that it would be a price distortion.

19 Q. Okay. But that's a tradeoff MIG is willing to --

20 A. It's a tradeoff. If -- if that is -- that -- and,
21 like I said, it -- it's -- it's not triggered. I'm not
22 sure if it would be triggered enough for the -- my
23 economics theoretical to really matter in the real world.

24 Q. Uh-huh.

25 I think my last question, I wrote down some notes,
26 I think you were talking to Ms. Hancock on why 24 months,
27 right? So you said, well, if you looked at stuff that was
28 less than 24 months, it seems to create more volatility,



1 is what my notes say. And if you looked at a time period
2 that was more than 24 months, it doesn't transmit market
3 signals very well.

4 A. And what I mean by that is it just gets too far
5 out in time. It starts to really -- it starts muting it.
6 It starts to look a lot like the \$0.74.

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

9 THE WITNESS: You're welcome.

10 THE COURT: I have one question.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: Would you turn to your Exhibit 265,
13 page 5. And I'm struck with what a tiny percentage this
14 adjuster is. It seems like a lot of calculation to get to
15 that.

16 Do you anticipate that it might be a larger
17 percentage of the price in the future?

18 THE WITNESS: No. I have actually looked at the
19 same thing over the entire 20-year period that the data is
20 there for the spreadsheet, but if I put 20 years on here,
21 you wouldn't be able to read the numbers at the bottom the
22 dates.

23 THE COURT: So the purpose for all of this is to
24 try to get to that promise of neutrality in the revenue.

25 THE WITNESS: Uh-huh.

26 THE COURT: There's just got to be a simpler way.
27 Do you have any response to my dilemma here?

28 THE WITNESS: I understand your dilemma.



1 Regrettably -- regrettably the simple \$0.74 adjuster
2 didn't do a good job, because even though this is a pretty
3 small percent of the price, it's enough of a difference
4 that people care.

5 And so the adjuster -- the adjuster -- we need --
6 the adjuster is needed in order to have the average work
7 in the same way that the higher-of works.

8 You have to have an adjuster to keep them roughly
9 equivalent.

10 THE COURT: So what if it was just
11 contemporaneous, and it's -- so it's volatile, it's tiny,
12 it could be volatile. Did you -- did you consider that?

13 THE WITNESS: The -- so by contemporaneous, do you
14 mean without a lag?

15 THE COURT: Without a two-year lookback and
16 without a lag. Is there any way to just have it be known?
17 I know that that might interfere with the hedging.

18 THE WITNESS: If you just -- if we continue just
19 picking a number like the \$0.74 -- and the \$0.74 isn't
20 just a number that came out of thin air. The \$0.74 was
21 looking at this orange line over an extended period of
22 time, and the variance, the difference between the times
23 when it's 5%, and the times when it's 15% are meaningful
24 to the participants in the market, and so that's why we
25 have it constructed this way.

26 THE COURT: Thank you. Redirect?

27 MS. VULIN: Thank you.

28 REDIRECT EXAMINATION



1 BY MS. VULIN:

2 Q. Ms. Hancock had asked you a question about where
3 the money went that was the difference between the
4 higher-of and the average-of, and I would like to approach
5 that a different way to get to where I think maybe that
6 was headed.

7 Instead of asking where it went, because I believe
8 your answer was it never existed. If the higher-of had
9 been in place, you know, during that 2020 period, and the
10 base Class I skim price was \$2 higher, who would have paid
11 that extra \$2 per hundredweight, ultimately?

12 A. Ultimately, consumers. And before that, the
13 customer. Because the processor, if it had been the
14 formula, that's what the processor would have paid, and it
15 would have had to have been passed along.

16 Q. So when we talk about this kind of "missing
17 money," this is not money lining the pockets of processors
18 somewhere, this is money the consumers were saving during
19 that period of pandemic on their milk price?

20 A. Yes, you could look at it that way.

21 Q. And then Mr. Miltner had asked a question about
22 the adjuster that we were just talking about, and the
23 signal, and the delay that signal might be of rapidly
24 rising cheese prices and the adjuster.

25 But wouldn't the contemporaneous average-of
26 calculation that makes up the bulk of the base of the
27 Class I skim formula, wouldn't that be reflective of
28 rapidly rising cheese prices?



1 A. Yes. Absolutely. The bulk of -- the bulk of the
2 base Class I skim price is the average-of III and IV. So
3 in a time when Class III prices are rising rapidly,
4 that -- that average is also going to rise. And when
5 powder prices are rising and it's driving the Class IV
6 price up, the same thing would happen.

7 Q. Okay. And we have spent a lot of time talking
8 about 2020, and that's because we saw really radical price
9 distortion in that period. But in your opinion, is 2020 a
10 good example year upon which to base policy that will be
11 in place over the course of many years?

12 A. The events of 2020 were extraordinary, and I don't
13 think it's a great example. I -- you know, I think that
14 we want to, as an industry, recognize that things can
15 happen in the future that we won't predict, like what
16 happened in 2020. But it's not a great lookback example.
17 2020 was very unusual.

18 Q. And then lastly, I wanted to ask, Ms. Hancock
19 asked you about this definition of roughly revenue
20 neutral. And I just want to make sure we all were
21 oriented to where you pointed her.

22 So if you could go to page 5 of your testimony,
23 please.

24 A. Sure.

25 Q. And you have a citation and a block quote there
26 from 84 Federal Register 8590.

27 Do you see that?

28 A. Yes.



1 Q. And about halfway through that quote you -- I see
2 that phrase, can you just read the sentence that starts,
3 "thus the inclusion"?

4 A. "Thus the inclusion of the \$0.74 in the
5 calculation should make the change roughly revenue
6 neutral."

7 Q. And this is USDA's language, correct?

8 A. Yes, that's correct.

9 Q. And so that -- that was how you were using the
10 phrase in your testimony in development of Proposal 15?

11 A. Yes.

12 Q. Okay.

13 MS. VULIN: Nothing further.

14 THE COURT: So there's nothing else? Somebody
15 else?

16 Mr. English?

17 MS. VULIN: Then I'll move, I just wanted to give
18 anyone a chance to follow up.

19 THE COURT: Okay. Does anybody have any more
20 questions before we just accept evidence in the form of
21 exhibits and have no further testimony?

22 I see no one.

23 MS. VULIN: Sorry, I jumped out a little quick
24 there.

25 I would move to admit Exhibits 263, 264, and 265,
26 please.

27 THE COURT: Is there any objection?

28 There is none. Exhibit 263 is admitted into



1 evidence.

2 (Exhibit Number 263 was received into
3 evidence.)

4 THE COURT: Exhibit 264 is admitted into evidence.
5 (Exhibit Number 264 was received into
6 evidence.)

7 THE COURT: Exhibit 265 is admitted into evidence.
8 (Exhibit Number 265 was received into
9 evidence.)

10 THE COURT: Thank you so much. You are an
11 extremely articulate, lucid witness on very difficult
12 issues, because they are a little bit revolutionary.

13 THE WITNESS: Thank you, your Honor.

14 THE COURT: You're welcome. Thank you.

15 MS. VULIN: MIG would call next Jacob Schuelke
16 with Crystal Creamery, but if we could do just one of
17 those five-minute stretch breaks, we have a computer to
18 set up. And I know we are close to 5:00, but I'm hopeful
19 we could at least fit his direct testimony in, and maybe
20 some cross.

21 THE COURT: So we could either do five or we can
22 do ten. What does everybody want? Five's enough?

23 (An off-the-record discussion took place.)

24 THE COURT: Let's go back on record.

25 We're back on record. It's 4:41.

26 Would you state and spell your name for us?

27 THE WITNESS: My name is Jacob Schuelke. Last
28 name is S-C-H-U-E-L-K-E.



1 THE COURT: Have you testified previously in this
2 proceeding?

3 THE WITNESS: No, I have not.

4 THE COURT: I would like to swear you in.

5 JACOB SCHUELKE,

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

8 DIRECT EXAMINATION

9 BY MS. VULIN:

10 Q. Good afternoon, Mr. Schuelke. How are you?

11 A. Wonderful. How are you?

12 Q. Good. Thank you. This is Ashley Vulin with the
13 Milk Innovation Group.

14 We got your name on the record.

15 Could you tell us your business address, please?

16 A. We are at 529 Kansas Avenue in Modesto,
17 California.

18 Q. And, Mr. Schuelke, in front of you is a document
19 entitled MIG-Crystal 13.

20 Do you see that?

21 A. Yes.

22 Q. And that testimony, that document is your
23 testimony, your written testimony for this proceeding?

24 A. Yes.

25 Q. And then I also see you have in front of you a
26 document entitled Exhibit MIG-Crystal-13A.

27 Do you see that?

28 A. Yes.



1 Q. And that's a PowerPoint you have to share with us
2 today?

3 A. Yes.

4 Q. Thank you.

5 MS. VULIN: So I'd ask that MIG-Crystal-13, the
6 written testimony, please be marked as Exhibit 267, and
7 that Exhibit MIG-Crystal-13A be marked Exhibit 268.

8 THE COURT: Those exhibits have been so marked.
9 Thank you.

10 (Exhibit Numbers 267 and 268 were marked for
11 identification.)

12 BY MS. VULIN:

13 Q. So, Mr. Schuelke, I know you have a PowerPoint.
14 Would you mind pulling that up for us, please?

15 Great. Thank you.

16 So let's start out with you, Mr. Schuelke. And I
17 see your Crystal shirt and your Crystal products, so we
18 know you are from Crystal Creamery.

19 A. We are a marketing company, so we try to sell
20 milk. So if there's a logo on there, I'm going to put it
21 on.

22 Q. Great.

23 And everyone will walk out of here with a free --
24 no, I'm just kidding.

25 So you also -- why don't you tell us about how you
26 got into the dairy industry?

27 A. I was born into it. I grew up on a dairy farm in
28 New York State.



1 Q. And what was your education post-high school?

2 A. Post-high school I went on to the local land grant
3 university, Cornell, to pursue an undergraduate degree in
4 agricultural business. Primarily focused on dairy farm
5 production economics, dairy farm management, and I did
6 research there under ag finance professor Eddie LaDue.

7 Q. And what did you do after you graduated?

8 A. I moved on to the University of Wisconsin at
9 Madison to pursue an agricultural economics degree. We
10 got a grant from USDA RMS under Professor Ed Jesse, and we
11 were to look at the new futures markets. And the
12 completion work would be in a staff paper called the
13 Effectiveness of Naive Class III Hedging Strategies, if
14 you want to read it.

15 Q. I'll go straight there after the hearing.

16 A. Still online.

17 Q. Great. And what --

18 THE COURT: What year was that?

19 THE WITNESS: Oh, I would have graduated there in
20 2003. 20 years ago.

21 BY MS. VULIN:

22 Q. And what did you do after you graduated?

23 A. I went to work for the extension service in the
24 state of Wisconsin at first. I was the head of the
25 University of Wisconsin Dairy Price Risk Management team.
26 So me and Bob Cropp went all over the state putting on
27 seminars for farmers, how to hedge their milk checks,
28 things like that, in addition to other responsibilities.



1 And then I moved on to Cornell, where I had had a
2 very similar position there putting on educational
3 workshops for dairy farmers primarily, on price risk
4 management, general farm manage principles, things like
5 that.

6 After that I moved on to private sector.

7 Q. How many years were you at the extension service?

8 A. Probably four years.

9 Q. And then after you went into the private sector?

10 A. Uh-huh.

11 Q. Where to?

12 A. I first went to Hilmar Cheese Company, where I was
13 their economist.

14 Q. And how long did you do that?

15 A. Seven years. And there, I was involved with the
16 typical things you would expect. And then they had a
17 facility in California and one in Texas as well, so
18 California Order and Federal Order.

19 Q. And what did you do after Hilmar?

20 A. I moved on to California Dairies, where I was head
21 of their milk payment and pooling division, and also risk
22 management.

23 Q. And how long were you with California Dairies?

24 A. Two-and-a-half-years, something like that.

25 Q. Where did you go from there?

26 A. From there I went on to work for Joseph Gallo
27 Company, so that was another unique operation, a true
28 vertical integration. At one time they were 30,000 dairy



1 cows supplying milk to their own cheese plant, and then
2 selling it locally, primarily L.A. market. Worked there
3 for a couple years.

4 And then I had a great opportunity. A bunch of
5 dairy farmers I knew in the area decided they were going
6 to throw a bunch of money into a hat and build their own
7 greenfield powder plant. So I was hired there as employee
8 number three, and when I showed up, I worked in the
9 jobsite trailer, and we built the entire company from the
10 ground up.

11 I got Capper-Volstead certification for their
12 cooperative, all those things. It was, you know, a fun
13 experience. You will do a startup once in your life,
14 never twice.

15 And from then on had a great opportunity here with
16 the Crystal company. It was right at -- maybe within the
17 last three years. Came here to Crystal, and this would
18 have been right at the height of the Dean Foods and Borden
19 bankruptcies. So the entire market was really tough, and
20 it was just a great opportunity to go there and be part
21 the turnaround team.

22 We have done some things. We have been able to
23 make Crystal the number one branded milk in Northern
24 California. Really proud of the things that we have been
25 able to accomplish there in the past few years.

26 Q. Uh-huh. And what's your job title at Crystal?

27 A. I'm the CFO.

28 Q. And tell us a little bit about your day-to-day



1 responsibilities.

2 A. So I would do all the things that you would think
3 a CFO would do with the accounting and finance
4 departments --

5 (Court Reporter clarification.)

6 THE WITNESS: All right.

7 THE COURT: Start that sentence again.

8 BY MS. VULIN:

9 Q. I can ask you -- so tell me about your day-to-day
10 job responsibilities as CFO at Crystal.

11 A. So I would do all of the accounting and finance
12 functions that you would anticipate, but also given my
13 background in economics and also commodity manufacturing,
14 I have a much larger say in the general management of
15 those functions and addition to pricing and things like
16 that.

17 Q. And what Federal Orders have you worked within
18 before?

19 A. So I was born in Federal Order 1. That's the only
20 one I have ever milked a cow in.

21 But I went on to Wisconsin, where I did price risk
22 management, things like that. That's the Upper Midwest
23 order.

24 And then back to New York again, where I was on
25 the education side.

26 Moved on to Hilmar where we had a cheese plant in
27 the Southwest order, but its location was a stone's throw
28 from the Central Order, and then also because of needs, we



1 were often in the Southeast Order supplying milk as well.
2 So there.

3 And then when California entered the Federal
4 Order, we are exclusively pooled there, and we -- when we
5 get into my pictures here, you will see I have -- to slow
6 down -- ten grams of protein on my reduced fat milk,
7 things like that. Some great monikers I would love to
8 share about you ever went to get into component
9 discussions again.

10 But we sell California standard milk there. We
11 also sell some California standard milk in Oregon, and
12 Arizona, and some -- also some Federal Order standard milk
13 in those same two orders.

14 Q. And you have had -- and just a little quick
15 reminder to go nice and slow. Almost artificially slow.

16 You have had quite extensive experience in orders
17 across the country, then?

18 A. Yes.

19 Q. And it sounds as though you have also had quite a
20 bit of experience in risk management?

21 A. Yes.

22 Q. Can you tell us a little bit about the history of
23 Crystal?

24 A. Crystal Creamery Company is the oldest brand of
25 milk in California. We celebrated our 120th anniversary
26 last year. We made a special birthday cake ice cream to
27 commemorate that, but --

28 Q. And I see you have some products up here.



1 Why don't you tell us a little bit about Crystal's
2 products?

3 A. Crystal is very unique in that we are truly the
4 only plant that's in all four classes of milk every single
5 month in the California order.

6 We are primarily a fluid plant, but we are also a
7 very significant player in the ice cream, cottage cheese,
8 all the Class II products you would think that you could
9 make.

10 We don't manufacture hard cheese onsite, but we do
11 sell a lot of condensed milk to local cheese plants. So
12 if you look at our pool reports, we'll have that Class III
13 utilization there. And we have a very large powder dryer
14 that we use to balance our own fluid milk supply. We also
15 manufacture butter there as well.

16 Other great things I would love to talk about are
17 cottage cheese we have up there. Sales of cottage cheese,
18 a lot of our places are up 20% year-over-year. Just a
19 great story I want to share with you. And if you look at
20 there, it says 13 grams of protein on the label. If you
21 ate that entire package, you would get less than 400
22 calories for lunch, over 50 grams of protein, and it would
23 be just the greatest thing you could ever buy, so --

24 Q. Are you sure you are not in sales? You are doing
25 great. Wonderful.

26 Well, I understand that you also have a few plant
27 photos to share. Could you show us those?

28 A. Uh-huh. So, yeah, this is part again of what



1 makes us really unique here. If you look at that red
2 dome, that's a large powder dryer. About a half to a
3 third of our milk, depending on the year, goes there.
4 That helps -- that helps us balance our milk supplies,
5 which is important in a number of ways.

6 We can go from manufacturing 16% fat ice cream mix
7 one day to 0% fat cottage cheese, things like that. We
8 have a multitude of products that we can make. And having
9 that onsite allows to us make whatever we want, whenever
10 we want.

11 Q. And how many employees does Crystal have?

12 A. 750.

13 Q. So is Crystal a small business as defined by the
14 SBA?

15 A. Yes.

16 Q. And if you could go to page 2 of your testimony,
17 Exhibit 267.

18 A. Okay.

19 Q. There's just a slight typo there I would like to
20 correct on the record. Halfway through you see it says,
21 "Our headquarters is in Modesto, California, and we have
22 fewer than 1,1150 employees."

23 I think there's an extra one in there; is that
24 right?

25 A. It's 750. Yes, that's a typo.

26 Q. Okay. So we'll strike one of those 1s.

27 A. And turn the other one into a 7.

28 Q. Thank you.



1 How about we strike the whole thing and we replace
2 it with 750?

3 A. The court reporter is going to kill us for this.

4 THE COURT: Now, you say "fewer than"? Are you
5 telling me fewer than 750 employees?

6 THE WITNESS: That's an approximate number.

7 MS. VULIN: So how about we change that to "about
8 750 employees."

9 THE WITNESS: Yes.

10 THE COURT: All right. We will change that in the
11 exhibit. We're talking about Exhibit 267. I want to do
12 it now so we don't forget. 267, page 2, second full
13 paragraph, the second line. There's a number there of
14 employees, and we're going to change the "fewer than" that
15 number, and instead we're going to say "approximately" --

16 THE WITNESS: Yes.

17 THE COURT: -- "750." So what we are striking is
18 "fewer than 1,1150." Thank you.

19 MS. VULIN: Thank you.

20 BY MS. VULIN:

21 Q. And how many fluid milk distributing plants does
22 Crystal have?

23 A. One.

24 Q. And did you say you're the largest in Northern
25 California? Did I hear that right?

26 A. We have the number one brand selling milk in
27 Northern California. We're -- we're big.

28 Q. And on what order is that plant regulated?



1 A. California Order.

2 Q. And can you tell me a little bit about Crystal's
3 suppliers, please?

4 A. We have the most unique, diversified milk supply
5 network I have ever seen. We have a large number of
6 direct-ship farmers. Many started shipping on a handshake
7 over 30 years ago. We have a number of independents that
8 we work with, both small cooperatives and large
9 cooperatives as well. But we're primarily the pooling
10 source for the small independents, and that would also
11 include independent manufacturers who are selling milk to
12 us looking for pool access both in Class III and Class IV.

13 Q. And I think you have a couple more photos to
14 share. If you just want to spin through those for us,
15 please.

16 A. Yep. And the main things you would get here about
17 this one is we are a very, very large plant. We do a
18 number of things here, so we are not just fluid.

19 And right here is a picture of the production
20 floor. That's actually a Class II product there,
21 Bulgarian buttermilk. We make it all.

22 Q. Great. Thank you.

23 So we're at a good stopping point.

24 A. Yeah. You don't want to get into pools and
25 utilizations?

26 Q. We'll save that. Give us something to look
27 forward to tomorrow morning.

28 A. All right.



1 THE COURT: Very good. We'll pause your
2 testimony.

3 Before we disband, I would like a preview of our
4 plans for tomorrow. I know we will start with this
5 witness, and then will we have the other witness that you
6 would have put on today?

7 MS. VULIN: Yes. We will also have Michael Newell
8 with HP Hood. And then tomorrow MIG also has Chuck
9 Turner, with Turner Dairies, and Tim Doelman with
10 Fairlife.

11 THE COURT: Good.

12 MS. TAYLOR: And, your Honor, we do have one
13 farmer that I'm aware of coming tomorrow morning,
14 Mr. Barlow, and he would like to go on in the morning. I
15 believe he's driving here from, I want to say Kentucky.

16 MS. VULIN: Should we plan to have him go first,
17 then?

18 MS. TAYLOR: He asked anywhere from 9:00 to 12:00,
19 so I'm not sure of his arrival time. Maybe we can finish
20 your witness first and then put him on.

21 THE COURT: Or interrupt your witness so that the
22 court reporter will be able to type more slowly for a
23 time.

24 MS. VULIN: We will be happy to accommodate.

25 THE COURT: Excellent.

26 MS. TAYLOR: I will just add, left over from my
27 list from today, but sometime this week is Dr. Bozic,
28 perhaps after we're done with our MIG witnesses.



1 DR. BOZIC: Are you sure?

2 MS. TAYLOR: I'm not sure about anything anymore.
3 But you're on my list, I'm sure about that.

4 MR. ROSENBAUM: Mike Brown should be on the list
5 too and --

6 THE COURT: What time would be preferable?

7 MR. ROSENBAUM: Well, I think we're going to have
8 to arm-wrestle Dr. Bozic on that question.

9 MS. TAYLOR: I'll let you two handle that in the
10 hallway. Because today is Wednesday; am I correct?

11 THE COURT: Yes.

12 MS. TAYLOR: So we have Thursday, and we have
13 three hours on Friday, as we will be doing our virtual
14 dairy farmer testimony from noon to 3:00 on Friday, which
15 Judge Clifton has not had to experience yet, so we'll talk
16 about that with you so you know about that.

17 THE COURT: Very good.

18 So when you say three hours, that's noon to 3:00?

19 MS. TAYLOR: Yeah, typically on Friday when we
20 have our virtual testimony, we go from 8:00 to 11:00-ish,
21 and we take our lunch break early, then we do virtual
22 testimony from noon to 3:00, and then we end on Friday at
23 3 o'clock. And that is still the plan this Friday.

24 THE COURT: Understood.

25 MS. TAYLOR: I'm talking too fast, sorry. And we
26 do have nine farmers signed up for Friday. I imagine that
27 will probably take close to all three hours has been
28 previous experience.



1 THE COURT: Very good. Well -- excellent. I will
2 see you all at 8 o'clock tomorrow morning. We go off
3 record at precisely 5:00 p.m.

4 (Whereupon, the proceeding concluded.)

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1 STATE OF CALIFORNIA)
) SS
 2 COUNTY OF FRESNO)

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

9

10 DATED: November 13, 2023

11 FRESNO, CALIFORNIA

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16 MYRA A. PISH, RPR CSR
 17 Certificate No. 11613

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