

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 29, 2023

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25 ---o0o---

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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M A S T E R I N D E X

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1 FRIDAY, SEPTEMBER 29, 2023 - - MORNING SESSION

2 THE COURT: Let's go on record.

3 We're back on record in this milk hearing. It is
4 September 29, 2023, a Friday. It's approximately 8:01 in
5 the morning.

6 I have one preliminary matter before I ask the
7 witness who is seated in the witness stand his name.

8 My preliminary item is to mention that there are
9 two judges from USDA assigned to this proceeding. Chief
10 Judge Channing Strother assigned himself to preside, and a
11 week ago he tested positive for COVID and knew he should
12 not come back here, and he then assigned me as an
13 additional judge. So he's still sleeping 16 hours a day
14 and isolating at home, and so I'm the judge you have got
15 for now. And I hope I'll see you next week.

16 All right. Let's have the witness identify
17 himself, please.

18 THE WITNESS: I'm Mike Brown with the
19 International Dairy Foods Association.

20 THE COURT: And I know how to spell Mike Brown,
21 but I'm going to ask you to spell it for me.

22 THE WITNESS: M-I-K-E, B-R-O-W-N. None of those
23 weird German spellings. It's the regular one.

24 THE COURT: Very good.

25 Have you previously testified in this proceeding?

26 THE WITNESS: Yes, I have.

27 THE COURT: You remain sworn.

28 THE WITNESS: Thank you.



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MIKE BROWN,

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

DIRECT EXAMINATION

BY MR. ROSENBAUM:

Q. Good morning, Mr. Brown. I have placed before you
our -- placed before you two documents, one of them is
IDFA Exhibit 37.

Is that a copy of your written testimony?

A. Yes, it is.

Q. And I have also placed before you IDFA Exhibit 49.
Is that the PowerPoint presentation that you are
going to go through today?

A. Yes.

Q. All right.

MR. ROSENBAUM: Your Honor, I would ask that IDFA
Exhibit 37 be marked with the next Hearing Exhibit number.

THE COURT: And that number is 275. And IDFA
Exhibit 49 will be 276.

(Exhibit Numbers 275 and 276 were marked for
identification.)

BY MR. ROSENBAUM:

Q. And, Mr. Brown, are you testifying today regarding
IDFA's position regarding what's sometimes colloquially
called the Class I mover, but I think more formally known
as the base Class I skim price?

A. Yes, I am.

Q. And this relates to Proposals 13 through 18; is



1 that correct?

2 A. Yes, it does.

3 Q. Okay. And these are proposals, in part, relate to
4 the issues of hedging; is that correct?

5 A. Correct.

6 Q. And do you have personal experience with hedging?

7 A. Yes, I do.

8 Q. Tell us what that is.

9 A. It goes back a long ways. It goes back to the
10 early 2000s when I was working actually at National
11 All-Jersey. We worked with producers on hedging programs
12 and some of our cheese company partners that we worked
13 with trying to put together -- put together programs.
14 That was the start.

15 We had a unique opportunity in the early 2000s
16 working with a foodservice company and working with a
17 cooperative to set up a Class I swap, even one of the very
18 first ones. And that was -- that was a good experience
19 getting two sides together, and a negotiation's always an
20 opportunity.

21 And then further in my career working with
22 Darigold, mostly with farmers; at Glanbia, working with
23 our cheese customers, as well as our farmers on risk
24 management; and then while at Kroger, using risk
25 management, both on some fluid and also other packaged
26 dairy products, as well as non-dairy products, working on
27 fixed pricing contracts.

28 Q. We may get back to it in a minute, but did the --



1 did that Class I swap end up working out?

2 A. It did, but it was difficult to get new ones. It
3 was hard to -- again, you are trying to -- there was no --
4 no center place to go to -- to negotiate. So it was -- it
5 was -- and I left Jersey pretty soon after that to go to
6 Darigold.

7 Q. Okay. All right. So let's go to page 2 of your
8 PowerPoint presentation, if we could, please. Okay.

9 So just give us a little bit of the history of the
10 Class I mover.

11 A. Okay. The Class I price equals the Class I mover,
12 which is the same everywhere, plus the Class I
13 differential, which varies by location.

14 From January 2000 through April 2019, the Class I
15 mover each month was from the higher-of the advanced
16 Class III price or Class IV price.

17 Both IDFA and NMPF aim to recognize that this
18 approach created a big problem and made it nearly
19 impossible to engage in Class I hedging.

20 Both processors and end users of Class I products
21 never knew which product price to hedge because it was
22 impossible to know whether the Class I price at hedge
23 expiration would be based on the advanced Class III price
24 or the advanced Class IV price.

25 Q. All right. And going to page 3, tell us what
26 transpired as a result of those difficulties.

27 A. In 2017 there was a discussion between the two
28 groups, and I was involved with that as an employee of



1 Kroger and a member of IDFA. We were working together.
2 We calculated that the higher-of advanced Class III or
3 Class IV price was an average-of \$0.74 more than the
4 average-of the advanced III and Class IV prices. The
5 difference was consistent, based on that analysis, over
6 many timeframes evaluated.

7 IDFA and NMPF obtained legislation that changed
8 the Class I mover to the average-of the advanced Class III
9 and Class IV prices plus \$0.74.

10 IDFA and NMPF jointly presented this to Congress
11 as a revenue-neutral way to help processors and farmers by
12 facilitating hedging.

13 Q. All right. And if we turn to page 4, I don't want
14 you to read this into the record because we have it in
15 your written testimony already, and it's somewhat lengthy,
16 but is this paper, which was -- was posted on the CME
17 website in August 2019 soon after the switchover had taken
18 place to the average-of versus the higher-of?

19 A. Yes.

20 Q. And -- and CME is the sort of central marketplace
21 where people come to engage in hedging; is that correct?

22 A. Yeah. The Chicago Mercantile Exchange, or CME, is
23 a public market for futures trading.

24 Q. And did this paper recite the history of the
25 efforts to engage in hedging pre-switchover to the
26 average-of?

27 A. It does.

28 Q. And does it describe the challenges that made that



1 essentially impossible?

2 A. It did.

3 Q. And -- all right. And the analytics may have been
4 more from a sophisticated economist point of view, but was
5 this reflective of the general view of the industry?

6 A. It was certainly reflective of my experience and
7 understanding at that time.

8 Q. Okay. Now, we go to the next page.

9 Is this the document that National Milk and IDFA
10 jointly used when they went to talk to Congress in support
11 of the legislation that would switch from the higher-of to
12 the average-of plus \$0.74?

13 A. Yes, it is.

14 Q. Okay. And it's a little bit -- there's a lot of
15 information here. We want to focus, at the moment at
16 least, on the rationales that those two entities partly
17 gave -- jointly gave -- excuse me -- for why the
18 switchover should take place.

19 And have you simply copied that language from the
20 document that appears on page 5 and inserted it into
21 page 6?

22 A. Yes, I did.

23 Q. And, you know, there are I think seven, I believe,
24 benefits listed.

25 And is it fair to say that all, or virtually all,
26 of these benefits relate to the ability that the
27 average-of plus \$0.74 would -- the advantages that would
28 provide in terms of the ability to engaging in hedging?



1 A. Absolutely. Yes.

2 Q. That was the driving force, correct?

3 A. It was.

4 Q. All right. And now let's turn over to page 7.

5 And the use of \$0.74 in the legislation at the
6 joint behest of IDFA and National Milk reflected the fact
7 that \$0.74 was the average difference over time between
8 the Class III and Class IV advanced prices, correct?

9 A. Advance skim price, yes.

10 Q. Okay. I appreciate that correction.

11 And the notion was that if you took the average-of
12 and added \$0.74, that would, number one, allow hedging,
13 because now you would know what the mover was going to be
14 based off of, namely, the average-of Class III and
15 Class IV, correct?

16 A. Yes.

17 Q. As opposed to under the higher-of where you never
18 knew in advance whether the mover was going to be the
19 Class III or the Class IV, correct?

20 A. That was the concept, yes.

21 Q. And the \$0.74 was being added to that to reflect
22 that historically that would make it a break even for
23 farmers and processors, the new formula, correct?

24 A. Yes. And just a little color on that. Both IDFA
25 and National Milk came up with the same numbers
26 independently, which was either we -- so we were using the
27 same methodology.

28 Q. Okay. And as page 7 explains, as things turned



1 out, the \$0.74 actually did not end up being a number that
2 would be revenue neutral; is that correct?

3 A. That is also correct.

4 Q. Okay. And you have explained that part of that
5 relates to the COVID pandemic and the government's
6 response to that, which resulted in the cheese price
7 raising -- rising sharply because the government was
8 buying cheese to try to give it to people who needed
9 cheese during -- that needed food?

10 A. Yeah. They bought a lot of it.

11 Q. Okay. And that because they were buying cheese
12 and not nonfat dry milk and butter, or at least not in
13 similar quantities, the Class III price rose
14 substantially, correct?

15 A. Yes. There was actually efforts to get them,
16 particularly on butter, to buy more product, but they
17 weren't particularly successful.

18 Q. Okay. And the result is that the Class I mover
19 average plus \$0.74 ended up lower than the Class I mover
20 based upon higher-of, correct?

21 A. Yes.

22 Q. Okay. And so it's fair to say that IDFA continues
23 to be committed to the agreement it entered into with
24 National Milk, that the effort here was to be something
25 that would be revenue neutral, and you are still committed
26 to that, correct?

27 A. Yeah. That's what our proposal does. Yes.

28 Q. Okay. But by the same token, your view is having



1 a hedgeable Class I skim milk price is critical to Class I
2 processors, correct?

3 A. It is. And from retail, it's becoming more and
4 more important as well.

5 Q. And so your Proposal 14 is your effort to
6 preserve, if you will, the purposes behind the original
7 deal, namely to have a Class I mover that is revenue
8 neutral, as compared to what the mover would have been had
9 there never been a change and we had still been under
10 higher-of, correct?

11 A. That is true.

12 Q. And on -- but on the other hand, to preserve the
13 absolutely critical -- from your perspective at least,
14 IDFA's perspective -- ability to engage in hedging of
15 Class I, correct?

16 A. Yes. That was the -- that was the reasoning.

17 Q. Okay. And so just in a nutshell, does page 8
18 summarize what IDFA Proposal 14 does?

19 A. Okay. The proposal addresses the changes in
20 relationship between Class III and IV milk, as we have
21 discussed, that's changed in recent years. And the goal
22 is to keep the Class I price consistent with the previous
23 higher-of mover over time, yet still allow for effective
24 and affordable Class I risk management.

25 To do that, the formula pays farmers the
26 average-of the advanced Class III and Class IV prices,
27 plus whichever of the following is higher: \$0.74, which
28 is the current formula, or the amount the farmer would



1 have received historically under the old higher-of
2 Class III or Class IV formula.

3 Q. And do you believe that this proposal carries out
4 the revenue neutrality goal that was the impetus -- one of
5 the impetuses for the 2018 legislative change that adopted
6 the average-of?

7 A. Yes. In fact, it provides a slight kick over time
8 because of the floor.

9 Q. Okay. And what you are saying is because the --
10 if we go back to page 8 just momentarily -- because the
11 farmer will be paid the higher-of \$0.74, which is the
12 current formula, or the amount the formula would have
13 received under the old higher-of, there will be some
14 periods where they actually are getting more money than
15 they would have gotten under the higher-of, correct?

16 A. That is true.

17 Q. Because the \$0.74 floor will, in some time
18 periods, be higher than what the difference actually was,
19 or is, between Class III and Class IV; is that correct?

20 A. Yeah. You know, it's an average. So over time,
21 even when we were putting this together, there was some
22 years that were below and some years that were above
23 \$0.74.

24 Q. Okay. Now, if we go to the next slide, 9, that's
25 where we get into a little bit of the detail as to how it
26 is that the -- that the formula works under Proposal 14.

27 So can you just explain that?

28 A. Certainly can. What we see here is how the basics



1 of how the formula would work. The farmer would've
2 received under the old higher-of Class III or Class IV
3 formula will be calculated over a two-year lookback
4 period, and that will -- amount will be paid to farmers if
5 it's higher than the \$0.74 floor.

6 What that -- what that means is, again, they will
7 either get that minimum or they would get whatever that --
8 that lookback average was for a period a year.

9 Q. Okay. And over time, are they -- okay.

10 Well -- and so let's go on to the next -- next
11 page. And this is something that I think is -- page 10 --
12 it's important to focus on this.

13 When the -- when the current average-of plus \$0.74
14 was put in place, that was based upon, if you will, a
15 prediction that the difference between Class III and
16 Class IV over time would continue to be its historical
17 difference of \$0.74, correct?

18 A. That's what we all assumed.

19 Q. Yes. And so it was a prediction that actually
20 turned out not to be correct, correct?

21 A. Yeah. Unfortunately, we all know a lot of
22 volatility in recent years has changed a lot of aspects
23 of, frankly, the entire food business.

24 Q. Okay. But --

25 THE COURT: Changed a lot of what?

26 THE WITNESS: A lot of things.

27 THE COURT: A lot of things.

28 THE WITNESS: A lot of relationships in the food



1 business.

2 THE COURT: Thank you.

3 BY MR. ROSENBAUM:

4 Q. But does Proposal 14, in any way, rely upon
5 predictions?

6 A. It does not.

7 Q. Okay. And tell us why that's the case.

8 A. It does not because the intention is to allow for
9 hedging and allow for both processors and buyers to engage
10 in a fixed price program. And also, because if you --
11 anytime you go to future for calculating numbers, you --
12 you bring an inherent risk relationship.

13 Q. In terms of the payment that farmers will get,
14 you're always going to be looking back to see what the
15 price would have been under the higher-of, correct?

16 A. That is correct.

17 Q. And you're always -- if that turns out to be more
18 money than they have been paid, you will make that up by
19 an increase in the Class I mover, correct?

20 A. That is also correct.

21 Q. So there is no ceiling, correct? In terms of how
22 high the Class I mover could go, correct?

23 A. Not under this program. It goes wherever the
24 numbers tell us it goes.

25 Q. But -- but there is a floor. It can't drop below
26 \$0.74, correct?

27 A. That is also correct.

28 Q. Okay. So let's look at some examples of how this



1 works in the real world.

2 Let's look at how it would work in calendar year
3 2024 were the proposal to be adopted in time, to be in
4 effect in 2024. This is obviously hypothetical because
5 it's not going to be adopted that quickly. But please
6 tell us.

7 A. Certainly. This example walks through how the --
8 the adjuster would be determined for 2024 calendar year,
9 because it is a two-year lookback with a six-month -- with
10 a six-month break or period between when it's announced so
11 hedging can take place. It's looking at the August -- in
12 this case from August 2021 through July of 2023. It looks
13 at that Class III and Class IV movers. It looks at
14 what -- what the higher-of would be, and also looks at the
15 simple average.

16 Once it -- once it takes that, it takes the
17 average-of the difference between the higher-of and the
18 simple average to develop an average for the 24-month
19 period.

20 In this case, the higher-of average is 11.92; the
21 simple average was 10.97. So when you take those two
22 numbers and you -- it's a pretty simple comparison, what's
23 higher? And in this case the \$0.95 difference, which is
24 the difference between the higher-of and the simple
25 average, is higher than the \$0.74, so the 95 becomes the
26 skim adjuster for calendar year 2024.

27 Q. And in that way are farmers being made whole, so
28 to speak, for the fact that -- that the higher-of had not



1 been in place during the period August 2021 through
2 July 2023?

3 A. Yes.

4 Q. Okay. And let's go then to, I think -- I think
5 the next page 12 actually covers the same subject.

6 So let's just go to 13 and do your second example.

7 A. Okay. Again, this is going -- going back to 2021.
8 And the average difference between Class III and Class IV
9 prices was \$0.70 from August of '18 to July of 2020.
10 Because \$0.70 is lower than \$0.74, the Class I mover in
11 all months in the calendar year -- it should be 2021 not
12 2024.

13 MR. ROSENBAUM: I'm sorry, can we make that
14 correction, Your Honor? In the second --

15 THE WITNESS: Page 13, second point, second line,
16 it should be year 2021.

17 MR. ROSENBAUM: That's a typo, Your Honor. If we
18 could have that corrected.

19 THE COURT: So let's do it right now.

20 So we're on -- and these little page numbers are
21 there, even though they are tiny and very light. So you
22 are looking for 13, this is page 13 of Exhibit 276, and we
23 are looking at the second bullet point, the second line.
24 You are striking 2024 and inserting 2021. It is done.

25 MR. ROSENBAUM: Thank you, Your Honor.

26 BY MR. ROSENBAUM:

27 Q. And would you continue, please, Mr. Brown?

28 A. Anyway, so it would be -- it would be -- 2021



1 would be the average plus \$0.74, because it is higher than
2 the actual mover difference of \$0.70, so the floor would
3 have kicked in for 2021.

4 Q. Okay. And just so we're clear on that, had the
5 higher-of been in place, the -- the amount that would be
6 paid above the average between Class III and IV would have
7 been \$0.70 during that period, correct?

8 A. That is correct.

9 Q. And that's how much farmers would have gotten
10 under the higher-of, correct?

11 A. Yes.

12 Q. But under IDFA's proposal, the floor can never go
13 below \$0.74, correct?

14 A. Yes.

15 Q. So you -- you would, in 2021, be paying them
16 \$0.74, even though you really wouldn't be making up
17 anything; is that right?

18 A. Yes. Well, for that period, that two-year period
19 of time, which is where that's calculated from, we are
20 never going to let that go below \$0.74, so they would get
21 some additional money than the formula itself would infer
22 you would.

23 Q. Okay. And let's go to the next page, which is
24 page 14, yes.

25 Have you there compared the result of IDFA
26 Proposal 14 in the first column to National Milk Producer
27 Federation Proposal 13 as to what the results would have
28 been had those proposals been in effect for the years 2003



1 through 2023?

2 A. Yes, I have.

3 Q. Okay. And obviously only 2023 through part of the
4 year. We don't have all of it in place yet.

5 A. Yeah, I did a forecast based on end-of-August
6 futures because that's when this was assembled.

7 Q. Okay. And over time, how much do farmers get paid
8 in terms of a minimum base -- a minimum base skim price
9 under the IDFA proposal versus a National Milk proposal?

10 A. Well, for the entire history, in 2003, just so you
11 people understand, is as far back as you can go, because
12 we needed -- we needed higher-of, and we needed
13 information from 2001 and -- 2000, 2003 -- '22, to
14 calculate that difference, so that's why it starts at '03.

15 And for that '03 through what we call pre-COVID,
16 2019, the average difference was \$0.08 more than the
17 higher-of.

18 And then if you look at the -- basically the
19 ten-year -- or 20-year, which is '04 through '23, the
20 difference is \$0.05.

21 Q. All right. So if you look at the period 2003
22 through 2019, then farmers would have gotten paid \$0.08
23 more per hundredweight over time than they would have been
24 paid if National Milk Producer Federation Proposal 13 is
25 in effect, correct?

26 A. Yes. That is correct.

27 Q. And -- and does that difference basically reflect
28 the impact of the floor of the IDFA \$0.74 floor?



1 A. That is what the difference is due to is the
2 floor.

3 Q. Okay.

4 THE COURT: Now, I just want to be clear. Where
5 you have "2023F," you are indicating that you do have
6 12 months in that year because you projected?

7 THE WITNESS: That is correct. It is actual
8 through August and the last four were projected.

9 THE COURT: Very good. I don't quite understand
10 why for your second averaging you went so far back again
11 to 2004 to bring it forward to 2023.

12 THE WITNESS: It's just a 20-year history of the
13 program. It's to give a broad perspective because it does
14 bounce from year to year.

15 THE COURT: Okay. And you don't have a similar
16 calculation for a more recent history?

17 THE WITNESS: I could sit and do it in my head.
18 But, no, I don't have it immediately available.

19 THE COURT: Understood. Thank you.

20 You may proceed.

21 BY MR. ROSENBAUM:

22 Q. All right. And so just so we're clear, for the
23 period, you have, if you will, two summary periods here.
24 One is the period 2003 through 2019, correct?

25 A. Yes.

26 Q. And under that period, the IDFA proposal would
27 have paid \$0.08 more per hundredweight than the National
28 Milk proposal, correct?



1 A. Yes.

2 Q. And under the 20-year analysis you did from 2004
3 to 2023, the IDFA proposal would have paid dairy farmers
4 \$0.05 more per hundredweight, correct?

5 A. Yes.

6 Q. All right. And this is obviously a retrospective
7 look. But prospectively, given the fact that IDFA has
8 a -- proposal has a \$0.74 floor and -- but it will always
9 make up whatever is necessary to make sure farmers at
10 least have gotten paid as much as they would have under
11 the higher-of, will this relationship stay in place in the
12 future?

13 A. It will. I mean, it obviously bounces around year
14 to year because of the lookback. But over time it will
15 pay -- it will pay slightly more than the National Milk
16 proposal because of the floor.

17 Q. Okay. Now, let's go on to page 15 and -- and
18 assess the, if you will, the National Milk proposal, which
19 is simply return to the higher-of, correct?

20 A. Right.

21 Q. And if we turn to page 16, tell us what your
22 assessment is.

23 A. NMPF Proposal 13 would reinstate the old Class I
24 mover formula: The higher-of the advanced Class III or
25 Class IV price. This would eliminate or significantly
26 inhibit each of the seven benefits of the current formula.

27 Q. If we turn to the next slide, what have you done
28 there?



1 A. We looked at each of these individually, each of
2 these seven benefits, and evaluated whether or not they
3 would still be true when we return to higher-of. And
4 unfortunately, none of them would be.

5 Q. Now, these are the same, word for word, benefits
6 that National Milk and IDFA jointly provided Congress when
7 they were seeking the legislation -- successfully -- to
8 put in place the average-of Class I skim milk mover,
9 correct?

10 A. Yes.

11 Q. I mean, this is word for word from the joint
12 document, correct?

13 A. Yes, word for word.

14 Q. And in your view, not a single one of those
15 benefits would survive if National Milk Producer
16 Federation Proposal 14 were adopted; is that correct?

17 A. No. They would all be invalid.

18 Q. Okay. So let's go to the next page. And we're
19 going to switch to a related topic, which is, if you will,
20 what I would call alleged countervailing considerations.
21 Okay? And -- and we're going to walk through them one by
22 one.

23 So the first one is the contention advanced by
24 National Milk, and I think others perhaps as well, that
25 using the higher-of Class III and IV -- which is the
26 National Milk proposal, of course -- reduces the incentive
27 for depooling, as compared to the IDFA proposal.

28 So have you analyzed that question?



1 A. Yes. Yes, I have.

2 Q. Tell us what you did.

3 A. It's a -- if you -- probably the best recent
4 paper, and I know -- I don't know which exhibit it is, but
5 it's the research by Wolfe and Bozic looking at what
6 causes depooling or incentives for depooling, and it shows
7 several things that do.

8 And so one of the things I try to look at in a
9 very simple way is what are the differences in those --
10 the relationships between Class I price, and I use the
11 \$1.60 base differential, and the manufacturing prices in
12 different markets, and what percentage of the time from
13 two thousand and -- what period -- what percentage of the
14 time was the Class I mover actually below the price of
15 Class II, Class III or Class IV, or a weighted average of
16 the three based on National Milk utilization.

17 Q. And why is that relationship important to
18 determine the potential for depooling?

19 A. Because depooling is really -- it's all about
20 price relationships between classes. And the time it
21 becomes most -- most onerous is when you have one class
22 that's significantly higher than other classes, which --
23 and, again, assuming that isn't Class I because they can't
24 depool -- it would be III or IV generally, do they have
25 that incentive to -- to not participate in the pool
26 because it would actually reduce their revenue for their
27 producers.

28 Q. Now, is -- does the analysis you do here, does it



1 focus on the impact of the Class I mover on depooling?

2 A. Yes.

3 Q. It's not -- it's excluding the impact of the gap
4 between Class III and Class IV, correct?

5 A. Yes, it is. Partly because we'd had a three-hour
6 presentation I think if we had gotten into that. But,
7 yes, this is just on Class I because the issue here of
8 course is the mover.

9 Q. But that's the issue, right?

10 A. Absolutely.

11 Q. Okay. So keep going, please.

12 THE COURT: Let's stop for just a moment.

13 Let's go off record.

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

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

16 We're back on record at 8:33.

17 You may proceed.

18 THE WITNESS: Okay. IDFA evaluated that
19 relationship between the IDFA and National Milk mover
20 proposals. Class I, we use the IDFA and National Milk
21 proposed class mover prices at the minimum differential
22 zone of \$1.60.

23 BY MR. ROSENBAUM:

24 Q. So just to be clear, your analysis here is
25 comparing what happens under the IDFA Proposal 13 versus
26 what happened under the National Milk Proposal 14,
27 correct?

28 A. Yes, what share of the months are prices of



1 Class I below the others for both proposals. We use the
2 announced Class II, III, and IV prices. We -- to
3 determine how to weight those prices for our average
4 difference, we took the national utilization rates that
5 USDA provided us in the hearing request information for
6 Classes II, III, and IV, to determine the weighted average
7 price for all three manufacturing classes.

8 So what we see below is on total pooled milk,
9 Class II was 12.4%; Class III was 38.4; Class IV was 20;
10 on the combined, Class II was 17.5; Class III, 54.2; and
11 Class IV was 28.3 when you look at all of the -- all of
12 the -- just the milk and manufacturing part of the pool.

13 Q. Okay. And -- and then you compared the two,
14 correct?

15 A. Yes.

16 Q. And turn to the next page and show us what the
17 results were of that. And sort of, if you will, can you
18 refer to the upper left-hand box, the upper right-hand
19 box, and the lower box so that the record will be clear
20 which ones you are talking about.

21 A. Okay.

22 THE COURT: I'd like also -- takes a little
23 longer -- but when you are looking at a percentage, I
24 would like you to express it in your testimony as a
25 percent.

26 THE WITNESS: Yes.

27 THE COURT: Thank you.

28 THE WITNESS: I will. Okay.



1 What we -- when we looked at this information and
2 we went back to January of 2012, as far back as we went in
3 this evaluation, what we looked at, again, was the
4 difference between the Class I with the differential under
5 both the mover, as it's currently -- as we're proposing,
6 and then also the higher-of.

7 And we -- this is -- this expresses the number,
8 the percentage of months during these different periods of
9 time that the Class I price from either IDFA or National
10 Milk would be below the different class prices.

11 So, for example, in 2018, 5% of the time the --
12 and this is upper left -- 5% of the time the IDFA proposal
13 was -- actually should be -- these also need a
14 correction -- should be lower than the Class II price.

15 11.7% of the time it was lower than Class III;
16 1.7% of the time it was lower than Class IV; and 5% of the
17 time it was lower than the weighted average.

18 Q. Okay.

19 MR. ROSENBAUM: I'm sorry, Your Honor, I think
20 every single time we have "greater" in this document, we
21 should have "lower," and I would propose that we submit a
22 corrected page, because that's a lot of things to -- to
23 mark out. That's some -- I'm not sure how that slipped
24 through, but it did.

25 THE COURT: That's fine with me that we submit a
26 substitute page.

27 How many copies do you want for your substituted
28 page?



1 USDA REPRESENTATIVE: I need two, and one for Your
2 Honor, so at least four.

3 THE COURT: At least four.

4 What I think would be wise for whoever gets these
5 additional pages to do is put them on someplace on the
6 exhibit, but keep the old one and just put a line through
7 it so that it's clear that it was replaced.

8 MR. ROSENBAUM: Yes, Your Honor. What we'll do is
9 we will submit -- it will be a corrected exhibit, Your
10 Honor, and it will have page 20 crossed through and then a
11 new page 20 with corrected numbers on it. I think that
12 would make the most sense.

13 THE COURT: I only want -- I don't want you to
14 distribute anything more than the corrected page.

15 MR. ROSENBAUM: Perfect. Just the one page, Your
16 Honor?

17 THE COURT: Yes.

18 MR. ROSENBAUM: Okay. Fine. Then we will submit
19 a corrected page 20.

20 THE COURT: Very good.

21 MR. ROSENBAUM: And we'll give copies to everyone.

22 THE COURT: And it would be wise to label it
23 corrected 20. That would be great.

24 MR. ROSENBAUM: We will do that. So everyone
25 please use the word "lesser" as you look at these.

26 BY MR. ROSENBAUM:

27 Q. So go ahead.

28 A. Okay. So that was the five years.



1 For National Milk, the numbers are actually quite
2 similar. It was 5% -- this is going to -- we're in the
3 upper right now, for the 2018 through 2022 period. The
4 difference was 5% of the months were lower than the
5 Class II price for the National Milk mover, same as the
6 IDFA; 11.7% for Class III, ironically the same; 5% on
7 Class IV; and then on the weighted average of
8 manufacturing classes it was also 5%.

9 Q. I don't think we need to do all the numbers.

10 A. Okay.

11 Q. You have obviously done the same thing for three
12 periods: 2018 to '22; 2013 to '22; and 2012 to '23,
13 correct -- or June -- excuse me -- January 2012 to
14 August 2023, correct?

15 A. Yes.

16 Q. And then in the bottom box, have you simply netted
17 the numbers?

18 A. Yes.

19 Q. Okay. And --

20 A. What --

21 Q. And what is the --

22 A. Let me just give a quick description.

23 A positive means that the difference in percent
24 months was higher for IDFA versus National Milk; the
25 negative means the percent months was lower for the IDFA
26 proposal versus National Milk. And there's some
27 differences between them.

28 But, again, the amazing irony when you look at all



1 three weighted averages are actually the same for all
2 three periods we did for the weighted average of those
3 manufacturing classes.

4 Q. So what is your bottom line conclusion as to
5 whether the IDFA proposal and the National Milk
6 proposal -- let me start that question again.

7 What's your bottom line conclusion regarding
8 whether the IDFA proposal versus the National Milk
9 proposal have any different impact on depooling?

10 A. It's -- it's -- it's really insignificant. It's
11 very small.

12 Q. Okay. All right. Let's go on, then, to page 21.
13 We're now moving on to another criticism or comment that
14 the -- using the higher-of Class III and IV reduces
15 volatility.

16 And tell us what you have done there.

17 A. Okay. What we did here is we looked at the actual
18 differences for every month from that 2012 through '23
19 period. And when we did that, we looked at the
20 difference, again, between the IDFA proposal and the
21 different milk classes, and then also National Milk's
22 proposal in the different milk classes. And again, the
23 numbers are pretty similar.

24 Again, we'll -- we'll go to the upper right. For
25 IDFA, there's a --

26 Q. Upper left.

27 A. Upper left, excuse me.

28 For IDFA the average difference for Class II was



1 2.05; average difference for Class III was 2.07; average
2 difference for Class IV was 2.77; and then the weighted
3 average for the three would be 2.27.

4 For that same period of time --

5 THE COURT: Now, just a moment. Now you are
6 talking dollars and cents.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: So I'd like you to make that clear in
9 the transcript for people who aren't looking at the chart
10 when they read the transcript.

11 THE WITNESS: Okay. I can re-read that line if
12 it's helpful.

13 Okay. The upper right. The average-of the
14 difference between the Class I price and 1.60 differential
15 and the manufacturing class for those -- these periods of
16 time in Class II was \$2.05; Class III was \$2.07 --

17 THE COURT: Let me stop you because you said upper
18 right. So we're looking at upper left --

19 THE WITNESS: Yes.

20 THE COURT: So start again.

21 THE WITNESS: Okay. Upper left. The difference
22 between IDFA's proposal and the class price. For
23 January 2013 through December '22, the average for
24 Class III was \$2.05; the average for --

25 THE COURT: That was Class II.

26 THE WITNESS: -- Class II; average for Class III,
27 the difference is \$2.07; average difference for Class IV
28 was \$2.77; and the weighted average difference between II,



1 III, and IV was \$2.27.

2 Upper right -- well, this is the National Milk
3 Proposal 13, again, for this ten-year period. The
4 difference between the higher-of mover with a 1.60
5 differential and the class prices. Class II average was
6 2.09 --

7 THE COURT: \$2.09?

8 THE WITNESS: -- \$2.09; Class III was \$2.11;
9 Class IV is \$2.81; and the average for the four -- three
10 classes was \$2.30.

11 BY MR. ROSENBAUM:

12 Q. Okay. And you have done -- you have just read the
13 averages into the record.

14 You also have figures for the maximum, the
15 minimum, and the standard deviation; is that correct?

16 A. That is correct.

17 Q. And -- and what is -- and then once again you have
18 a box, what I'll call the lower box, where you compare
19 Proposals 14 and 13 by, if you will, combining the two
20 upper boxes; is that correct, what you have done?

21 A. That is correct.

22 Q. Okay. And what's your bottom line conclusion
23 there as to whether using the higher-of reduces
24 volatility?

25 A. Well, in the measure of volatility you can look at
26 max and the mins, but the statistical way is to look at
27 the standard deviation, because that tells you, basically,
28 two-thirds of the time what that variation will be.



1 And, again, going back up to upper left, the
2 standard deviation for IDFA Class II was \$1.42; Class III
3 is \$2.03; Class IV is \$1.67; and the weighted average
4 difference is \$1.36 in standard deviation.

5 For National Milk proposal, upper right box,
6 standard deviation for the higher-of versus Class II is
7 \$2.15; Class III is \$2.14; Class IV is \$2.36; and the
8 weighted average is 1.84.

9 THE COURT: \$1.84.

10 THE WITNESS: Yes. Thank you, ma'am.

11 The standard deviation, the differences, the
12 bottom box shows the difference between IDFA Proposal 14
13 and National Milk Proposal 13. And, again, the smaller
14 standard deviation means the average variation is smaller.
15 And so a negative number means the numbers vary less
16 widely, they are more consistent. And in -- in this case,
17 under the IDFA Proposal 14, the standard deviation
18 difference in Class II is \$0.72 less --

19 BY MR. ROSENBAUM:

20 Q. Negative \$0.72.

21 A. Yeah. \$0.72 less.

22 Class III is minus \$0.11; Class IV is minus \$0.69;
23 and the weighted average of the three is minus \$0.48.

24 Q. Okay. And what conclusion, therefore, do you --
25 do you reach as to which proposal is less volatile in
26 terms of its results?

27 A. Based on the analysis, the IDFA proposal is less
28 volatile.



1 Q. Okay. And let's go to the next page, page 22.

2 Is that simply a chart showing the relationship
3 that you have been describing on the previous page?

4 A. Yes. There's two charts here. I charted the
5 Class III differences between the Class I and Class III;
6 that's the upper chart. The lower one is Class I versus
7 the weighted average of the II, III, and IV. Again, just
8 for comparative purposes.

9 And as you can see, the lines really follow each
10 other pretty closely. There's one, frankly, significant
11 exception, and that is during 2020 when we had that
12 volatile -- very volatile, very high cheese price which
13 created the differences. And they still follow, but the
14 differences are less for IDFA than for National Milk.

15 Q. Okay. Let's go on then to page 23, and we're now
16 on to the next issue, which is whether using the higher-of
17 Class III or IV, which is the National Milk proposal,
18 sends an important price signal to farmers.

19 Tell us what -- what your analysis did and what it
20 concludes.

21 A. Well, from -- from my experience, the price signal
22 to farmers is the blend price, it is not the Class I
23 price. It's the combined price from all classes, what
24 they receive.

25 I would acknowledge that because utilizations vary
26 from market to market, that impact can vary. But it is
27 the blend that the farmer -- farmer sees. That's the
28 regulated minimum price.



1 Nationally, we looked at, again, what the
2 percentages were. Class I on average is only 29.2% of
3 pooled milk for that same five-year 2018 to '22 average.
4 And for the past ten years using that -- that percentage,
5 the Class I share of the blend price was 31.8% under both
6 the IDFA Proposal 14 and 31.9% under National Milk
7 Proposal 13.

8 Under the IDFA proposed --

9 THE COURT: Wait a minute. I might be reading in
10 a different place. I'm looking at this page 23, and it
11 says that it was same percentage under both those
12 proposals.

13 MR. ROSENBAUM: Mike, for some reason your page is
14 a little different than the page we're showing people. It
15 doesn't have that correction for some reason.

16 THE COURT: I realize it's a tiny difference --

17 THE WITNESS: But it is a difference.

18 THE COURT: But you have a tiny difference between
19 those two, and this one says they were both the same.

20 THE WITNESS: Both should be -- cross out the word
21 "both," and then I think it would be accurate. The 31.8
22 and 31.9 are the correct numbers.

23 MS. TAYLOR: We don't have 31.9.

24 THE WITNESS: I know. I don't -- I don't know how
25 this copy is different than that copy.

26 MS. TAYLOR: You can't just cross out "both." You
27 have to add a number to our copy.

28 THE WITNESS: Yes. Okay.



1 THE COURT: Let's take five minutes for the
2 witness to drink water, and then we will come back and
3 instruct on the editing. So five minutes. Please be back
4 and ready to go at 8:55. We go off record at 8:49.

5 (Whereupon, a break was taken.)

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

7 We're back on record. It's 8:55.

8 Mr. Rosenbaum.

9 MR. ROSENBAUM: Yes, Your Honor. There was a
10 last-minute correction which obviously did not make it
11 into the printed copy of the PowerPoint presentation. We
12 apologize for that. I will make the corrections and then
13 have Mr. Brown correct them. And once again, we will
14 submit a corrected page 23 so we will have it.

15 On the indented bullet point it should say, "The
16 Class I share of the blend price was 31.8% under" -- cross
17 out the word "both" -- "IDFA Proposal 14 and" -- and now
18 insert -- "31.9% under" -- this is a very minor
19 correction, obviously, but we still want to be right.

20 And then under the next bullet point, in the
21 second sentence, you see -- sorry, second line -- you see
22 1.45. That number should be 1.41.

23 And then in the third bullet point, the second
24 line is 1.48. That should be 1.49.

25 So these are all very small corrections, but they
26 need to be made.

27 THE WITNESS: Okay.

28 THE COURT: I think we should just make them on



1 the page we have got.

2 MR. ROSENBAUM: Yes, Your Honor.

3 THE COURT: I think that will be just fine.

4 MR. ROSENBAUM: Oh, all right.

5 THE COURT: So let's go through that again. So
6 we're on page 23 of Exhibit 276, and we're now going to
7 make those changes.

8 So say them again, Mr. Rosenbaum.

9 MR. ROSENBAUM: Yes, Your Honor.

10 For the three indented bullet points, I'd call
11 them, the word "both" should be stricken. So it should
12 be -- it will read, "Under IDFA Proposal 14" -- with the
13 word "both" having been deleted -- "and" -- and then we
14 insert after the word "and" -- "31.9% under."

15 The next bullet point has a number in it, 1.45%.
16 That should be "1.41%."

17 The third bullet point has a number 1.48%. That
18 should be "1.49%."

19 Those are the corrections, Your Honor.

20 THE COURT: And they have been made.

21 BY MR. ROSENBAUM:

22 Q. So, Mr. Brown, can you continue, what is it that
23 you're -- what do you conclude as to the -- you know,
24 whether -- whether the -- using the higher-of sends a
25 materially different price signal to farmers?

26 A. Well, again, over time, it just doesn't. And if
27 you look at the percentage of whether you look at the --
28 in the case of IDFA, if you look at what that mover is



1 under the new formula, National Milk, you look at that
2 higher-of versus the average to get that difference, they
3 are very, very close. And when you're looking at a blend
4 price, again, we're 30%. We have orders certainly higher
5 than that; we have orders a lot lower than that. It's a
6 very small portion of the total blend price, the
7 differences.

8 Q. So is it fair to say that the difference between
9 the two is not very material, correct?

10 A. Yes.

11 Q. And -- and, actually, the -- as part of the blend
12 price, it's not that much to begin with; is that fair?

13 A. That is true.

14 Q. All right. Let's go on to the next page where you
15 address the question, this is page 24 of Exhibit 276,
16 where you address whether you feel that using the -- a
17 simple or weighted average would impede Class I handler's
18 ability to procure milk.

19 A. Yeah. And, again, keep in mind, before retiring
20 from Kroger in last January, I was at Kroger from 2015 to
21 two thousand -- January of '23. And since 2019, of
22 course, we had been living under the current formula, the
23 average plus the adjuster. There had been no significant
24 reported problems in Class I handlers obtaining enough
25 milk, except in the Southeast.

26 My personal experience with four plants in the
27 Southern Appalachian orders, we had no difficulty getting
28 milk when necessary. We had very reliable co-op



1 suppliers.

2 Then the Southeast, we do recognize, presents a
3 regional issue, which we believe is already being
4 addressed by USDA through its recommended decision
5 addressing transportation credits. That's not a complete
6 hearing process yet, but what's public, they have -- they
7 are making -- they are recommending some changes.

8 Q. Okay. All right. And then the next page, 25, you
9 address another issue, which is whether basing the Class I
10 on the higher-of would more accurately reflect the value
11 of milk in the different classes.

12 What's your view about that?

13 A. I -- again, I think that we need to recognize that
14 the average value of milk is a function of all product
15 markets, not just the one with the highest commodity. And
16 as we previously discussed, the average producer milk
17 utilizations across all Federal Orders by class are the
18 29.2% on I, 12.4% for Class II, 38.4% for Class III, and
19 20% for Class IV.

20 Class II, III, and IV prices are not affected by
21 the choice between higher-of and average-of. Actually,
22 the opposite is true, because Class I is determined by
23 Class III and IV prices.

24 IDFA's average-of with a lookback ensures that
25 shifts in demand for any manufacturing -- any single, I
26 should say -- manufacturing product will not lower Class I
27 prices over time. Farmers will be paid as much for
28 Class I as they would have under higher-of.



1 THE COURT: You inserted the word "stabilized."
2 Is that what I heard you say, for any stabilized
3 manufacturing product?

4 THE WITNESS: I -- single, but I don't think it's
5 necessary to change it. You can strike it from my
6 testimony, because --

7 THE COURT: State again how -- how your testimony
8 should be.

9 THE WITNESS: Okay. I will. Thank you, ma'am.

10 IDFA's average-of with a lookback ensures that
11 shifts in demand for any manufactured product will not
12 lower Class I prices over time. Farmers will be paid as
13 much for Class I as they would have under higher-of.

14 THE COURT: Thank you. That's exactly as the
15 exhibit reads.

16 THE WITNESS: Thank you for catching that.

17 BY MR. ROSENBAUM:

18 Q. All right. And next page, 26, you address the
19 concern that some handlers may go out of business.

20 What's your view about that?

21 A. My view is, if the milk sales are there, whatever
22 handler is in business will be paying those dollars into
23 the pool. And so the makeup obligation is a part of price
24 setting, being added into the Class I skim milk mover, and
25 is received by all farmers supplying milk.

26 If there is a demand for the fluid milk, someone
27 is making those products and making the makeup payments.

28 The makeup obligation is part of price setting



1 being added into the Class I skim milk mover and becomes
2 an obligation of all handlers.

3 Q. Okay. And then the last contention on page 28 --
4 27, excuse me, could you address that, the notion that
5 farmers may go out of business and never receive the make
6 up payments.

7 A. Yes. Farmers go out of business for many, many,
8 reasons. It may be -- it's -- for many, many reasons.

9 The makeup obligation is part of price setting
10 being added into the Class I skim milk mover and is shared
11 by all farmers supplying milk under the Federal Order.

12 Farmers who have gone into the dairy business, or
13 expanded production, will receive the higher payments even
14 though this is new milk production.

15 This is no different than the fact that there are
16 also handlers who will go out of business during the
17 period before Make Allowances have been raised to
18 appropriate levels.

19 MR. ROSENBAUM: All right. And I want to hand
20 out, provide one more exhibit, Your Honor.

21 THE COURT: Let's go off record while those are
22 distributed.

23 We go off record at 9:03.

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

25 THE COURT: We're back on record at 9:05. This
26 new exhibit I have had marked, and it is 277.

27 (Exhibit Number 277 was marked for
28 identification.)



1 MR. ROSENBAUM: Okay. So, Your Honor, we had
2 posted to the website as IDFA Exhibit 49A, an Excel
3 spreadsheet that contains the calculations underlying the
4 analysis. So that's on your -- should be posted on your
5 website, I assume.

6 MS. TAYLOR: Is that what this is?

7 MR. ROSENBAUM: And that's what this is.

8 So Hearing Exhibit 277 is a PDF printout of the
9 Excel spreadsheet. I would -- you know, but obviously the
10 Excel spreadsheet is a lot easier to use, but --

11 MS. TAYLOR: It is online.

12 MR. ROSENBAUM: And it is posted -- I have just
13 been informed it is posted.

14 But we understood that USDA wanted to have a PDF
15 version, and so this is the PDF version.

16 THE COURT: Tell me again what it is called on the
17 website?

18 MR. ROSENBAUM: It's IDFA Exhibit 49A, as in
19 apple. And, I mean, the Excel spreadsheet is easier to
20 use, obviously, but we're complying with what we
21 understood to be AMS's desire.

22 So can you pull up, Mr. Brown, the --

23 THE WITNESS: I can. I have it up. This -- I
24 don't know where our technical guy is.

25 THE COURT: Sean, we have got a slide to switch
26 out.

27 THE WITNESS: We're putting up a spreadsheet.

28 THE COURT: Let's go off record.



1 We're off record at 9:07.

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

3 THE COURT: We're going back on record.

4 We're back on record at 9:07.

5 You may proceed.

6 BY MR. ROSENBAUM:

7 Q. So, Mr. Brown, you have put up on the screen the
8 spreadsheet that is IDFA Exhibit 49A, and has -- has been
9 marked as Hearing Exhibit 277, correct?

10 A. Yes.

11 Q. All right. And so could you just briefly walk us
12 through the tabs so that anyone who wants to understand
13 more deeply how you did your calculations will be able to
14 follow it.

15 A. Yes. The tables page is the tables that were
16 shown in the PowerPoint, and they were actually -- those
17 calculations were actually made on the Class I, II, III,
18 IV price comps page, but I put them all here as well so
19 that they were all together in one spot and easier to
20 find. Because as you can see, there's a lot of numbers in
21 these spreadsheets, and they are pretty small.

22 Q. Okay.

23 A. So that's the first page. The mover page --

24 Q. Give the exact title, please, of the -- it's
25 called, what, "Mover Calc"?

26 A. Yeah, the "Mover Calc" page is the calculations
27 made to determine what the -- what the different --
28 different prices would be. You will note -- let's get



1 down to where we have data for all columns. Some reason
2 it is not letting me move.

3 THE COURT: You are moving.

4 THE WITNESS: There. Yeah, but up and down I
5 can't, and I need to move up and down, so -- let's see.

6 But if you look at the sheet that you have, these
7 are the prices again that -- the advanced price data came
8 from USDA. It was one of their hearing requests. I can't
9 remember which table it is. I think at the bottom, if I
10 could get there, I could tell you, but I can't. And from
11 that I calculated the different prices for different --
12 for the different proposals.

13 I have IDFA's mover skim. As you can see, there's
14 no price here because we didn't start -- we evaluated this
15 from 2012 on, and you also see we have the mover at 3.5%,
16 so it's per hundredweight.

17 And then we also have the higher-of skim and the
18 higher-of mover per hundredweight proposed by National
19 Milk.

20 So those numbers are on your sheet, as you can
21 see. Again, I apologize for the size of the print.
22 That's one of the reasons this spreadsheet's been posted.

23 BY MR. ROSENBAUM:

24 Q. Let's go on to the next one.

25 A. The Class I, II, III, IV price comps page is where
26 I determined the -- the -- the differences between the
27 announced or the proposed mover and the manufacturing
28 class prices. You can see across the top, those are the



1 percentages that I used. Again, that's based on the
2 producer receipts by order page, and it's the average.
3 And then the sales share manufacturing simply takes out
4 the Class I and shares among Class II, III, and IV, the
5 manufacturing classes. And so that gives you -- that
6 gives you the different -- the different prices, different
7 shares. And then these are the actual prices for those
8 different classes of milk. This is all 3.5 milk.

9 You get over to N. Column N, this table compares
10 the 50/50 differential plus -- 50/50 IDFA proposal at the
11 \$1.60 differential versus the Class II price that's
12 column N. That comparison versus Class III is column O.
13 That comparison 50/50 versus Class IV is column P. And
14 50/50 versus the weighted average of the three
15 manufacturing classes is column Q.

16 Moving over, these are the higher-of comparisons,
17 and they are essentially the same setup, where you have
18 the higher-of, it's that \$1.60 differential level, versus
19 Class II --

20 Q. Tell us the column.

21 A. Column T.

22 Column U is a differential versus Class III;
23 column V is the differential versus Class IV; and column 4
24 is the higher-of that differential plus the weighted
25 average -- versus the weighted average. So these are
26 comparing those prices.

27 Q. Okay. Can we go on to the next --

28 THE COURT: Before you do, you referred to the



1 table that you had called to our attention as, this is all
2 3-5 milk; is that right?

3 THE WITNESS: Yes.

4 THE COURT: And how should the "3-5" look in the
5 transcript?

6 THE WITNESS: Okay. 3.5% milk, USDA announces fat
7 and skim prices for different classes. The reference
8 that's always been used has been milk at 3-5% butterfat.
9 So in this case, if you take the skim price times 96.5%,
10 because skim prices are per hundredweight, and then you
11 add the value of 3.5% pounds of fat, you get that price
12 per hundredweight at 3-5 test.

13 THE COURT: At 3-5 what?

14 THE WITNESS: 3-5 butterfat test.

15 MR. ROSENBAUM: Test.

16 THE COURT: Test.

17 THE WITNESS: Percent. Thank you.

18 THE COURT: Thank you.

19 BY MR. ROSENBAUM:

20 Q. Can you give us -- take us to the next tab if you
21 could, please?

22 (Court Reporter clarification.)

23 THE WITNESS: Okay. The Class I pool
24 contribution, this is a table where we evaluated, based on
25 again, those average national utilization rates at \$1.60
26 zone, what the -- what the contribution would be of the
27 producer blend price from each of the four classes. It's
28 a very simple compilation. It's that class -- that class



1 price times the percent utilization from national share.
2 Again, that's column -- that's row 3. So columns B
3 through K simply provide what those base prices are on a
4 per hundredweight basis.

5 Columns O through T -- and this is the IDFA
6 proposal -- shows the contribution at those percent
7 utilizations of each class to the producer -- to the
8 producer blend price.

9 Again, this is a very simple calculation. It's on
10 hundredweight. We did not try to take out fat or skim.
11 It's as much for comparative purposes. You are not going
12 to calculate your Federal Order price off of the
13 spreadsheet.

14 So column P is the Class I contribution from
15 IDFA's proposal; Class Q is the -- column Q is the
16 Class II price; column R is the Class III price; column S
17 is the Class IV contribution again.

18 And then the price for all of those combined is
19 \$17.96. And the entire columns are calculated that way.

20 BY MR. ROSENBAUM:

21 Q. Mr. Brown, we are running up against -- getting
22 close to our time limit.

23 Do you then have the same information for National
24 Milk --

25 A. Yes, I do.

26 Q. -- and then a comparison?

27 A. Yes.

28 Q. And can you go to what I think is the -- is that



1 the last tab? The --

2 A. The last tab -- the last -- this is actually the
3 last tab of the calculations that are shared. I have
4 actually added the spreadsheet since that time. But
5 columns A3 through AF show the share of Class I for IDFA
6 and National Milk of that -- of that -- of that blend
7 price, as 18-AD, AE shows the IDFA proposal Class I share,
8 and that is the share of the price over the -- it's the
9 adjuster over the 50/50 skim price for Class III and
10 Class IV.

11 National Milk, that number again is the difference
12 between the higher-of and the average-of Class III and
13 Class IV. And that -- that is the share of that price.

14 When we looked at the share of price on that slide
15 back in the testimony, these are where those numbers came
16 from.

17 Q. Okay. And so those are the numbers that show that
18 the adder, if you will, does not actually contribute a
19 material percentage to the overall blend price?

20 A. Over time it's very small --

21 Q. Okay.

22 A. -- relative to the other components.

23 Q. Okay.

24 MR. ROSENBAUM: And, Your Honor, we -- we did have
25 some other slides in the PowerPoint presentation, but
26 those are all addressed in his written testimony.

27 So at this point, we will make Mr. Brown available
28 for cross-examination.



1 THE COURT: Mr. Brown, are you ready to go or
2 would you like a five-minute break?

3 THE WITNESS: I would like a throat refreshment
4 break, if I could.

5 THE COURT: Yes, let's take --

6 MS. TAYLOR: Can we take a ten-minute morning
7 break?

8 THE COURT: We could. It's now 9:17. Please be
9 back and ready to go at 9:27.

10 We go off record.

11 (Whereupon, a break was taken.)

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

13 We're back on record. It is 9:27.

14 Mr. English?

15 MR. ENGLISH: Your Honor, if I may beg everyone's
16 indulgence for a moment of personal privilege.

17 We have just learned today that Senator Feinstein
18 from California has died. I happen to know she was not
19 just a dedicated public servant generally, but a great
20 friend of the dairy industry. So I just wanted to give
21 everybody an opportunity for pause for such a great public
22 servant.

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

24 THE COURT: Thank you, Mr. English.

25 Who would begin the cross-examination?

26 MS. HANCOCK: Thank you, Your Honor.

27 ///

28 ///



1 CROSS-EXAMINATION

2 BY MS. HANCOCK:

3 Q. Good morning. Nicole Hancock on behalf of
4 National Milk.

5 Good morning, Mr. Brown.

6 A. Good morning.

7 Q. I just turned around to see if anybody else was
8 going to hop up first. I realize it's Friday and the room
9 is much smaller today in attendance.10 Okay. Let's just -- I want to just walk through
11 some of your -- I'm going to look at both Exhibit 276,
12 which is your presentation, and Exhibit 275, which is your
13 written statement, but I'm going to just maybe use your
14 PowerPoint as the anchor to kind of start from.15 If you -- and I don't care if you present it or if
16 you just have the hard copy there, either one is fine, but
17 if you want to turn to page 4 of your presentation.

18 A. Okay.

19 Q. And you're -- you are quoting on this page from an
20 article that Dr. Bozic had co-authored in 2019?

21 A. Yes.

22 Q. So I'm going to ask you what he means, but maybe
23 you can help me because you used the quote.24 In the third paragraph there you are talking about
25 a small number of hedgers who chose to hedge -- I'm sorry,
26 not you, but he was -- whichever one of them wrote this
27 part -- was talking about a small number of hedgers who
28 chose to hedge Class I milk exposure by utilizing futures

1 and options.

2 And this was referring to the higher-of time
3 period; is that right?

4 A. That is correct.

5 Q. Okay. Were you at all involved prior to 2019 in
6 using futures or options to mitigate your risks in any of
7 the various roles that you had for Class I?

8 A. Not for Class I, no. For other products we -- I
9 did. But at that point in time, up to 2015 I was on the
10 sell-side, or working for a producer cooperative, so
11 working with producers. In '15 I went to Kroger, and
12 our -- our accountants thought it was far too much risk --

13 Q. Okay.

14 A. -- basis risk. So we did some forward buys, but
15 they were on commodities, not on milk.

16 Q. Okay. But in your experience in the industry, you
17 were aware that there were people who were using futures
18 and options to mitigate their risks with respect to
19 Class I when it was under the higher-of system?

20 A. I personally didn't work with anyone, but if -- if
21 this article says that someone did, probably somebody did.
22 That would be my observation.

23 Q. Okay. So are you saying you are not aware of
24 anyone --

25 A. I'm not aware of anyone.

26 Q. Okay. But you don't have any reason to disagree
27 that what either Dr. Bozic or Matt Gould had written here
28 is -- is incorrect?



1 A. No, I -- I have no reason to think -- I wouldn't
2 have quoted it if I thought it was incorrect.

3 Q. Okay. And they go on to say, "These participants
4 would hedge with the higher" --

5 A. My blood sugar is dropping.

6 Q. Oh, do you want something to eat? You want to
7 take a pause?

8 A. No, you can keep -- sorry.

9 THE COURT: What's three minutes now?

10 MS. HANCOCK: What's three minutes?

11 THE COURT: Stop for three minutes. We'll go off
12 record.

13 Off the record at 9:32.

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

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

16 We're back on record at 9:35.

17 Ms. Hancock.

18 BY MS. HANCOCK:

19 Q. Okay. Mr. Brown, we are on Exhibit 276, and I'm
20 on page 4.

21 A. Yes.

22 Q. And we are on the third paragraph there, and we're
23 talking about under the higher-of time period.

24 In this article it was referencing that
25 participants who would use risk management tools during
26 the higher-of would hedge with the higher priced futures
27 contract and also pay a premium for an option on the
28 others future contract.



1 And then it states that, "While the strategy was
2 effective at reducing price risk, for many fluid buyers it
3 was also cost prohibitive."

4 And I'm wondering what your understanding of who
5 those fluid milk buyers would be in that instance.

6 A. Well, I can't give names, but there is -- I guess
7 the one I know best was a large foodservice buyer of milk
8 that used it.

9 Q. And I'm just looking for categories.

10 A. Okay. It would be restaurants.

11 Q. Okay. And not that this is the one, but something
12 like a Starbucks, or somebody who would be a big consumer
13 of dairy products that would be on the buying side.

14 A. That would be correct.

15 Q. Not necessarily -- could it be retail stores as
16 well?

17 A. It could be. I'm not aware of it. I -- my
18 experience, C stores tend to be more sensitive to fixed
19 prices, particularly on -- on single-serve beverages, kind
20 of the story you heard from Nestle. But who was doing it
21 at that point, it was difficult and it was expensive, and
22 so it wasn't -- it wasn't, from my experience, widely
23 used.

24 Q. Okay. And when you just -- I think what you
25 referred to as C stores, it sounds to you probably like
26 normal everyday talk but --

27 A. Convenience stores. It's not Costco.

28 Q. Okay.



1 A. Although they may be doing it, but I have no idea.

2 Q. Okay. Convenience stores, meaning they are a
3 large buyer of smaller-sized dairy products.

4 A. Yeah. A lot of single-serve sizes. Both
5 conventional milk as well as long shelf life milk.

6 Q. Okay. And are you aware of whether that is also
7 the case today, that those C stores or these fluid milk
8 buyers are still not really utilizing risk management
9 tools even with the average-of?

10 A. From what I understand, they are actually
11 demanding it more from their suppliers because they know
12 the suppliers now have a way to do it more efficiently. I
13 think they are seeing more of that, particularly national
14 brands. But, yes, they are seeing more.

15 Q. And can you identi- --

16 A. It's true in groceries, too, by the way.

17 Q. I'm sorry?

18 A. It's true in grocery stores as well. National --
19 because buyers know it's possible, they are demanding it
20 more from folks like Fairlife and Nestle.

21 Q. And you were a buyer for Kroger, weren't you?

22 A. Yeah. I led the buy team at Kroger.

23 Q. Did you do any kind of risk management or hedging
24 when you were there for the Class I products?

25 A. We did on national brands.

26 Q. And when you say "national brands," what is
27 encompassed in that?

28 A. Anything that's -- you think of a national brand



1 like a Nestle's Quik, or a Fairlife, or a lactose -- or a
2 Lactaid or lactose-free kind of milk, not just Lactaid, is
3 where you would see it. And that's kind of where I would
4 say the predominant use. People -- the earlier adopters
5 of it were there.

6 And in Kroger, you buy products, and we're totally
7 responsible, my team, for Kroger brand, but we also worked
8 with the category managers who worked with the national
9 brands. And that's where we -- we were asked for lots of
10 assistance from our category managers on, did that fixed
11 price make sense, and we would of course look at the
12 futures market and say, yeah, it's in alignment, or no,
13 they are striking a pretty big premium for it, they can do
14 better. That was our role, advising those people on
15 national brands.

16 Q. And what years did you work at Kroger again?

17 A. '15 through just last -- this past January '23.

18 Q. Okay. So that's under both higher-of and
19 average-of?

20 A. And we didn't really deal with it until '19.

21 Q. Okay.

22 A. That's when it -- it's when -- I think perhaps
23 because the brands were starting to offer it more
24 aggressively, and it became part of your decision-making
25 on whether you were going to pick product A or product B.

26 Q. And did you have some concerns about whether you
27 should be locking in for a period of time, that if your
28 competitors, for example, didn't lock in, that there could



1 be some movement in the market that would drive whether or
2 not you were competitive in those products?

3 A. Not really on national brands, because they tend
4 to be fixed price. They don't change with the commodity
5 market from my experience on milk. And so you had more
6 safety.

7 The other thing is, when you're working with a
8 national brand -- this is true with cheese, it's true with
9 any product, it could be butter, cheese -- is that you
10 tend to have that fixed level of price and then you have a
11 promotional program. And those promotional programs,
12 again, because you are looking at -- at a fairly small
13 margin, the advantage of risk management is that you knew
14 you would at least have some margin, and that cost was
15 shared generally between the supplier and the grocery
16 store itself.

17 Q. And how far out do you set your promotional
18 programs?

19 A. Usually a year.

20 Q. Okay.

21 A. And, again, you will change with the market, but
22 generally you go about a year. I mean, ironically, with
23 some of these essentially packaging shortages that we
24 dealt within '21 and '22, there was more promotional
25 programs changed due to lack of packaging, frankly, in
26 some cases labor, than it was with milk was available.
27 But you had to be able to get it in the right format.

28 Q. Okay. A lot of other variable costs were moving



1 around you as well?

2 A. Oh, amen. You got that right.

3 Q. And the examples that you gave about when you
4 would look at some forward milk price contracts with your
5 suppliers when you were at Kroger, the list that you gave
6 were mostly ESL products; is that right?

7 A. That would -- that would be the case. From our --
8 from our experience, that would be the case.

9 Q. Okay. Did you ever do any kind of forward
10 contracting for other types of milk products?

11 A. Like --

12 Q. HTST?

13 A. Oh, HTST? Tiny, but, yes. Small amount.

14 Q. Okay. When you say tiny, less than 1%?

15 A. Yes.

16 Q. Okay. Okay. Let's turn to the next two pages,
17 when -- this is within the category of where you were
18 providing some historical context of how we made the move
19 from higher-of as the mover to average-of.

20 Is this the section?

21 A. That is correct.

22 Q. And so you have included what was a recommendation
23 between National Milk and IDFA that was a recommendation
24 to Congress in order to make a legislative change; is that
25 right?

26 A. That is correct.

27 Q. And, in fact, that is what happened, is that it
28 became a legislative change that made the move from



1 higher-of to average-of?

2 A. That is true.

3 Q. And is that what you believe is the right place
4 for -- for making changes in the prices for dairy
5 products?

6 A. I think if you look at history, we have -- most of
7 it's been through the hearing process. But a lot of it --
8 let's go back to Federal Order reform. It was legislative
9 initiative that started that. In that case, it was an
10 informal -- an informal process. But a rule -- I don't
11 know what you -- the technical term is, but it wasn't all
12 through formal hearing. We got a recommended decision,
13 and then we all commented on it.

14 My experience, it's a combination of both.
15 Sometimes USDA, for example, with this price survey we all
16 want, they need statutory change in order to do it, to
17 make it mandatory. So I think it's really a mix.

18 Q. Okay. So it's an alternative path, but not the
19 primary path for which the milk pricing formulas have been
20 set?

21 A. Yeah. It's been both. And same with
22 differentials.

23 Q. And if you had your druthers, which one would you
24 think is a more effective representative of the industry?

25 A. I think it takes a mix of both, perfectly -- and
26 I'm sincere on that. I think it takes a mix of both to
27 make it work.

28 Q. Do you think one is more representative of the



1 dairy industry than the other?

2 A. Not necessarily, no. And one of the challenges we
3 have with representative of the dairy industry, the dairy
4 industry has many facets, as we are discussing here,
5 because people have different views on how to best do
6 things.

7 So I think it -- I think actually it can take
8 both. I do think that most of the time, this hearing
9 process is probably the best way because you have a lot of
10 experts, and you can't have somebody sliding something
11 into legislation at the last minute. Thankfully in this
12 case it didn't happen. But it takes a mix of both.

13 I mean, it's a complicated industry, our
14 regulations are pretty complicated, and so I think
15 sometimes it does take a legislative initiative sometimes
16 just to give USDA permission, which is what we viewed what
17 the 2018 bill did. But we also believe that these
18 hearings are an important way to make change as well. You
19 need both.

20 Q. Okay.

21 A. Do we need to have six weeks of hearing?
22 Apparently we do. But we do -- I think both are
23 important.

24 Q. And when you said it gives USDA some authority or
25 permissions, what, in this case, are you talking about
26 that after two years it gave USDA the authority to hold a
27 hearing to evaluate whether average-of should continue or
28 not?



1 A. That was part of the arrangement that after two
2 years a hearing could be requested or request for change.
3 And needless to say, that's what we're doing.

4 Q. And was that two-year time period something that
5 IDFA and National Milk supported at the time as well?

6 A. Yes.

7 Q. And that was because it was an opportunity to try
8 it out and look at whether it was working or not?

9 A. I'd go a little farther than that. Does it work?
10 And if it doesn't work, how do you best fix it?

11 Q. Okay.

12 A. Yeah.

13 Q. And -- and in that two-year time period, that's
14 something that everybody in the industry knew was a window
15 within which the average-of would be evaluated.

16 A. Yes.

17 Q. And if we look at the totality of what was -- what
18 you have described here in the history, all of that was
19 kind of resting on a foundation of understanding that the
20 proposal would be revenue-neutral with respect to the pay
21 prices paid to dairy producers for their Class I milk?

22 A. Well, it's -- yes. And the irony is a lookback
23 is -- you know, hindsight is always 20/20. Is that -- it
24 should have had some kind of adjustment from the start.

25 Full disclosure, my old boss, Peter and I, spent a
26 lot of time independently looking at this. And -- and our
27 mistake was the record was so consistent, we didn't think
28 about what if it's not. And so that obviously is what



1 happened, particularly with the disruption of COVID, and
2 the Food Box Program particularly caused a lot of
3 disruption.

4 Q. And those were in 2000?

5 A. 2020, the Food Box Program. No, our discussions
6 were in 2017 when we were talking about if we were to go
7 to a mover that was hedgeable, what's the best way to do
8 it, and that 74 -- yeah, since 2000.

9 It was weird, you looked at three-year, five-year,
10 ten-year, and 2000 averages, and they are all within a
11 penny of each other, and showing that the past isn't
12 always the future.

13 Q. Yeah. And I meant to say 2020. I have no idea
14 where 20 years went there.

15 A. Okay.

16 Q. I meant to say the Food Box --

17 A. Yeah, our evaluation went back to 2000. But,
18 yeah, 2020 was -- was just, as we all know, a very, very
19 crazy year. Milk was short one month; the next month it
20 was long. If you were making the right kind of cheese,
21 the Food Box Program was great. If you weren't and the
22 delis were all closed, which was a lot of the case in
23 foodservice, those specialty cheese guys got hit
24 particularly hard.

25 And we saw that with requests from our suppliers
26 at Kroger, because we also -- because the lack of staff
27 closed our delis during the -- during the first parts of
28 COVID because we simply wanted to get the stock -- the



1 basics on the shelf and stocked, and you couldn't -- an
2 example, individually sliced cheese off the deli case, it
3 was very labor intensive, and that person needed to be
4 stacking the prepackaged cheese in the deli section just
5 because we need it.

6 It was crazy times. It was really fun buying
7 products during that time, too.

8 Q. And so -- so when you were making the proposal and
9 working with Dr. Vitaliano at National Milk in order to
10 determine what the right adjuster would be in making that
11 proposal, you looked back over historical data and felt
12 like you had a number that was going to be reflective of
13 achieving that revenue neutrality?

14 A. Yes. We -- that was -- that was our expectation.
15 And, again, we had the history we had, and it was very
16 consistent, if you look at a two- or three- or five-year
17 average. And 2020 changed a lot of things.

18 Q. And Dr. Vitaliano, in his testimony, talked about
19 how you looked at some one-off events that had occurred in
20 those historical numbers that you -- that you evaluated,
21 and you collectively made the choice to keep those in
22 the -- the dataset that was used to set the adjuster
23 because you knew that there would be additional future
24 anomalies that would happen as well?

25 A. Well, we certainly -- certainly were -- we knew
26 there would be. The extremity of them in 2020 was not
27 expected, as you can imagine.

28 Q. Right. And that's kind of where I'm going,



1 that --

2 A. Yeah.

3 Q. -- you did your best to account for the anomalies
4 by using the historical anomalies?

5 A. Well, we both still have our jobs, which means
6 people thought we did the best we could. That's how I
7 look at it.

8 Q. Yeah. And I don't think anybody's disagreeing
9 with that --

10 A. Yeah.

11 Q. -- because you only have the dataset that you have
12 available to you?

13 A. Yes, ma'am. That's correct.

14 Q. Okay. And -- and then the pandemic happened, and
15 the world proved that where it has anomalies previously,
16 the world can tend to level up on us unexpectedly?

17 A. It certainly did. And it was both the -- it was
18 both regulatory or food program related, as well as just
19 simply COVID on its own. You are right. It was just
20 things that none of us had dealt with in our lives before.

21 Q. And -- and when you say things we had never dealt
22 with before, it also changed the way that we continue to
23 operate in our world today that will have a long-term, if
24 not, you know, into perpetuity, effect on how -- how we
25 engage as consumers, as manufacturers, and as producers?

26 A. Well, we learned quickly what priorities were,
27 that's for sure, during that period of time. But it has.
28 I think it's got us all more wary of things may change and



1 we need to be ready to deal with that because we were --
2 you learned very quickly you had to make kind of decisions
3 in the middle of the -- middle of the -- in the road, just
4 because you just couldn't know. You tried to predict what
5 was going to happen, but we learned quickly it wasn't just
6 predicting, it was having an Action Plan to deal with it.

7 THE COURT: Let's go off the record. It's 9:52.
8 We'll go off for a minute or two.

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

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

11 We're back on record at 9:57.

12 BY MS. HANCOCK:

13 Q. All right. Let me see if we can make up a little
14 ground. I'm sorry.

15 A. My apologies, too. I didn't -- no one ever plans
16 for this, but it just happens.

17 Q. Okay. I'm still on your PowerPoint presentation,
18 Exhibit 276. I'm going to move ahead to page 7, and this
19 is just to give us a little bit of an anchor point.

20 It -- after the average-of mover was -- was
21 implemented, your slide here talks about how it didn't
22 work as predicted. And you talk about the pandemic as
23 being one of the main drivers for that.

24 Is that a fair characterization?

25 A. Yes.

26 Q. And then if we -- if we flip ahead, you have
27 actually graphed that on page -- on page 22.

28 A. Yes.



1 Q. And -- and this graph here, it's comparing what
2 would be National Milk's proposal to go back to the
3 higher-of, with IDFA's proposal with the adjuster; is that
4 right?

5 A. Yes.

6 Q. And really what it shows is they tend to track
7 pretty closely together; is that fair?

8 A. Yeah, remarkably so I thought. When I put them on
9 paper, I was surprised how close they track.

10 Q. Yeah.

11 And really the one kind of big divergent is we can
12 see the orange, which is National Milk's proposal to go
13 back to higher-of, that kind of takes a little bit of a
14 higher peak in 2020 when things really went a little
15 crazy?

16 A. Yeah. It was -- when that -- when block cheese
17 went crazy, the differences went crazy. Yes, that's
18 correct.

19 Q. Okay. And then that's when we saw a lot of
20 depooling had happened as well?

21 A. Yeah. And that's -- you know, I'm not here to
22 talk about depooling, but it's different orders manage it
23 differently, and so the impacts were different in
24 different parts of the country.

25 Q. Yeah. But if we had to categorically discuss it,
26 there was a higher number of incidents of depooling during
27 that volatility?

28 A. Yes, there were. In fact, if you go back and look



1 at Chris Wolf and Marin Bozic's paper, they talk about
2 different things, and that III/IV spread was the biggest
3 impact on depooling decisions. Unfortunately, but that
4 was the case.

5 Q. And that's a time period where dairy farmers were
6 disproportionately harmed by the market conditions going
7 so haywire and the results of that depooling activity; is
8 that fair?

9 A. I don't think so. Because we -- the rules were
10 followed. I think that -- I don't think you can blame the
11 Class I mover for depooling decisions. I mean, to me,
12 depooling is one of those things that's kind of like silly
13 tax credits, you are probably going to take them if you
14 can, even though you think ethically maybe it isn't the
15 smartest thing to do to be fair to the market.

16 So I don't think that's as clean a decision -- or
17 cleaner of an observation as it could be. Because
18 depooling is -- is not mandatory. It's a decision made by
19 individual handlers whether they want to do that or not,
20 and that's a little different.

21 Q. Yeah. And I'm not at all trying to say that there
22 was anything inappropriate about anyone depooling.

23 That's just how the system works; is that right?

24 A. Well, that's what the rules that you do, so you
25 are going to do the best for your company, yes.

26 Q. And in order to stay competitive, you have to do
27 essentially what your competitors are doing as well to
28 make sure that, as the handlers, that they are putting



1 their business in the best position possible?

2 A. Yeah. We, again, I mentioned it a little bit
3 earlier. We particularly saw that with non-cheddar
4 cheese, especially specialty cheeses. When I say
5 "special," I mean even things like Swiss. Because the
6 Food Box Program originally did not allow different types
7 of cheese, only cheddar. And so those folks at the same
8 time, as I mentioned earlier, couldn't even sell product,
9 but yet they had a milk supply they had to manage. So it
10 was really tough.

11 A few of them could make cheddar blocks, and they
12 did, as you would imagine. But most of them, they don't
13 make 40-pound blocks. They don't have the format to do
14 it. So it caused -- I think from farmer all the way
15 through processor, it caused a lot of stress.
16 Particularly the non-cheddar block makers in the cheese
17 business got particularly hard hit.

18 Q. Yeah. And so I just want to go back to what I was
19 asking about, which was just with respect to the dairy
20 producers.

21 This was a time period for them where -- where
22 they are not making decisions about to pool or depool, are
23 they?

24 A. They don't get to make that decision unless it's
25 their company.

26 Q. And I'm not talking about if they have hats that
27 they wear as part of the processors or manufacturers, I'm
28 talking about just them operating as dairy producers.



1 They don't have any -- any choices of whether to pool or
2 not, they just have to deliver their milk every day?

3 A. Yeah. And that is exactly why the \$0.74 flat
4 adjuster didn't work, and that's why we say it needs to
5 change.

6 Q. Yeah.

7 A. Because you are right. You are right. It was
8 tough. Particularly if you are in a market with a lot of
9 depooling, it was particularly hard on a farm, I'm sure.

10 Q. And -- and when it is something really kind of
11 unexpected like this happens, when -- that nobody could
12 have predicted, when you say this is -- it just didn't
13 work for them, that's because when -- when their world was
14 going haywire, that average-of system diluted or -- or
15 blended out their ability to capture that same spike?

16 A. Yes. Yes. That is true.

17 Q. And then when we move forward in the pandemic, we
18 get the vaccine, things somewhat stabilize in our supply
19 chain, people are going back to work, we see on your chart
20 that in 2022 there's some additional increased activity
21 and volatility there?

22 A. Yes, there is. And the thing -- and, again, for
23 much of '22, actually, IDFA's proposal was higher because
24 that was part of the period where we were recounting and
25 re-getting that money back from the 2020.

26 But, yeah. 2022, under the current formula, did
27 underpay what -- what was expected to be paid. You are
28 correct.



1 Q. And -- and that was due to some other unforeseen
2 circumstances, like an increase in exports?

3 A. Yeah. It was tight supply. And that powder is
4 the balancer for the market. So when supplies get tight,
5 it is actually the most volatile price we have. Although
6 butter is working hard to become that price. And so
7 because it tends to balance the market, it tends to have
8 more fluctuation in value, particularly historically. And
9 it's so dependent on world trade, it deals with that
10 volatility, too, the powder market does, nonfat dry milk.

11 Q. Do you think that we are going into time periods
12 when we're going to see more volatility as well in the
13 future than what we have seen historically?

14 A. Well, based on my prediction of what the mover
15 should be, I don't know what my predictions are worth, but
16 I think -- I think everything in our world has become less
17 predictable, at least for now. We're still in a period of
18 recovery.

19 The world markets have been U.S.'s opportunity to
20 grow production. As we all know, it's roughly 18% of our
21 total milk production solids now goes into exports, which
22 means those markets are going to impact us. Sometimes
23 it's helpful, sometimes it's not. So it can certainly
24 create -- create differences. No question about it.

25 Q. And since November of 2021, what's the
26 overwhelming majority of the time -- which one of the
27 classes -- manufacturing classes that's been higher?

28 A. Since '21 -- '21 was fairly flat. '22 was



1 certainly powder. And this year has been a mix, but it's
2 been powder lately.

3 Q. Class IV?

4 A. Yes, I'm sorry. Yes, Class IV.

5 Q. That's okay. I just want to make sure I'm staying
6 on track. Okay.

7 So then if we move ahead and look at your
8 slide 11, this is where you start getting to some
9 examples. I believe this is the example under IDFA's
10 proposal for the adjuster, staying with the average-of and
11 then IDFA's adjuster.

12 A. Right.

13 Q. Okay. And you have, I guess, described here that
14 dairy farmers are essentially made whole over time for the
15 extra amounts that they would have received from that
16 August 2021 time period through July of 2023 had the
17 Class I mover been based on the higher-of as opposed to
18 IDFA's Proposal 14?

19 A. Yes.

20 Q. And so when you say "made whole," you're meaning
21 putting those dairy farmers in the place they would have
22 been had the higher-of been used?

23 A. Yeah. It means the price was basically the
24 same --

25 Q. Okay.

26 A. -- for that period of averages.

27 Q. So with the lookback adder, you are saying to the
28 extent that it would fall short, it would be made whole



1 over time in the future when you average out based on the
2 calculations that you have made?

3 A. Yes. That was the premise behind what we
4 proposed. That's correct.

5 Q. And you gave us the calculations that you did,
6 Exhibit Number 277. That was the basis of the
7 calculations that you did in order to make that analysis?

8 A. That is correct.

9 Q. And the analysis that you did in Exhibit 277 was
10 all from backward looking up until 2023?

11 A. Yes. Only forecast for the last quarter of '23.

12 Q. And you went back to 2002?

13 A. Are you talking about page 11 or page -- or you
14 are in the testimony now? I went back to 2012.

15 Q. 2012.

16 A. Yes.

17 Q. Okay. And are you concerned that there could be
18 the same issue that you had when you did the -- when you
19 and Dr. Vitaliano had looked back to 2000, I think, in
20 order to set the \$0.74 additur?

21 A. Really not. Because we didn't -- what we're
22 proposing does capture those wider spreads over time, and
23 so -- so they do -- they are recovered over time. And
24 that's why we built it the way we did, and we even stress
25 test it, put some crazy prices together. And -- and over
26 time, it does what it's supposed to do, which is in the --
27 in the -- I think one of the things about it is that
28 whether III's higher or IV's higher, over time, that money



1 gets back to producers if it's above the \$0.74.

2 Q. And -- and, in part, because you don't have a cap
3 on it like the \$0.74 adder does, or becomes?

4 A. Yeah. I mean, we don't -- but we do have a floor,
5 because as yours is below \$0.74, so our goal was to assure
6 at least that level, and realize that -- that that
7 adjuster is going to change. The idea of the adjuster, as
8 producers, we believe that they have a right to that
9 money. We need to balance that with the ability to
10 forward contract.

11 Q. And you would agree with me, though, that the more
12 volatile or the higher the spikes, similar to what we saw
13 with the pandemic, whichever way it ends up going for a
14 dairy farmer, the longer period in front of it, it will
15 take to recover?

16 A. Well, it takes 24 -- well, basically 30 months --
17 or 24 months, because the way the formula works, it's the
18 degree of difference. For example, I think in 2022 it was
19 \$1.74 under our proposal, which was well above the \$0.60
20 different in higher-of. '23 was \$1.52, that difference.

21 But it really goes -- it really depends on the
22 year, and it depends on the difference. So there's times
23 when the price is actually much higher as you are
24 recovering that difference, but it never goes, of course,
25 below the floor.

26 So it -- there's a lag, we recognize that. It's
27 unavoidable if you are going to recognize that long-term
28 difference in price and still be able to provide for



1 forward contracting, at least in our opinion. That's what
2 we found.

3 Q. It's not -- it's not that you recover in that --
4 beginning in 24 or 36 months when that -- when that time
5 period becomes reflected in the adjuster. That's just the
6 first time, date by which you get to start seeing that
7 volatility that would have occurred, impact the price; is
8 that right?

9 A. Can you repeat that, please?

10 Q. Yeah. So I mean, maybe we can do it a little
11 visually. Let's go -- if you want to just look at --
12 helps me to look at -- your graph on page --

13 A. The graphs are 22.

14 Q. 22. Thank you.

15 So if we just looked at that 2000, October, or
16 whatever, would that be -- August, September of 2020, and
17 then again in November, December of 2020?

18 A. Yeah. December was the really crazy month.

19 Q. That's are where those peaks are, right?

20 A. Yes.

21 Q. And under this model, those numbers under -- when
22 I say "this model," under IDFA's proposal, those peaks
23 would not be reflected in a dairy producer's adjuster
24 until 36 months later, or 30, or 20, or whatever?

25 A. Well, actually, it starts to be projected, it's
26 18 months later. You are right. But there's two sides to
27 that. First of all, we're assuming that the cheese market
28 is the dairy market. It's not. You got to look at the



1 broad picture of all the things that we make. And that --
2 and I think that's -- that's important to remember.

3 The second -- second thing is -- is that -- is the
4 other side of that, when producers do get that money back,
5 when the -- when the mover would be lower. For example,
6 that was the case in '20, I think '21 was a -- would have
7 been a -- let's see, 2022 would have been \$1.74. So we
8 can't deny there's a lag, because there is. But there's
9 times when that will overpay what the higher-of would do.
10 So there's two sides to that picture.

11 Q. Yeah, yeah.

12 A. It's just recovered -- It would be dishonest to
13 say it's recovered immediately, because it's not.

14 Q. Okay. And that's fine. I -- I'm just trying to
15 make sure I understand.

16 A. Oh, sure.

17 Q. But when -- when you first get to see that
18 adjuster from that peak hit a dairy producer's realtime
19 adjuster is more than a year or two years later?

20 A. Yes.

21 Q. And then you will agree with me that when it hits
22 at that first month, you are not going to fully recover
23 everything you didn't get in that peak, it's going to take
24 some time for that to play out?

25 A. Yeah. I think the argument is, is the peak, the
26 right number when we're marketing more than just cheese,
27 or powder, either one. You got to look at the combined.

28 Q. I'm just using it as an example so that we can



1 understand when we actually realize the benefit of what
2 you have described as the attempt to make the dairy
3 farmers whole.

4 A. Yes.

5 Q. Okay. And so you would agree with me, if there is
6 a peak, you don't just recover it after that lag period,
7 you actually have to let it play out for a period of time
8 that they have to continue to produce to make up for that
9 delta?

10 A. That is -- that is correct.

11 I would add that, again, we view time periods and
12 such. We have a proposal. We leave it to USDA's wisdom
13 if some kind of program like ours is acceptable. If they
14 wanted to change dates, we would be -- that would be
15 acceptable to us. The most important thing is for us to
16 be able to forward contract out for a year. Quite
17 honestly, that's the most important thing. And how we
18 accomplish it, we're pretty flexible.

19 Q. And no matter how you change that time period, the
20 average-of is always going to be dilutive of any kind of
21 anomalies that happen in the marketplace.

22 A. Yes, that is true. And the longer time period you
23 have in that number, the more it will be diluted. But on
24 the other hand, when the -- when the payback comes, it's
25 also higher above the market.

26 Again, I think we all recognize, frankly, since
27 2019, markets have become so volatile, it's hard to manage
28 regulated pricing just because the disparity of classes of



1 price is very difficult. Again, that's not just Class I.
2 That's Class III and IV differences, other things, and
3 differences between markets. It's become very stressful
4 for producers. If their -- their -- their Federal Order
5 doesn't make the right products, they can feel some pain.

6 Q. If we look at page 14 of your testimony, this is
7 where you had done an average going back to 2003 for the
8 differences between Proposals 14 for IDFA and National
9 Milk's proposal; is that right?

10 A. Yeah. You mean -- you mean PowerPoint 14?

11 Q. Yeah, PowerPoint 14.

12 A. Okay.

13 Q. And if we look at that column on the right that --
14 where it's a negative, that negative number means in that
15 year it would have resulted in that much of a loss as
16 compared to using the higher-of?

17 A. Yes. And of course the positives are the
18 opposite.

19 Q. Okay. And then I think Judge Clifton had asked,
20 well, why'd you go all the way back to 2003? Why not a
21 different timeframe? And so I did the calculation just
22 using years 2019 to -- to the 2023 forecasted numbers, and
23 I come up with a negative \$0.94.

24 Does that sound right --

25 A. Sounds --

26 Q. -- that time period?

27 A. It sounds high.

28 Q. It sounds high?



1 A. Yes. '19 to '23, you have a minus 1.76, then you
2 have a plus 75, a plus 37, a plus 8, and a plus 9. So
3 it's a little high.

4 Q. Okay. Do you know what the number is?

5 A. I'm probably not in the best shape right now to do
6 a lot of math in my head, but certainly it can be
7 calculated. If we get to a break, I can try to put that
8 together for you.

9 Q. Okay.

10 THE COURT: Would you repeat the numbers you are
11 looking at? A minus \$1.76.

12 THE WITNESS: Yes.

13 THE COURT: A plus \$0.75?

14 THE WITNESS: Okay. Let me -- if you go to
15 page 14 of the -- of the PowerPoint, I believe you asked
16 for the last '19 through '23, the last five years.

17 BY MS. HANCOCK:

18 Q. Right.

19 A. So if you look at the last five years, the
20 differences are, IDFA's proposals plus \$0.09 in '19; it's
21 minus \$1.76 in '20; it's plus \$0.08 in '21; plus 37 in
22 '22; and plus 75 in '23.

23 So if you take that, you add the 37, 75, 8, and 9
24 together, and then compare that to the 1.76, that's what
25 the difference would be.

26 Q. Oh, 9.4. I just don't know where to put my
27 decimal.

28 A. No worries. I would be a liar to say that doesn't



1 happen to me.

2 Q. 9.4 cents, does that sound right?

3 A. That could be. Because we're -- as you might
4 imagine, we're still -- we're now -- our formula will
5 take -- reflect the broad differences in '20, '22, and
6 '23, and '24.

7 Q. Okay. And largely impacted by that anomaly that
8 we just discussed?

9 A. Yes. That -- that took a long time to recover
10 from.

11 Q. Okay.

12 A. I think for the whole industry, far beyond Class I
13 prices.

14 Q. And when I said 9.4 cents, it was a negative
15 9.4 cents?

16 A. Yes, it would be negative at that point, because
17 we're still recovering from the \$0.60 difference in 2020,
18 under the current formula -- 2022, excuse me, under the
19 current formula.

20 Q. Let's turn to page 20 of your presentation.

21 THE COURT: No, I'm sorry, go back. You meant
22 2020. You were correct in saying 2020 was the big
23 negative.

24 THE WITNESS: Yes.

25 THE COURT: Yes. Okay.

26 MS. HANCOCK: Thank you.

27 THE COURT: Yes.

28 BY MS. HANCOCK:



1 Q. If we turn to page 20 of your presentation.

2 You have an example of reality here under -- doing
3 another comparison of other proposals.

4 In these examples you have just chosen a Class I
5 price with \$1.60 differential?

6 A. Yeah, we picked the lowest one because the
7 negatives would be most prevalent when you use the lowest
8 differential.

9 Q. And what if a differential was zero?

10 A. Well, you have to run -- you've got the
11 spreadsheets. You can run the numbers. It would be
12 different. Obviously be lower. The percentage would
13 be -- the percentage below would be higher just because
14 the price is lower.

15 Q. Okay. It would be considerably lower?

16 A. I think so. But even with \$1.60 off, if you look
17 at the -- if the -- at the differences on slide 21, you
18 know, they vary from 1.42 -- 1.36 to as high as -- as
19 2.14. So -- excuse me, that's the standard deviations.
20 The averages are all over the \$1.60, which is on the top
21 two charts, that first line. And actually it's pretty
22 similar. But the averages are -- are still over. But
23 that's a -- that's -- again, as we look at differentials,
24 we need to think about, A, what do they accomplish? And
25 B, there's a lot of other factors that also affect the
26 price of milk.

27 But if you take the 1.60 off, it would still be
28 positive. The mover itself would still be positive on



1 average.

2 Q. And if we turn to your testimony at Exhibit 275, I
3 just have a couple questions. I'm going to try and move
4 through this. I apologize.

5 A. No worries. I have taken enough extra time this
6 morning. You are allowed.

7 Q. We're just running the clock.

8 We have -- if you look at page 15 --

9 A. Yes, ma'am.

10 Q. -- the bottom there you have a statement that
11 says, "Without the necessary tools to manage flat pricing
12 of fluid milk products, bottlers must either forego the
13 business or accept the margin risk."

14 And you were here when -- when the witness from
15 Hood testified that they change their prices less than
16 annually?

17 A. Yes. Just, I can tell -- it depends on their
18 product. But, yes, they can.

19 Q. Okay. And -- and they said that was their
20 practice over the last ten years. Some -- several of
21 which of those years were under the higher-of mover.

22 And you're not suggesting here that dairy farmers
23 should accept the average-of with the adjuster mover in
24 order to support a margin protection program for handlers,
25 or for their customers, are you?

26 A. No. I want them to grow Class I sales, and it's a
27 challenge in some -- well, particularly foodservice and C
28 stores. They want a flat margin whether they are selling



1 an almond milk or a milk-milk -- excuse me -- an almond
2 beverage. I need to be more correct here.

3 Q. Thank you.

4 A. And they need to -- and so that's why they demand
5 what they are doing. And a lot of industries -- you heard
6 a representative from Fairlife talk about that a bit
7 yesterday, the challenges that that caused. And certainly
8 since we have had the volatility starting in 2020, it's
9 been much, much more difficult with higher-of than in the
10 past.

11 From '15 to '19, milk prices were fairly --
12 weren't high enough. I think we all acknowledge that was
13 a rough time for farmers. But they were relatively
14 stable, so you didn't have the big fluctuations that you
15 had starting in 2020.

16 Q. Okay. And you would agree, then, that the Federal
17 Order system is not a place where we're here to be
18 protecting the handlers' margin risk, right?

19 A. I think it's a place we are attempting to grow
20 demand and provide stable prices, and I think that's why
21 you need a compromised position so we can do the best we
22 can providing for both.

23 The growth in Class I is primarily ESL, and
24 it's -- I know that from personal experience. Kroger's
25 putting in a second ESL plant, the first one is primarily
26 organic, because they see that's where the growth is going
27 to be. So then the decision you have when you build that
28 plant, do I bottle almond, oat, or do I bottle milk? And,



1 again, it gets down to that trying to have a consistent
2 margin.

3 The thing I found interesting is, the cost of
4 making some of those milk substitutes -- maybe that's a
5 good term -- isn't that much lower, but you can basically
6 forward buy those ingredients for two years, which is why
7 it's attractive.

8 Q. Different -- different markets entirely.

9 A. Yes. But I'd sure prefer -- I'm a dairy guy since
10 I was a kid. I would sure prefer those lines be used for
11 milk.

12 Q. Yeah.

13 So you are just saying that the true motivation in
14 IDFA's proposal is really just to make sure that we create
15 an opportunity to expand milk production and the sales of
16 Class I milk?

17 A. Yes. I -- for certainly. And we think the -- the
18 real potential markets are -- a lot of it is frankly in
19 retail foodservice, i.e., restaurants. Because that
20 volatility is one of the reasons why restaurants are
21 reluctant to carry milk. And -- and I have been surprised
22 to learn it isn't so much the cost difference, it's the
23 variability, because they all have their fixed price
24 menus. I learned that with cheese at Glanbia in a big
25 way. So you do what you can to stabilize that cost.

26 Q. Let's turn to page 19 of your written testimony.
27 I'm under Section E, as in Edward.

28 A. I'm there.



1 Q. Okay. And under this section you have gone
2 through National Milk's proposal to move to the higher-of
3 and pulled out some items that you believe National Milk
4 is using to justify why it wants to go back to the
5 higher-of, and you are challenging those contentions.

6 Is that an accurate characterization?

7 A. I would say yes.

8 Q. Okay. And the first one that you have here, you
9 say that National Milk has contended that the higher-of
10 does not -- or I'm sorry, I should say this different.

11 The first one that you have here under the title
12 here, you are saying the higher-of does not better reflect
13 the value of the milk. And then you have summarized
14 National Milk's contention as basing Class I on the
15 higher-of Class III and Class IV would more accurately
16 reflect the value of milk in the different categories of
17 years in a four-class system.

18 A. Yes.

19 Q. And are you saying that National Milk's contention
20 that basing Class I on the higher-of Class III or IV would
21 not more accurately -- I said that -- I got my -- let me
22 start again.

23 A. Okay.

24 Q. Are you saying here that basing Class I on the
25 higher-of Class III and IV would not more accurately
26 reflect the value of the milk?

27 A. It doesn't, because the milk market isn't just
28 butter powder versus cheese with higher-of. It's a



1 combination of all products.

2 And so from our point of view, and my -- frankly,
3 I'll be honest, my personal point of view -- is that it
4 needs to reflect that broader competitive value of milk.

5 The other -- other part of that is that one of the
6 struggles we have with Class I, we can't look at the
7 class -- we can't look at the sales of bottled milk in
8 stores and come up with a formula to determine what that
9 milk price is. Actually the opposite happens. Basing it
10 based on that price is converting into a price.

11 So to me, it's -- I think 2020 is a prime example
12 where we looked at -- you know, cheese was very, very
13 high, but even barrel cheese was relatively weak, and
14 certainly -- certainly butter powder were until later in
15 the year.

16 And as a result, is the Class I really worth that
17 value of cheese milk? What would that do to volatility in
18 the store? What would that do -- I know from my
19 experience in grocery, once you raise your price, you are
20 really reluctant to bring it down. We saw that in cheese
21 in 2020. We all had to raise our prices. We had to
22 change our promotions to a higher price. And guess what?
23 They have never come back down, even though those prices
24 have dropped. So I think that's the other thing, too.

25 Class I is so precarious. It's so important. We
26 all know nutritionally how important it is. But we -- we
27 need to be cognizant that that value of that milk to the
28 consumer isn't as high as maybe we would hope it would be.



1 So what can we do to make it easier -- easier to have a
2 consistent margin?

3 That's -- again, that gets back into basic
4 insurance theory. If you have a lot of volatility in
5 price, you are going to set your price level -- you heard
6 a little of that from some of the processors -- at a level
7 where they can at least break even.

8 When you have been able to do a forward sell, you
9 can -- you can have a price where there's less risk and
10 cost, and that keeps not only margins consistent in the
11 plant, probably just as importantly, it keeps margins
12 consistent for the customer of that product, because they
13 are all looking for that consistency. No one likes to
14 sell someone they don't know what they are going to make
15 on it. It's a struggle.

16 Q. And would it surprise you to learn that this
17 wasn't National Milk's quote, this was actually a quote
18 that came out of the order reform language in setting
19 higher-of -- or establishing the higher-of as a mover?

20 A. I would be. My apologies for that.

21 Q. Okay. And if you look at page 20 of your
22 testimony, the next one where you said, "National Milk
23 contends that the higher-of Class III and IV to move
24 Class I prices will help to reduce the volatility in milk
25 prices."

26 And you have faulted National Milk for using that
27 as the basis of going back to the higher-of as well; is
28 that right?



1 A. Yes. Well, one of the reasons, certainly not the
2 only reason, but, yes. I mean, there's been a lot of
3 discussion here on that. It will reduce volatility at
4 this -- within the testimonies. Although this was
5 submitted before most of those were heard. There's been a
6 lot of testimony on that.

7 Q. Would it, again, surprise you to know that that's
8 not National Milk's quote, but again, that was a quote
9 from the justification out of order reform as the basis
10 for establishing the higher-of as the mover?

11 A. Yes, it would.

12 Q. And then the third --

13 THE COURT: Ms. Hancock, which number was that?

14 MS. HANCOCK: That was number 2 on page 20 of the
15 testimony.

16 THE COURT: Thank you.

17 BY MS. HANCOCK:

18 Q. And if you look at number 3, "National Milk
19 contends that the higher-of formula helped address class
20 price inversions and depooling."

21 And you were critical of National Milk taking that
22 position because you disagreed with it as well?

23 A. Yes. And that was part of the analysis we shared
24 this morning after -- after we heard the conversations on
25 higher-of. We decided to try to figure out the best way
26 we could simply to evaluate that as part of our rebuttal
27 or contention or disagreement on National Milk's proposal.
28 But, yes.



1 And I have a feeling you are going to tell me the
2 same thing here in a second.

3 Q. Okay. I am.

4 A. Okay.

5 Q. Would it surprise you again, to learn that that's
6 not National Milk's quote, but that was actually a quote
7 out of the order reform language that established the
8 higher-of as the mover?

9 A. It does surprise me. The fact it was in that
10 language doesn't surprise me. I apologize for having the
11 wrong -- attributing it to the wrong people.

12 Q. That's okay. Dr. Vitaliano feels vindicated.

13 MS. HANCOCK: Thank you for your time.

14 THE WITNESS: Oh, thank you very much. Well, he's
15 one of my favorite people even when we don't agree, so
16 it's no worries. I think we'll still be friends.

17 MS. HANCOCK: Me, too.

18 THE COURT: Well done, Ms. Hancock.

19 CROSS-EXAMINATION

20 BY MR. MILTNER:

21 Q. Good morning, Mr. Brown.

22 A. Good morning.

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

25 I'd like to start by asking you about risk
26 management and hedging.

27 You mentioned that while you were with Kroger,
28 their hedging activities on Class I milk were limited to



1 national accounts?

2 A. That is except for organic, that is correct. And
3 also, it's not Class I, but Class II cream products we did
4 some hedging, but not Class I milk.

5 Q. And so I think you described them as national
6 accounts.

7 Did you also describe them as ESL accounts or ESL
8 products?

9 A. In our case, they were ESL accounts.

10 Q. Were there any HTST products that Kroger hedged,
11 that you are aware of?

12 A. Organic, no, we didn't. Actually that was a fixed
13 price. Just so that you -- Kroger doesn't -- does not
14 hedge themselves. They do it through their suppliers.
15 And part of that is just obviously keeping track of that
16 accounting is so onerous that our accountants say, we
17 don't want that burden.

18 So, for example, if we want a fixed price, just
19 say on butter for three months, we work with our vendor,
20 and they, through their business, hedge that cost. So we
21 buy at a fixed price, and that's included -- that's true
22 with national brands as well. They provide that fixed
23 cost, and then Kroger decides if it is acceptable.

24 Q. And I understand you are not a representative of
25 Kroger at this time?

26 A. I am not. I'm becoming a historian.

27 Q. With every day that goes by, right?

28 A. Yes, sir.



1 Q. Do you think that Kroger's position or experience
2 with not wanting to hedge themselves is shared by other
3 captive Class I bottlers?

4 A. I can't speak to that. I simply can't affirm or
5 say or what percentage. I honestly don't know. We have
6 had a lot of Class I bottlers testifying. I'm relying on
7 what they told you.

8 Q. So to the extent you can speak to what you know
9 about Kroger and are willing to share, do you think that
10 Kroger would -- would move toward hedging its Class I milk
11 if -- if USDA maintained an average-of mover, or would
12 those regulatory requirements keep them from doing so?

13 A. Well, on the -- again, it kind of depends on the
14 product. If you look at what you call -- Kroger is
15 starting to make more -- you saw a slide yesterday from
16 Turner that showed lactose free milk in HTST. Kroger has
17 started to do that in the west. That product competes
18 directly with national brands very much, and national
19 brands in all stores. That's the kind of product -- or
20 high -- high-cost chocolate, those are the kind of
21 products you are more likely to see because they aren't
22 necessarily line priced with all of the conventional HTST
23 milks. That would be the place you are going to see it.

24 Moving forward will they do that? I can't
25 speak -- I was kind of a risk management nerd there, so --
26 well, we had a cheese guy that was good at it, but, I
27 mean, that's -- I can't speak what they would do. But I
28 can -- I would speculate that it would be the products



1 that are -- aren't your -- that are actually growing fast
2 but are not the -- maybe what you think of as the gallon
3 of milk. Maybe a gallon of whole fat chocolate milk.
4 That kind of thing.

5 Q. So let me ask about, I guess generically, a
6 situation that might mirror something Kroger would do.

7 So let's assume you have a captive HTST plant.
8 And for the record, what I mean is, where the retailer
9 owns the facility. Okay?

10 And just for the record, in Kroger's case, they
11 own their own plants, correct?

12 A. Yeah. We have -- we are self-supplied on HTST
13 milk with the exception of a small set of stores in
14 Central California.

15 Q. Okay. And so let's talk about that specific type
16 of plant where they are buying their raw milk supply from
17 a cooperative or multiple cooperatives.

18 A. Yeah. Kroger is 100% co-op supplied.

19 Q. Okay. If Kroger is not -- and they wanted to then
20 hedge HTST milk, if Kroger were not going to enter into
21 that risk management contract, how do you envision that
22 occurring?

23 A. Well, if they -- if they reach the point they
24 decide to do that, they will have to figure out a way to
25 do it.

26 And what's interesting in Kroger is that we --
27 we -- and I can't talk about the details of it, but we
28 have a transfer cost of milk to divisions -- on formulas I



1 think are pretty similar across the industry, I don't want
2 to speculate, basically transportation and resin in milk.
3 The supermarket chain is -- of that division is
4 responsible for marketing that product.

5 And so in the case of Kroger, how that would be
6 handled, my guess is the request would come from the
7 supermarket, from, say, for example, Ralph's in Southern
8 California, we want to have a more consistent milk price,
9 and then it would be up to the plant to put that together.

10 But the request on a product like that is more
11 likely to come -- it would come from the division, not
12 from internal Kroger. Just because its milk in every
13 market, and the competition in every market on fluid milk
14 is intense, but it really depends where you are.

15 I mean, I'll be honest, I'm buying my 2% milk
16 right now in Wisconsin for \$2.35 a gallon.

17 I mean, I used to bring Spotted Cow Beer back to
18 Cincinnati when I was -- because I lived -- I still have
19 my house up there. Maybe I need to be moving it around
20 but -- so, so much of it's local competition.

21 The other place I think you might see it
22 longer-term, if you want to plan some kind of sales
23 opportunity for a certain period of time, they might do
24 that. But at this point, they have not done that on HTST
25 milk.

26 Sorry for a confusing answer, Ryan.

27 Q. No, that's okay.

28 Under that kind of example, would Kroger



1 necessarily have to enter into the risk management arena
2 itself?

3 A. Yes. And the reason for that is, we don't
4 allow -- manufacturing at Kroger is considered a division.
5 We don't allow a division, rather it's a store or a plant,
6 to take risk like -- the price risk like that, without
7 some kind of agreement on cost.

8 In the case of Class I, it's always been more
9 difficult because you couldn't hedge Class I through your
10 supplier. It's a lot easier with cheese. It's a lot
11 easier with fat for ice cream and other things. But you
12 can't do it with Class I milk.

13 And so it makes it much more difficult. Because
14 again, because we would have to -- we would have to
15 assemble that hedge and execute it ourselves, or do an
16 over-the-counter with some of the traders that are willing
17 to do that. It wouldn't be as simple as saying, you know,
18 Mr. Co-op, I want a flat price on Class I, because that's
19 not allowed. It's more complicated, unfortunately.

20 Q. Now, if we think about a retailer like a Kroger
21 that does want to flat price, fix price, stable price
22 their ESL products on the shelf, how would -- explain, if
23 you could, how -- how that would be structured if Kroger
24 is not going to enter into the hedge itself.

25 A. Well, with the exception of some lactose-free ESL,
26 all of our ESL milk is organic, so that is purchased at a
27 flat price. So we deal with the opportunities and
28 challenges of pool -- pool obligation because of course



1 that varies. But as far as the milk itself, it is already
2 flat price.

3 So in our personal case, it would not -- it
4 would -- ours -- I should say Kroger's personal case -- it
5 would not affect but a small portion of their ESL
6 production. If they decided they needed to do it, they
7 would have to change -- in my mind, they would have to
8 figure out a way -- whether it was with a swap, or an OTC
9 contract, or going to the futures, they would have to be
10 like a Nestle and do it themselves.

11 Q. So maybe I'm confused. It's quite possible.

12 A. Well, I probably am, too. Don't feel bad.

13 Q. Well, when you were answering questions earlier, I
14 think you said that you -- you did some work for Kroger on
15 hedging those national accounts?

16 A. We provided consulting to the buyers that buy
17 those, yes.

18 Q. Okay.

19 A. And so it was negotiating the flat price with the
20 buyer, what did they think they could give us, and they
21 did the back office work.

22 Q. So when you are talking with a buyer, is a buyer
23 in that sense a Kroger --

24 A. Yes.

25 Q. -- employee?

26 A. Kroger category manager they call them. They buy
27 the national brands. And my group, the dairy supply chain
28 team, consults them on what's a fair price.



1 Q. Okay.

2 A. But they -- they make the final decision. And so
3 they are looking at marketing strategy on the shelf,
4 whereas we're generally -- we do that, too, because we
5 share those -- share those responsibilities with the
6 buyers. If they say I want -- I would like my butter
7 price flat for the last three months of the year, what can
8 you do, we work with them on that.

9 Q. So in that instance the hedge is executed by the
10 Nestle, the Fairlife, or the manufacturer of that ESL
11 product?

12 A. Yes, that is correct.

13 Q. Now, some members of MIG or other bottlers have
14 testified that although they are intrigued by hedging
15 their HTST products, it has not been largely adopted in
16 the 40 years that it's been available.

17 Did you hear any of that testimony?

18 A. Oh, yes. I did.

19 Q. Okay. And you stated that at least in Kroger's
20 experience, they have made a decision not to hedge their
21 HTST milk?

22 A. Yeah. I don't think that's changed, but from my
23 experience, yes, that's correct.

24 Q. Okay. In your experience or conversations, are
25 there other Class I bottlers, captives that have similar
26 concerns as Kroger in terms of their regulatory
27 obligations if they were to hedge their HTST milk?

28 A. If they don't have a way to -- their HTST, regular



1 milk? Yeah.

2 It depends if they have -- a lot of organizations,
3 including grocery stores, have their own risk management
4 division that can manage those kinds of derivatives and
5 manage that kind of a strategy. Kroger actually doesn't
6 have that, so there's no team internally to do it. So
7 when we do risk management, that's why we do it through
8 our vendors. And, again, in Class I milk, that's pretty
9 much impossible. It's illegal, so we don't do that.

10 But we would need to -- and I know there's been
11 discussions at Kroger because we could use that same team
12 on grains, our bakeries, we could use it on oil, I mean,
13 like vegetable oil, we could use it on fuels. And that's
14 currently -- anytime that's done, it's done through the
15 vendor. They are set up to do it.

16 Fluid milk is different. We would have to do it
17 on our own, because you can't get a -- a flat price
18 through your normal milk supplier because that's not
19 legal.

20 Q. One of the main reasons that processors have
21 requested that the average-of be maintained is for these
22 very risk management issues. But it seems to me that the
23 vast majority of the milk in Class I, which is HTST,
24 either can't, isn't, or won't participate in hedging.

25 Do you agree with that?

26 A. No. Because I don't know. I can say from my
27 experience at Kroger, it's not likely. I can't speak for
28 even other grocery store chains what their thoughts are on



1 that. I just honestly don't know.

2 And it depends -- and, again, I think the price
3 for HTST, from my personal experience, has the most
4 potential for fixed prices in restaurant trade,
5 foodservice, and we do see that. A lot of times that's
6 actually managed by the buyer of those finished products
7 doing it themselves, rather than going to the vendor. So
8 it isn't just -- this isn't just an issue for -- for a
9 processor. It's an issue for those end users of products
10 as well.

11 And I would -- my observation would be in HTST, I
12 can't say this for sure, I would not be surprised to learn
13 that more HTST is -- is hedged by the end user of the
14 product rather than the manufacturer of the product,
15 because they have teams set up to do those kinds of things
16 and they are more used to it than some of our
17 old-fashioned supermarket chains are.

18 Q. I don't know the answer to this off the top of my
19 head, and perhaps you do, or perhaps a range.

20 What percentage of Class I milk ends up in
21 foodservice?

22 A. Well, if you look at all foodservice, I mean,
23 like, everything, I don't have a number for restaurants,
24 institutional, schools, restaurants. I think it's --
25 again, this is my, I think number, I think it's roughly
26 30%.

27 Q. Okay. USDA probably has data that we can check on
28 that.



1 A. I have never looked it up. I'm only repeating
2 what I have been told, so may be bad gossip. But I don't
3 know. If they do, then that would be a useful number to
4 know.

5 Q. I have not looked it up either. That's why I
6 asked.

7 A. And I wish I could help you. I can't.

8 Q. In preparing your testimony, or based on your
9 experience, do you have any thought as to how much of the
10 foodservice market is using the hedging tool or the
11 hedging opportunity that's been available since 2019?

12 A. I do not. What I have learned so far is more than
13 I thought was. I'll leave it at that. Again, because
14 they are doing it themselves over the counter, or with
15 CME, a lot of sellers aren't even aware it is happening.

16 Particularly, if you think about it, if you have
17 restaurants across the country, you buy milk from six or
18 seven different suppliers, the most efficient way to
19 manage that, since it's all Class I price, except for
20 differentials, it's the same everywhere. It's much easier
21 for them to do it themselves en masse than to have all the
22 contracts. Because fluid milk is local, there are some
23 real advantages to doing a hedge inside the buyer's
24 business rather than the seller.

25 Q. On page 4 of your slides, Exhibit 276, and this is
26 where you are quoting Drs. Bozic and Gould, I think -- and
27 maybe Ms. Hancock asked about this. I don't know if this
28 question was asked.



1 The third statement there, "Another small number
2 of hedgers chose to hedge Class I milk exposure by
3 utilizing futures and options."

4 Do you agree that that was done or --

5 A. If there was any done, that would be the way you
6 would do it. And the issue, as you might imagine, options
7 get very -- futures contracts are the same price; options
8 can get really expensive. And that's where the cost
9 really gets prohibitive. I'm not personally familiar with
10 anyone who did that.

11 Q. Now, options do come with -- with premiums, but
12 using puts and calls you could collar things --

13 A. Oh, yeah.

14 Q. -- and offset some of those costs, right?

15 A. Oh, I have collared lots of products in my day.
16 Yes, you're right. You can.

17 Q. So any individual option would come with a cost,
18 but you could -- you could offset that with a different
19 option, to some extent, if you are willing to accept a
20 range of prices, correct?

21 A. And can you buy that range at an even buy-sell
22 price to make it workable, I found a lot of my time
23 working with options. When you are working with
24 merchandising, they have arrangers sit in -- and this is
25 on hard dairy products, not on milk -- they -- of course,
26 they want a tight range and pay nothing for it, because
27 that's how merchandisers think. But those costs can be
28 prohibitive.



1 The other thing is, of course, timing. Depending
2 where, you know, everybody wants to hedge butter now for
3 2.50 now that it's 3 -- well, over 3.50, or 3.30. So it
4 really depends on -- on the market, and it depends on
5 how -- how important that is to you as far as managing
6 that.

7 But collars are certainly possible. But, again,
8 you are doing options on two different prices, not just
9 one.

10 And particularly Class IV is pretty thinly traded.
11 On futures options is even worse. So getting liquidity
12 you might need for a significant amount of milk could be
13 hard.

14 Q. Do you really want to scare the people listening?

15 A. Do I?

16 Q. Yeah.

17 A. They probably already think, what a nerd.

18 Q. That's okay.

19 Are you familiar the Black-Scholes Model of
20 options valuation?

21 A. I used to be.

22 Q. I mean, the price of options is directly related
23 to the volatility of the underlying --

24 A. Oh, of course.

25 Q. -- commodity, right?

26 A. Yes. Yes.

27 Q. And the model that is used to establish a rational
28 price -- and the market sets a price, but if you are



1 trying to establish whether the market price is rational
2 or not, you look at the volatility of the underlying
3 asset, correct?

4 A. Oh, yeah, that's -- of course, that determines
5 your option cost --

6 Q. Okay.

7 A. -- is that risk.

8 Q. Okay. And the higher the volatility, the higher
9 the cost for the option, correct?

10 A. Yeah. Without a doubt.

11 Q. Okay. And you can find that implied volatility by
12 looking at those prices in the underlying asset, correct?

13 A. Oh, yeah. You can back-calculate it. Yes, that's
14 true.

15 Q. Okay. But the price of the option is never
16 greater than the volatility you are trying to hedge, is
17 it?

18 A. No. Well, no. Expected volatility, you are
19 correct.

20 Q. Right.

21 A. Again, we don't always know what that's going to
22 be. As we have learned in the last five years, volatile
23 can really be volatile. That would be the case. It's --
24 but it's a -- and part maybe it's just laziness. It's a
25 far more difficult way to manage risk by using basically
26 six puts, calls, and a futures contract, versus just two
27 futures contracts. It's much more complicated.

28 Q. Aside from the complication, the assertion that



1 it's too expensive, it's not more expensive than the
2 implied volatility of the underlying asset, correct?

3 A. No. It can be much more expensive. Because if
4 you can get a buyer at the price in the futures contract
5 you can work with, you don't have to worry about the
6 variance, you just have to have a willing buyer. It's
7 different.

8 And, again, the difference between options and
9 futures is futures -- the transaction cost is set that the
10 your -- your challenge is finding someone who is willing
11 to buy at the price you are selling, or selling at the
12 price you want to buy at. But that -- you are cost of
13 that contract is the same.

14 Options are -- like you said, they are basically
15 volatility -- estimates based on volatility. I'm sure
16 there's lots of much better statisticians than me that
17 spend a lot of time figuring that out. I mean, that's
18 basically what actuaries do. And that's -- so that cost
19 can be significantly different.

20 And the other thing is, again, is the complexity.
21 And, again, are we assuming that that's the only reason
22 not to not price milk on higher-of? Because just the
23 inherent volatility. And think about it, the Class I
24 mover in its higher-of, it takes a lot more volatility
25 than if it is some kind of average or even a single
26 market.

27 And so it becomes all the more difficult, and that
28 also makes it more expensive, because there's more



1 volatility what that predicted price will be.

2 Q. I think your answer assumes that there would be a
3 futures option -- an option to purchase futures in
4 addition to the option to purchase options; is that
5 correct?

6 A. Yes.

7 Q. Okay. IDFA's position is that using the higher-of
8 the futures options are not -- the option to purchase
9 futures is not viable, correct?

10 A. That is correct. On their own, they are not.

11 Q. Okay. So if that is not on the table, despite a
12 higher cost, options would allow you to hedge your risk,
13 but that cost of the options is still less than the
14 implied volatility that you are avoiding, correct?

15 A. I'm not sure.

16 Q. Okay.

17 THE COURT: Mr. Miltner, I want to get some census
18 from the group. Please stay right where you are.

19 We're going to break for lunch in six minutes. So
20 I don't think we're going to finish this witness. So I
21 want to know if there are any announcements that we need
22 to make before we break for lunch. So don't go very far.
23 You might even get to finish, but there might be others.

24 Mr. Rosenbaum, what would you suggest?

25 MR. ROSENBAUM: Well, I think your Honor's asking
26 the right questions, but we don't exactly know how long
27 the farmers are going to take, and I don't know how many
28 other people will question. It's not inconceivable to me



1 that we would get the farmers done by 2:15. And if
2 45 minutes would be enough, we could finish. But I'm not
3 saying that's for sure the case. I don't know who else is
4 planning to ask questions.

5 MS. TAYLOR: Based on past experience, my guess
6 would be the nine farmers will take up most of the three
7 hours. Now, that might not be the case. In which case,
8 if we had 45 minutes left, I obviously would also support
9 putting Mr. Brown back on and seeing how much more cross
10 we can get through by 3:00. We don't object to that. I
11 don't know if it will happen, but --

12 THE WITNESS: Well, I'll have my voice back and my
13 sugars stabilized by then, so hopefully it will work.

14 MR. MILTNER: So, Your Honor, I have got a couple
15 of, I guess, categories that I would continue to ask
16 Mr. Brown about. That was kind of the last question I had
17 on futures and options and hedging in that context.

18 THE COURT: What are your additional categories
19 just so he can be thinking about that? I'm not suggesting
20 you start them.

21 MR. MILTNER: Yeah. So I have some questions
22 about his assumptions that he -- that he used on analyzing
23 the frequency of price inversions, and the Class III and
24 IV spread. And then some questions about how his
25 spreadsheet operates so we can look at some different
26 aspects other than what -- what he testified to directly.
27 Those are the two main areas.

28 THE COURT: Thank you.



1 I would like now for those who also intend to
2 cross-examine this witness to come to the podium and
3 identify yourself.

4 MS. VULIN: Ashley Vulin with the Milk Innovation
5 Group. I have four questions. I think I could finish
6 them in the next two minutes.

7 THE COURT: Now that's encouraging. You may
8 begin.

9 THE WITNESS: I hope I don't disappoint.

10 CROSS-EXAMINATION

11 BY MS. VULIN:

12 Q. Mr. Brown, to the extent that there is more
13 volatility, or the potential for more volatility going
14 forward, wouldn't that increase the need to have hedging
15 opportunities?

16 A. Yes.

17 Q. And to the extent that there is any anticipation
18 of more volatility, wouldn't that also make
19 over-the-counter hedging options either more expensive or
20 less accurate?

21 A. Both of those. And also, maybe harder to get,
22 which is why they cost more.

23 Q. And are you aware of any -- I believe you said
24 this, but are you aware of any foodservice entities that
25 are currently hedging Class I?

26 A. Yes.

27 Q. Would that include things like coffee shops or
28 other entities that are very focused in areas that consume



1 a lot of milk?

2 A. Yeah. They are foodservice that does consume a
3 lot of milk at retail, that is correct.

4 Q. Thank you.

5 MS. VULIN: Nothing further.

6 THE COURT: Wow. Who can do something like that?

7 MR. SJOSTROM: I can't, but Lucas Sjostrom, Edge
8 Dairy Farmer Cooperative.

9 We have about five questions that we'll wait due
10 to travel and other reasons to when we reconvene.

11 THE COURT: And who else will cross-examine this
12 witness while we're here today?

13 Dr. Cryan?

14 DR. CRYAN: About 20 minutes.

15 THE COURT: Dr. Cryan, about 20 minutes.

16 Okay. There's a possibility we may finish you
17 after the farmers. We will not finish you before lunch.

18 THE WITNESS: I am not going anywhere. Waiting to
19 see what happens next week, so you can take whatever time
20 people want to spend today.

21 THE COURT: That's the optimism I had yesterday.

22 THE WITNESS: It's the reality.

23 THE COURT: All right. Let's go off record at
24 10:59. Please be back ready to go at 12 noon.

25 (Whereupon, a luncheon break was taken.)

26 ---o0o---

27

28



1 FRIDAY, SEPTEMBER 29, 2023 - - AFTERNOON SESSION

2 THE COURT: Let's go on record.

3 All right. We're back on record. It's
4 approximately 12:02 p.m., and we're about to begin our
5 afternoon session.

6 I would like to hear from the Agricultural
7 Marketing Service what we anticipate.

8 MS. TAYLOR: Thank you, Your Honor. We have nine
9 dairy farmers testifying virtually today, and so the
10 behind-scenes-team says we're ready to go.

11 So I think our first one up is Mr. Joe Borgerding.
12 It sometimes takes a second to get them up and the video
13 on.

14 THE COURT: Excellent.

15 Would you state your name for me, and spell both
16 your names.

17 THE WITNESS: My name is Joe Borgerding.
18 Officially it's J-O-S-E-P-H, B-O-R-G-E-R-D-I-N-G.

19 THE COURT: Excellent. I'm Jill Clifton. I'm the
20 United States Administrative Law Judge who is conducting
21 this portion of the hearing, and I would like to swear you
22 in before you testify.

23 You may remain seated, but if you would raise your
24 right hand.

25 JOSEPH BORGERDING,

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

28 THE COURT: And in a moment I'll call on someone



1 who will be asking you questions. But first I want to
2 address your statement which we have as an exhibit. I
3 want to make sure I give it the right number. And it
4 appears to me it would be 278.

5 I'm putting that on the Exhibit 278, and up at the
6 right-hand corner is its designation as Exhibit MIG-27.

7 THE WITNESS: That's right.

8 (Exhibit Number 278 was marked for
9 identification.)

10 THE COURT: Very good.

11 You may proceed, Counsel.

12 MS. VULIN: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MS. VULIN:

15 Q. This is Ashley Vulin with the Milk Innovation
16 Group.

17 Hi, Mr. Borgerding. How are you?

18 A. I'm good.

19 Q. Thank you for joining us today.

20 So we have marked your testimony as Exhibit 278.

21 Do you have that there in front of you?

22 A. I'm not sure what that is. 278?

23 Q. Oh, it's your testimony that says Exhibit MIG-27
24 at the top.

25 A. Yes.

26 Q. Do you have that?

27 A. I have that.

28 Q. Great.



1 And that's your testimony for the hearing here
2 today?

3 A. Yep.

4 Q. Great. Thank you.

5 If you could please read your testimony for us.

6 And a reminder on our end to just go very slow
7 because we have a court reporter who will be taking down
8 everything you are saying.

9 A. We'll see. All right.

10 Q. Thank you.

11 A. Dear USDA, Hello from Minnesota. My name is Joe
12 Borgerding, and since 1870 my family has farmed in Stearns
13 County, Minnesota.

14 Farming has always been our sole source of income.

15 My adult children are now the sixth generation
16 hoping to do the same and raise their families on our
17 farm. Besides my wife Toni and myself, we have three sons
18 and a nephew working full-time on our farm.

19 Our farm currently has 190 cows and 160 heifers
20 and some steers for beef. All of the milk, and most of
21 the livestock, are marketed through our co-op, Organic
22 Valley. We are very fortunate to be able to grow all of
23 our feed and have extra crops to sell from the 1300 acres
24 that we manage. We have been USDA-certified organic since
25 2004, and we use a diverse rotation and cover crops as a
26 way to build our soil carbon levels and improve the water
27 quality on our farms.

28 We are a small business as defined by the Small



1 Business Administration.

2 My family has a long history of working to improve
3 the industry in Minnesota. My great grandfather helped to
4 form the first local co-op creamery to make butter in the
5 early 1900s. Selling cream from cows grazing grass from
6 hillsides generated far more income for farmers than when
7 they grew grain which had to be sold through the
8 monopolistic railroad and grain buyers of that time.

9 Besides adding value to the milk and making it
10 less perishable, it could now bring quality nourishment to
11 more distant populations, while at the same time,
12 supporting jobs in small rural towns. Since dairy cows
13 can utilize lots of grass and forages, barren, eroding
14 hillsides became green, lush, and fertile again. The
15 great northern prairies that had been home to the
16 countless herds of American bison soon naturally became
17 the so-called dairy belt -- the dairy-belt region.

18 Eventually, due to competition, technology, and
19 consolidation, many small town creameries had to close.
20 As milk buyers, including co-ops, became more detached
21 from the smaller remote farms, the procuring of milk
22 became chaotic and rather disorganized. Milk and milk
23 pricing needed to be standardized with at least two goals:
24 First, to ensure a fresh milk could be -- I lost my place
25 when my phone went off. I thought I maybe had -- I
26 totally lost my place.

27 Q. You were just three lines down from the top. If
28 you start with "milk and milk pricing." Do you see that



1 sentence?

2 A. Yes.

3 Q. Start right there.

4 A. Milk and milk price is needing to be standardized
5 with at least two goals: First, to ensure milk -- fresh
6 milk could be made available to more people around the
7 country; and secondly, to combat the disorderly conduct --
8 the disorderly marketing of the milk by dairy farmers
9 themselves.

10 My understanding of all this was that it was a
11 strong reason for the establishment of the Federal Milk
12 Marketing Order system over 80 years ago. Trying to bring
13 fairness and availability to all farmers and consumers was
14 a tall order. But I wonder if this framework has outlived
15 its usefulness and practicality.

16 I believe when the order started, there were major
17 problems in a lot of areas, including transportation,
18 sanitation, refrigeration, distribution, seasonal
19 production, as well as demand shifts and allocation of
20 processing. Many things have changed regarding the
21 challenges facing the dairy industry. We have better
22 transportation, refrigeration, and marketing systems.

23 My dad and my uncles had to watch as things like
24 trans fats and oleo-margarine reduced butter's market
25 share, and so they turned to collective bargaining as a
26 way to survive low milk prices. Lower value that was then
27 achieved by making cheese as butter had lost its value. I
28 remember when Minnesota farmers had to sue the USDA to



1 stop them using Eau Claire, Wisconsin, from being used as
2 a basis for determining milk pricing for most of the
3 country's milk.

4 It seems ludicrous to me that distance from an
5 efficient production area should even be a factor, which
6 made me think that we could likely afford to grow oranges
7 in Minnesota if it was based on the price of orange juice
8 from the distance from Florida. The distance shouldn't be
9 a factor. You know, the transportation cost should be an
10 equalizer.

11 I have kept abreast of many of the FMMO changes
12 over the past 45 years, and regrettably, I have witnessed
13 the tremendous loss of the efficient Midwestern family
14 dairy farms to different areas that never paid Federal
15 Milk Market Order class assessments.

16 Dairy has been my passion, and besides managing
17 our farm, I have been very involved in the industry. I
18 have served on the Board of Directors of the Minnesota
19 Milk Producers Association for ten years. I was appointed
20 to the 2007 Dairy Profitability Advisory Committee
21 established by the governor of Minnesota. I have lobbied
22 with the Dairy Policy Action Coalition in D.C. ahead of
23 the 2014 Farm Bill. And I sit on the Dairy Executive
24 Committee for our CROPP Cooperative.

25 My opinion, after all that I have seen, is that
26 the original good intentions of the Federal Orders are
27 largely outdated and not entirely relevant to today's
28 challenges.



1 80 years ago, milk was not likely to be shuttled
2 into different orders just to avoid assessments or to gain
3 blending advantages, because most processing was done
4 locally and on a small scale.

5 Modern markets today can more easily determine the
6 best use of and potential value of each of the many
7 components of milk and its valuable byproducts. Dairy
8 buyers have a better ability to adjust for location,
9 demand changes, and supply to contract for their needs so
10 they can deliver whatever their customers want.

11 Many other commodities such as hogs, cattle, corn,
12 and beans are all priced on the expected returns from the
13 various products that can be derived from them, not on
14 which class or order they happen to fit into.

15 In 2004, we invested into CROPP Cooperative
16 because of their commitment to underserved family-oriented
17 farmers, and they were marketing milk to a whole new type
18 of consumer, an organic consumer.

19 As more and more consumers were looking for
20 healthy options for their families, CROPP branded their
21 products as Organic Valley. They went looking for farmers
22 willing to produce milk to drastically different standards
23 and become certified USDA organic.

24 For a host of reasons, Organic Valley has been
25 able to attract new customers, millions of new customers,
26 who are willing to pay an organic premium for dairy
27 products of all kinds. This allows Organic Valley to
28 provide a stable market to many small, remote, but high



1 quality family-run small farms in 32 states. Many of
2 these farms would not have been able to continue under the
3 unstable pricing formulas of today and the dynamics of a
4 consolidated marketplace dominated by bigger and bigger
5 operations.

6 As time has gone by, and our new organic market
7 has matured some, I have come to find out that our small
8 farms through our co-op are being assessed millions of
9 dollars by the Federal Market Order system. That doesn't
10 seem right. As Organic Valley farmers, we operate under a
11 quota system managing our own supply and we are never
12 going to flood the market -- the milk market -- in this
13 country.

14 THE COURT: Could I ask you to read your whole
15 phrase there? Never going to flood --

16 THE WITNESS: Okay. I'll say that.

17 That doesn't seem right as Organic Valley farmers
18 are under a quota system where we manage our own supply
19 and we are never going to flood the fluid milk market in
20 this country. Since organic milk has to meet unique
21 standards, conventional milk pooling is never going to be
22 able to do a thing to balance our needs.

23 While Organic Valley does offer a higher pay
24 price, I can tell you, our members are really struggling
25 to get by with the higher input costs needed to run an
26 organic dairy. The reality for us is any increased
27 Federal Milk Market Order costs or assessments to the
28 co-op means that it has to come from somewhere. And



1 unfortunately, that probably means it will come from the
2 pay price I receive now, or from the organic pay price I
3 could receive in the future.

4 Organic consumers reward our farmers for the extra
5 work and expense to produce the product that they want,
6 but not enough that we can afford to help balance the
7 system for those that produce huge volumes of milk with
8 different standards that our consumers don't even want.

9 Many changes will need to be made to the system if
10 it is to remain viable, but some changes should have been
11 made a long time ago. And one of those is, organic milk
12 needs to be treated differently because it is different.

13 I am very thankful for the opportunity to share
14 some of my experience and my current thoughts on this
15 important work being done to get the orders updated.

16 Thank you for the opportunity to testify, and I'm
17 open to any questions.

18 BY MS. VULIN:

19 Q. Thank you very much, Mr. Borgerding. We
20 appreciate you speaking today.

21 So you're a member of the Organic Valley
22 Cooperative?

23 A. Yes.

24 Q. And you are here in support of the proposals that
25 Organic Valley has put forth in this hearing?

26 A. Yes.

27 Q. All right. Thank you very much. Appreciate it.

28 MS. VULIN: The witness is available for



1 cross-examination, Your Honor.

2 THE COURT: Thank you.

3 This is Judge Clifton. Would anyone who would
4 like to ask questions of Mr. Borgerding, please approach
5 the podium with the microphone.

6 CROSS-EXAMINATION

7 BY DR. CRYAN:

8 Q. Good afternoon, Mr. Borgerding. I'm Roger Cryan
9 with the American Farm Bureau Federation. Thanks for
10 testifying.

11 A. Thank you.

12 Q. Are you a Farm Bureau member?

13 A. No, I'm not.

14 Q. Do I understand that you'd just as soon do away
15 with the Federal Orders entirely?

16 A. No, not entirely. There's some balancing that
17 needs to be done. My concern is, why do we have four
18 classes of milk? It all gets dissected and put back
19 together in one form or another. I think that could be
20 simplified. I believe it would eliminate some of the
21 trucking that's being done kind of wastefully, hauling
22 milk between different pools. So those are my concerns.

23 Q. Okay.

24 DR. CRYAN: Well, thank you for your testimony.

25 THE WITNESS: Yep.

26 THE COURT: Thank you, Dr. Cryan.

27 Who next would like to ask questions of
28 Mr. Borgerding?



1 I would invite questions now from the Agricultural
2 Marketing Service.

3 MS. TAYLOR: Thank you.

4 CROSS-EXAMINATION

5 BY MS. TAYLOR:

6 Q. Good afternoon.

7 A. Hi.

8 Q. This is Erin Taylor with USDA AMS. I want to
9 thank you for your joining us virtually to testify today.

10 Just a couple questions about your operation.

11 How far does your milk travel?

12 A. We're about two hours from St. Paul, Minnesota,
13 where it's processed.

14 Q. Processed into fluid products?

15 A. I believe so, yes.

16 Q. And then, because you are an organic farmer, I'm
17 guessing your risk management strategies might be
18 different since your milk is probably priced differently
19 than a conventional farmer.

20 I was just wondering if you could talk about that
21 a little bit on the record.

22 A. Our co-op is very farmer-oriented, and they do
23 a -- they are very hard working to try to stabilize our
24 price for producers. Sometimes that is an expense of the
25 co-op which affects our equity. So they take care a lot
26 of the milk pricing, balancing, and stabilizing.

27 The risk we see is a large fluctuation in feed
28 costs. You know, organic feed cost is probably more



1 volatile than conventional, and very high priced.

2 Q. Okay. Okay. Well, thank you so much for joining
3 us today.

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

5 THE COURT: Thank you, Ms. Taylor.

6 Redirect?

7 MS. VULIN: Thank you so much for joining us
8 today, Mr. Borgerding. This is Ashley Vulin. Really
9 appreciate you testifying.

10 And I just ask, Your Honor, that Exhibit 278,
11 Mr. Borgerding's testimony, be admitted into evidence.

12 THE COURT: Is there any objection?

13 There is none. Exhibit 278, also shown as
14 Exhibit MIG-27, is admitted into evidence.

15 (Exhibit Number 278 was received into
16 evidence.)

17 THE COURT: Mr. Borgerding, thank you so much.
18 You are the first of I believe nine farmers that we'll
19 have during this space in time. And of course you're
20 welcome to continue to observe.

21 And we will now call our next farmer.

22 THE WITNESS: Thank you very much for the work you
23 are doing.

24 THE COURT: Thank you.

25 MS. TAYLOR: Thank you, Your Honor. Our next
26 farmer joining us this afternoon is Perry Tjaarda. I
27 think he has counsel here in the room.

28 THE COURT: Wonderful.



1 I'm going to ask Perry -- ah, we can see you now.

2 Good.

3 THE WITNESS: Yes.

4 THE COURT: I'm going to -- you can't see me, I'm
5 the judge, but I can see you. I'm going to ask you to
6 state and spell both of your names for the record.

7 THE WITNESS: My name is Perry Tjaarda. And Perry
8 is P-E-R-R-Y. My last name Tjaarda is T-J-A-A-R-D-A.

9 THE COURT: Have you previously testified in this
10 milk marketing order proceeding?

11 THE WITNESS: I have not.

12 THE COURT: Then I'd like to swear you in.
13 Would you raise your right hand, please.

14 PERRY TJAARDA,

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

17 THE COURT: And I'd now invite your representative
18 to identify himself, please.

19 MR. MILLER: Yes. This is Todd Miller
20 representing Dairy Farmers of America.

21 DIRECT EXAMINATION

22 BY MR. MILLER:

23 Q. Good afternoon, Mr. Tjaarda.

24 You have prepared a statement today, haven't you?

25 A. I have, yes.

26 MR. MILLER: Your Honor, I'd ask that we mark
27 Exhibit DFA-6 as Hearing Exhibit 279 on a preliminary
28 basis.



1 THE COURT: Yes. And it has been so marked.

2 (Exhibit Number 279 was marked for
3 identification.)

4 THE COURT: Exhibit 279 is Exhibit DFA-6.

5 MR. MILLER: Thank you.

6 BY MR. MILLER:

7 Q. Mr. Tjaarda, would you please go ahead and read
8 your statement.

9 A. Okay. Good afternoon, everyone.

10 My name is Perry Tjaarda, and I'm a second
11 generation dairy farmer from Shafter, California. My wife
12 and I operate a family farm that includes 960 acres of
13 crop ground, and milk 3200 cows. Our two sons work us
14 with on the dairy and represent the third generation. My
15 87-year-old parents are retired from the business. My
16 parents both emigrated to the United States in the 1950s
17 and started the dairy in 1964. Over the years we have
18 been fortunate enough to grow the dairy, while reinvesting
19 in practices and technology to achieve the efficiency and
20 sustainability. In 59 years, we have had many struggles,
21 but also much success. We currently have 27 full-time
22 employees and value their input daily.

23 I currently serve as a director on the Western
24 Area Council of Dairy Farmers of America, while also
25 serving as a director on the corporate board of DFA. I am
26 also a director on the National Milk Producers Federation
27 Board of Directors, as well as other local organizations,
28 and am a former director of state and national dairy



1 promotion organizations.

2 I appear today in support of the National Milk
3 Producers Federation proposals to:

4 1) Limit the Make Allowance increase to the
5 National Milk Producers Federation proposed levels;

6 2) Return the Class I mover to the higher-of;

7 3) Eliminate the barrel cheese price from the
8 calculation of the Class III protein price;

9 4) Increase and regularly update the skim
10 component tests used to determine Federal Order skim milk
11 price;

12 5) Implement the NMPF proposed national Class I
13 differential and price surface proposal.

14 I want to provide information today about what is
15 going on with my farm and how a reduction in the milk
16 price from a large Make Allowance change will impact us.

17 This has been a challenging year on our dairy
18 farm. The California Federal Order's statistical uniform
19 price peaked at \$25.49 per hundredweight in June of 2022.
20 June of this year it was \$16.42 per hundredweight, a
21 decline of over \$9 per hundredweight. My DFA milk check
22 has declined in a similar fashion.

23 The challenge is that my costs of production have
24 not gone down to the same degree, and our dairy is
25 tremendously unprofitable right now. We have faced
26 significant inflation in our input costs since 2020. Our
27 operating expenses have increased by more than \$5 a
28 hundredweight in that time. Feed costs are historically



1 50 to 60% of our milk check. However, this year they have
2 been as high as 90%. As a dairy farmer, I know that feed
3 costs will fluctuate from year to year. I also know that
4 my other costs, my fixed costs, don't go down, costs such
5 as labor, utilities, fuel, insurance, parts, service, and
6 equipment to name a few.

7 My dairy's cost structure is very similar to
8 others in California. As you can see, the California milk
9 production cost structure has changed significantly over
10 the last few years. We also have regulatory changes in
11 California that we struggle with. For example, California
12 Sustainable Groundwater Management Act will gradually
13 limit acreage available to grow livestock feed. This will
14 increase feed costs as larger quantities of feeds will
15 need to be brought in from further and further away.

16 I do not like that Make Allowances will increase
17 and lower my milk price. However, I understand that
18 Make Allowances are an important aspect of determining
19 Federal Order class prices, and from time to time there is
20 regulatory need to adjust them. I ask that in doing so,
21 that the Secretary of Agriculture take into account the
22 impact on dairy farm milk prices, not only nationally, but
23 regionally also, and more importantly, the impact on dairy
24 farm profitability.

25 The more modest changes proposed by NMPF, which
26 they have indicated will lower farm milk prices by about
27 \$0.50 a hundredweight, is already a troublesome change.
28 The average profitability on my dairy over the last five



1 to ten years has been less than the \$1.45 per
2 hundredweight milk price decline coming from the changes
3 proposed by the International Dairy Foods Association and
4 the Wisconsin Cheese Manufacturers Association. This
5 degree of decline in milk prices would be devastating to
6 my family's dairy, as well as most other dairies
7 throughout California. Dairy farmers already pay all the
8 freight for feed, supplies, and services coming into their
9 farms, while also paying most of the freight for milk
10 leaving the farm.

11 I and other dairy farmers are concerned about the
12 data provided by IDFA and WCMA you are being asked to use
13 to increase the Make Allowances. We believe if you are
14 going to lower our milk prices by increasing the
15 Make Allowance, there should be credible data. Every year
16 those involved in the dairy industry have access to, and
17 can easily determine, what a producer's cost of production
18 is. All commodity manufacturing plants should be
19 reporting their costs frequently. This information should
20 be collected by USDA, audited, and verified.

21 Just as dairies of all sizes have to grow, adapt,
22 and innovate to stay competitive, so should plants.
23 Plants must also do better when marketing their products
24 to help offset the need for a Make Allowance. You can't
25 keep taking money out of the dairy farmer's pocket and
26 expect us to survive.

27 I close by repeating my support for NMPF's
28 proposals to change the Class I mover, eliminate barrel



1 prices from the Class III protein price formula,
2 modernizing the skim component factors, and updating the
3 Class I differential and producer price surface. Others
4 from DFA and NMPF will be speaking more directly to these
5 issues.

6 Thank you for allowing me to testify today on
7 these issues that are very important to my family and the
8 future success of our dairy business.

9 Q. Thank you, Mr. Tjaarda.

10 MR. MILLER: Mr. Tjaarda is available for
11 cross-examination.

12 THE COURT: Thank you, Mr. Miller.

13 Who would like to begin with questions for
14 Mr. Tjaarda?

15 Dr. Cryan.

16 Again, Mr. Tjaarda, he can see you, you are on a
17 big screen here where we're assembled, but you can't see
18 him.

19 CROSS-EXAMINATION

20 BY DR. CRYAN:

21 Q. Hello, Mr. Tjaarda. I'm Roger Cryan with the
22 American Farm Bureau Federation.

23 A. Good afternoon.

24 Q. Are you a Farm Bureau member?

25 A. I am, yes.

26 Q. I appreciate that. And I appreciate your
27 testimony.

28 You laid out support for a lot of the things that



1 the Farm Bureau also supports. You raised some concerns
2 about the Make Allowance changes at all. You indicated
3 your concern about the data that's being presented, and
4 you view -- you indicated your support for mandatory and
5 audited surveys of processing costs and yields.

6 Did you say processing costs and yields?

7 A. Processing costs and yields, yes.

8 Q. And what sort of -- what sort of -- so when those
9 analyses are done, when those surveys are done, what sort
10 of plants' costs ought to be covered in a Make Allowance,
11 the average plant, the plants producing, you know, the
12 50th percentile, or 75th percentile of production, or
13 maybe the biggest newest plants coming in? There's
14 some -- some discussion about what -- what sort of level
15 ought to be covered. Do you have any opinion on that?

16 A. Not really an opinion on that so much. My opinion
17 revolves around more of the regionality of some of these
18 determinations.

19 Q. Okay. And ultimately you would like to see a
20 relatively conservative increase in the Make Allowance in
21 the absence of audited mandatory data; is that correct?
22 Is that -- did I read your testimony correctly?

23 A. Yes, you did. Yes.

24 Q. Very good.

25 DR. CRYAN: That's all I have. Thank you very
26 much for testifying. Thank you for your Farm Bureau
27 membership. Have a great day.

28 THE COURT: Thank you, Dr. Cryan.



1 Who else has questions for Mr. Tjaarda?

2 I would invite now Agricultural Marketing Service
3 to ask questions of Mr. Tjaarda.

4 CROSS-EXAMINATION

5 BY MS. TAYLOR:

6 Q. I think it's good morning where you are,
7 Mr. Tjaarda.

8 A. It is morning, yes.

9 Q. Well, good morning. This is Erin Taylor from
10 USDA. Mr. Cryan asked one of my clarifying questions, so
11 I don't have too many questions for you. I do appreciate
12 you coming here to testify virtually today and taking the
13 time out of your day.

14 You said your farm, you milk 3200 cows and you
15 have 960 acres of crop ground.

16 And a question is whether your farm would meet the
17 small business definition, which is \$3.75 million in
18 annual gross receipts annually on a whole farm basis?

19 A. By that definition, it would not. It's more than
20 that.

21 Q. Okay. Thank you. And I'm not sure where Shafter,
22 California is.

23 A. Okay. So we're a little bit northwest of
24 Bakersfield, which is in the Southern San Joaquin Valley.

25 Q. I know where that is. Thank you.

26 Where does your milk go?

27 A. Milk typically goes about two hours south of here
28 to an Alta Dena plant, which is a fluid plant, or it goes



1 about an hour and a half north of here to a cheese plant.

2 Q. All right. Thank you.

3 And how -- I was wondering if you could talk about
4 your transportation costs recently. Have you seen those
5 in the past five years change, and if so, how?

6 A. The transportation costs are creeping up, as all
7 costs are, or at least costs seem to be everywhere else,
8 too. Granted the trucking companies are facing similar
9 challenges to what we are. But, yeah, those costs are
10 creeping up.

11 Q. Okay. And then my last question's around risk
12 management. We've heard a lot of testimony on risk
13 management in this hearing and the impact that some of
14 these decisions can have on both manufacturing and
15 processors' side, of positions they might take, and the
16 dairy farmer side.

17 So I was wondering if you could illuminate for the
18 record if you use any risk management tools.

19 A. So we typically use two different tools, one of
20 them being the Dairy Revenue Protection Program, and we
21 also use the Dairy Margin Coverage Program.

22 Q. And when you are using DRP, about how far out do
23 you look or -- your positions, you know, on average, are
24 about how far out do you try to lock in?

25 A. So to be fair, my son does most of this, so I
26 don't have to worry about it too much. But what we're
27 typically looking at is about second and third quarter --
28 at this time of year we're looking at about second and



1 third quarter already of next year.

2 Q. Of next year, so 12 months out.

3 A. Yeah. Yeah. That's correct.

4 Q. Okay. Thank you.

5 MS. TAYLOR: That's all the questions we have
6 today. I do appreciate you taking the time out of your
7 day to join us.

8 THE WITNESS: Thank you.

9 MR. MILLER: And thank you, Mr. Tjaarda.

10 I would now ask the Court to enter Exhibit 279
11 into the record.

12 THE COURT: Is there any objection to the
13 admission into evidence of Exhibit 279?

14 There is none. Exhibit 279, also marked as
15 Exhibit DFA-6 is hereby admitted into evidence.

16 (Exhibit Number 279 was received into
17 evidence.)

18 MR. MILLER: Thank you, Your Honor.

19 THE COURT: Thank you, Mr. Miller.

20 Thank you, Mr. Tjaarda. You are number 2 of 9
21 today, and you're welcome to continue to monitor.

22 THE WITNESS: You guys have a little work ahead of
23 you.

24 THE COURT: We do indeed. Thank you so much.

25 THE WITNESS: All right. Thank you.

26 MS. TAYLOR: So next, Your Honor, is Clara Ayer --
27 I don't know if I'm saying that right, my apologies -- and
28 she has counsel here as well.



1 THE COURT: I'd like for you to state and spell
2 your name for us. I'm Jill Clifton, Ms. Ayer. I'm the
3 Administrative Law Judge. I can see you, and you are on
4 our big screen here. You cannot see me or the people
5 at the podium, but you will be able to hear us loud and
6 clear.

7 Would you state and spell your name?

8 THE WITNESS: Yes. Thank you. Clara Ayer.
9 That's C-L-A-R-A, A-Y-E-R.

10 THE COURT: Thank you.

11 Have you previously testified in this particular
12 proceeding regarding the various milk Marketing Orders?

13 THE WITNESS: I have not.

14 THE COURT: Would you raise your hand? I'll swear
15 you in.

16 CLARA AYER,

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

19 THE COURT: I would now invite counsel to identify
20 yourself, please.

21 MS. HANCOCK: Nicole Hancock with National Milk.

22 DIRECT EXAMINATION

23 BY MS. HANCOCK:

24 Q. Hi, Ms. Ayer.

25 Can you start by providing us with your business
26 address?

27 A. Yes, I can. It would be 40 Shattuck Road, that's
28 S-H-A-T-T-U-C-K, and that's in Andover, Massachusetts,



1 01810.

2 Q. Thank you.

3 And did you prepare your testimony today that's
4 been identified as Exhibit NMPF-75?

5 A. Yes.

6 MS. HANCOCK: Your Honor, I believe we are at
7 Exhibit 280, if we could mark this?

8 THE COURT: Correct.

9 (Exhibit Number 280 was marked for
10 identification.)

11 BY MS. HANCOCK:

12 Q. Ms. Ayer, would you proceed with your testimony.
13 And then just be mindful that we have a court reporter
14 here trying to capture everything, so just have a good
15 reasonable pace when you are reading.

16 A. Sure. Thank you.

17 Thank you for the opportunity to speak with you
18 today. My name is Clara Ayer. I'm a third generation
19 dairy farmer at Fairmont Farm in East Montpelier, Vermont.
20 We are proud members of Agri-Mark, and have been since
21 1998.

22 I farm with my parents, cousin, and brother.
23 Together we operate a 1500-cow dairy across two sites and
24 raise another 1,000 head of dairy replacements, 25 head of
25 beef, 25 feeder pigs, 25 lambs, and crop 3600 acres on our
26 family-owned farm. In addition to animal agriculture, we
27 operate Fairmont Farm & Market where consumers can
28 purchase our farm's beef, pork, and lamb, Cabot dairy



1 products, and other local products.

2 My role on the farm is CFO, Human Resources, and
3 Public Relations Director. Before returning to our family
4 farm, I attended Cornell University, and after graduation,
5 worked for Yankee Farm Credit as a loan officer and tax
6 specialist.

7 I was elected to Agri-Mark's Board of Directors in
8 2021, and in 2023 was elected to a board leadership
9 position of 5th Executive Committee Member. As a co-op
10 director, I'm focused on the future of Agri-Mark, our
11 Northeast milk shed, and every member's farm along with my
12 own.

13 Additionally, I am a director for New England
14 Dairy Promotion, a prior Director for the Vermont
15 Agriculture Innovation Board, and previously was the
16 Secretary of the Vermont Holstein Association. I have
17 been active in Agri-Mark's Young Cooperator program as
18 well as their Vermont Legislative Committee.

19 Agri-Mark, a dairy cooperative in the Northeast,
20 is owned and operated by over 550 dairy farm families
21 across New England and New York. Our members are pooled
22 in Federal Order 1. The cooperative has been marketing
23 milk for dairy farmers since 1916, and has headquarters in
24 both Andover, Massachusetts and Waitsfield, Vermont.
25 Those farm families supply more than 3.2 billion pounds of
26 farm fresh milk that we use to make our award-winning
27 Cabot branded cheeses, dairy products, and ingredients.

28 Agri-Mark operates three cheese manufacturing



1 facilities located in Cabot and Middlebury, Vermont, and
2 Chateaugay, New York. These are pooled supply plants.
3 The cooperative manufactures and markets valuable whey
4 proteins around the world, produced at Middlebury -- at
5 our Middlebury, Vermont facility. Agri-Mark also operates
6 a butter powder facility in West Springfield,
7 Massachusetts, that is a non-pooled supply plant.
8 Additionally, Agri-Mark supplies fresh fluid milk to the
9 region's largest dairy processors.

10 I'm testifying today on behalf of Agri-Mark and
11 our 550 dairy farm families. As farmers and cooperative
12 owners, we recognize the importance of Federal Milk
13 Marketing Orders and the value they provide to dairy
14 farmers, cooperatives, and processors alike. We
15 appreciate the time and the effort that National Milk
16 Producers Federation and its cooperatives have put in over
17 the last two years to ensure that the FMMOs are
18 modernized.

19 FMMOs are designed to assure consumers an adequate
20 supply of fluid milk and promote orderly marketing for
21 farmers. Amending the FMMOs is critical to ensure FMMOs
22 evolve with the ever changing industry and meet the needs
23 of today's dairy industry participants. Agri-Mark is in
24 full support of National Milk Producers Federation
25 proposal for modernization of the Federal Milk Marketing
26 Orders. Additionally, we support NMPF's legislative
27 efforts to give USDA authority to collect data to support
28 future and frequent improvements to the FMMO system.



1 My remarks today focus on support of NMPF's
2 Proposal 3, restore the original Federal Order Reform
3 Class I skim milk price mover. NMPF's Proposal 3
4 recommends the Class I mover calculation be returned to
5 the original higher-of Class I skim milk price mover.

6 Since Federal Order Reform, the Class I mover was
7 equal to the higher-of Class III or Class IV. This
8 calculation was hugely beneficial for farmers throughout
9 the years as it was in place, always returning the highest
10 price to farmers.

11 In 2017, at the request of processors looking for
12 improved price risk management, a group of stakeholder
13 representatives reached a compromise. The agreed upon
14 change eventually included in the 2018 Farm Bill and put
15 in place in May of 2019 changed the Class I skim milk
16 price mover formula to the average-of Class III and
17 Class IV plus \$0.74 per hundredweight.

18 The change was made with the intention of two
19 outcomes: One, using an average calculation would improve
20 price risk management; and two, the addition of \$0.74
21 would make the change revenue neutral for farmers over
22 time. While we appreciate that the first of those
23 outcomes have been achieved, we must recognize that the
24 second has fallen short.

25 As expert witnesses have testified, the current
26 formula creates asymmetric risk for dairy farmers. It
27 puts a ceiling on how much more Class I skim revenue can
28 be generated for producers than the old formula without



1 any downside limit on how much more revenue can be lost.
2 Since implemented, the change has cost dairy farmers
3 nationwide more than 900 million in Class I revenue, with
4 the Northeast Order suffering the largest share. The
5 impact was felt by all farmers, regardless of farm size,
6 and was an unintended and unanticipated consequence of
7 changing the formula.

8 In 2020, in response to the pandemic, the USDA
9 created the Farmers to Families Food Box Program. The
10 program heavily weighed its dairy products purchases
11 towards cheese, which consequentially caused a wide chasm
12 between Class III and Class IV prices. This resulted in
13 Class I skim milk prices averaging \$3.56 a hundredweight
14 lower during the second half of 2020 than they would have
15 under the higher-of mover, equating to 750 million in
16 costs on skim milk revenue, including more than
17 141 million in the Northeast Order.

18 We're grateful for the Pandemic Market Volatility
19 Assistance Program created by USDA in 2021. PMVAP
20 returned 350 million (250 in Round 1 and 100 million in
21 Round 2) of this lost revenue caused by the government
22 induced pandemic market back to farmers nationwide through
23 emergency COVID funds provided by Congress. That equated
24 to 46% of 2020's losses. Our two farms received a
25 combined total of \$131,513 based on January to June 2020
26 milk that was split up between Round 1 and Round 2.
27 However, we recognize that these ad hoc programs are not
28 feasible nor appropriate in perpetuity.



1 Unfortunately, the impacts did not end in 2020,
2 and continued in the post-pandemic markets of 2022, and
3 now into 2023. In these cases, underlying market
4 fundamentals drove divergences in Class III and IV prices.
5 In 2022, Class I skim milk prices averaged \$0.62 lower
6 than they would have under the higher-of mover. That
7 equated to more than 230 million in lost Class I skim
8 revenue, including more than 45 million in the Northeast
9 Order. Thus far in 2023, we have witnessed \$1.02 a
10 hundredweight negative impact in the Class I skim milk
11 revenue in July, and \$1.67 per hundredweight August
12 impact, with additional losses expected.

13 Only one of the two intended outcomes of the 2018
14 change has been met: It improved price risk management
15 for Class I processors. The second objective, farmer
16 revenue neutrality, has been grossly undermet. Given the
17 price volatility that persists in today's dairy market,
18 the current average-of formula is expected to continue to
19 negatively and meaningfully cost dairy farmers compared to
20 the previous higher-of mover.

21 Eliminating the asymmetric risk factor by our
22 dairy farmers has to be top priority. The solution is the
23 adoption of NMPF Proposal 3, restore the original Federal
24 Order Reform Class I skim milk price mover.

25 I thank you USDA for the opportunity to testify
26 today and encourage USDA to adopt this proposal.

27 MS. HANCOCK: Your Honor, we would make her
28 available for cross-examination.



1 THE COURT: Thank you, Ms. Hancock.

2 Who would like first to ask questions of Ms. Ayer?

3 I had one question.

4 So what is in East Montpelier, Vermont, as opposed
5 to what's in Andover, Massachusetts?

6 THE WITNESS: Sure. Well, my farm is in East
7 Montpelier. Andover, Massachusetts would be our
8 headquarters for Agri-Mark, which is the cooperative we're
9 a part of.

10 Does that answer your question?

11 THE COURT: It does indeed. Thank you.

12 I would invite questions from the Agricultural
13 Marketing Service.

14 CROSS-EXAMINATION

15 BY MS. TAYLOR:

16 Q. Good afternoon.

17 A. Hi.

18 Q. Thank you for joining us and taking time out of
19 your day to testify.

20 This is Erin Taylor with USDA. You mention your
21 farm has -- between the two farms I think -- you have 1500
22 cows and then a very diversified portfolio.

23 So I do have a question as to whether your farm,
24 or farms, meet the small business definition, and I'm not
25 sure if you heard me state what that was on the earlier
26 witness.

27 A. We do not meet that definition.

28 Q. And where does your milk go?



1 A. Our milk travels about 15 miles to Cabot Creamery,
2 the Cabot, Vermont plant.

3 Q. And you're talking about the Class I skim mover in
4 your testimony, and I'm just wondering also if you might
5 be able to add to the record from your farm's experience,
6 we have had many farmers talking about kind of how -- how
7 things look on the farm for the past couple years, and if
8 you could speak to your experience when it comes to milk
9 prices or input costs and hauling costs, etcetera.

10 A. Sure. Yeah.

11 I think my testimony on that is not going to be
12 that different from what you have heard. Margins are
13 small. They're especially tight this year. We're seeing
14 increases in all of our inputs, largely feed and labor,
15 and fertilizers, things like that. And certainly the
16 revenue hasn't been there as to back up those rising
17 costs.

18 Q. And so with that in mind, I was wondering if you
19 could tell us if you all use any risk management tools to
20 help you weather that storm?

21 A. Sure. We do participate in DMC, which I have very
22 much appreciated the changes that have been made to that
23 program over the years. We find that that works well for
24 us.

25 We have -- we have tried DRP a little bit here and
26 there. I would not say we actively participate in that.
27 It -- that would be a business-dependent decision, and it
28 hasn't necessarily made sense for us.



1 Q. Okay. Thank you.

2 MS. TAYLOR: Thank you for your time today.
3 Appreciate it.

4 THE COURT: Thank you so much, Ms. Ayer. You're
5 number 3 farmer of our 9 farmers that we're going to talk
6 to in this way.

7 Is there anything else you would like to add
8 before I ask for counsel's redirect examination?

9 THE WITNESS: I just really appreciate the time.
10 Thank you.

11 THE COURT: You're welcome.

12 Ms. Hancock.

13 MS. HANCOCK: Thank you for being here, Ms. Ayer.
14 Your Honor, we would move for admission of
15 Exhibit 280.

16 THE COURT: Is there any objection?

17 There is none. Exhibit 280, also marked as
18 Exhibit NMPF-75, is admitted into evidence.

19 Thank you again, Ms. Ayer.

20 (Exhibit Number 280 was received into
21 evidence.)

22 THE COURT: It's 12:55. After the next farmer
23 we're going to take at least a five-minute stretch break.

24 (Court Reporter clarification.)

25 THE COURT: We'll take two minutes right now.

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

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

28 We're back on record at 12:56 p.m.



1 I'm Judge Clifton. And you cannot see me, but I'm
2 delighted that you are Jennifer Lawrence. Would you --

3 THE WITNESS: The original.

4 THE COURT: The original. Very well played.

5 Would you state and spell your name?

6 THE WITNESS: Sure. Jennifer Lawrence,

7 J-E-N-N-I-F-E-R, L-A-W-R-E-N-C-E.

8 THE COURT: Thank you.

9 Have you previously testified in this proceeding?

10 THE WITNESS: No, I have not.

11 THE COURT: In that case, I would like to swear
12 you in. Would you raise your right hand, please.

13 JENNIFER LAWRENCE,

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

16 THE COURT: Thank you. I know you can't see me.

17 I'm Judge Clifton. I can see you.

18 I would like now to invite Ms. Hancock to speak.

19 MS. HANCOCK: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MS. HANCOCK:

22 Q. Good afternoon, Ms. Lawrence.

23 Did you prepare -- well, I should start off, what
24 is your business address?

25 A. My business address is 13921 Park Center Road,
26 Herndon, Virginia, 20171.

27 Q. Thank you.

28 And did you prepare Exhibit NMPF-78 in support of



1 your testimony today?

2 A. I did, along with some assistance from the
3 Ms. Bath at Maryland & Virginia.

4 Q. Okay.

5 MS. HANCOCK: Your Honor, if we could mark this as
6 Exhibit 281.

7 THE COURT: Yes. It's so marked.

8 (Exhibit Number 281 was marked for
9 identification.)

10 THE COURT: So it is Exhibit 281, and it also
11 has, up in the upper right-hand corner,
12 Exhibit NMPF-78.

13 MS. HANCOCK: Thank you.

14 BY MS. HANCOCK:

15 Q. Ms. Lawrence, would you proceed with your
16 testimony? And then, just be mindful of our court
17 reporter and your speed.

18 A. All right. Thank you.

19 Hello. My name is Jennifer Lawrence, and I, along
20 with my husband Tom, and our daughter Carolyn, operate Tol
21 Je So Farm, LLC, in Nottingham, Pennsylvania, which is in
22 southern Lancaster County. Currently, we rent the house,
23 barns, and pasture on the farm. We milk about 100 cows
24 and raise about 80 replacement heifers. We purchase all
25 the feed for our operation from the owner of the farm.
26 Our farm markets its milk through Maryland & Virginia Milk
27 Producers Cooperative Association, Incorporated. In
28 addition to farming, I currently serve on our



1 cooperative's Board of Directors and have since 2020.

2 I am a first-generation dairy farmer, while my
3 husband Tom is a third-generation dairy farmer. When his
4 family sold their farm in 1987, Tom left with five
5 heifers, and he and I began our dairy journey together by
6 renting a dairy farm with 35 cows in Pomfret Center,
7 Connecticut.

8 Q. Ms. Lawrence, if I could just have you go a little
9 bit slower.

10 A. Yes, I can. Sorry.

11 There we built the herd up to 70 milking cows. In
12 1996, we sold half of our milking herd and left New
13 England with the remaining half of our herd to join
14 another herd in Port Deposit, Maryland, where we farmed
15 for the next ten years. In 2006, we moved our herd and
16 our family to our current facility where we farm today.

17 I am here today to testify in support of the
18 National Milk Producers Federation proposal to restore the
19 original Federal Order Reform Class I milk price mover
20 formula to use the higher-of the most currently calculated
21 advanced Class III or Class IV skim milk price.

22 As was the case in 2000, milk used for
23 manufacturing is separated into two categories, with
24 Class III being primarily cheese and Class IV being
25 primarily butter and nonfat dry milk. Using the higher-of
26 and the Class I skim milk price formula would help to
27 assure that shifts in demand for any one of the products
28 of the two classes would not lower the Class I value.



1 Consequently, this would also help to reduce the
2 volatility in milk prices from month to month, bringing
3 more stability and predictability to farmer income. This
4 would also likely reduce incidents of uniform statistical
5 price calculations resulting in negative PPDs.

6 The previous methodology seemed to work well in
7 the first 17 years since Federal Order Reform. However,
8 some processors and sellers of dairy products that used
9 risk management strategies raised some concern with this
10 methodology because they do not have the ability to
11 predict which of the two manufacturing classes would be
12 the higher-of. This added a secondary layer of inherent
13 risk to them.

14 In an attempted compromise, the Agriculture
15 Improvement Act of 2018, implemented in the 2019 final
16 rule, changed the Class I mover to the current language
17 which uses the average-of Class III and Class IV prices
18 plus a fixed differential of \$0.74 per hundredweight. The
19 \$0.74 differential represents the average value that the
20 higher Class III and Class IV contributed to the Class I
21 mover, relative to the average-of Class III and IV from
22 January 2000 through August of 2017. The intent of this
23 change was to ensure revenue neutrality to dairy farmers,
24 while removing an additional risk factor from processors
25 and sellers of dairy products that use risk management
26 strategies.

27 However, this change in the Class I mover formula,
28 since it became effective in 2019, has created significant



1 market losses in pooled Class I skim milk values in all
2 orders. Those losses are estimated to have been more than
3 900 million through January of '23 -- 2023. Those losses
4 are more likely magnified because of the unprecedented and
5 unforeseeable volatility in the marketplace that occurred
6 which were related to the COVID-19 pandemic and continued
7 recovery from it.

8 In the second half of 2020, the Farmers to Family
9 Food Boxes created significant demand for cheese, causing
10 a rapid run-up of Class III prices while the Class IV
11 prices did not follow. In 2022, the opposite occurred;
12 while Class IV prices remained relatively strong,
13 Class III prices saw modest decreases. At times, these
14 inversions had created record negative producer price
15 differentials, also known as PPDs. Those inversions are
16 likely to continue in the future and will continue to have
17 a detrimental effect on producer prices if things don't
18 change. Farmers, whose job it is to feed the world,
19 especially in times of need, have been effectively
20 punished by the unintended consequences of a miscalculated
21 policy decision.

22 I would be remiss if I didn't take advantage of
23 this unique opportunity to appear before the USDA today to
24 express my sincere appreciation and gratitude to Secretary
25 Vilsack for his support and Congress for their passage of
26 the Pandemic Market Volatility Assistance Program,
27 hereafter referred to as PMVAP. The PMVAP program
28 ultimately distributed nearly \$350 million to dairy



1 farmers to help at least partially offset the losses
2 incurred by dairy farmers between July and December of
3 2020. While those dollars seem significant, and they are,
4 they are just a fraction of the revenue that dairy farmers
5 lost during that same period due to the Class I mover
6 formula in 2019.

7 Please allow me to remind you of where I am from.
8 I live in Lancaster County, Pennsylvania, home of the
9 largest concentration of Amish communities in the world.
10 Many of my dairy farmer neighbors and constituents of my
11 cooperative are of plain sect, are extremely conservative,
12 and are deeply rooted in their religious convictions.
13 Despite my many efforts to encourage their participation
14 in the PMVAP program by explaining that it was designed
15 and intended to assist dairy farmers who received a lower
16 value of milk due to market abnormalities caused by the
17 pandemic and ensuing federal policies, most would
18 absolutely refuse to participate. No matter how the
19 program was dressed up, the program was still considered a
20 government handout, even though the dollars were
21 distributed by their handler cooperative. They clearly
22 understand that the funds were derived from taxpayers and
23 not the marketplace.

24 Today, I will stand beside those same conservative
25 farmers, as well as the National Milk Producers
26 Federation, to support their stance that the Class I mover
27 formula needs to be restored to what it was with the
28 Federal Order Reform in 2000. Using the higher-of the



1 most currently calculated advanced Class III or Class IV
2 skim milk price in the Class I mover formula will ensure
3 the dollars will come to the marketplace as originally
4 intended. Thank you.

5 THE COURT: Thank you, Ms. Lawrence.

6 Ms. Hancock.

7 BY MS. HANCOCK:

8 Q. Thank you, Ms. Lawrence. I just first want to say
9 I love the name of your farm. When I read it, it didn't
10 ring like you said it, so I should have said it out loud.
11 So it's very clever.

12 Just one question on behalf of National Milk. We
13 appreciate your testimony here. You talk in large part
14 about higher-of and the proposal that National Milk put
15 forth with respect to the higher-of. But National Milk
16 had four other proposals as well, and I just wanted to
17 confirm whether you support those proposals as well.

18 A. I do. Our cooperative does as well.

19 Q. And the reason that you have highlighted the
20 higher-of for purposes of your testimony is because of its
21 priority and importance to you?

22 A. That's correct.

23 Q. Okay. I appreciate that.

24 MS. HANCOCK: Your Honor, we would make her
25 available for cross-examination at this time.

26 THE COURT: Thank you, Ms. Hancock.

27 I would now invite cross-examination of
28 Ms. Lawrence.



1 Dr. Cryan.

2 CROSS-EXAMINATION

3 BY DR. CRYAN:

4 Q. Good afternoon, Mrs. Lawrence. I'm Roger Cryan
5 with the American Farm Bureau Federation.

6 A. Good afternoon.

7 Q. Thank you for your testimony. Thanks for
8 participating.

9 Are you a Farm Bureau member?

10 A. Yes. For many years.

11 Q. Wonderful. Thank you.

12 Could you expand a little bit on the impacts that
13 the negative PPDs and depooling have had on you or your
14 neighbors?

15 A. Well, you know, with the price volatility and, you
16 know -- it impacts our income, you know, and we expect
17 a -- and need a certain amount of money to cover our
18 expenses, to cover our feed bills. And when we're
19 getting -- you know, subtracting 2, 3, up to \$5, it hurts
20 a lot.

21 Q. And to follow up on one of the points you made
22 about, you know, it's not just Amish folks, it's not just
23 conservative folks, it's farmers generally would prefer to
24 get their money from the market than from the government;
25 is that correct?

26 A. Absolutely. Absolutely. You know, we're --
27 we're -- we don't want handouts. We want to earn an
28 honest living at the end of every day.



1 Q. That's all I have.

2 DR. CRYAN: Thank you very much.

3 THE WITNESS: Thank you.

4 THE COURT: Are there other questions for
5 Ms. Lawrence?

6 I would invite the Agricultural Marketing Service
7 to ask questions.

8 CROSS-EXAMINATION

9 BY MS. TAYLOR:

10 Q. Good morning -- or afternoon.

11 A. Afternoon, yes.

12 Q. It's been a long week, but it's always good to end
13 with dairy farmers at the end of the week. So I do
14 appreciate you taking the time out of your day to join us
15 today. This is --

16 A. Thank you.

17 Q. This is Erin Taylor with USDA, and I just had a
18 couple of questions for you.

19 First, for your farm, did you hear my question of
20 other witnesses in listing the small business definition?

21 A. Yes. And we do qualify for that.

22 Q. Okay. And where does your milk go?

23 A. Maryland & Virginia Milk Producers Co-op, we
24 market our milk to them. The Thursday before this -- you
25 know, the week -- following week, they decide where our
26 milk is needed based on orders, and the most economical
27 way to move the milk. Our milk generally goes about
28 45 minutes from where we are, but up to two hours.



1 (Court Reporter clarification.)

2 THE WITNESS: It's Maryland & Virginia Milk
3 Producers Co-op. They market our milk for us. And on the
4 Thursday before the -- you know, the next week, they
5 decide where our milk goes based on orders and the most
6 economical way to move that milk. Our milk goes -- our
7 personal milk goes 45 minutes or up to two hours away.

8 BY MS. TAYLOR:

9 Q. Can you talk a little bit about how your hauling
10 costs have been in the past couple of years? How have you
11 seen those? Up? Down? The same?

12 A. They try and keep it pretty steady. It has, you
13 know, trended up, you know, based on fuel costs.

14 Q. And I was wondering, you talked a little bit on
15 the milk price and revenue side with Dr. Cryan.

16 But could you talk a little bit about the cost
17 pressures on your farm and how you have seen input costs
18 recently or over, you know, the past five years, let's
19 say?

20 A. Well, we are a purchased feed operation, so we are
21 completely dependent upon the market prices of grain and,
22 you know, corn silage. And so we have seen, of course,
23 that trending up as well. A couple years ago things were
24 pretty steady, but they are really trending up and making
25 it tighter as we -- it's been a little bit tough, you
26 know. Our neighbors are in the same boat. We go to hay
27 auctions and try and get the best prices we can for our --
28 for our inputs.



1 Q. Okay. Thank you.

2 And I was wondering if you use any risk management
3 tools?

4 A. Yeah. We use DMC. If it wasn't for DMC, we -- I
5 wouldn't be sitting here with you today. DMC's made a big
6 difference for our farm and, you know, helping keep the
7 income somewhat predictable and steady.

8 Q. Okay.

9 MS. TAYLOR: Well, thank you very much, and I
10 appreciate you taking the time today.

11 THE WITNESS: Thank you.

12 THE COURT: Ms. Hancock, redirect?

13 MS. HANCOCK: Your Honor, we would just move for
14 admission of Exhibit 281.

15 THE COURT: Is there any objection?

16 There is none. Exhibit 281, also marked as
17 Exhibit NMPF-78, is admitted into evidence.

18 (Exhibit Number 281 was received into
19 evidence.)

20 MS. HANCOCK: Thank you for your time,
21 Ms. Lawrence.

22 THE WITNESS: Thank you.

23 THE COURT: Thank you, Ms. Lawrence. You're
24 welcome to continue to monitor. We have five more farmers
25 after you.

26 THE WITNESS: Well, enjoy them. Thank you.

27 MS. TAYLOR: Your Honor, I was wondering if we
28 could fit one more farmer in before our break.



1 THE COURT: Are you thinking -- okay, I'm thinking
2 of stand up five minutes here in the room. Are you
3 thinking ten minutes?

4 MS. TAYLOR: I'm thinking of a ten-minute break
5 after our next farmer.

6 THE COURT: Okay. Let's have two minutes to stand
7 up and move. Is our next farmer already connected?

8 MS. TAYLOR: Yes.

9 THE COURT: She is. Okay. It will only be two
10 minutes.

11 MS. TAYLOR: Okay. Two minutes. Thank you.
12 Let's go off record for that at 13:13, 1:13.

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

14 THE COURT: All right. We're back on record at
15 1:15.

16 Mr. Frost, you can hear my voice, but not see me.
17 I'm Judge Clifton, and thank you, we needed that stretch.

18 All right. I'm looking at testimony of Spencer
19 Frost. The document has been marked as Exhibit 282.

20 (Exhibit Number 282 was marked for
21 identification.)

22 THE COURT: And it is also marked as Edge-13.
23 Can you hear me okay?

24 THE WITNESS: It is a little faint. My earpiece
25 turned off when I came on video. So I can hear you. I
26 just have to lean in and look a little silly on video
27 here.

28 THE COURT: Can we fix that? No?



1 I'm sorry, you don't look silly. However, you can
2 keep your chin up even while you are leaned in so that we
3 can see more of your face and less of the top of your
4 head.

5 THE WITNESS: Okay.

6 THE COURT: Okay. Good. All right. I think that
7 will work.

8 Mr. Frost, have you previously testified in this
9 proceeding?

10 THE WITNESS: I have not.

11 THE COURT: All right. I'd like to swear you in.
12 Would you raise your right hand, please.

13 SPENCER FROST,

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

16 THE COURT: Thank you.

17 Do you want to read your statement or do you want
18 to talk to us knowing that we have your statement?

19 THE WITNESS: I will be mostly reading the
20 statement. I do -- I might elaborate a little bit
21 further, but it will be from the statement.

22 THE COURT: Excellent. You may proceed.

23 THE WITNESS: My name is Spencer Frost -- as we've
24 already covered -- I'm from Frost Farms in Waterford,
25 Wisconsin. That's kind of the far southeast corner,
26 Racine County.

27 MS. TAYLOR: Mr. Frost? Sorry, we have a court
28 reporter here that will attempt to get down every word you



1 say, so could you speak a little bit slower?

2 THE WITNESS: I will.

3 MS. TAYLOR: Or a lot slower.

4 THE WITNESS: Sorry. Okay.

5 My name is Spencer Frost. I'm from Frost Farms in
6 Waterford, Wisconsin. We are a sixth-generation dairy
7 farm where we milk over 650 cows, raise 500 replacements,
8 and farm nearly 1700 acres of land. We employ 17 full-
9 and part-time employees.

10 Our milk goes to a privately-owned butter
11 manufacturer named Grassland Butter. That plant is in
12 Greenwood, Wisconsin, which is about 230 miles from our
13 farm. And our farm does pay for all the trucking costs,
14 which right now is roughly 10% of the value of milk. I
15 think it's \$1.75 a hundredweight. During some of the
16 school year, though, luckily, we're able to ship to a
17 fluid milk plant that supplies the Chicago Public School
18 system. That's located in Rockford, Illinois. That plant
19 cuts our costs in half, roughly, to around \$0.80.

20 Our farm would not -- even though my brother and I
21 manage, own, and work on the farm every day -- our farm
22 would not meet the definition of a small business as it
23 has been identified with this hearing, based on our
24 revenue.

25 Our farm is a member of the Edge Dairy Farm
26 Cooperatives. Edge, based in Green Bay, Wisconsin, is the
27 third largest dairy cooperative in the country, according
28 to milk volume. In addition to milk verification



1 services, Edge provides dairy farmers throughout the
2 Midwest with a voice in Congress, with customers, and
3 within our communities. Our over 800 member farms are
4 located in Illinois, Indiana, Iowa, Kansas, Minnesota,
5 Nebraska, Ohio, South Dakota, and Wisconsin, where I'm
6 joining you from.

7 In addition to belonging to Edge, I do serve on
8 the Board of Directors for the Dairy Business Association,
9 a dairy-focused trade association, in Wisconsin.

10 I am testifying today in support of Edge's
11 Proposals 16 and 17. While I'm not an expert on all the
12 intricacies of the proposals, I am very much in favor of
13 their intent to enhance farmer's ability effectively
14 manage price risk.

15 On our farm, we do utilize Dairy Margin Coverage,
16 Dairy Revenue Protection, and Livestock Gross Margin
17 insurance. We like to protect as far into the future as
18 we can. Usually that's 11 months into the future. This
19 allows us to smooth out the volatility of selling a
20 perishable commodity that is based on a variable price we
21 can't control.

22 Any changes that might impact our ability to use
23 these tools would negatively impact our farm and its
24 financial viability. This includes delaying formula
25 changes and eliminating advanced pricing. Eliminating
26 advanced pricing would work to prevent negative producer
27 price differentials from adversely impacting a producer's
28 ability to effectively manage price risk.



1 A significant negative PPD can make the programs I
2 mentioned above, and utilize, so much less effective,
3 because it makes my mailbox check so much less than the
4 price I manage for and protected for.

5 Additionally, depooling is a negative for the
6 dairy industry. Even though much of our farm's milk is
7 used for fluid and butter consumption, it is apparent that
8 cheese is the driver of the dairy market going forward.
9 Allowing processors to jump in and out of pools causes a
10 negative effect on our mailbox price through negative
11 PPDs.

12 And I would like to see us eliminate that
13 loophole. We all are producing milk, and in our farm's
14 case, and the case of the vast majority of Wisconsin
15 farms, it's high quality milk fit for any use. Why should
16 some be able to take advantage of the system to the
17 disadvantage of others?

18 With that, I conclude. We just want a fair
19 playing field that we all can manage risk effectively for.
20 And I very much appreciate your time. Thank you to the
21 USDA and AMS for the opportunity to testify. Have a great
22 day and thank you for your service to the ag community and
23 farms like ours. Thank you.

24 THE COURT: Mr. Frost, that was very eloquent
25 and -- oh, I'm sorry, you have to lean in, yes.

26 THE WITNESS: I can hear you, sorry.

27 THE COURT: All right. This is Judge Clifton.
28 That was very eloquent and thought-provoking.



1 THE WITNESS: Thank you.

2 THE COURT: You're welcome. You have a lot to
3 say.

4 Now, there will be people here who may want to ask
5 you questions, so I'm going to give them an opportunity to
6 let me know that now.

7 THE WITNESS: Okay.

8 THE COURT: I would invite the Agricultural
9 Marketing Service to question Mr. Frost.

10 CROSS-EXAMINATION

11 BY MS. TAYLOR:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. Thank you for joining us virtually today. This is
15 week six, and I think all the farmers are listening, and I
16 don't have very many questions, because most of you put
17 all of your answers to my questions in your statement. So
18 I appreciate that. It's good to know someone's listening
19 out there.

20 I do have one --

21 A. I value efficiency.

22 Q. After six weeks, we do as well, I'll tell you
23 that.

24 I do have one clarification question, and I want
25 to make sure I understand it. You talked about you don't
26 want any changes that would impact your ability to hedge,
27 that would negatively impact your farm and your ability to
28 hedge.



1 And one of the things you said you support is
2 eliminating advanced pricing; is that correct?

3 A. Yes.

4 Q. And the other thing, I think just because the way
5 it's written in the sentence, and the way the sentences
6 work together, and you said, "This includes delaying
7 formula changes."

8 So are you supporting delaying implementation of
9 any formula change?

10 A. The way I did -- I agree that I did feel I worded
11 that clunky in the statement. I'm just saying I don't
12 want to -- I need to be able to effectively use these
13 tools. I'm in support of just consistency and the ability
14 to utilize the tools I have been using. And if we can,
15 you know, do the things like controlling the depooling
16 issue and other things that would affect negative PPDs,
17 that's what I'm in favor of, yes.

18 Q. Okay.

19 MS. TAYLOR: Well, thank you very much. And thank
20 you for taking the time, and also for showing us the
21 beautiful place you live in, so I appreciate it.

22 THE WITNESS: Thank you.

23 THE COURT: I am looking at Exhibit 282, also
24 marked as Edge-13. Is there any objection to that
25 document being admitted into evidence?

26 There is none. Exhibit 282 is admitted into
27 evidence.

28 (Exhibit Number 282 was received into



1 evidence.)

2 THE COURT: Thank you again, Mr. Frost.

3 THE WITNESS: Thank you very much.

4 MS. TAYLOR: So at this time, Your Honor, I think
5 I would maybe encourage we take a 15-minute break, or
6 10-minute break, 10 minutes.

7 And then I will ask, if Heidi Fischer is online,
8 you would be next up. If you could raise your hand
9 virtually so that our USDA crew can find you in the list.

10 She raised her hand, so we'll be able to get you
11 queued up to go first after the break. Thank you.

12 THE COURT: All right. Please be back and ready
13 to go at 1:35. We now go off record at 1:25.

14 (Whereupon, a break was taken.)

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

16 All right. We're back on record.

17 It's 1:36. Do we have Heidi Fischer able to hear
18 my voice?

19 THE WITNESS: Yes.

20 THE COURT: Oh, good. You're loud and clear.

21 Am I loud and clear to you, Ms. Fischer?

22 THE WITNESS: Yes, you are.

23 THE COURT: My name is Jill Clifton. I'm the
24 judge that's presiding at this point, and I have got in
25 front of you a statement that's marked Edge-12, and I'm
26 going to mark that with our next exhibit number in this
27 proceeding. So this will be Exhibit 283.

28 ///



1 (Exhibit Number 283 was marked for
2 identification.)

3 THE COURT: And I can see you, and I am delighted.
4 That's a good, clear picture. You cannot see us, and I'm
5 sorry for that. But -- but I'm Jill Clifton, and we'll
6 have some other people who will talk to you about your
7 statement, if they have questions.

8 So have you -- well, let me start by having you
9 state and spell your name.

10 THE WITNESS: Heidi Fischer, H-E-I-D-I,
11 F-I-S-C-H-E-R.

12 THE COURT: Thank you.

13 Have you previously testified in this hearing?

14 THE WITNESS: No, I have not.

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

16 Would you raise your right hand, please.

17 HEIDI FISCHER,

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

20 THE COURT: Thank you.

21 You may proceed.

22 THE WITNESS: Hello. My name is Heidi Fischer,
23 and I farm with my husband Jon, and his parents Mike and
24 Sue, at Fischer-Clark Dairy Farm in Hatley, Wisconsin.
25 The farm was founded in 1972 with eight cows. Today, we
26 milk over 1,000 cows and raise nearly 700 calves and
27 heifers, as well as farm about 2,750 acres for corn,
28 alfalfa, soybeans, and grass. We employ 18 full-time and



1 six part-time employees. In addition to practicing
2 strip-till precision farming for the last eight years, we
3 use some no-till and cover crops, and have inter-seeded
4 our second-year alfalfa with a grass blend to boost
5 tonnage and milk component levels.

6 The milk from our farm is shipped to a
7 privately-owned cheese plant in nearby Antigo, Wisconsin.
8 The haul is about 30 miles from our farm, and our farm
9 pays for all of the freight charges.

10 Our farm would not meet the definition of a small
11 business established in this hearing for dairy farms.

12 Our farm has been continuously recognized by our
13 processor for our high quality, including low somatic cell
14 count and high cheese yield since 2016. Fischer-Clark
15 Dairy Farm was also recognized as the 2019 Platinum farm
16 and the 2022 Silver farm for the National Dairy Quality
17 Assurance. We hope to continue advancing our farm and
18 build more efficiencies through technology and other
19 evolutions.

20 In addition to my role on the farm, I sit on
21 several boards, including my role as Secretary on the Edge
22 Dairy Farmer Cooperative Board of Directors. I also sit
23 on the Board of Directors for the Greater Wausau Area
24 Chamber of Commerce, and the Partnership for Progressive
25 Agriculture, a county ag promotion group.

26 Edge is based in Green Bay, Wisconsin, and it's
27 the third largest dairy cooperative in the country based
28 on milk volume. In addition to milk verification



1 services, Edge provides dairy farmers throughout the
2 Midwest with a voice in Congress, with customers, and
3 within our communities. Our over 800 member farms are
4 located in Illinois, Indiana, Iowa, Kansas, Minnesota,
5 Nebraska, Ohio, South Dakota, and Wisconsin.

6 I'm testifying here today in support of
7 Proposals 16 and 17 put forth by the Edge Dairy Farmer
8 Cooperative. While I cannot speak to the specifics of
9 these proposals, both would eliminate the advanced pricing
10 of Class I milk.

11 While I have not watched the entirety of this
12 hearing, one issue I do not believe has received enough
13 attention is advanced pricing. Due to the various hedging
14 options available and discussed within this hearing,
15 advanced pricing is no longer necessary for fluid milk
16 bottlers and other manufacturers. Much like dairy
17 farmers, processors can now hedge to protect their
18 financial exposure for market volatility.

19 Today's current advanced pricing system allows for
20 rising unannounced or final prices to exceed advanced
21 prices resulting in lower or even negative producer price
22 differentials and depooling.

23 These conditions --

24 THE COURT: Ms. Fischer, this is Judge Clifton.
25 You read that sentence a little differently from what's
26 typed on this page. Would you read that again?

27 THE WITNESS: Sure.

28 Today's current advanced pricing system allows for



1 rising un- -- announced or final prices --

2 THE COURT: That's what I wanted to clarify, you
3 read it as "unannounced," I see typed "announced."

4 THE WITNESS: Correct. It should be announced.
5 I'm sorry.

6 THE COURT: It should be what?

7 THE WITNESS: Announced.

8 THE COURT: Okay. Good. Start again, then,
9 please.

10 THE WITNESS: Sure.

11 Today's current advanced pricing system allows for
12 rising announced or final prices to exceed advanced
13 prices, resulting in lower or even negative producer
14 differentials and depooling. These conditions can
15 adversely impact the farmer's ability to effectively
16 manage the price risk on the farm.

17 Yes, we use LGM, or Livestock Gross Margins, for
18 dairy, as well as DMC or Dairy Margin Coverage. LGM has
19 been beneficial for us, as it has offset the low milk
20 prices and the high feed costs.

21 Thank you very much to USDA and AMS for allowing
22 me to speak at this hearing today, and for the enhanced
23 flexibility given to accommodate farmers like myself to
24 speak at this critical juncture in dairy pricing policy
25 reform.

26 THE COURT: And thank you very much.

27 Is there anything you want to add before I invite
28 questions from those who are here?



1 THE WITNESS: No. Not at this time.

2 THE COURT: All right. Are there questions for
3 Ms. Fischer?

4 I would invite questions from the Agricultural
5 Marketing Service.

6 CROSS-EXAMINATION

7 BY MS. TAYLOR:

8 Q. Good afternoon, Ms. Fischer. Thank you for
9 joining us today.

10 A. Thank you.

11 Q. Your statement covers most of my normal questions
12 for dairy farmers, so I do appreciate that. I did have a
13 question.

14 Most farmers come in and they say they use DMC or
15 DRP, but you say you use Livestock Gross Margin Dairy
16 Program.

17 A. Yes.

18 Q. So I wondered for the record if you could just,
19 you know, discuss a little bit about how that works.

20 A. I'm not very proficient in it. It's basically
21 done by my father-in-law. He's kind of taken over that
22 role on our farm. So I don't feel at this time I can
23 effectively speak on it.

24 Q. That's okay. We here in the room have learned a
25 lot about risk management, and most of us would probably
26 also want someone else to do it for us, if we had to.

27 A. Yes. I know Livestock, LGM, can be pretty
28 confusing, so I don't want to misspeak and misquote any of



1 the -- what is considered and what is not considered for
2 the pricing.

3 Q. All right. I appreciate that.

4 One general question about your farm. We have had
5 other farmers talk about -- I know your haul is short, but
6 for your other cost pressures on the farm, if you could
7 just talk a little bit about kind of what you all are
8 experiencing right now.

9 A. Absolutely.

10 As with other farmers, our input costs for our
11 fields for fertilizer definitely has increased in the last
12 several years. That's one of the reasons why we look into
13 the different cropping methods, using cover crops and
14 inter-seeding, trying to be more efficient with our manure
15 hauling, just to find a more organic, low-cost way to get
16 fertilizer back in.

17 Obviously, being in a rural part of Wisconsin, I
18 feel like employee costs have definitely gone up,
19 competing with manufacturers and other industries.
20 They're competing for the same sector of employees that
21 we're looking for, so that definitely has -- you know, to
22 meet their demands and to keep them, we like to have low
23 turnover, so, you know, we feel it's fair to help them --
24 also give them a fair pay.

25 And the trucking fee. I mean, I know we have a
26 short haul, but that was something that used to be
27 supplemented by our dairy plants and is no longer. And
28 the price has substantially gone up. And there's also a



1 fuel surcharge that when the fuel costs are over a certain
2 dollar level, it kicks in.

3 And unfortunately, I feel like since that's been
4 established, it's always been used. There's been little
5 to no relief on the price of diesel. So we definitely see
6 an increase in that hauling cost, and that's something
7 that is hard to manage. You're at the mercy of a third
8 party.

9 Q. Thank you.

10 And you mentioned up in the top of your statement,
11 that you feed, and one of the reasons the way you feed is
12 to build milk -- to increase milk component levels.

13 And so could you tell us what your average
14 component levels are?

15 A. Sure.

16 So we -- like I said, we have been recognized as
17 being a high-component farm, and that then translates into
18 a high cheese yield. So currently our butterfat is at
19 4.04, and our protein is at a 3.18. So that's, like, a
20 7.19 total. So as far as cheese yield, the goals, that's
21 ideal.

22 Q. Okay. And one last question.

23 Since you are up in Wisconsin, and we have had
24 discussion this week about just kind of how things operate
25 up there, and it seems to be a little different. And so
26 I'm curious if -- if -- if you have -- do you have a
27 contract with your plant up there, a written contract, or
28 is it one of those handshake agreements I keep hearing



1 about? How does that work up there?

2 A. We do not have a contract with our cheese plant.
3 So we do have to meet certain standards that they have
4 implemented, and a lot of it is based on the farm program.
5 So we meet with them twice annually to go over that. So
6 as long as we continue to meet those standards and we have
7 our low somatic cell count, we will get -- we're
8 considered, you know, an ideal patron farm for them.

9 MS. TAYLOR: Well, thank you very much for your
10 time today.

11 THE WITNESS: Thank you.

12 THE COURT: I'm looking now at Exhibit 283, also
13 marked as Edge-12. Is there any objection to that
14 document being admitted into evidence?

15 There is none. I admit Exhibit 283 into evidence.
16 (Exhibit Number 283 was received into
17 evidence.)

18 THE COURT: Thank you so much.

19 THE WITNESS: Thank you.

20 MS. TAYLOR: Okay. Your Honor, I think next on
21 the list is Simon Vander Woude from CDI, and I believe his
22 counsel is in the room.

23 THE COURT: Would you please -- I'm going to mess
24 this up -- I'm about to ask you to pronounce your name.
25 Would you please, Mr. Vander Woude, pronounce and spell
26 your name for us.

27 THE WITNESS: Sure. Simon Vander Woude,
28 S-I-M-O-N, V-A-N-D-E-R, W-O-U-D-E.



1 THE COURT: Woude; is that right?

2 THE WITNESS: Woude. Yep.

3 THE COURT: Good.

4 Have you previously testified in this hearing?

5 THE WITNESS: I have not.

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

7 Would you raise your right hand, please.

8 SIMON VANDER WOUDE,

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

11 THE COURT: I'm going to say it. Thank you,
12 Mr. Vander Woude.

13 THE WITNESS: You got it right away. Thank you.

14 THE COURT: Thank you. I like the "wow" part of
15 it.

16 THE WITNESS: Yeah. My son likes to say he's the
17 "wow" and his sister is the "duh."

18 THE COURT: I hope he's the little brother.

19 THE WITNESS: Naw, he's pretty big.

20 THE COURT: Ms. Hancock, would you identify
21 yourself, please?

22 MS. HANCOCK: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MS. HANCOCK:

25 Q. I'm Nicole Hancock with National Milk.

26 Would you mind providing your business address for
27 the record, please?

28 A. Sure. 2022 Rahilly Road, R-A-H-I-L-L-Y, Road,



1 Merced, California, 95341.

2 Q. Thank you.

3 And did you prepare Exhibit NMPF-72 for your
4 testimony today?

5 A. Yes, I did.

6 Q. Okay.

7 MS. HANCOCK: And Your Honor, if we could have the
8 next exhibit number?

9 THE COURT: Yes. This is marked Exhibit 284, and
10 I'll just also read into the record its previous
11 identification, Exhibit NMPF-72.

12 (Exhibit Number 284 was marked for
13 identification.)

14 MS. HANCOCK: Thank you.

15 BY MS. HANCOCK:

16 Q. Mr. Vander Woude, would you proceed with your
17 statement, please.

18 A. Yes.

19 Good morning -- good afternoon. My name is Simon
20 Vander Woude. My wife and I own and operate three dairies
21 in Merced County, California. We do have partners on two
22 of those dairies: One being a manager, and on the other,
23 two of our children. These are family-operated dairies.
24 I also happen to be the current chairman of California
25 Dairies, Incorporated, vice-chair of National Milk
26 Producers Federation, as well as serving on the board of
27 the U.S. Dairy Export Council.

28 I am either a first-generation dairyman or a



1 third-generation dairyman, depending on your definition.
2 Both of my grandparents were in the dairy business in San
3 Diego after immigrating from Holland after World War II.
4 My parents started their own operation in San Diego, which
5 is where I grew up on a dairy. My wife and I had the
6 opportunity to start our own dairy in 1994 in San Marcos,
7 also in San Diego. We moved to Merced in 2001, and have
8 continued to grow our operations, which is now enabling us
9 to bring some of our six kids into the dairy business as
10 well, which has been a true blessing.

11 How would you define a dairy operator? Someone
12 who puts in long hours, doing physical labor, caring for
13 cattle and crops, or would you think of us as data
14 analysts? I think we're a bit of both. Most of us love
15 the physical outdoor work, but also love the data analysis
16 provided by milk meters, health monitoring systems,
17 genomics, yield data, and the list goes on and on.

18 I would like to talk about the proposed
19 Make Allowance adjustment proposed by National Milk
20 Producers Federation in this hearing. As a board of our
21 member-owned cooperative, we are responsible for the
22 financial health of our cooperative business. CDI's plant
23 network has historically processed about 25% of all the
24 milk in California and about 5% of all the milk in the
25 U.S. on a daily basis. We do see seasonal ebbs and flows
26 in milk volumes to our plants, but these plants are
27 essential to the orderly marketing of milk within
28 California.



1 As a dairy owner and operator, I fully acknowledge
2 that raising the Make Allowance will impact my on-farm
3 income, as it will lower my milk price. As a board member
4 of our cooperative, I have seen the impact of what I
5 consider to be a broken pricing structure. How can we
6 operate a pricing structure that changes on a monthly
7 basis for the output side of the equation, while not
8 changing for 15 years a portion of the input side of the
9 equation?

10 My business has seen drastic changes in the cost
11 of operations over the past 15 years, and I can attest to
12 the fact that our cooperative-owned plants have seen many
13 of those costs increase as well. In 2009, my cost to
14 produce 100 pounds of milk was close to \$9.50. Today,
15 that's closer to \$19. It's doubled. The feed part of
16 that equation carries the bulk of that increase, but my
17 non-feed costs have nearly doubled over that time due to
18 higher labor costs, equipment costs, service costs,
19 etcetera. How can we expect processing plants to not have
20 that same pressure?

21 That said, we fully acknowledge that raising the
22 Make Allowance too much in one hearing will have
23 detrimental effects to on-farm income and may push many
24 more dairies out of the business, as margins are squeezed
25 every year. We have had to become much more efficient
26 through genetics, feed efficiency, farming efficiency,
27 energy efficiency, etcetera, which all lead to a better
28 sustainability story and outcome. Most of our



1 cooperative-owned plants have also become much more
2 efficient as well, but not enough to cover the costs
3 associated with a Make Allowance that has not been
4 adjusted for 15 years.

5 I would respectfully request that USDA move
6 forward with the proposal submitted by National Milk
7 Producers Federation, and we hope and pray that a future
8 audited reporting process will provide the hard data
9 needed to possibly change these again in the future. As
10 we have operated in the California pricing system for most
11 of my career, we see the value of data in having
12 discussions regarding what it costs to balance milk in
13 California and ultimately process that milk into stable
14 dairy products that can be stored and sold into domestic
15 and export markets. This request from National Milk
16 Producers Federation is a big step towards rectifying the
17 pricing formula for the perishable products we produce on
18 our dairies every day of the year, while understanding
19 that we don't have enough defensible data today to fully
20 adjust the costs or the yields of the Make Allowance
21 portion of our pricing structure.

22 Thank you for the opportunity to present in this
23 hearing.

24 Q. Thank you very much. Appreciate that.

25 And your testimony here in Exhibit 284 is
26 primarily focused on the Make Allowance proposal that
27 National Milk put forth; is that right?

28 A. Correct.



1 Q. Do you also support the other four proposals that
2 National Milk put forth in this hearing?

3 A. I do.

4 Q. Okay.

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

7 THE COURT: Thank you, Ms. Hancock.

8 Who would like to begin questions for Mr. Vander
9 Woude?

10 Mr. Vander Woude, I really did enjoy your dynamic
11 presentation, and just the way you described it about how
12 you would define a dairy operator. I just think it's --
13 this is a beautiful document.

14 I'm going to invite now the Agricultural Marketing
15 Service to ask you further questions.

16 CROSS-EXAMINATION

17 BY MS. TAYLOR:

18 Q. Good morning where you are, I think it's --

19 A. It is still morning, yes.

20 Q. Well, thank you for joining us this morning to
21 testify today.

22 This is Erin Taylor with USDA. I appreciate your
23 statement. I did -- I did have a question. On the bottom
24 of the first page you make a statement, "As a board member
25 of our cooperative, I have seen the impact of what I
26 consider to be a broken pricing structure."

27 Now, I was just wondering if you could expand on
28 that a little bit.



1 A. Yeah. I mean, we -- we adjust the cost -- or the
2 pricing structure with NDPSR on a monthly basis -- so many
3 parts of this thing are adjusted on a monthly basis,
4 except for the Make Allowance. That's the only part of
5 this equation that really hasn't changed in a long time.
6 And I think it's time that -- in our -- in our California
7 pricing system, we had an auditing process, and we
8 collected the data on what it cost to process milk. And I
9 think USDA is heading in the right direction striving to
10 get to that sort of system, because we know that, you
11 know, the -- everything -- prices change, so inflation's
12 real.

13 Q. Thank you.

14 And you have three farms, you stated. And I was
15 wondering if you heard me give the definition of a small
16 business earlier this morning, and if whether any of your
17 farms would meet that definition?

18 A. No, they do not.

19 Q. Okay. And I was wondering if you could talk, if
20 you use any risk management tools?

21 A. We participate in DMC. And I have done a little
22 bit of DRP here and there, but I'm not -- I'm not a
23 regular customer of -- I'm not a huge insurance guy. So
24 if I can't -- especially now it's hard to lock in a
25 margin, a positive margin. So I play a little bit, but
26 not too much.

27 Q. Okay. Thank you.

28 MS. TAYLOR: Well, thanks again for taking the



1 time today. We do appreciate it.

2 THE WITNESS: My pleasure.

3 MS. HANCOCK: Your Honor, at this time we would
4 move for the admission of Exhibit 284.

5 THE COURT: Is there any objection? There is
6 none. Exhibit 284 is admitted into evidence.

7 (Exhibit Number 284 was received into
8 evidence.)

9 MS. HANCOCK: Thank you very much for your time
10 today.

11 THE WITNESS: Thank you.

12 THE COURT: Goodbye, Mr. Vander Woude.

13 THE WITNESS: Goodbye. Thank you for getting my
14 name.

15 MS. TAYLOR: Your Honor, next up is Sarah Lloyd,
16 and we'll let her come to the screen. There she is. And
17 she has a PowerPoint presentation, so hopefully -- well,
18 I'm sure you want to swear her in first and then she can
19 choose to share her screen if she'd like.

20 THE COURT: Very good. So I have taken the
21 PowerPoint presentation, and I have marked it with an
22 exhibit number. It's 285.

23 (Exhibit Number 285 was marked for
24 identification.)

25 THE COURT: 285.

26 And, Ms. Lloyd, please state and spell your name.

27 THE WITNESS: Yes. My name is Sarah Lloyd,
28 S-A-R-A-H, L-L-O-Y-D.



1 THE COURT: Have you testified previously in this
2 hearing?

3 THE WITNESS: No.

4 THE COURT: I'd like too swear you in.
5 Would you raise your right hand, please.

6 SARAH LLOYD,
7 Being first duly sworn, was examined and
8 testified as follows:

9 THE COURT: Thank you.
10 You may proceed.

11 THE WITNESS: Thank you.

12 So my name is Sarah Lloyd. My husband and I dairy
13 farm in Columbia County, Wisconsin. We farm with his
14 brother, and his brother's family, and my in-laws, so my
15 husband's parents. We -- so three families.

16 We have just received our Century farm, our
17 100-year farm designation through the state of Wisconsin,
18 and recognized for 100 years of family ownership and
19 continuous operation of the farm. We milk -- up until
20 three weeks ago, we milked 450 cows. We are selling cows
21 to try to re-organize the business, dealing with some of
22 the cash crunch due to the low and volatile prices.

23 So I'm going to share my screen to just go through
24 some of the issues that I want to raise in the hearing
25 today.

26 THE COURT: Excellent. I appreciate your faculty
27 with these technologies.

28 THE WITNESS: Yes. Sadly, we're maybe all too



1 used to Zoom meetings now. So, yeah.

2 So I'm a Wisconsin dairy farmer. I am also a
3 member of the Wisconsin Farmers Union, and part of the
4 Dairy Together Movement. That's a movement of farmers
5 across the country to work for fair pricing policy and
6 systems. But I'm speaking to you today as a dairy farmer.

7 And so regarding the particular details of this
8 hearing, I want to indicate my support for reverting the
9 Class I pricing formula to the higher value of, so the
10 higher-of Class III or Class IV instead of the average.

11 I also support adding mozzarella to the mandatory
12 price reporting system so it can be included in the
13 Class III pricing formula, with the goal of achieving a
14 more accurate and fair price for farmers.

15 I want to recognize in the conversation in this
16 hearing about Make Allowances for processors, that if this
17 is to be considered, it has to come with an adequate price
18 for farmers.

19 And in my third bullet point in this slide that is
20 submitted as Exhibit 285, that any reform -- reform of the
21 Federal Milk Market Order system to better manage and
22 balance supply and demand needs to happen in order for
23 there to be considered a Make Allowance for processors,
24 because we cannot do a Make Allowance for processors and
25 not really figure out how to get farmers a price, so that
26 in the full value chain, all those costs can be accounted
27 for.

28 And so I just mention the fact that there is a



1 plan to balance, better balance supply and demand that is
2 out there circulating in the farm community and with
3 policymakers. And that is not specifically in this
4 hearing, but I call your attention to it. We cannot have
5 the Make Allowance come out of the back, off the hides of
6 the farmers, which is what I fear will happen.

7 The Federal Milk Market Order system was
8 originally devised back in the late '30s to better balance
9 the supply and demand of milk. And I would ask for those
10 listening and adjudicating this hearing to consider
11 really, you know, making true on the original intent, so
12 that we can have farmers and we can have processors.
13 Because I recognize that they need to make money, too.

14 I just want to go through some of the issues that
15 I see as really driving the overall problem. And again,
16 saying that if the -- that sort of piecemeal or Band-Aid
17 reforms to the pricing system and the market order system
18 are not going to get at this -- these underlying issues,
19 which are that we are having persistent periods of low
20 pricing impacting our farms and our families. We're also
21 having a lot of volatility, so wild price swings that does
22 not allow me, as a businessperson, to plan when my price
23 that I am paid is all over the place.

24 We have had -- seen across the industry rapid
25 uncoordinated production growth. And if you took
26 Economics 101, I remember them talking about this idea
27 that somehow if a low price signal came from the market,
28 that that should push, like, production down or give a



1 signal that I should take my foot off the gas for
2 production.

3 But we're really seeing expansion in production
4 even when prices are low, which is an indicator to me that
5 the system -- the pricing system is not working, or the
6 signals are not strong enough to overcome the other
7 underlying issues.

8 And part of that reason that the price signal is
9 not enough to better regulate production volumes is
10 because we have a lot of consolidation. We've seen a
11 sharp decline in the number of farms, and then you are
12 seeing -- and you see an increased average herd size.

13 And, you know, just to sort of show the USDA NASS
14 price reports. You see these kind of wild swings. As a
15 dairy farmer of kind of medium-size by Wisconsin
16 standards, this is really difficult to navigate as a
17 businessperson.

18 We have more and more milk. So we're losing a lot
19 of farms, but we just have more and more milk. And,
20 again, we can see with the USDA statistics that we have
21 are continuing to lose farms. And we're seeing the exit
22 of dairy herds.

23 And the reason that I point this out is that, you
24 know, I live in a rural area. I know all of the
25 supporting businesses that we support as our farm. Those
26 are the people that come and service our dairy milking
27 equipment. Those are the AI, the semen salesmen that come
28 and do the artificial insemination breeding of our cows.



1 We have our veterinarian. We employ people on our farm
2 for some of the daily work. We have repairs on our
3 equipment and machinery.

4 And so the economic ecosystem around the small and
5 mid-size farms is very important. And it doesn't mean
6 that the larger farms aren't also doing that, but having a
7 distributed economic ecosystem is a better resilient
8 system in the long run. And if we don't correct the
9 pricing problems that are driving more and more people out
10 of business, we're just pulling apart the fabric of the
11 economics of our rural communities.

12 And so I really call on the Federal Milk Marketing
13 Order as its considering these different reforms to think
14 about, you know, how the need for more farms, and not
15 fewer farms, is critical.

16 Again, you know, we need a system that overall
17 that the pieces come together in a Federal Milk Marketing
18 Order system that can create the opportunity of a better
19 coordinated milk supply that will manage growth and allow
20 farmers to keep farming and stay on the land.

21 This has environmental implications. So, you
22 know, this picture is complex and -- and bigger than the
23 individual farms or the individual processors.

24 We need to curb overproduction, because what we're
25 having is, we're producing all this milk, it sometimes
26 isn't finding a home in our different orders, and it's
27 also glutting it out and pulling the prices down. But
28 we're doing that at the cost of water, air, soil health,



1 and climate. And so this is -- we have to think of a
2 systems approach, and again, that's why some Band-Aid
3 reforms here and there need to be really considered in the
4 whole.

5 And as I will reiterate that, you know, money in
6 farmers' pockets supports rural economic vitality. I just
7 think about all of the money that our farm flows through
8 its system to support our neighboring businesses.

9 I also was talking to friend who is a vegetable
10 farmer and sells to restaurants and farmers markets, and
11 she had a crisis where her refrigerated storage on her
12 farm went out, the cooling system went out. And she said
13 she had four refrigeration specialists in like a 20-mile
14 radius that she could call because she said, dairy farms.
15 The only reason that there's that many people that still
16 can service refrigeration units out in this rural area is
17 because of the strength of the dairy farmers and their
18 need for that service.

19 So even vegetable farmers benefit from a more
20 dense and robust system of businesses, and those
21 businesses need fair prices.

22 And, you know, finally it's a food security issue.
23 When we think about the system, we have to think about the
24 fact that COVID showed us that we could very easily
25 disrupt our supply chains with just pulling some little
26 thread with an unexpected shock.

27 And so when we think about pricing systems, you
28 know, the interest to me in the Federal Milk Market Order



1 system is that when it was developed, it was specifically
2 thought about in geographic pools, trying to think about
3 the production and the consumption as a unit together.
4 And so we need to think about the production, the
5 processing, and the consumption. And that is the strength
6 of the market order system, but we need to think about it
7 as its whole and as the larger system that it supports.

8 So once again, I'll stop there. We -- the
9 Make Allowance considerations must come in total tandem
10 with how the pricing for what I get paid as a dairy farmer
11 is going to work. And we cannot solve these volatile
12 pricing systems without having some way of better managing
13 supply and demand of the amount and the volume of milk
14 that's on the market.

15 So I'll leave it there with my slides.

16 THE COURT: That is a beautiful,
17 professionally-prepared presentation, and I appreciate it
18 very much.

19 THE WITNESS: Thank you.

20 THE COURT: Did you do that yourself?

21 THE WITNESS: Well, I did, and a friend from
22 Wisconsin Farmers Union helped with the slides, too.

23 THE COURT: That made it more fun.

24 THE WITNESS: Yeah.

25 THE COURT: Very good.

26 I'm going to see what questions people might have
27 for you here where we are located.

28 And let me ask now, does anyone have questions of



1 Ms. Lloyd?

2 I would invite Agricultural Marketing Service to
3 ask Ms. Lloyd whatever you would like.

4 CROSS-EXAMINATION

5 BY MS. TAYLOR:

6 Q. Thank you for joining us, Ms. Lloyd, and taking
7 time out of your day. Just a few questions.

8 You mentioned you all, well, are downsizing, but
9 had about 450 cows. And I was wondering if you had heard
10 earlier questions of other farmers about whether they meet
11 a small business definition and whether your farm would
12 meet that definition.

13 A. I heard the question, but I didn't, unfortunately,
14 hear the definition. If you could repeat it, I'm happy to
15 try to answer that.

16 Q. I sure can. It would be a farm that makes
17 \$3.75 million or less in gross receipts annually on a
18 whole-farm basis.

19 A. Yes. We would. My farm would meet that, to my
20 knowledge. Yes.

21 Q. Okay. And then you're located in Wisconsin.
22 Did I catch that correctly?

23 A. Yes, correct. Columbia County, Wisconsin.

24 Q. And where does your milk go?

25 A. So our milk goes to a private cheese processor
26 that's located north of us on the central part of the
27 state.

28 Q. About how far is that haul?



1 A. It's a bit of a haul. It is, I'm going to guess,
2 60 to 70 miles.

3 Q. Okay. And can you talk a little bit about your
4 hauling costs then for that over the past, say, five
5 years, how have you seen those change or not change?

6 A. Yeah. So one thing to note, we -- up until May of
7 2020, we were shipping to a cooperative that we had been
8 members of for many, many decades, my husband's family had
9 been members of.

10 I married my husband 16 years ago and became
11 involved with the farm business. So things changed for us
12 in that May 2020, which was a bit of a risky business in
13 the middle of the pandemic to make a shift.

14 But one of the reasons why we were trying to
15 figure out if we could not find a different processor or a
16 different person to buy our milk, was that we were seeing
17 increasing transport and hauling charges coming off of our
18 check from the cooperative.

19 And really, the bigger problem was that the
20 communication from the cooperative was rather spotty as to
21 give us any kind of warning, and they were also taking
22 other deductions called, like, market adjustment
23 deductions that had little -- that they were not
24 communicating well to the membership. So we were not
25 satisfied with the way that the co-op was treating us as a
26 long-time patron.

27 We found the ability, which I know is a -- is a
28 precious ability -- to shift to this private hauler but --



1 and did have what we found to be comparatively good
2 hauling rates in that time in May 2020. We have seen
3 those tick up as the year -- from then until now.

4 I believe, you know, like I'm looking at a
5 May 2023 statement, at that point we were paying \$1.03
6 or -- yeah, \$1.03. So on our 1.234 -- 1.23 million
7 pounds, we were paying \$12,713 for the trucking as a base
8 hauling charge.

9 Q. Okay. Thank you. I appreciate all that.

10 So you're an independent direct shipper up there,
11 then?

12 A. No. We go through a hauler. So we -- a third
13 party that works for -- I mean, is -- is in -- I don't
14 know what their official business arrangement is with the
15 private processor, but -- but we are not direct shipping,
16 no. We are -- they are -- they are the agreed upon
17 shipper for the processor, and they are -- but their
18 deduction is taken off of our check, but they are named as
19 the hauler as a separate business.

20 Q. And you're no longer a cooperative member, though,
21 you are an independent dairy farm?

22 A. Yes. Yes. I apologize. Yes. We are not a
23 cooperative member. Although we still hold some equity in
24 the co-op.

25 Q. So as an independent dairy farm up there, do you
26 still find a benefit -- you know, there's been some talk
27 about the benefits of Federal Orders of the independent
28 farmer, so I would like to get your perspective on that.



1 Do you all still feel the Federal Orders do
2 provide some benefit to you?

3 A. Yeah. I mean, absolutely. I think because of
4 some of the sort of systems things that I -- that I named,
5 that I do think that whoever was thinking back in the '30s
6 of figuring out these geographic pools that actually could
7 respond, you know, technically with like matching supply
8 with demand, organizing the flow -- the flow of milk,
9 figuring out what's a reasonable price across kind of a
10 geography that has some like features. I do feel like
11 it -- it is a system. We have it in there. Let's use it
12 to the best of our ability. It's not functioning well in
13 getting a price that allows me to be a viable business
14 operator right now, so obviously we need to make changes.
15 So appreciate this -- these efforts and these hearings.

16 So, yes, I think it's -- you know, it's still
17 important and has a good function if we can get it right,
18 improve it.

19 Q. Okay. And does your farm use any risk management
20 tools?

21 A. So we have used the DMC as a -- from its
22 inception. We also use the Milk Income Loss. We do a bit
23 of forward contracting with our private milk processor on
24 a limited basis. As a small-ish farm and getting smaller,
25 we have some limited opportunity to do that just because
26 of the -- you know, the minimum sizes of those -- those
27 contracts.

28 Q. Okay. Thank you.



1 And I just had one quick question. I want to make
2 sure we know -- I'm turning to the slide that says "Boom
3 and Bust Prices." And I don't have the slide number --

4 A. Yes.

5 Q. -- printed on my copy, but that's the title of the
6 slide --

7 A. Fourth slide.

8 Q. -- "Boom and Bust Prices," the fourth slide.

9 A. Yeah.

10 Q. And the title of the chart says, "Prices Received
11 for Milk by Month - United States." And you cite NASS.
12 And I just want to make sure we know what price you were
13 looking at to make that chart.

14 Is that the all milk price?

15 A. I pulled it from the -- I actually -- we had this
16 slide in here from a year ago, and so I really just
17 Googled prices received by milk, NASS, and I pulled up a
18 more recent slide. So this -- I did not create this
19 graph. This is the one that's sitting on the NASS. So
20 I'm happy to do -- find the exact website and submit it if
21 that's helpful.

22 Q. Yeah. That would be great. And you could submit
23 it through the same hearing website, and we can take
24 official notice at the end of the hearing.

25 A. I will do that.

26 Q. If that's okay with Your Honor.

27 A. Sorry for not clarifying it.

28 MS. TAYLOR: Thank you. That's all the questions



1 from AMS. I appreciate your time today.

2 THE COURT: Very good.

3 So you didn't know you were going to have a
4 homework assignment, but that would be great. If you
5 would send it in, then even without having you testify
6 again, I can verify the source and take official notice of
7 it.

8 THE WITNESS: Yes. I will do my homework.

9 MS. TAYLOR: Your slide presentation was so good,
10 I knew you could handle a homework assignment.

11 THE COURT: All right. Thank you so much,
12 Ms. Lloyd.

13 THE WITNESS: Thank you for your time. I
14 appreciate it.

15 THE COURT: You're welcome.

16 MS. TAYLOR: Your Honor, I think we have --

17 THE COURT: Let's see, I haven't admitted it into
18 evidence, yet, I don't think.

19 MS. TAYLOR: I apologize. I don't believe you
20 have.

21 THE COURT: Is there any objection to the
22 admission into evidence of Exhibit 285?

23 There is none. Exhibit 285 is admitted into
24 evidence.

25 (Exhibit Number 285 was received into
26 evidence.)

27 MS. TAYLOR: All right. Thank you.

28 I think our last dairy farmer for the day is on,



1 Brenda Cochran, and I see her name up there, so hopefully
2 we can get her highlighted.

3 Ms. Cochran, we see your name. We don't have a
4 video. You do not have to turn on the video if you don't
5 like. That's a choice. But just so you know that.

6 THE COURT: Ms. Cochran, this is Judge Clifton.
7 Can you hear me okay?

8 MS. TAYLOR: I think she's working to come on
9 screen. Great. You might have a sticker over your --

10 THE WITNESS: Yes, I think I do.

11 Thanks to a pen knife. Never farm without a pen
12 knife.

13 MS. TAYLOR: Okay, Your Honor, Ms. Cochran is here
14 to testify. And she does not have a prepared statement
15 for us to enter as an exhibit.

16 THE COURT: Ms. Cochran, welcome.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: You're number 9 of 9 farmers this
19 afternoon. It's been very fun. Wonderful. The stories
20 haven't always been fun, but the conversations have been
21 very fun.

22 I'd like to have you state and spell your name.

23 THE WITNESS: Yes. Brenda Cochran, B-R-E-N-D-A,
24 C-O-C-H-R-A-N.

25 THE COURT: Thank you.

26 Have you previously testified in this hearing?

27 THE WITNESS: I have not.

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



1 Would you raise your right hand, please.

2 BRENDA COCHRAN,

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

5 THE COURT: Thank you.

6 Is there anything -- well, let's start with where
7 you farm.

8 THE WITNESS: Okay. I have a written statement
9 here if you would prefer I just read what I have.

10 THE COURT: That would be great.

11 THE WITNESS: That's great. I didn't submit it as
12 an earlier submission, but I do have something I could
13 read here.

14 MS. TAYLOR: Ms. Cochran, if I just -- I just want
15 to make you aware we have a court reporter in the room
16 that is transcribing everything, so if you could just keep
17 at a slow to moderate pace, that would be great.

18 THE WITNESS: I will certainly do that. My mother
19 was a lifetime federal court reporter, so she would be
20 very angry if I challenged your court reporter.

21 MS. TAYLOR: I think you might be her favorite
22 witness.

23 THE WITNESS: Yes. We'll be slow.

24 Well, first of all, good afternoon. My name is
25 Brenda Cochran, and I'm grateful for this opportunity to
26 testify at this hearing.

27 My husband Joe and I started farming with our
28 children in Maryland in 1975. We are still dairy farming



1 with our family now in Pennsylvania. I was not raised on
2 a dairy farm. I believe my background provides me with a
3 unique perspective to assess how dairy farmers are treated
4 in the dynamic of Federal milk pricing.

5 The way dairy farmers are treated still appalls
6 me. I cannot believe predatory milk pricing is happening
7 in America. I speak here today as a victim of
8 institutionalized anti-farmer milk pricing policies
9 myself.

10 I am dedicating my time to the thousands of
11 unrepresented voiceless dairy farmers who could not come
12 here to speak for themselves, because they fear losing
13 their milk market for speaking out, and to the memory of
14 those farmers who have already lost their farms, their
15 families, and some of them their lives, because of those
16 decades-long catastrophe of low milk prices. What I have
17 to say definitely relates to how dairy farmers are paid in
18 the Federal Milk Marketing Orders.

19 Dairy farmers are typically marginalized during
20 the USDA hearing process, while professional dairy
21 industry experts take center stage to propose, discuss,
22 and analyze blindingly abstruse complexities which seem to
23 presume the impact that farmers possess economics
24 credentials at the Ph.D. level. I have read the proposal
25 submitted, and while I understand why some of the issues
26 have been raised, I find it deeply disturbing that there's
27 nothing in any proposal to address the dairy farmers'
28 legitimate and all important costs of production.



1 I admit that it is impossible for me, an average
2 dairy farmer, to comprehend this dairy industry language,
3 and the dairy industry is all that anyone focuses on at
4 federal hearings. There is some dairy farmers who believe
5 that milk pricing is deliberately made complicated to keep
6 dairy farmers in the dark about how their milk is priced.
7 Others believe the low milk prices are part of an effort
8 to displace farmers from their land.

9 Nothing I am presenting here is intended to
10 disrespect the impressive credentials and hard work of the
11 trained experts who have shared their skills to organize
12 and participate in this hearing, but I can state
13 unequivocally that average dairy farmers, like myself, are
14 really sick of the decades-long pattern at federal
15 hearings where no mention is ever made of figuring out why
16 such highly qualified, smart people, inside and outside of
17 government, cannot or will not figure out a way for dairy
18 farmers, the salt of the earth as far as I am concerned,
19 to get paid a fair milk price as was received under the
20 parity system that got snuffed out by federal actions
21 beginning on April 1st, 1981.

22 National Farmers organization reported in late
23 2022, that the parity price for milk was nearly \$64. In
24 my 20s we received a milk price that reflected 80% of
25 parity, which gave us the ability to run our dairy farmers
26 properly. Do the math on 80% of \$64 and understand why
27 U.S. dairy farmers are so stressed and are in such a bind
28 since order reform was passed.



1 Order reform is so defective. It was very soon
2 after the arrival of component pricing that payments from
3 government programs like MILC and DMC became part of the
4 dairy economic landscape, as destitute dairy farmers
5 struggled harder than ever to cash float.

6 It is noteworthy that the government payments, as
7 much as farmers appreciate getting them, are insufficient
8 to bring anyone's milk check the level of solvency farmers
9 have a right to expect based on the real value of their
10 cows' milk.

11 The dairy farmers plight has gotten much worse
12 with the current hyperinflation and the staggering debts
13 dairy farmers now carry from years of milk prices below
14 cost of production, debts that must now be repaid.

15 I am aware of the objections raised as to why
16 parity is no longer a Federal Milk pricing option, but I
17 will affirm the moral necessity to bring our American
18 dairy farmers' milk price up to a level that allows us to
19 pay our bills, care for our cattle and our farms, and
20 provide for our families and community.

21 Why are some dairy farmers receiving milk prices
22 as low as \$12 and few much above \$18? Those are milk
23 prices we were paid decades ago, and those prices didn't
24 go very far then, either.

25 How will this hearing accomplish -- fix the broken
26 milk pricing formula for the farmers to give us a living
27 wage milk price? When was the last time U.S. dairy
28 farmers were given a cost of living adjustment? How are



1 dairies supposed to dig out from the debt and cover basic
2 farm and family living expenses if Make Allowance
3 increases for processors take more money away from the
4 paltry milk checks, that are also being drained by higher
5 transportation charges and the incessant monetary
6 hemorrhage of capricious market adjustment feeds that are
7 never included in DMC payments?

8 These unconscionable milk prices continue to bring
9 many dairy farmers to despair. The strain from these dire
10 financial problems is very hard on farmers. It does not
11 matter where the farmer milks the cows, or the breed of
12 cows, or the size of the herd. Dairy farmers cannot make
13 it on such low milk prices that suck the life and hope out
14 of our American dairy farming class.

15 What is done to us also decimates our rural
16 communities that are now laid waste by over 40 years of
17 degrading milk prices that have ruined marriages, divided
18 families, and destroyed family farms of all sizes, that
19 were often passed down through generations, along with
20 spreading the attendant financial fallout that has totally
21 wiped out vital local support businesses and productive
22 rural infrastructure that is critical for national
23 security.

24 National policies that harm dairy farmers will
25 inevitably harm consumers. While the devastation that has
26 created socioeconomic mayhem across America's dairyland is
27 everywhere, the prime victims of lowball Federal milk
28 prices have been the traditional, local, small to mid-size



1 dairy farmers who were targeted for extermination in
2 Nixon's infamous Flanigan report.

3 Flanigan has been the driving force for all that
4 is wrong with federal dairy policy, and there is much that
5 is wrong. Many politicians running for election insist
6 they are concerned about the small to mid-size dairy
7 farmers. The question is, will they support costs of
8 production milk pricing policy changes those sized dairy
9 farms need to stay in business?

10 I do not profess to be an expert on milk pricing,
11 but I am an expert on what it's like being ripped off by
12 federal milk pricing policy since April 1st, 1981, and
13 being forced to live in dire straits doing without the
14 most basic farm inputs, and without enough money to
15 provide adequately for my family, or participate in the
16 U.S. economy as a member of the middle class.

17 My family is one of thousands of dairy farmers who
18 were told by various dairy industry experts that farmers
19 like us deserve to go out of business because we were not
20 efficient and did not understand economies of scale.

21 MR. HILL: Ms. Cochran -- excuse me, Ms. Cochran?
22 Can you please slow down a little bit? You are picking up
23 speed, and we need to have everything transcribed by the
24 court reporter.

25 THE WITNESS: Sorry. Yes, I will do that.

26 When order reform was imposed on us by Congress
27 with the help of block voting by Capper-Volstead Dairy
28 Cooperative, government officials ignored what Judge



1 William Satchel stated in his order and opinion for
2 St. Albans Cooperative Creamery, Inc., v. Glickman,
3 99 CV 274, which was that dairy farmers could not sustain
4 the projected financial losses that were going to hit them
5 when 1B was implemented.

6 The entire process of Federal Order reform remains
7 mired in injustice from the initial mandate under the FAIR
8 Act through Secretary Dan Glickman steamrolling 1B onto
9 dairy farmers who already indicated their preference for
10 1A by a large majority.

11 Former dairy farmer and current Farm Women United
12 Chairman of Policy Development Gerald Carlin has this to
13 say about the hearing goals, and I quote, "If the goal of
14 the federal government and the USDA in particular is to
15 destroy the family dairy farm, USDA dairy policy should
16 continue on its course, as it has been very effective in
17 destroying the traditional dairy farm. If the goal of the
18 USDA is preserve the traditional dairy farm, dairy policy
19 must make a 180-degree change to make dairy farmers' cost
20 of production a foundation of future milk pricing.

21 "The Federal Milk Marketing Improvement Act of
22 2007, 2009, and 2011, authored by dairy farmers Arden
23 Tewksbury and Gerald Carlin, and introduced in the U.S.
24 Senate by the late Senator Arlen Specter and Senator
25 Robert Casey, addressed costs of production in milk
26 pricing, which is exactly what dairy farmers need."

27 The Federal Milk Marketing Improvement Act
28 recently revised by Mr. Tewksbury and Mr. Carlin now deals



1 with excessive milk check deductions by dairy
2 cooperatives, requiring them to pay the full announced
3 FMMO minimum price without deductions.

4 On April 5, 2023, American Farm Bureau Federation
5 stated in a letter to Secretary Tom Vilsack that the
6 average dairy farmer in the U.S. lost \$6.27 per
7 hundredweight in 2021, with dairy farmers milking 50 cows
8 losing over \$21 per hundredweight. These figures were
9 taken directly from the most current USDA ERS milk
10 production costs and returns per hundredweight sold.

11 On May 1, 2023, USDA ERS, quote, "erased and
12 replaced," end quote, the figures for 2021 by dramatically
13 lowering cost estimates from \$27.50 per hundredweight to
14 \$24.04 per hundredweight, with no explanation given. This
15 was not the first time USDA ERS played the quote, "erase
16 and replace card. In 2018, they also lowered 2013 through
17 2016 cost production figures," end quote.

18 Behavior like this, at the very least, calls ERS
19 figures into question, and at worst, renders them totally
20 unreliable. Parity is the best economic indicator of a
21 dairy farmer's ability to participate in the real economy.

22 Everyone bends over backwards to justify
23 Make Allowances for dairy processors, while the dairy
24 farmer's costs of production, which are based on real
25 foundational economic needs, are ignored.

26 I am reminded of what New York dairy farmer Bob
27 Wohr stated many years ago under Order Reform when he
28 attended a Cornell Cooperative Extension meeting



1 concerning dairy farm management issues. Addressing the
2 presenter, Mr. Wohr said, quote, "I do not need you to
3 tell me how to manage my dairy farm. What I need is for
4 you to tell me how to manage my dairy farm without any
5 money."

6 A Pennsylvania dairy farmer insists that he should
7 be allowed to send out his own bill for his milk and get
8 paid for it, because the federal system isn't getting the
9 job done. Can anyone disagree with his logic?

10 It is no secret that Agri-Mark Cooperative drew
11 stark attention to the depths of depression dairy farmers
12 routinely face from inadequate milk checks when the co-op
13 leadership decided to include the infamous mental health
14 letter with the milk checks. Elected officials and farmer
15 advocates worry about farmer suicide risk. The need for
16 suicide help lines would drop precipitously if dairy
17 farmers were paid an equitable milk price.

18 Dairy farmers' losses continue to be staggering
19 under the current federal pricing methodology.
20 Progressive Agriculture Organization's Arden Tewksbury has
21 stated consistently that since passage of the 2014 Farm
22 Bill, when the milk prices collapsed to levels from which
23 there has been no recovery, the dairy farmers are in
24 uncharted waters with losses around \$19 billion in 2015
25 alone, while NMPF testified at a House Ag Committee
26 Hearing in May of 2016 that dairy farmers lost about
27 \$20 billion in 2015.

28 Mr. Tewksbury maintains that the annual losses



1 dairy farmers have been suffering since 2015 are steady,
2 around \$10 billion to \$12 billion each year. These are
3 staggering financial losses that rip through the rural
4 economy when factored by a multiplier of five. Is it any
5 wonder that dairy farmers are being driven out of business
6 by federal milk pricing schemes which will seemingly be
7 preserved along the same lines when this hearing is over?

8 Farm Bureau President Duvall's April 2023 letter
9 opposing an increase in processor Make Allowance is
10 remarkable because it is rare to have such a prestigious
11 farm organization publicly acknowledge the brutal extent
12 of the financial losses federal milk prices are inflicting
13 on dairy farmers.

14 It is time for a federal dairy hearing to allow
15 the issue of low milk prices to be discussed and finally
16 address the unjust way American dairy farmers are expected
17 to operate modern dairy farms with insufficient money.

18 THE COURT: Ms. Cochran, that is an amazingly
19 comprehensive report, and very heavy, very dark. I am so
20 sorry.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: I'm glad you have taken it upon
23 yourself to speak, especially for those who are not in a
24 position to do what you have just done.

25 THE WITNESS: I appreciate that.

26 THE COURT: Is there anything else you would like
27 to add before I invite questions from those who are here
28 in this room?



1 THE WITNESS: No. I'm just so grateful to be able
2 to speak, and I think what we have to understand is this
3 side of dairy issues is not allowed to be talked about.
4 And we have a lot of people suffering, a lot of people in
5 pain, and they have to be able to be acknowledged and to
6 speak about this and what these formulas have done to
7 their families and their farms since 1981.

8 THE COURT: I have to look at my notes and
9 remember, are you in Maryland now? No, now you are in
10 Pennsylvania.

11 THE WITNESS: In Pennsylvania now, yes, Your
12 Honor.

13 THE COURT: When you say that people are not
14 allowed to talk about these oppressive conditions, are you
15 speaking primarily of what you have observed in Maryland
16 and Pennsylvania?

17 THE WITNESS: It's consistent. It does not matter
18 if you are talking to someone from California, Wisconsin,
19 Minnesota, Vermont, Louisiana, Florida, Virginia,
20 Pennsylvania. This is a universal problem for dairy
21 farmers in the United States, since these policies, the
22 globalization of dairy, overtook what in the past was a
23 very benign and benevolent system. I'm not saying it
24 wouldn't have needed to have some tweaks. We definitely
25 were at a point that some -- maybe some overhaul was
26 necessary, but this is just brutal. This is a pilgrim.

27 This is an extermination of people who feel --
28 many of our farmers -- I think one of the earlier farmers



1 spoke about this -- we have a lot of people who are
2 milking cows right now, not just in Pennsylvania but other
3 parts of the country who are plain people, and taking care
4 of animals and farming is very much a part of their
5 religious expression. So they are suffering acutely
6 because they feel threatened that they can't fulfill what
7 they consider to be God's call to them to farm.

8 THE COURT: Understood. I'm going to invite
9 questions from those who are here.

10 I'm sorry you can't see me, and you can't see who
11 else is here, but the gentleman who's come to the podium
12 and has a microphone is Mr. Miltner.

13 Mr. Miltner, would you identify yourself, please?

14 MR. MILTNER: I will, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. MILTNER:

17 Q. Ms. Cochran, my name is Ryan Miltner. I'm an
18 attorney, and I represent Select Milk Producers, a
19 cooperative of dairy farmers in the Midwest and the
20 Southwest. Thank you for your statement today.

21 A. Thank you.

22 Q. My question is, the last two times that USDA
23 changed Make Allowances, the cooperative I represent, and
24 others, filed a lawsuit against USDA, and we argued that
25 USDA did not take into account farm costs. And in both
26 instances, the Courts ruled against us.

27 And I wonder, I don't -- not asking you for a
28 legal analysis, but with those challenges having been made



1 and you raising similar issues, do you have any
2 suggestions for the people in this room about how your
3 concerns can better be taken into account by the people
4 that are going to make a decision here?

5 A. I really would have to read the Court record on
6 that. I'm not sure what was the basis for their findings
7 on that.

8 I just know that it's hard for me to believe that
9 the original intent of Congress was that Capper-Volstead
10 would be used to put us in a straightjacket and that the
11 '37 AMAA would be used to undermine stability for farm
12 families by destabilization of our ability to pay our
13 bills.

14 I mean, let's be honest, we have to have stable
15 dairy farms before we can equitably move a drop of milk
16 out of that bulk tank. And when the trucks come up, and
17 I'm one of the farmers, I'm being bled on explosive
18 increase in transportation. Okay?

19 We have -- and I'll use the term again, we have
20 predatory pricing and predatory marketing of milk, and we
21 have a class of people who are afraid to speak up.

22 I was in two different meetings with farmers and
23 tried to talk about some issues. I did not get one farmer
24 to speak up because they were afraid. They are literally
25 afraid that they will lose their market by speaking up
26 about these issues.

27 So I don't know. I can't say. I know sometimes
28 the Court will decide in a certain way because it's



1 specifically related to how the statute is written, or
2 maybe it's a Constitutional issue.

3 But anyone with any decency, even if you look at
4 the Canadian system, which some people look at, there was
5 an effort to make sure the farmers' needs were covered,
6 and the processors' needs were covered, and the retail
7 needs were covered, and that's what the Canadian consumer
8 had to deal with. And I know they had a different system
9 from ours.

10 But the reality is, you know, how long can you
11 abuse dairy farmers? I mean, is it really the intent to
12 just have robots on farms and get some milk, but mostly go
13 to maybe these replacement products, that I'm sure those
14 of us on the call here do not believe should be called
15 milk. You've got to take care of your farmers.

16 How can we take care of our cattle and our
17 environment and our communities if we are so punished by
18 these low milk prices?

19 Q. Thank you.

20 You mentioned the Capper-Volstead Act and that you
21 have spoken with farmers that are afraid of losing their
22 markets.

23 A. Correct.

24 Q. And the Capper-Volstead Act applies mostly to
25 cooperatives.

26 Are you a member of a cooperative?

27 A. I am.

28 Q. Okay. And the farmers you spoke with, I assume



1 they are cooperative members also?

2 A. That is correct.

3 Q. Okay. I won't ask you to share the co-op that
4 they are members of, but I thank you for your time today.

5 THE COURT: Thank you.

6 THE WITNESS: The intimidation -- I just want to
7 leave this. It is intimidation that is making it
8 impossible for American citizens to engage in the process
9 of what our nation is supposed to provide us, the ability
10 to speak and to have a remedy -- remedy for these abuses.

11 THE COURT: I'm now going to invite the
12 Agricultural Marketing System to ask questions of you,
13 Ms. Cochran.

14 CROSS-EXAMINATION

15 BY MS. TAYLOR:

16 Q. Ms. Cochran, this is Erin Taylor from USDA.

17 I do -- I do really appreciate -- on behalf of the
18 Secretary, I want to express our appreciation for you to
19 come today and testify and provide your thoughts for the
20 record so he can consider those.

21 You mentioned you were in Pennsylvania. Can I
22 ask, how -- how many cows you all milk up there?

23 A. We are now at about 65 cows. When our children
24 were all at home, we were close to 300. But naturally
25 with our aging and just with the difficulties, we just had
26 to cut down. I mean, it's -- we're right at about 65 cows
27 right now, and a proportionate number of youngstock.

28 Q. I missed that last part, what did you say? A



1 portion of what?

2 A. Oh, a proportionate number of heifers and calves.

3 Q. Okay.

4 A. I can't give the exact number.

5 Q. Sure.

6 And where does your milk go? How far?

7 A. There again -- since I'm not near my records, I
8 really can't say exactly where it's going. I do know that
9 our milk has to go a great distance sometimes to get a
10 market, and that's contributing to these punitive hauling
11 rates.

12 I know that everybody involved with my co-op and
13 the other network that we're working with are 100%
14 committed to what was the original intent of
15 Capper-Volstead. They are doing their best under very,
16 very difficult circumstances.

17 Leadership in the co-op has complained in the past
18 that it's difficult when you are predominantly dealing
19 with spot markets with these prices, basically because the
20 large units are selling under class. I mean, that's been
21 a major problem for our milk shed.

22 Q. Okay. Well --

23 THE COURT: Would you explain what you mean, the
24 large units are selling under class?

25 THE WITNESS: Well -- and there's probably people
26 in your room who would do a better job, but I mean, the
27 volume of milk that is handled by some of the huge co-ops
28 right now, they are marketing behemoths. And small co-ops



1 like ours, we often were able to do a little better on a
2 spot market.

3 But there again, this atmosphere of intimidation
4 is intimidating independent markets, also. I know
5 exclusive supply contracts, you know, I can't get my milk
6 into a market if they have signed paperwork with the large
7 co-ops, the mega co-ops. And they are basically under --
8 there's the word -- intimidation, not to take any milk
9 from outside their network.

10 And I will mention that a lot of this information,
11 many of us dairy farmers we're hoping would come out if
12 Senator Gillibrand's JO Report had been allowed to go to
13 the next level. And there again, we needed that
14 investigation to go forward. There is information that
15 needs to be brought forth by federal authorities that is
16 not coming out, and we -- we don't know what else to do.

17 We can't handle this level of intimidation and put
18 pressure on the market by moving milk when all the outlets
19 are closed, so we have to drive great distances and pay
20 these hauling rates.

21 So these co-ops have so much milk under their
22 control, whatever the class price is, they can -- they can
23 cut us out.

24 THE COURT: Thank you for adding that.

25 Ms. Taylor, back to you, please.

26 MS. TAYLOR: That was all the questions I had.

27 I do appreciate that context, Your Honor.

28 And, Ms. Cochran, again, thank you for joining us



1 today.

2 THE WITNESS: Appreciate the opportunity. And
3 that's why I say, it's wonderful to be able to be treated
4 legitimately, that our problems matter and that we can
5 speak in a public forum like this.

6 THE COURT: Yes. We're very appreciative and
7 grateful that you did so. You -- you spent a lot of time
8 preparing this statement. You have probably lived with it
9 for years.

10 THE WITNESS: Well, I'll be honest with you, I
11 think it's living with it, because if you could see -- I'm
12 very incompetent with technology, and if you folks who are
13 so skilled at it, could see what my computers, and my
14 printers, and my software has done to me over the past
15 four days, you would be amazed at what I went through,
16 so -- that's because I live it.

17 THE COURT: And now it's preserved in the record.

18 THE WITNESS: Well, that is -- that is a great
19 blessing. Not just for me, but for all these farmers I'm
20 alluding to.

21 THE COURT: Thank you so much, Ms. Cochran.

22 THE WITNESS: Thank you, Your Honor.

23 MS. TAYLOR: Okay. Your Honor, that was the last
24 of our dairy farmer witnesses for today. And I think
25 we're nearing our 3 o'clock time, so it did take most of
26 the three hours.

27 THE COURT: Mr. Brown.

28 MS. TAYLOR: So I think Mr. Brown will be coming



1 back to testify whenever that lovely day is.

2 THE COURT: I hope he wants to.

3 MR. BROWN: I don't think I have a choice. I have
4 been with all my friends here for over a month. I can't
5 imagine not being back again.

6 THE COURT: All right. Then if there's nothing
7 further from any of you, I have a statement for you.

8 Do you want to stand up for a minute and stretch?

9 Okay. So we all know that today is September 29.
10 This hearing, considering proposals to change the Uniform
11 Pricing Formulas within Federal Milk Marketing Orders, is
12 recessed today, Friday, September 29, 2023, at 3:00 p.m.,
13 because I think it will take me until -- well, that's
14 seven minutes, I'll perhaps revise that -- but today no
15 later than 3:00 p.m. I'm reading this statement at
16 2:53 p.m. now.

17 Recessing the hearing now allows sufficient time
18 for employees to travel home and to ensure hearing records
19 are secured as part of our preparations for the
20 possibility of a lapse in appropriated funding. These are
21 good government steps being taken in the event of a
22 possible lapse in funding.

23 With regards to continuance, this hearing is
24 planned to reconvene on Monday, October 2, 2023, at
25 8:00 a.m., unless there is a lapse in appropriations
26 resulting in an extended recess of the hearing.

27 If the lapse in appropriations ends on or before
28 October 7, 2023, which is a Saturday, this hearing will



1 reconvene at 8:00 a.m. on the next business day, 24 hours
2 after the legislation funding the government is signed by
3 the President. For example, if legislation is signed at
4 1:00 p.m., on Tuesday, October 3, 2023, the hearing will
5 reconvene at this location, where we are now, 502 Event
6 Centre, Carmel, Indiana, at 8:00 a.m. on Thursday,
7 October 5, 2023.

8 If the lapse in appropriations extends beyond
9 11:59 p.m., Saturday, October 7, 2023, the hearing will
10 reconvene on a date to be announced on the USDA AMS Dairy
11 Program website, and through the other public methods
12 identified in 7 Code of Federal Regulations,
13 Section 900.4.

14 Proponents participating in the hearing have been
15 made aware and understand the process for reconvening this
16 hearing.

17 I'm going to go off record for a moment at
18 2:56 p.m. Don't leave yet. I'll go back on to finally
19 close us, recess us. So off record at 2:56 p.m.

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

21 THE COURT: We're back on record at 3:01 p.m.

22 The reason we're back on record is we want to
23 address the exhibits that Mr. Brown identified prior to
24 lunch. We didn't finish his testimony, but we can
25 certainly deal with these three exhibits.

26 Mr. Rosenbaum.

27 MR. ROSENBAUM: Yes, Your Honor, Steve Rosenbaum
28 for IDFA.



1 I would like to move into evidence Hearing
2 Exhibits 275, 276, and 277.

3 I want to note that Hearing Exhibit 277 exists in
4 two formats, one is an Excel spreadsheet which has been
5 posted to the website, and the other is a PDF of that --
6 of that spreadsheet. And so I would like both versions to
7 be deemed admitted.

8 THE COURT: Understood. And I presume that your
9 Excel -- your Excel spreadsheet previously submitted was
10 identified as IDFA Exhibit-49A?

11 MR. ROSENBAUM: That's correct, Your Honor.

12 THE COURT: All right. Is there any objection to
13 what Mr. Rosenbaum has requested?

14 There is none. Exhibit 275 is admitted into
15 evidence.

16 (Exhibit Number 275 was received into
17 evidence.)

18 THE COURT: Exhibit 276 is admitted into evidence.
19 (Exhibit Number 276 was received into
20 evidence.)

21 THE COURT: Exhibit 277 is admitted into evidence.
22 (Exhibit Number 277 was received into
23 evidence.)

24 THE COURT: And in this case, the electronic
25 version, which has much more utility in many ways, is also
26 part of the evidence. That is IDFA Exhibit-49A.

27 I would mention also the IDFA numbers for the
28 other two documents. Exhibit 275 was also IDFA



1 Exhibit 37, and Exhibit 276 was also IDFA Exhibit 49.

2 Is there anything further? This hearing is now
3 recessed. It is 3:03 p.m. on September 29, 2023.

4 Thank you, all.

5 (Whereupon, the proceedings concluded.)

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1 STATE OF CALIFORNIA)
) SS
 2 COUNTY OF FRESNO)

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

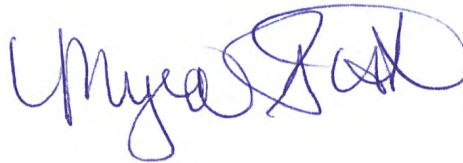
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10 DATED: November 16, 2023

11 FRESNO, CALIFORNIA

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16 MYRA A. PISH, RPR CSR
 17 Certificate No. 11613

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TRANSCRIPT OF PROCEEDINGS
 NATIONAL FEDERAL MILK MARKETING ORDER PRICING FORMULA HEARING

September 29, 2023

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