

**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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Zionsville, Indiana

December 4, 2023

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Reported by:

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

1 A P P E A R A N C E S:

2 FOR THE USDA ORDER FORMULATION AND ENFORCEMENT DIVISION,
3 USDA-AMS DAIRY PROGRAM:

4 Erin Taylor
5 Todd Wilson
6 Brian Hill
7 Michelle McMurtray

8 FOR THE MILK INNOVATION GROUP:

9 Charles "Chip" English
10 Ashley Vulin

11 FOR THE NATIONAL MILK PRODUCERS FEDERATION:

12 Nicole Hancock
13 Brad Prowant

14 FOR SELECT MILK PRODUCERS, INC.:

15 Ryan Miltner

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

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M A S T E R I N D E X

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1 MONDAY, DECEMBER 4, 2023 -- MORNING SESSION

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

3 We're back on record on 2023, December 4th. It's
4 a Monday. It's approximately 8:00 a.m. Eastern. We are
5 in our new location.

6 I would like to read in the record where we are.
7 We're at the Palomino Ballroom, 481 South County Road,
8 1200 East, Zionsville, Indiana, 46077.

9 When we stopped last week, we were in the middle
10 of Mr. English's cross-examination, and that was of Steve
11 Stout. I'm happy to resume with that, unless there are
12 any preliminary matters.

13 MR. ENGLISH: Yes, Your Honor. I have a
14 housekeeping matter left over from last week.

15 THE COURT: All right. Identify yourself, please.

16 MR. ENGLISH: My name is Chip English for the Milk
17 Innovation Group.

18 THE COURT: Say it again and we'll see if --

19 MR. ENGLISH: My name is Chip English for the Milk
20 Innovation Group.

21 THE COURT: Good. That was a good test of the
22 volume, and that's good.

23 MR. ENGLISH: Your Honor, last week we had
24 presented Exhibit MIG-53, which was entered into evidence
25 as 357. It was a one-page document labeled Central Order
26 States with a bar chart. And at the time, I did not
27 have -- it's entirely my fault -- the citation.

28 Promptly thereafter we resubmitted electronically



1 to USDA a replacement Exhibit MIG-53 with the source
2 information, and we have not yet passed it out. So I have
3 a copy for Your Honor, I have the 15 copies for USDA, and
4 then I have the industry copies. And so I would like to
5 have that marked and replaced as Exhibit 357 so that we
6 have the USDA Federal Milk Marketing Administrator's
7 citation.

8 THE COURT: All right. I'll let you pass it out,
9 and then I'll find out if there are any objections.

10 MR. ENGLISH: May I approach, Your Honor?

11 THE COURT: You may. Let's go off record.

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

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

14 We're back on record at 8:04. Is there any
15 objection to Exhibit 357, also marked Exhibit M-I-G or
16 MIG-53, being admitted into evidence?

17 There is none. It will replace the previous 357
18 that we had.

19 Thank you, Mr. English.

20 MR. ENGLISH: Thank you, Your Honor.

21 THE COURT: Ms. Hancock, did you have anything
22 preliminary?

23 MS. HANCOCK: Yes, Your Honor. Just to say that
24 Mr. Stout will return to hopefully go on first thing in
25 the morning. He has an afternoon flight, and so we're
26 hoping we could conclude tomorrow. So we're hoping we can
27 conclude -- stop wherever we are, pause the rest of
28 whoever is on the stand to allow him to go on and complete



1 his examination.

2 THE COURT: Tomorrow morning at 8:00?

3 MS. HANCOCK: Yes.

4 THE COURT: Excellent.

5 MS. HANCOCK: And then we'll have Brad Parks as
6 our next witness.

7 THE COURT: For now?

8 MS. HANCOCK: For now.

9 THE COURT: Okay. Great. Thank you.

10 So I have a copy of Brad Parks' Class I Update
11 testimony, and it's marked as Exhibit NMPF-45.

12 What will be the number to be given that exhibit?
13 What is our next number? Let's off record while we
14 determine that.

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

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

17 We're back on record at 8:07.

18 Ms. Hancock, I have marked the testimony that's to
19 be presented by Brad Parks as Exhibit 406, it is also
20 Exhibit NMPF-45.

21 (Thereafter, Exhibit Number 406 was marked
22 for identification.)

23 MS. HANCOCK: Thank you, Your Honor.

24 THE COURT: Hello.

25 THE WITNESS: Good morning.

26 THE COURT: Would you spell -- state and spell
27 your name.

28 THE WITNESS: It's Brad Parks, B-R-A-D, P-A-R-K-S.



1 THE COURT: Have you previously testified in this
2 proceeding?

3 THE WITNESS: I have not.

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

5 BRAD PARKS,
6 Being first duly sworn, was examined and
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MS. HANCOCK:

10 Q. Good morning, Mr. Parks.

11 Would you please provide your business address for
12 the record.

13 A. It's Michigan Milk Producers Association, 41310
14 Bridge Street, Novi, Michigan, 48375.

15 Novi is spelled N-O-V-I.

16 Q. Thank you, Mr. Parks.

17 Did you prepare Exhibit 406 in support of your
18 testimony today?

19 A. Yes.

20 Q. Would you please provide us with that statement,
21 just being mindful of your speed and volume so that our
22 court reporter can take it down.

23 A. My name is Brad Parks. I'm director of financial
24 planning and analysis and business development with
25 Michigan Milk Producers Association located in Novi,
26 Michigan.

27 My career in the dairy industry started 36 years
28 ago and has evolved into executive level positions



1 managing dairy processing plants and the customer
2 relationships that are associated with the business. My
3 experience is primarily with Class I and Class II
4 products, along with other dairy ingredients.

5 The first 15 years of my career was with Country
6 Fresh Dairy/Dean Foods in Michigan, where I held a variety
7 of positions from plant controller to vice president of
8 administration. My subsequent positions have included
9 vice president of operations for a national ice cream
10 manufacturer in Dallas, Texas; general manager of a
11 Class I plant in Wisconsin; and president of Creative Edge
12 Design Group, a division of Superior Dairy, located in
13 Canton, Ohio. Superior Dairy was acquired by MMPA,
14 Michigan Milk Producers Association, in January of 2022.

15 MMPA extends its appreciation to the Secretary of
16 Agriculture, the Dairy Division staff, and everyone
17 involved in this process for holding this important
18 hearing.

19 MMPA is a farmer-owned cooperative established in
20 1916. We have more than a thousand members in Michigan,
21 Ohio, Indiana, and Wisconsin, and market 5 billion Grade A
22 milk pounds per year, primarily in Federal Order 33.

23 THE COURT: And just to make sure that that amount
24 of milk is properly captured, how much?

25 THE WITNESS: 5 billion pounds per year.

26 THE COURT: Thank you.

27 THE WITNESS: MMPA operates two ingredient
28 balancing plants in Michigan that produce bulk butter,



1 powder, liquid dairy products, including specialty dairy
2 blends, cream, and condensed milk products.

3 MMPA also operates a small cheese plant in
4 Middlebury, Indiana, and a fully-regulated Class I fluid
5 milk plant in Canton, Ohio. We also operate a
6 state-certified laboratory at our headquarters located in
7 Novi, Michigan. MMPA is a member of National Milk
8 Producers Federation.

9 This testimony is presented in support of
10 Proposal 19, update the Class I price differential surface
11 throughout the United States as proposed by National Milk
12 Producers Federation. I will share comments in support of
13 NMPF's proposal to revise the Class I surface map that has
14 been in place since 2000. My comments will focus on the
15 Michigan and Ohio portion of the Mideast market.

16 MMPA fully supports the NMPF proposals to
17 modernize the Federal Milk Marketing Order system, and
18 specifically Proposal 19, update the Class I differentials
19 throughout the U.S.

20 Mideast milk market data. Reviewing the changes
21 from 2000 to 2022, referencing Table 1 in my testimony:

22 The number of producer farms has declined 66% from
23 10,030 in 2000 to 3420 in 2022.

24 The number of Class I plants has declined by 42%,
25 from 57 plants in 2000 to 33 plants in 2022.

26 The Class I milk utilization has declined -- has
27 declined 21% from 47% in 2000 to 37% in 2022.

28 The uniform milk price average was \$12.08 per



1 hundredweight in 2000 and \$23.45 per hundredweight in
2 2022, which is a 94% increase.

3 Milk production, referenced in Table 2, in
4 Michigan, Illinois, Indiana, Ohio, has increased from
5 14.7 billion pounds in 2000 to 23.4 billion pounds in
6 2022, an increase of 8.7 billion pounds, a 59% increase.

7 Michigan accounts for 68% of this milk production
8 increase. Michigan has increased milk production
9 6 billion pounds, or 106%, from 5.7 billion pounds in 2000
10 to 11.7 billion pounds in 2022.

11 Indiana has increased 2 billion pounds, or 82%.

12 Ohio has increased 1 billion pounds, or 24%.

13 Illinois has seen a decline of .38 billion pounds,
14 or minus 18%.

15 THE COURT: Let me stop you there. It's very
16 small, but I think we should correct it.

17 So I'm looking at your bullet point about Indiana,
18 and you mentioned the 2 billion pounds, or 82%. I just
19 want us to change that "of" to "or." So let's change that
20 on page 3 of Exhibit 406, the bullet point regarding
21 Indiana, we're just going to change the word "of" to "or."

22 Thank you. You may resume.

23 THE WITNESS: Milk production per cow referenced
24 in Table 3 increased in all four states, with Michigan and
25 Indiana seeing the largest increase of 44% and 43%
26 respectively. The average increase in cow numbers
27 referenced in Table 4 for the four states is up 14%, with
28 Indiana and Michigan having the largest increase of 55%



1 and 43%, while Illinois had a 45% decline, and Ohio a 5%
2 decline in cow numbers.

3 Tables 5 --

4 THE COURT: Now, go ahead and insert what you have
5 in your statement on page 3 where you say "see Table."
6 The end of that sentence.

7 THE WITNESS: "See Table 4."

8 THE COURT: Thank you.

9 THE WITNESS: So then my testimony just lists the
10 Tables 1 through 4, then I'll continue.

11 Tables 5, 6, and 7 are presented showing data from
12 2000 to 2022. The growth in milk production, cow numbers,
13 and milk production per cow for the four states has been a
14 long and consistent trend and not a one- or two-year
15 abnormality.

16 Exhibit 61 contains a data request to the USDA
17 that lists producers' milk pounds received at pool
18 distributing plants and partially-regulated distributing
19 plants by state in 2015 versus 2022. A comparison is made
20 to total milk production by state for 2015 and 2022.

21 Receipts at plants located in Indiana that bottle
22 milk increased by 678 million pounds, while total milk
23 production in Indiana increased 388 million pounds.
24 Approximately 25% of the milk production in Indiana is
25 shipped to other markets and pooled in Federal Orders 5
26 and 7.

27 Receipts at plants located in Michigan that bottle
28 milk decreased by 478 million pounds, while total milk



1 production in Michigan increased by 1.5 billion pounds.

2 Receipts at plants located in Ohio that bottle
3 milk decreased by 196 million pounds, while total milk
4 production in Ohio increased by 26 million pounds. The
5 decrease in bottling plant receipts in Ohio was absorbed
6 by additional demand from Class II plants.

7 Michigan milk production market. The Michigan
8 market supports good milk production due to the ideal
9 climate, abundant and sustaining natural resources to grow
10 the necessary feed in the region. Michigan consistently
11 has the highest milk output per cow in the U.S., with a
12 44% increase in milk output per cow since 2000 referenced
13 in Table 7.

14 70% of the milk supply in Michigan is concentrated
15 in three geographic areas, with 56% of supply located in
16 the eastern thumb and central/northern counties of the
17 state. Four counties in Western Michigan supply 14% of
18 the milk in the state. These main dairy farming regions
19 in Michigan continue to expand, while other regions in the
20 state have experienced a reduction in milk production.

21 70% of the milk production in Michigan is from
22 three regions: 33% comes from Central/Northern lower
23 Michigan, in Gratiot, Clinton, Osceola -- that's spelled
24 O-S-C-E-O-L-A -- and Missaukee County -- spelled
25 M-I-S-S-A-U-K-E-E.

26 THE COURT: Now, I appreciate those spellings, but
27 we need one also for the word that starts G-R.

28 THE WITNESS: Gratiot, which is spelled



1 G-R-A-T-I-O-T.

2 THE COURT: Thank you.

3 THE WITNESS: 23% comes from the thumb of Michigan
4 in Huron, H-U-R-O-N; Sanilac, S-A-N-I-L-A-C; and Tuscola,
5 T-U-S-C-O-L-A, Counties.

6 14% in Western Michigan in Ionia, I-O-N-I-A;
7 Allegan, A-L-L-E-G-A-N; Ottawa, O-T-T-A-W-A; and Barry
8 County, B-A-R-R-Y.

9 The Mideast market had 57 Class I processing
10 plants in 2000. Today there are 33 Class I plants, a
11 reduction of 24 plants, or a 42% reduction. Michigan
12 currently has two Class I plants in the metropolitan
13 Detroit area and four Class I plants on the west side of
14 the state, for a total of six.

15 The reduction of Class I plants has caused milk to
16 be transported greater distances to reach Class I plants.
17 Adjacent markets to Michigan have experienced similar
18 Class I plant reductions. Two large fluid plants formerly
19 located in Chemung, which is spelled C-H-E-M-U-N-G, and
20 Huntley, H-U-N-T-L-E-Y, Illinois, closed that had
21 primarily served the Class I fluid milk market in Chicago.

22 Packaged Class I products are now supplied to
23 Chicago retailers from Class I plants located in Western
24 Michigan, Ohio, and Wisconsin, and I would also like to
25 add Iowa.

26 THE COURT: Yes. And let's put that also on the
27 record copy. We're on page 7 in the middle. So I -- I'm
28 going to call it the third paragraph, the sentence now



1 ends "Michigan, Ohio, and Wisconsin," and we will add
2 "and" -- did you say Iowa?

3 THE WITNESS: Yes.

4 THE COURT: "Iowa." Thank you.

5 THE WITNESS: MMPA's largest balancing plant is in
6 Ovid, O-V-I-D, Michigan, located in Clinton County, in
7 Central Michigan, in the heart of its milk shed.

8 Michigan has experienced the addition of new
9 plants near the milk producing counties. A condensing
10 milk plant was built in Cast City, Tuscola County, which
11 is T-U-S-C-O-L-A, in 2013, which is in the thumb region.

12 In 2018, a milk RO, which is reverse osmosis,
13 processing plant was built in Greenville, Michigan to
14 condense milk in West Michigan. A new Class I fluid and
15 butter powder plant opened in 2012 located in Ottawa
16 County in West Michigan. A large cheddar cheese plant
17 opened in Clinton County, Michigan, in 2020.

18 As Class I plants have closed, additional plants
19 have been built close to the milk supply, competing for
20 the same milk that is being supplied to more distant
21 Class I plants. Milk in Michigan travels south and east
22 to reach Class I plants in Indiana, Ohio, Pennsylvania,
23 and states even further south when needed. The Michigan
24 Milk Market acts as a reserve source of milk for these
25 other states.

26 In the past ten years, there have been four new
27 Class I processing plants built in the Mideast market.
28 These new plants are in Fort Wayne, Indiana; Tipp City,



1 Ohio; Coopersville, Michigan; and just recently a new -- a
2 new ultra-high temperature processing plant opened in
3 Morgantown, West Virginia. The new Indiana and Ohio
4 plants are 200 to 350 miles further south from where the
5 milk supply is in Michigan. The addition of these new
6 plants contributed to the closing of two Class I plants in
7 Livonia, which is spelled L-I-V-O-N-I-A, and Ewart,
8 Michigan, E-V-A-R-T, in recent years.

9 Ohio has experienced increased growth in the
10 demand for milk. The new Class II plant was built in
11 Wooster, W-O-O-S-T-E-R, Ohio, in 2016, and an existing
12 Class II plant in Minster, M-I-N-S-T-E-R, Ohio, has
13 expanded its production capacity. And a Class I plant in
14 Canton, Ohio, has more than doubled its milk volume in the
15 past ten years. This additional milk demand has increased
16 the shipments of milk from Michigan to Ohio. Michigan has
17 become the reserve supply for these growing markets.

18 Michigan also supplies milk as required seasonally
19 to the Southeast area of the United States. The milk
20 hauling costs to move this milk to the Southeast are
21 subsidized by the milk cooperatives in the Southeast.

22 The current Class I differentials established in
23 2000 are not adequate to cover the increased costs of
24 transporting milk to distant Class I plants, whether that
25 is within the Mideast market or outside of it. The zone
26 for the Class I differential of \$1.80 per hundredweight in
27 Michigan covers a large geographic territory that
28 stretches 525 miles from the northern part of the upper



1 peninsula of Michigan in Marquette County, which is
2 spelled M-A-R-Q-U-E-T-T-E, to Fountain and Clinton
3 Counties in Central Indiana.

4 MMPA supplies milk to a Class I plant in
5 Marquette, Michigan. The hauling cost to get milk to this
6 plant approaches \$1.50 per hundredweight. The NMPF
7 proposed change in Class I surface maps addresses the
8 inadequacies of one differential covering this large
9 geographic area and reflects additional rates across
10 smaller zones to better reflect the cost to move milk.

11 There are more cheese plants competing for milk
12 today compared to 2000. The Mideast market has three
13 large cheese plants in Michigan, a large cheese plant in
14 Eastern Pennsylvania, and multiple midsized to smaller
15 cheese plants in Ohio. In October 2020, a new large
16 volume cheese plant opened in Central Michigan that now
17 absorbs 8 million pounds of milk per day from the Michigan
18 market.

19 The current Class I differentials are too low and
20 do not provide the economic incentive the Federal Milk
21 Marketing Orders intended to ensure that Class I plants
22 get the milk they need and to compete with the increased
23 demand for manufacturing plants in the Mideast market and
24 other parts of the country. Milk cooperatives and their
25 members end up subsidizing the cost to get milk to Class I
26 plants due to marketing and hauling costs exceeding the
27 current Class I differentials. The concern is that
28 serving the Class I market is not economically sustainable



1 long-term. One could conclude that it would be better to
2 deliver milk locally to a large manufacturing plant,
3 rather than absorbing the added cost to deliver the milk
4 to a more distant Class I plant.

5 Milk hauling market changes. MMPA contracts milk
6 hauling services with third-party haulers to move bulk
7 milk into our plants and process bulk liquid dairy
8 products manufactured at MMPA plants to regional and
9 national customer locations. The key components of the
10 milk hauling costs have all increased: Diesel fuel,
11 distribution equipment, trucks and tankers, driver wages
12 and benefits, and liability insurance.

13 The following cost feedback was from key haulers
14 utilized by MMPA in Michigan and Ohio, provides insight
15 into the cost increases experienced in the Mideast market.

16 Additional rolling stock is needed today versus
17 2000 because of the Department of Transportation's driver
18 hours of service allowed per day revisions implemented in
19 2018, and the increased distance milk must now travel to
20 more distance Class I dairy plant locations.

21 New trucks require more service to the emissions
22 systems and electronics. This results in more downtime
23 compared to 2000.

24 Diesel fuel costs have increased from \$2 per
25 gallon in 2006 to \$4.40 per gallon today, an increase of
26 120%. MMPA now pays fuel surcharges to haulers that adds
27 38% to hauling costs just for fuel cost increases,
28 referencing August of 2023. Improved fuel mileage per



1 gallon has offset a small portion of the fuel increases.

2 New EPA regulations mandating fuel mileage
3 increases in lower emissions have increased the cost of a
4 truck due to increased use of sensors and controls.
5 Unfortunately, these emission detection systems tend to be
6 unreliable and have increased maintenance costs, which
7 causes additional equipment downtime. The historical cost
8 of a new truck in 2009 was \$96,000; in 2019, \$153,000; and
9 in 2023, \$183,000, a 90% increase in 14 years.

10 The cost of a bulk milk tanker has increased. In
11 2020, a standard 48,000-pound bulk tanker cost \$68,000.
12 That same trailer today costs \$96,000, a 40% increase in
13 just three years.

14 Another contributing factor to truck cost
15 increases has been a shortage of parts along with
16 increased demand for trucks, especially during the COVID
17 years of 2020 and 2021. The combination of the short
18 supply of new trucks and haulers looking to avoid
19 increased repairs and downtime of new trucks caused the
20 prices of used equipment to increase over the past two
21 years.

22 MMPA milk haulers indicate that liability
23 insurance costs have increased significantly in the past
24 five years, driven in part by the increased cost of
25 equipment.

26 Driver wages have increased to obtain and to
27 retain qualified drivers due to a national driver shortage
28 that peaked in 2018, triggered by the hours of service



1 increased restrictions.

2 Medical benefit costs have increased 30% since
3 2016.

4 Traveling out of Michigan generally involves the
5 use of toll roads and sometimes special road permits. An
6 example of toll road costs for Michigan to Cleveland,
7 Ohio, is \$64.00 roundtrip, or just under \$0.13 per
8 hundredweight.

9 MMPA milk hauling costs for July 2023 to transport
10 milk from mid-Michigan to Eastern Ohio was \$1.60 per
11 hundredweight, per 100 miles. This cost includes Ohio
12 toll road fees that adds \$0.05 per hundredweight, per 100
13 miles.

14 Farm Costs/Milk Quality. Customers that buy
15 Class I and Class II milk have increased their quality
16 standards for milk and have increased their requirements
17 for maintaining sustainability, environmental, and animal
18 welfare programs. While we support these efforts, we
19 recognize these programs come with additional costs.
20 Customers increasingly discourage us from supplying them
21 with route milk or commingled loads of milk. Customers
22 prefer to receive a single load of milk from a single
23 farm.

24 Customer requirements for somatic cell counts,
25 SCC, are more likely to be in the range of 150,000 to
26 180,000, and not the 350,000 contained in the Federal Milk
27 Order language. To achieve lower SCC milk, the
28 cooperative has a quality premium program where somatic



1 cell count premiums and deductions in addition to the
2 Federal Order SCC adjustments computed in the producer pay
3 price are paid to producers.

4 MMPA pays modest volume premiums to large farms to
5 recognize the marketing efficiencies associated with
6 single-farm loads. This adds cost to supplying the
7 Class I market that are not paid for by Class I handlers.
8 The additional milk quality and volume premiums paid to
9 producers exceeds \$0.50 per hundredweight.

10 An example of the cost of achieving lower somatic
11 cell count milk. Class I plants demand milk with SCC
12 values below 180,000. 2023 year-to-date 40-pound block
13 cheddar cheese price was \$1.80 times .005 adjuster, equals
14 .0009 per thousand somatic cell count adjustment rate.

15 THE COURT: I need you to read that again, if you
16 will. So we're on top of page 12, and just start there.

17 THE WITNESS: 2023 year-to-date 40-pound block
18 cheddar cheese price equalled \$1.80 times .0005 adjuster,
19 equals .0009 per thousand somatic cell count adjustment
20 rate. A base somatic cell count of 350,000, less 180,000
21 actual, equals a target somatic cell count reduction of
22 170,000 times .0009, equals \$0.15 per hundredweight.

23 Active participation of dairy farmers in animal
24 welfare programs such as Farmers Assuring Responsible
25 Management, or FARM, that certify animal welfare
26 conditions.

27 Enrollment in environmental sustainability
28 programs includes defining a plan, tracking, and reporting



1 the results.

2 Achieving meaningful changes requires capital
3 investment and additional resources.

4 The price mechanism available to producers to
5 recover these cost increases to serve the Class I market
6 is the Class I differential. Farmer cooperatives and
7 their members end up absorbing costs not covered by the
8 Class I differential.

9 Table 8 lists the past five years of the annual
10 average producer price differential that demonstrates the
11 low or even negative value the Mideast Federal Order 33
12 market pool has paid versus the base Class III price:

13 2018, average was \$0.60 per hundredweight; 2019,
14 the average was \$0.26 per hundredweight; 2020, the average
15 was a negative \$2.31 per hundredweight; 2021, average
16 negative \$0.38 per hundredweight; and 2022, average \$1.21
17 per hundredweight.

18 Table 8, Mideast Producer Price Differential is
19 listed. The current Class I differentials do not provide
20 sufficient economic recovery for producers.

21 The retail landscape. The retail landscape has
22 changed in the Mideast market whereby national retailers
23 such as Walmart, Sam's Club, Costco, Aldi, Meier, Kroger,
24 and Target have displaced local independent stores. Other
25 national retail chains such as A&P, Kmart, Safeway,
26 Dominick's in Chicago, which is adjacent to the Mideast
27 market, have exited the market.

28 Retailers selling Class I milk products have



1 consolidated. They have more locations that cover larger
2 geographic areas. This trend has served to put downward
3 pressure on Class I margins for Class I plants that, in
4 turn, puts pressure on farmer cooperatives in the
5 over-order premiums they are able to charge Class I
6 plants.

7 Class I over-order premiums peaked in January 2012
8 at \$2.37 per hundredweight, net of any performance credits
9 to buyers. The base premium was \$1.25 plus an rBST-free
10 premium of \$0.90, plus a fuel surcharge of \$0.22.

11 Over-order milk premiums slowly eroded from January of
12 2012 as rBST-free premiums were eliminated and buyers
13 became more aggressive in premium negotiations.

14 The low point came in January of 2018, when milk
15 premiums dropped to \$0.30 per hundredweight. Over-order
16 premiums for September 2023 are \$1.05, plus a fuel
17 surcharge of \$0.26, or \$1.31 per hundredweight.

18 More retailers operate fluid milk plants today
19 than in 2000 in the Mideast market. The Mideast market
20 has three -- has three retailers who operate six
21 processing plants. In 2000, there was one retailer
22 operating three processing plants. The large retailers
23 can offer farmer cooperatives large milk volumes because
24 of their expanded geographic footprint and increased
25 number of retail locations. The offer of large milk
26 volume tends to put downward pressure on over-order milk
27 premiums in the market. Increasing over-order milk
28 premium today is more difficult than it was 20 years ago.



1 The proposed adjustments to the Class I
2 differentials would provide for a fair and uniform system
3 of change.

4 Summary. In summary, the proposed new Class I
5 differentials across the market would provide for a fair
6 uniform system of change, but would not be influenced
7 negatively by an individual Class I plant's unwillingness
8 to pay these costs.

9 Class I differentials across the United States are
10 outdated and need updating to reflect the market changes
11 that have occurred since the last update in 2000. The
12 NMPF's proposed change in Class I differentials does not
13 attempt to capture all increased costs identified, but
14 strives to achieve a balanced approach of updating the
15 Federal Milk Order system and its implementation.

16 Your hard work and expertise as you consider this
17 important matter for the good of the dairy industry is
18 appreciated.

19 THE COURT: Ms. Hancock, this is a remarkable
20 document, and I need a five-minute break. So only five
21 minutes. You may move around, stretch your neck, but
22 don't go very far.

23 We'll go back on the record at 8:53.

24 (Whereupon, a break was taken.)

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

26 We're back on record at 8:54.

27 And, Mr. Parks, as I said before we took our
28 break, this is a remarkable document. You covered so many



1 different things that are so helpful, and I appreciate it.

2 THE WITNESS: Thank you.

3 THE COURT: Thank you.

4 Ms. Hancock.

5 MS. HANCOCK: Thank you, Your Honor.

6 BY MS. HANCOCK:

7 Q. I'm going to try and be able to read my notes now.

8 Mr. Parks, I just have a few -- a few follow-up
9 questions based on your testimony.

10 We have heard a number of questions in the last
11 week or so about whether there are deficiencies or -- in
12 the model that you are -- that you are accounting for in
13 your area. Can you tell me what -- what your observations
14 are based on the model results that -- that you saw for --
15 as it compares to your area?

16 A. So we took the bottle and evaluated in what our
17 market is like, where the milk is produced at, and where
18 the milk needs to go. And so, as I outlined, we tried to
19 incorporate -- or did incorporate the information that we
20 live with every day in terms of how do we move milk and
21 where do we move milk.

22 And transportation costs have increased. The
23 pressures that we get from our milk haulers every day was
24 at the forefront of our minds as we looked at this.
25 Traffic congestion in the area. And we've just got large
26 milk producing areas in the state that that milk moves out
27 of state for a variety of reasons. And as we looked at
28 the model, we incorporated those things and -- and, you



1 know, looked at making adjustments based on that local
2 information.

3 Q. And those items that you just discussed, are those
4 things that the model did not fully account for, in your
5 observations?

6 A. Correct.

7 Q. So you are applying your own local and regional
8 knowledge and experience in actually moving milk in the
9 area to make sure that the changes that you -- that you
10 supported for National Milk reflected those local and
11 regional considerations?

12 A. Yeah. And we just -- you know, things like -- you
13 know, we've got supertankers in Michigan that move milk
14 that hold 100,000 pounds of milk versus 50,000. Well,
15 those tankers cannot go out of state in Michigan without
16 special permitting from the other states that has to be
17 set up ahead of time, and there's substantial fees to do
18 that. We've got Amish milk in the southern part of
19 Michigan and Northern Indiana that can't go to every
20 plant. We've got increased Class I customer demands for
21 fluid milk for higher quality.

22 And so I think there's an assumption in the USDSS
23 model that assumes that all milk can go everywhere. It
24 cannot, based on the customer demands and plant demands.
25 We've got hauler limitations that not every hauler is
26 willing to go anywhere and everywhere. We have got driver
27 shortages.

28 And so we constantly are challenged with, where



1 can milk go? I need to make adjustments. I don't have
2 haulers. There's just a lot of requirements today that
3 just did not exist in 2000.

4 Q. When you -- when you had mentioned that you have
5 customers that have different standard requirements, if
6 you have two customers and they each have different
7 standard requirements, does that mean that milk cannot be
8 commingled in a truck?

9 A. Yes. So one of the -- one of the latest demands
10 of these retailer plants is the demand for a single load
11 of milk from a single farm and not commingled milk coming
12 from multiple farms. This is a requirement that adds
13 restrictions on hauling and -- and that we just have to
14 manage through today.

15 Q. And I'm wondering in the work that you did, you
16 had mentioned that you looked at alignment of the
17 different locations. I'm wondering if you could talk
18 about alignment and how those local factors played into
19 the relativities that you put in place, or that you
20 supported in your areas.

21 A. So my role was a supporting role to the National
22 Milk's task force, and specifically looking at Michigan
23 and Ohio. And so, you know, we just looked at the
24 starting point that the model was at. We just felt like
25 we have a lot of milk in Michigan, that milk moves -- the
26 only place it can move is south because of the Great Lakes
27 that surround us. And so that milk moves south. We have
28 good experience and numbers when moving milk to Ohio and



1 Indiana and what that cost is, and we just felt like the
2 slope of these Class I differentials needed to increase
3 going from Northern Michigan south to reflect the cost and
4 the actual occurrences today that happens when moving milk
5 to these southern markets.

6 Michigan used to have, you know, a lot of Class I
7 plants in every market where the milk was. Today those
8 plants are gone and this milk has to move south. And
9 so -- so that's -- that was the big factor to me that was
10 a difference in the USDSS model that we adjusted for.

11 And then we tried to smooth out that slope. And
12 so, as I mentioned in my testimony, today Michigan has one
13 Class I zone differential of \$1.80 of hundredweight that
14 goes from Northern Michigan all the way to Huntington,
15 Indiana.

16 Well, what we tried to look at is implementing
17 multiple zones to reflect the cost to move that milk
18 rather than a 525-mile distance, we built in logical
19 trans- -- you know, increased Class I differentials to get
20 that slope is what we did.

21 Q. So even with the work that we're doing, that your
22 teams did on that alignment and that, the adjustments that
23 were proposed, it was to not just account for the
24 locations today, but to allow a more modernized price
25 differential system that would allow it to be used in the
26 future as well if there are further changes in plants and
27 locations?

28 A. That's correct.



1 Q. And back in order reform, the model was used, but
2 it didn't -- it didn't have the capabilities of providing
3 data output for all of the counties that it does this
4 time. And the model results this time provided results
5 for all 3100-plus counties.

6 Is that -- is that part of why all of those
7 counties were now taken into account by National Milk's
8 task force?

9 A. Yeah. The model today that we used was just more
10 sophisticated, there's more data, and we were just able to
11 look at it county by county. So, yes.

12 Q. And when you say the model today is more
13 sophisticated and it has more data points, does that mean
14 that it -- it can, by itself, accurately set price
15 differentials on the model alone?

16 A. No. I mean, that -- we just didn't feel that the
17 model could incorporate all of the local issues that arise
18 and that exist. Some of that I have already mentioned.
19 It's just the model doesn't do everything, and so we just
20 felt applying that local knowledge and making those
21 adjustments reflected reality today.

22 Q. On page 9 of your testimony you talk about a
23 concern that serving Class I markets is not economically
24 sustainable long-term, and that it could be concluded that
25 it would be better to deliver to milk markets locally for
26 those large manufacturing plants rather than absorbing the
27 added cost to deliver milk to a more distant Class I
28 plant.



1 It made me wonder about some of the questions that
2 we have heard about: Can't we just let the natural market
3 conditions fix the pricing? And you talked about
4 over-order premiums in your testimony as well and how
5 there's more recently been some pressure on over-order
6 premiums.

7 I'm wondering if you could tell us about who it is
8 that that pressure is put on in those declining over-order
9 premiums.

10 A. So, yeah. It's interesting. So earlier in this
11 hearing, one of our members at Michigan Milk, Ken Nobis,
12 testified. His farm happens to be eight miles from the
13 cheese plant, the new cheese plant in Michigan. And he
14 testified on record that he -- he looks at it better off,
15 "I'd rather ship my milk to that cheese plant than even
16 ship it to Western Michigan to Grand Rapids," because of
17 the additional hauling cost that he feels, he just does
18 not get -- he doesn't get recouped for that cost to haul
19 that milk.

20 And so we've got this challenge in Michigan with
21 these other plants that just seem to be economically more
22 viable than serving a Class I plant in a distant market.

23 Part of my role at Michigan Milk is financial
24 analysis and planning. Our role is to get the greatest
25 value of milk for our members.

26 And so my concern, and really why I'm here, is I
27 have a concern that serving the Class I market, yes, milk
28 is getting everywhere it needs to today, but we sit in our



1 offices, in our meetings, and look at other opportunities
2 that would better serve our members. And I got to tell
3 you, serving a Class I plant is falling down the list of
4 options very rapidly.

5 We've taken our plant in Michigan, in Constantine,
6 Michigan, which is in Southwest Michigan. That used to be
7 a butter powder plant. We have actually converted that
8 now to a demand plant. We produce UF milk, and we run
9 that plant seven days a week. We no longer balance; we
10 don't run powder; we don't run butter. We have converted
11 that plant. We've made changes to better serve the
12 members of our cooperative.

13 And unless these Class I differentials are
14 updated, I'm just concerned that, yeah, our members are
15 going to be happy shipping milk to a cheese plant eight
16 miles away than a Class I plant in Indiana, Ohio, and
17 southeast portions of Ohio and Pennsylvania, because the
18 economics are just not there.

19 Now, when we look at Class I plants and the
20 additional demands they put on milk, basically all Class I
21 plants have learned that getting the shelf life up on a
22 gallon of milk is advantageous. And what does it take to
23 get shelf life up on milk? Improve milk quality. So what
24 does that drive? It drives more on-farm, better quality,
25 lower standard plate count results.

26 Plants are looking at specific farm samples, and
27 they are very quickly to call you up and say, exit that
28 farm, the quality is not where we want it. And so that



1 just creates additional chaos. We got to do something
2 with that milk. We got to find replacement milk for that
3 Class I plant.

4 So over the years -- and we get it. We understand
5 the benefits of improved milk quality. But that -- those
6 costs just are not reflected in the Federal Order system,
7 and that can be recouped out of the system.

8 And so I have always had the opinion that the
9 Federal Order exists to more efficiently market milk and
10 get milk to where it needs to be. And if we just leave it
11 up to the market forces, it creates inefficiencies because
12 of the demands that these plants place on a cooperative
13 organization to get milk to where it needs to be.
14 Over-order premiums, the pressure is down, you just can't
15 recoup that price.

16 So we feel like the Federal Order system is a
17 better opportunity to create stability and, like an
18 economic base that's there, that supports the cost
19 recoupment for the farmers.

20 Q. So if I can just maybe distill down the
21 explanation that you gave.

22 Is it fair to say, then, that dairy farmers are
23 not in a bargaining power position that would allow them
24 to negotiate over-order premiums that would cover those
25 added costs?

26 A. That's correct. I mean, very simply, what happens
27 is, you know, in our market, co-ops get together and we
28 try to talk about premiums, and can we increase premiums.



1 But you always seem to have the case where somebody's got
2 a single plant with a contract that, oh, I have got a
3 contract for six months, and I am not able to get it
4 changed right now. Nothing is ever in sync with all of
5 these customers with the different cooperatives, and that
6 just creates a challenge and difficulty going to the
7 market with an over-order premium increase. You just
8 can't get everybody on the same page to implement it.

9 Q. And you had mentioned that either the Class I
10 customers now are asking for higher quality standards that
11 lets them extend shelf life and other quality factors that
12 will help them compete and sell their product as well.

13 Are those costs borne by the dairy farmers in
14 order to achieve those quality standards?

15 A. Yes. So, you know, we -- we pay a quality premium
16 to our members in order to achieve, you know, increased
17 quality. And actually, we impose penalties as well for
18 lower-quality milk as an incentive to have higher quality.

19 Well, what does that mean? We have got a member
20 services team that visits farms, that helps our members
21 with quality, with on-farm challenges with quality. So in
22 order to achieve these higher quality standards, we have
23 got more visits to farms to help with quality, we have got
24 more inspections with milk tankers, we have got more
25 testing that our lab does to provide feedback to the
26 members to ensure that they have quality. The incentives
27 that we pay our members are about \$0.50 per hundredweight
28 to get that quality milk that we need.



1 Q. Do you know if that \$0.50 per hundredweight makes
2 them whole for all of the costs that they incur in
3 producing the milk that can service the Class I fluid milk
4 market?

5 A. I would say that there's additional costs that do
6 not get absorbed with our member services that -- you
7 know, we have got the Class I differential is really it to
8 get that added value out of the market. So, no, we do not
9 recoup all of the costs that -- that the new Class I
10 demand plants place on our members.

11 Q. And there are also continued costs that dairy
12 farmers have to absorb just in maintaining their Grade A
13 quality standards as well; is that right?

14 A. Yes. It's, you know -- we -- we have heard the
15 term here Grade A plus, and we look at it the same way.
16 We are constantly looking at improving the quality of our
17 milk and working with our members, and there's just a cost
18 associated with that in order to do that.

19 Q. Your testimony also talks about the balancing that
20 continues to occur at your cooperative and others.

21 I'm wondering if you could provide any, to the
22 extent you are comfortable, if you could provide any of
23 the balancing costs that you have been able to identify?

24 A. So in our -- in our cooperative and in -- we
25 balance our milk with skim powder, nonfat dry milk powder
26 I should say, and -- and butter. And so it's just --
27 balancing costs today you -- you know, a week ago was
28 Thanksgiving. We had about 7 million pounds come back at



1 our plants during that week because of the holiday and
2 customer plants that shut down and don't need the milk.
3 And so we -- we knowingly go through that week knowing
4 that we're going to make a lot of powder and a lot of
5 butter and put it in storage, and we're going to lose
6 money on that eventually. Really on the powder.

7 And so we try to average that out and balance that
8 as best we can. But I think our balancing costs today, I
9 would say they go up and down, and sometimes the market
10 forces come into play and can benefit you, but they easily
11 exceed \$0.90 a hundredweight overall in our milk, and will
12 approach on average \$1.50 to \$1.75 a hundredweight
13 balancing cost because of the market conditions when you
14 can sell that product.

15 Q. And when you were -- we were talking about the
16 pressures that are put on farmers' ability to negotiate
17 over-order premiums. If one plant refused to pay an
18 over-order premium, does that have an impact on areas for
19 beyond the location of that single plant? Does that
20 impact other areas as well?

21 A. Yeah. Definitely it does. Everybody knows, seems
22 to know when -- when a single plant is not willing to
23 accept premiums, and you just cannot -- you cannot pass
24 premiums on at that point if -- if everybody's not onboard
25 with an increase. So that -- premiums -- premiums can go
26 down very quickly and easily, and they go up very
27 difficult and slowly. And so it's definitely a challenge.

28 Q. And if one of the objectives of the Federal Order



1 system is to help neutralize that -- that unequal
2 bargaining power position, would raising the differentials
3 help achieve that bargaining power that we just talked
4 about?

5 A. Yeah. I think we just look at it as it takes out
6 the issue of a single plant not willing to participate in
7 a premium increase that impacts the whole market. It
8 just -- it takes that element away.

9 Q. Okay. Thank you, Mr. Parks, for your testimony.

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

12 THE COURT: Thank you, Ms. Hancock.

13 CROSS-EXAMINATION

14 BY MS. VULIN:

15 Q. Good morning, Mr. Parks.

16 A. Good morning.

17 Q. My name is Ashley Vulin. I'm an attorney for the
18 Milk Innovation Group. It's nice to meet you.

19 A. Nice to meet you.

20 Q. So I want to start -- and I have my phone up here
21 as my flashlight -- I'm not doing anything else, I
22 promise.

23 So I want to start with the University of
24 Wisconsin model and kind of your work and participation in
25 the red pencil or colored pencil crew. So I didn't see
26 any discussion of that in your testimony.

27 Did you participate in any group in -- that
28 managed the red pencilling of those results?



1 A. Yes, I did.

2 Q. Can you tell me about that, please?

3 A. Yeah. So we were involved -- really Dr. Eric Erba
4 was kind of the lead in our area, and then Jeff Sims from
5 a national standpoint. But we -- we provided local input
6 into the Class I differential changes. We looked at our
7 markets and looked at every county and made
8 recommendations up through our group in terms of a
9 proposed change as we looked at this proposal.

10 Q. And were you involved at the outset or did you
11 come in kind of midstream as some others did?

12 A. You know, I came in at -- at the beginning. I --
13 you know, there was a -- there was a task force above me,
14 and I got brought in early on, but kind of as a
15 sub-supportive group for Michigan, Ohio market. But I was
16 involved early on, yes.

17 Q. Did you participate in the selection of the anchor
18 cities?

19 A. I did not.

20 Q. That was done before you got involved?

21 A. Yes.

22 Q. And so your role, you said, was to provide local
23 input for Michigan and Ohio?

24 A. We looked at the whole market, the Federal
25 Order 33, the Mideast market. So it would be Michigan,
26 Ohio, Indiana, Western Pennsylvania, and then West
27 Virginia to the southeast.

28 Q. And you have talked a lot about Michigan. And I



1 went and looked at the proposal and compared it to the
2 average.

3 And it looks like in Michigan, NMPF's proposal
4 decreases the differential from what the University of
5 Wisconsin model had, correct?

6 A. Correct.

7 Q. And what were the reasons or principles you
8 applied in order to determine that a decrease was needed
9 in Michigan?

10 A. So a few things. So obviously we looked at the
11 abundant supply of milk in Michigan, and, you know, where
12 the markets are at and the cost to move milk. And so we
13 just -- looking at our own numbers, we just felt like the
14 differential did not need to be as high as it was. Really
15 more reflecting on our actual experience, and we didn't
16 spend a lot of time trying to look at, well, why is the
17 model like it is? We simply were interjecting facts that
18 we knew and lived with every day.

19 And the other objective, I think, we had going in
20 was the fact that milk does move north to south out of
21 Michigan, and we had this one big zone of \$1.80 that we
22 felt needed to be corrected that we know we needed to get
23 a larger slope or an increase as you went south in the
24 Class I differential. And so we built that into our
25 recommendation. It was a key factor.

26 Q. And did the original model results have a slope in
27 it or was the problem created when deviations were made
28 from the model in other areas?



1 A. The original model -- the model does have a slope.
2 We just felt to reflect local market impact that it needed
3 to be greater.

4 Q. And there was a lot of discussion in your
5 testimony about the challenges that farmers face in
6 Michigan, the costs of manufacturing -- or of producing
7 milk at a certain quality level, the transportation costs.
8 And I'll be honest, it sounded like we were headed up,
9 right, with all of that discussion? And so it's been
10 difficult for me to match that up with the fact that, in
11 fact, you are decreasing the differential in Michigan.

12 So why is that? How do I -- how do I harmonize
13 those?

14 A. So I think I started out, and I reflected on the
15 same thing. And so when I first prepared my testimony, I
16 was coming from a standpoint, well, I felt like I might
17 have had to explain sort of the whole, how did we end up
18 where we end up with? And so -- so there's a couple of
19 things.

20 We go from 2000, where the current rates were set,
21 to today. So we were trying to reflect like, well, what
22 happened in the market? How have costs changed?
23 Basically just trying to lay out the facts. And so, yeah,
24 it shows that costs have gone up, hauling costs are up,
25 equipment is up.

26 But at the same time, as you indicate, we have got
27 this USDSS model that was at a higher point that we
28 adjusted down. Frankly, we didn't spend a lot of time



1 worrying about that. We were more focused on getting the
2 numbers right and interjecting what we felt were our
3 true -- you know, our hauling costs and what we experience
4 in the market, and we just happened to end up at a lower
5 point than the model. We actually thought that was a good
6 thing, and so didn't really dwell on it a whole lot.

7 We just were more concerned about the overall map,
8 the slope, and we were conscious of going from one county
9 to another that we didn't want to see a big jump that
10 would create, let's say, new inefficiencies or new
11 uncompetitive issues. We were conscious of looking at
12 where the plants were located and were more focused on
13 that in terms of ending up with our final recommendation
14 was the process and the mindset that we had as we went
15 through it.

16 Q. So is it fair to say, then, you got the USDSS
17 model results, and you didn't take that as the next step
18 and then deviate from there. You kind of referenced it,
19 but went back to what you independently thought the values
20 should be; is that accurate?

21 A. Yeah. So we had anchor cities that were
22 identified, even from the original model that we looked to
23 try to keep in place, and then we adjusted from there.
24 Then we even had more market comparisons within our market
25 to build in logic, and still trying to keep that overall
26 original USDSS price, you know, relativity or comparison
27 price alignment in place based on the original model.

28 So we tried to incorporate all of that. But at



1 the same time, factoring in the information that we had.
2 And that's what resulted, obviously, in some adjustments.

3 Q. And I'm just trying to track the process, right?
4 So that I can say they did X, and then Y, and then Z, and
5 here's how we got the number.

6 So is it accurate to say that the anchor cities
7 drove your ultimate differentials in your region more so
8 than the USDSS?

9 A. Well, we started with the USDSS information, and,
10 for example, we looked at Chicago as a key market compared
11 to West Michigan. We looked at Detroit as a market. We
12 looked at Cleveland and Southeast Ohio, because we really
13 knew what our costs were to move milk there. And the
14 other co-ops in our group had same information about the
15 plants and the markets that they served.

16 And so it was a combination of starting with the
17 anchor cities, and then making those adjustments and
18 comparisons between, you know, between the ten city
19 pairings that we did. And we made adjustments that we
20 said, hey, it doesn't make sense that a Fort Wayne ought
21 to be this different from, say, Indianapolis or Detroit.
22 And we went through just a more detailed review of the
23 market is where we ended up at the changes that we made.

24 So it really -- yeah, it came down to the
25 comparisons of the local markets and the -- and the ten
26 city pairings that we did.

27 Q. And you say detailed review of the market.

28 What were the specific factors that you considered



1 in each market that drove how you set the differential for
2 that county?

3 A. Just where the milk was coming from, what does it
4 take to serve that market. Traffic issues and congestion
5 in, let's say, Detroit. Western Michigan's got
6 lake-effect snow that comes into play in certain parts of
7 the year. We have got local information from our haulers
8 on cost to serve our market and what does it take to move
9 milk. And all those things come into play.

10 Demands of a Class I plant, there is -- there's
11 certain restrictions on receiving hours at plants. And so
12 we tried to factor all that knowledge in. But at the end
13 of the day, it was, what does it cost to get milk to a
14 market that we know today? And that's what we factored in
15 in terms of, you know, what those adjustments should be
16 based on.

17 Q. So you said -- I just -- I want to distill it down
18 further.

19 So costs of serving a market. What is that? Is
20 that the cost of fuel? The cost of the truck? The weight
21 loads of road? Can you tell me the specific factors that
22 make --

23 A. Sure.

24 Q. -- the cost of serving a market?

25 A. Yeah. It's -- so from a milk hauling standpoint,
26 it's cost of equipment, cost of driver, benefits, you
27 know, what does it take, repair costs, fuel costs. And
28 so, you know, we take all that and look at, you know, sort



1 of a cost per hundredweight and some averages, but all
2 that comes into play.

3 Then it's -- it's -- it's just a cost to serve a
4 market like Detroit, Grand Rapids, Chicago. What are the
5 other factors that come in? So it's traffic. It's time
6 of service. It's more than just miles. And so you -- you
7 got to factor in, like, what does it take to serve a
8 plant?

9 Not every plant has -- will receive milk seven
10 days a week, 24 hours a day. And so we'll look at those
11 factors and just -- the people that deal with that every
12 day had input in our group that -- that we just tried to
13 incorporate.

14 Q. And so were there -- I'm sorry to interrupt.

15 A. Go ahead.

16 Q. Were there specific plants that drove those
17 considerations? So you said there are plants that don't
18 accept milk 24 hours. There are some that have certain
19 delivery fees or complications. So was that a specific
20 consideration, that plant X in county Y has really limited
21 receiving hours, so we're going to set the differential
22 based on that?

23 A. So I think all that -- all that detail that I
24 mentioned, it all ultimately rolls up into, what does
25 it -- what do you got to pay a hauler to deliver milk?

26 Q. Right. And -- sorry.

27 A. Yeah. And so we have all that detail, but at the
28 end of the day, you sort of got to roll it up and say,



1 well, how do I -- how do I use this information? How do I
2 incorporate it into what I'm doing?

3 And it ultimately gets into, what does it cost to
4 serve a given market? So we try to take all that
5 information -- if three or four co-ops are involved and
6 they are all saying the same thing about serving Detroit,
7 okay, we're all on the same page. We know there's
8 traffic. We know there's other restrictions that come
9 into play.

10 And we quickly learn that we were aligned on a lot
11 of those issues within our Mideast group, and so it was
12 very easy to come to a conclusion on, like, what those
13 numbers ought to be. There wasn't this big debate that we
14 had that, you know, something was off or something was
15 incorrect. We basically came at this and ended up at the
16 same place.

17 Q. So my question was actually pretty specific. So
18 it was -- and I just want to make sure I understand,
19 again, what was taken into account.

20 Did your committee consider the restrictions or
21 attributes of specific plants in existence today when
22 setting differentials in certain counties or areas?

23 A. I would say specifically, no. But that
24 information is there in the fact that we know what it
25 costs to serve a market indirectly, but we didn't sit and
26 talk about specific plants, restrictions, but we know that
27 they exist.

28 Q. And that general knowledge was taken into account?



1 A. Yes.

2 Q. And in these discussions that had a number of
3 factors considered, did you discuss whether or not the
4 USDSS already took these factors into account?

5 A. We -- I would say no. We assumed that the model
6 incorporated -- we knew that it incorporated something,
7 and we went into this with the understanding that our role
8 was to provide more local knowledge than what the model
9 was able to incorporate.

10 Q. But how did you know what the model incorporated
11 or didn't incorporate? Did you ask or did you not know?

12 A. Others at National Milk were more familiar with
13 the model and provided some feedback. I mean, basically,
14 that's why we were asked to participate, is to provide
15 local feedback. Because this was just a -- you know, a
16 model that could do what it could do. But, you know, we
17 knew there were limitations in terms of what it could
18 factor in.

19 Q. And what were those limitations, specifically?

20 A. Just -- yeah, the local -- the local market.
21 Like, for instance, the model does not incorporate the
22 fact that Michigan uses supertankers to move milk, as one
23 example.

24 Q. Do you mean, are you talking about hauling weight
25 limits on roads?

26 A. No. So a supertanker can haul 100,000 pounds of
27 milk versus a traditional milk tanker is 50,000 pounds.

28 And so --



1 Q. And how do you know the model can't take that into
2 account?

3 A. I believe, I'm trying to reflect back on -- I
4 believe somebody told us that those local -- that that
5 local type of information just was not factored in in all
6 3800 counties that the model, you know, represented.

7 Q. And how about -- you had mentioned that a
8 number -- two other factors, where the milk was coming
9 from and the demands of plants.

10 Was it your understanding that the USDSS did not
11 take those things into account?

12 A. No, I was -- I didn't have specific knowledge
13 about that.

14 Q. So you're not sure whether it did or not?

15 A. Correct.

16 Q. And have you -- I don't know if you have it before
17 you, but MIG previously introduced Exhibits 300 and 301,
18 which were the big NMPF spreadsheets.

19 Are you familiar with those?

20 A. Yes.

21 THE COURT: I can provide him with them.

22 MS. VULIN: I think I'll start with my general
23 questions to see if he knows enough to haul them out,
24 since I know that's no small task.

25 BY MS. VULIN:

26 Q. Were you involved --

27 THE COURT: It's easy. They are right here.

28 MS. VULIN: Oh, okay. Great. Then, yes, please.



1 Thank you, Your Honor.

2 BY MS. VULIN:

3 Q. Starting with Exhibit 300, did you prepare this
4 document?

5 A. No.

6 Q. And that we are trying to solve the mystery of
7 Column R.

8 Do you have any idea what Column R indicates?

9 A. I do not.

10 Q. And similarly for Exhibit 301, did you prepare
11 that document?

12 A. No.

13 Q. Thank you.

14 Your discussion of hauling charges, was that
15 intended to support deviation from the USDSS or to support
16 the base \$1.60 or \$2.20? How does that fit in
17 specifically to the differentials?

18 A. So we were just -- we were just looking at our
19 local market and what that starting point was in the USDSS
20 model, and then how we would look at a Class I
21 differential and what do we -- what did we think it would
22 represent in our market. So I didn't reflect on the \$1.60
23 at all. We were just looking at our local market and a
24 recommended change by various counties is how we looked at
25 it.

26 Q. You discussed some data in your testimony, and I
27 believe there were two sources: One was AMS producer milk
28 under an order, and the other was NASS milk production.



1 Does that -- is that true?

2 A. Yes.

3 Q. But those are different metrics, right? Not an
4 apples-to-apples type comparison?

5 A. I guess I'm not sure. I pulled everything off of
6 the Market Administrator websites, other than the
7 Exhibit 61 that we had asked for that data specifically.
8 But everything else came off of the USDA websites.

9 Q. And so you're not sure of the -- any distinction
10 between those two sources of data?

11 A. No.

12 Q. Okay. They did reflect, though, that the number
13 of farms have declined, but overall milk production is up
14 in the time period you measured, correct?

15 A. Correct. Yes.

16 Q. And at the same time, fluid plants are declining,
17 and Class I utilization is also down, correct?

18 A. Yes.

19 Q. Okay. And so then it makes logical sense then
20 that the average producer price differential would
21 likewise be not increasing over that time period, correct?

22 A. Yes.

23 Q. And so do you believe those numbers reflect that
24 Class I is healthy in that region or unhealthy?

25 A. Well, it is -- it is what it is. I mean, the
26 Class I demand is what it is. And so obviously, everybody
27 knows we have seen a 40-year decline in Class I milk
28 consumption, which some could argue that's unhealthy, but



1 we more look at it that that's just a fact of life and
2 that's the way the milk industry is today.

3 Q. And in light of that decline, what would you --
4 what do you think would -- let me restart that.

5 Do you think that raising Class I prices is going
6 to stem or lessen that decline?

7 A. No.

8 Q. So why would we want to raise Class I prices for a
9 market sector that's already in significant decline?

10 A. To ensure that we got a future milk supply to
11 serve Class I plants. That if it's not economically
12 viable for farmers to get milk to a Class I plant, to me
13 they are simply not going to do it. They are going to
14 look at other better options to increase the value of that
15 milk. That's my concern.

16 I don't think the Federal Order system exists to
17 solve the problem of Class I fluid milk decline that's
18 been going on for 40 years.

19 Q. But it probably shouldn't exacerbate it, correct?

20 A. I don't think the -- my opinion is, increasing the
21 Class I differentials that National Milk is proposing, I
22 have zero concern about the impact on fluid milk
23 consumption with that.

24 Today, this past year we have seen 13 to \$0.15
25 price decline in milk. In September we saw \$0.19 increase
26 in the price of a gallon of whole milk. I can tell you
27 from you the plants that we manage, we saw zero impact on
28 volume. On the orders that we get from customers, we



1 just -- we never sit there with retailers, never bring up
2 the fact that, hey, milk's going up \$0.19 a gallon, our
3 orders are going to be down. It's not an issue.

4 Q. And you had discussed the issue of it's not going
5 to be feasible to sell milk to these fluid plants, and I
6 know there have been some discussion previously of
7 over-order premiums.

8 Michigan Milk Producers has a fluid milk plant,
9 correct?

10 A. Yes.

11 Q. And is it -- do you also sell your milk to other
12 fluid milk plants?

13 A. We do.

14 Q. And has Michigan Milk Producers ever negotiated an
15 over-order premium in any of its sales?

16 A. Yes.

17 Q. How frequently?

18 A. There's not a -- there's not a one answer for
19 that. It's -- it's very seldom, and it will come up when,
20 let's say, a milk plant will put their business out for a
21 bid. That's your opportunity to say, okay, here's my
22 price. And oftentimes that -- that bid may be for one to
23 three to five years or that plant will try to lock in an
24 over-order premium.

25 And so it -- every customer is a bit different.
26 We participate in a -- in a market agency, a group of
27 co-ops in the Mideast where we talk about, and I'll try to
28 align on over-order premiums for the whole region. We



1 participate in that, so that's an opportunity that I would
2 say, on average a couple times a year we talk about
3 possibly an over-order premium change.

4 But, like I mentioned, my experience now, I have
5 been involved in that now for a couple years. My
6 experience is, we always hit a roadblock because
7 somebody's always got an existing plant that they are not
8 willing to move, and that quickly ends the discussion.

9 Q. And I think you were answering how frequently are
10 they negotiated for a certain customer; is that right?

11 A. Yes.

12 Q. And maybe, let me ask in a more precise way. What
13 percentage of sales contracts does Michigan Milk Producers
14 have where you have negotiated some form of an over-order
15 premium?

16 A. Yeah. I'd rather not get into specifics about our
17 particular co-op in terms of, like, our customer pricing
18 and over-order premiums.

19 Q. And I was just looking for something as all the
20 time, most of the time, over 50%, under 50%. If you are
21 not comfortable sharing, I won't pressure you, of course.

22 A. Because we participate in this agency, we're
23 aligned with that and where the agency stands on
24 over-order premiums. And so, you know, our role in that
25 with over-order premiums is try to work through the agency
26 of, if we feel there's a need to increase milk premiums,
27 that we try to work through that agency. And then when we
28 come along with customer bids of our own, we're aligned



1 with that agency premium is really how our market tries to
2 operate.

3 THE COURT: Ms. Vulin, I want you to remember
4 where you are. It's time for about a 15-minute break. I
5 would like you to be back and ready to go at 9:55.

6 We go off record at 9:40.

7 (Whereupon, a break was taken.)

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

9 We are back on record. It is 9:57. 9:57.

10 Ms. Vulin, you may proceed.

11 MS. VULIN: Thank you, Your Honor.

12 BY MS. VULIN:

13 Q. Mr. Parks, I wanted to circle back to the USDSS
14 model results. I know there were a few iterations of the
15 model results provided to NMPF; is that right?

16 A. Yes.

17 Q. And were you involved in giving any feedback for
18 any of those iterations?

19 A. No.

20 Q. I understand that there were discussions about
21 plant closures and openings and making sure that the model
22 reflected those.

23 Did you have any conversations with anyone about
24 that?

25 A. I did not.

26 Q. Do you know if anyone else at Michigan Milk did?

27 A. They did not.

28 Q. You said that in your testimony, that Michigan



1 Milk markets 5 billion Grade A milk pounds per year; is
2 that right?

3 A. Correct.

4 Q. Do you have any Grade B members?

5 A. No.

6 Q. Is that part of a requirement to be a Michigan
7 Milk member or is that just happenstance?

8 A. It's just -- it's just happenstance.

9 Q. And Michigan Milk owns a cheese plant; is that
10 right?

11 A. Yes.

12 Q. And does that cheese plant accept any Grade B
13 milk?

14 A. No. It could, like if there's instances of milk
15 gets delisted or something, then we could bring that milk
16 into that plant and use it.

17 Q. You say delisted, so milk that was intended to be
18 Grade A, but for some reason didn't meet the standards?

19 A. Yes.

20 Q. But your plant has not actively sought out any
21 Grade B milk, correct?

22 A. That is correct.

23 Q. And would Michigan Milk accept a Grade B supplier
24 knowing that the milk would always be Grade B, or is that
25 Grade B supposed to be an exception for a Grade A
26 supplier?

27 A. So all of the milk with our members is Grade A.
28 We do have the capability to bring in non-Grade A milk



1 into our cheese plant in Middlebury, Indiana. It's always
2 an option. But it's really not a specific strategy that
3 we have.

4 Q. And remind me, how many fluid processing plants
5 does Michigan Milk operate?

6 A. One.

7 Q. And where is that one?

8 A. Canton, Ohio.

9 Q. And you talked in your model about the need to
10 move farm milk larger distances to fluid plants, but isn't
11 that already captured in the USDSS?

12 A. Yes. So the USDSS model reflects that, yes.

13 Q. But you adjusted the differentials for Michigan
14 further based on that same factor?

15 A. Yes. We made adjustments.

16 Q. And you mention a new facility in Morgantown, West
17 Virginia.

18 Is that Mountaintop Beverage?

19 A. Yes, it is.

20 Q. And does that facility run a number of non-dairy
21 products as well as dairy?

22 A. That's my understanding, yes.

23 Q. And is it currently a substan- -- more one than
24 the other? Do you know the breakdown?

25 A. I do not know the breakdown.

26 Q. And on page 9 you mentioned a cheese plant in
27 Eastern Pennsylvania.

28 Did you mean Western Pennsylvania?



1 A. Yes.

2 THE COURT: Help us find that, Ms. Vulin.

3 MS. VULIN: It's the top of page 9.

4 THE COURT: Oh, where it says -- the second line,
5 where it says "Eastern Pennsylvania"?

6 MS. VULIN: Yes, Your Honor.

7 THE COURT: And you are telling me, Mr. Parks,
8 that should say "Western Pennsylvania"?

9 THE WITNESS: That's correct.

10 THE COURT: All right. I'm asking that the record
11 copy be changed. Page 9, second line, the word "Eastern"
12 will be replaced with the word "Western."

13 BY MS. VULIN:

14 Q. Mr. Erba had the same typo in his testimony.

15 And I am just wondering, was there -- did this
16 come from NMPF's original analysis? Could that error have
17 been integrated into the differentials or would this have
18 come later?

19 A. I guess I'm not sure. I don't know.

20 Q. And you talk about the need for Class I
21 differentials to move milk.

22 When you are marketing Michigan Milk's milk, what
23 factors do you consider in determining customers? And I'm
24 not talking kind of one-off, we have an extra load or
25 there's a weather issue. But the long-term milk
26 contracts, what drives those considerations?

27 A. Just the overall value that it would bring to our
28 members in serving that customer. And so you look at



1 location, and where is our milk at, and all the costs
2 associated with serving that customer.

3 Q. And if the Class I differentials change, per your
4 proposal, that would change those considerations if the
5 Class I differential plays a large part in that analysis,
6 correct?

7 A. Well, I think of the Class I differential not so
8 much as like a cooperative-specific strategy and how it
9 benefits a cooperative. We -- at least I went into this
10 project with the idea of looking at it from an industry
11 perspective and, in fact, worked very hard not to think of
12 Michigan Milk specifically or the pluses and minuses of
13 the impact on our cooperative. So I looked at it from an
14 industry standpoint.

15 And so I just think when you look at the Class I
16 differential, it's just one piece of the overall milk
17 program and, you know, part of the economics that drive
18 how milk is marketed. So there's many other factors that
19 would come into play, you know, that we would look at
20 specifically of serving a customer in a specific plant.

21 Q. And so when you say that Class I differentials
22 move milk, they don't move milk alone, they are a piece of
23 a much larger system that drives where milk will be bought
24 and sold?

25 A. Correct.

26 Q. And on page 14 you discuss some of the
27 difficulties of obtaining over-order premiums. And at the
28 top of that page, or the top half, you say, "The large



1 retailers can offer farmer cooperatives large milk volumes
2 because of their expanded geographic footprint and
3 increased number of retail locations. The offer of large
4 milk volume tends to put downward pressure on over-order
5 premiums in the market."

6 And my question is, isn't that just rational
7 economic behavior and tradeoffs in a negotiation that in
8 exchange for maybe less money, a cooperative will get a
9 guarantee of more volume in a more sure market?

10 A. I would agree with that. Yes.

11 Q. And so including this, you don't think this is a
12 flaw of the system, do you? I am just trying to figure
13 out how that piece fits in with your discussion.

14 A. The reason I put it in my testimony is really just
15 to describe how the market in Michigan has changed from
16 2000 to today, when we look at the change in -- you know,
17 talking about Class I differentials, well, the market has
18 changed, Class I plants have closed and exited the market.
19 We have got to move milk farther. And so the only -- you
20 have got really two things that you can get out of the
21 market: A Class I differential is there, is a price
22 mechanism; and then you have got over-order premiums.

23 Well, if the -- if we're saying the Class I
24 differentials are too low and need to be updated, and
25 secondly, because of this changing landscape with the
26 retailers now demanding lower over-order premiums because
27 of that volume offering, it just is another negative
28 impact on what makes the economics of selling milk today,



1 challenging.

2 Q. But it's not necessarily, I guess, wrong or
3 problematic that cooperatives are entering into this kind
4 of tradeoff with the large customer, is it?

5 A. No. I'm just stating the challenge of getting
6 over-order premiums out of the market is difficult because
7 of that landscape.

8 Q. And when -- and it's your position that if
9 over-order premiums, if the market is not offering
10 over-order premiums or they are not as readily available,
11 that Class I differentials should go up to account for
12 that?

13 A. Yeah. I mean, I can speak -- my experience is in
14 the market today. We have attempted to service a Class I
15 plant in the market, and attempted to get over-order
16 premiums and couldn't, so we elected not to serve that
17 plant because of the economics were not the best value to
18 our members.

19 Q. And that all seems -- oh, I'm sorry, please
20 continue.

21 A. And I would say, and so in my opinion and what I
22 tried to articulate, is by increasing the Class I
23 differential, to me it creates a more efficient market to
24 move milk because of that element of the over-order
25 premium pressure just is a challenge. And to me, it
26 creates inefficiencies in the market, of moving milk
27 efficiently.

28 Q. So -- and so it's your opinion that it's



1 inefficient, that when a buyer was unwilling to pay the
2 price that you were willing to sell your milk, and the
3 parties then didn't consummate a deal because there was an
4 agreement on the value of what was being offered and what
5 was willing to be sold, you think that's an inefficient
6 market decision?

7 A. Yes.

8 Q. You had discussed in your testimony, I believe,
9 that Michigan Milk's milk goes the way down into the
10 Southeast; is that right?

11 A. At times.

12 Q. And so is it anticipated that you will benefit
13 from the Southeast transportation credits or do you
14 receive benefit from the Southeast transportation credits?

15 A. No.

16 Q. Why not?

17 A. Well, so when milk needs to move, if we get
18 contacted to move milk historically, you know, we have a
19 price to move that milk, and all those costs are absorbed
20 in that market to move that milk down there and not borne
21 by -- by Michigan, is my experience.

22 Q. So you mean when milk travels that far, the
23 customer who is purchasing the milk pays for
24 transportation as opposed to Michigan Milk?

25 A. In our experience.

26 Q. And so that's --

27 A. I'm not sure if it's the same for everybody when
28 they need to move milk into that market. I can't speak to



1 that because I'm --

2 Q. I'm sorry. I didn't mean to interrupt.

3 A. I'm just not -- I'm not directly involved in all
4 of those transactions in that market or have knowledge of
5 that.

6 Q. So given that there are situations in your
7 personal experience where the customer pays for the
8 transportation of milk as opposed to the producer, doesn't
9 that indicate that that does not belong, that the cost of
10 transportation doesn't belong in the set base differential
11 because it's not always borne by the producer?

12 A. Well, in my experience, that cost is being paid by
13 another cooperative to bring that milk in, and not the end
14 customer, in my experience.

15 Q. I'd like to talk a little bit about your
16 discussion of milk quality. So if somatic cell count
17 requirements are now lower than the FMMO ranges, why not
18 seek to amend the language in the Order as opposed to
19 adding some form of compensation into the base
20 differential?

21 A. I really haven't reflected on that.

22 Q. Do you charge premiums for quality?

23 A. We pay our members premiums to produce quality
24 milk, but we do not get out of the market a quality
25 premium from -- from the plants that we sell it to, no.
26 Other than the standard over-order milk premium.

27 Q. What is the standard over-order milk premium?

28 A. So it's -- in our market, it's the agency that



1 we're part of, and it's one number. And we don't
2 specifically carve out like quality premiums or anything
3 like that. It's just a number.

4 Q. And so it could, in a sense, incorporate those
5 quality costs, it's just not called out specifically?

6 A. It's not called out.

7 Q. And doesn't Class III and IV also now routinely
8 require lower SCC counts in order to meet European
9 standards?

10 A. Yes.

11 Q. And so that fact of the industry that lower SCC
12 counts are commonplace now, it's not driven by Class I
13 demands, is it?

14 A. Yeah. It's my opinion is, you know, these
15 increased quality requirements have not been reflected in
16 over-order premiums in the market, specifically.

17 Q. And my question was a little bit different than
18 that.

19 My question was: Is this trend towards a market
20 standard of lower SCC driven by Class I demands or is it a
21 market-wide shift?

22 A. I really haven't reflected on that. I just -- my
23 experience is primarily Class I and Class II and not so
24 much Class III and IV, so I don't -- I can't really speak
25 to that.

26 Q. And if different customers or plants have specific
27 quality standards, isn't the appropriate mechanism to
28 compensate farmers who serve that plant and are meeting



1 those standards as opposed to money that gets paid into a
2 pool and shared amongst all producers?

3 A. Wow, that would be great if that happened, but it
4 doesn't. That's what I'm saying, those quality -- you
5 know, increased quality standards just are not reflected
6 in -- in premiums that co-ops or farmers can capture
7 today.

8 Q. And you mentioned farm requirements, but
9 similarly, doesn't that apply to all milk nowadays as
10 opposed to just Class I?

11 A. You are talking about like the FARM program?

12 Q. Yeah. The all capital FARM, correct.

13 A. Yeah. So as a co-op, we look at that for all of
14 our milk. But it seems like the Class I customers are at
15 the forefront of, you know, demanding improvements in that
16 area and reporting and -- and we have got ongoing
17 conference calls and -- and reporting requirements on
18 customer portal websites now that we have to submit data.
19 We just don't see that from other Class III, Class IV,
20 customers, in my experience, anyway.

21 Q. So are you marketing the milk so that only certain
22 suppliers have to meet these quality standards and you can
23 sell that to Class I and then everyone else can meet a
24 lower standard?

25 A. Well, I think this whole sustainability topic, we
26 try to look at this as, you know, we want to get all of
27 our farms, you know, up to these standards and make the
28 improvements that are necessary for the environment but --



1 and so there's different elements of the program.

2 What we try to look at is a third of our members
3 are going to focus on one aspect of the program, and
4 another third maybe in this, and then we plan to rotate
5 these farms. So eventually they are checking off all five
6 boxes of that FARM program eventually, but it just takes
7 time to get there with everybody, and it's just a way to
8 manage that.

9 So we're not trying to isolate or target, you
10 know, certain farms on a FARM program for Class I or
11 Class II, III, or IV customers. We just look at this, how
12 do we get everybody up to speed eventually. So right now
13 it's -- we look at it in total.

14 MS. VULIN: I have nothing further. Thank you.

15 THE WITNESS: Thank you.

16 MS. VULIN: I left a page behind at my table, so
17 sorry about that. Some questions about depooling and
18 negative PPDs.

19 BY MS. VULIN:

20 Q. You comment a fair bit about depooling and the
21 impacts of low and negative PPDs, correct?

22 A. Negative PPDs, yes.

23 Q. And what's the -- what drives negative PPDs? Did
24 you examine that in the process of determining how to set
25 Class I differentials?

26 A. We did not, no.

27 Q. And your cooperative owns a cheese plant, correct?

28 A. Yes.



1 Q. And then there was also a butter powder facility?

2 A. So we have got a butter powder facility in Ovid,
3 Michigan, and then we have got the plant Canton, Ohio, and
4 then our plant in Constantine, Michigan that does liquid
5 bulk dairy products.

6 Q. And --

7 A. Cream and condensed skim, those types of products.

8 Q. Are those plants ever pooled?

9 A. Can you repeat that?

10 Q. The butter powder and the cheese plants, are they
11 ever pooled?

12 A. The butter powder plant is depooled as market
13 conditions warrant, yes.

14 Q. And so in order to -- you say when market
15 conditions warrant.

16 You mean you are able to opportunistically pool
17 and depool depending on what would bring the most return
18 to your members, correct?

19 A. Yes.

20 Q. But Class -- an operation that's exclusively
21 Class I like Turner Dairy, can't depool, right? Has to
22 always participate in the market --

23 A. Yes.

24 Q. -- in the pool?

25 A. So our plant, our fluid plant in Canton, Ohio,
26 never is depooled.

27 Q. And do you -- have you done any analysis that
28 Class I differentials, as proposed, will have any kind of



1 meaningful impact on the PPDs and the rate of depooling,
2 given the utilization in the order?

3 A. I think somebody in National Milk has. I
4 specifically did not analyze that, but obviously if the
5 Class I differentials are increased, it's going to reduce
6 the inversion or the frequency of depooling.

7 MS. VULIN: Nothing further. Thank you.

8 CROSS-EXAMINATION

9 BY MR. MILTNER:

10 Q. Good morning. My name is Ryan Miltner. I
11 represent Select Milk Producers.

12 A. Good morning.

13 Q. Mr. Parks, I wondered if you happened to hear any
14 of the prior testimony of either Dr. Erba or Mr. Hoeger
15 regarding the Order 33 Class I differential map?

16 A. I did hear Chris Hoeger, but I was not able to
17 hear Dr. Erba's testimony.

18 Q. When you listened to Mr. Hoeger's testimony, did
19 you happen to hear when he was discussing maintaining
20 competitive balance for plant supplying Chicago?

21 A. Yes.

22 Q. Were you part of those discussions with the
23 working group over the competitive balance around Chicago?

24 A. Yes, I was.

25 Q. I was wondering if you could help explain, from
26 your perspective, what the intent was regarding both your
27 intentions for Chicago in that balance and how you
28 achieved it?



1 A. So I think the intention was just to look at
2 specific markets, so Chicago obviously we looked at, and
3 what plants would serve that market, and were the
4 recommended changes that we were looking at going to
5 create any competitive disadvantages that were unintended.

6 And so the Chicago market, I used to serve the
7 large retailer in the Chicago market from Wisconsin. And
8 I know my experience is I always looked at that as Bareman
9 Dairy in Holland, Michigan, was the exact same distance to
10 the Chicago market as the plant I was at in Wisconsin, and
11 so I was conscious of, hey, what's their milk price?
12 What's their Class I differential? We're both serving the
13 same market. So I had that in the back of my mind as I
14 looked at Chicago and looked at now where is milk coming
15 into the Chicago market based on the plants that have
16 closed there now.

17 And so -- and then we looked at -- I have got
18 great experience in the cost to deliver in Chicago and the
19 cost to move milk through Chicago with the traffic and
20 everything that's there. And so I had input into that in
21 terms of that market and what it would cost to get milk
22 there. And that was -- that was my participation in that.

23 Q. The Bareman Dairy which you referenced, is that
24 dairy still in operation?

25 A. Yes. Now it is a plant that was acquired by
26 Meijer Corporation.

27 Q. What type of unintended competitive advantages
28 would you be looking -- were you looking to avoid?



1 A. Just if one plant had a different Class I
2 differential than another that was really in, let's say,
3 the same distance from that market, to me would be a
4 competitive disadvantage.

5 Q. So your -- the goal is that plants supplying
6 Chicago located similar distances would have the same
7 Class I differential. That was the goal?

8 A. Yes.

9 Q. Now, the model, of course, takes into account the
10 supplies of milk in a particular area, correct?

11 A. Yes.

12 Q. And it takes into account the available markets
13 for the milk in those areas, correct?

14 A. Yes.

15 Q. And it also takes into account transportation
16 costs and logistics, correct?

17 A. Yes.

18 Q. So if you are looking at now, two plants supplying
19 Chicago, one in Michigan and one in Wisconsin, they are
20 going to have different available milk supplies to those
21 plants, correct?

22 A. Not necessarily.

23 Q. Well, let's take the dairy in Holland, Michigan,
24 for instance. And the milk supply for that plant in
25 Holland is going to be a different milk supply than for
26 the plant you were referring to in Wisconsin.

27 A. Yes. Correct.

28 Q. Okay. And transportation from -- from Wisconsin



1 to Chicago, and from Grand Rapids, or from Holland to
2 Chicago, same mileage but different roads, correct?

3 A. Different roads. Yes.

4 Q. Different tolls, correct?

5 A. Yes.

6 Q. Different traffic patterns.

7 A. Could be. Yep.

8 Q. Now, once a truck with packaged milk arrives to
9 Chicago, that headache is about the same for everybody,
10 correct?

11 A. Yes.

12 Q. Now, if the goal of the committee is to make the
13 Class I differential for each of those two plants in
14 Wisconsin and Michigan the same based on Chicago, aren't
15 you necessarily discounting all of the other factors that
16 the model takes into account when coming up with the
17 differential for those counties?

18 A. No. I mean, again, I -- the -- to us, the model
19 is a recommendation starting point. And we factored in,
20 like, local knowledge in terms of what do we know about
21 serving specific markets. And that's how we came up with
22 the adjustments we made. So we looked at it as a
23 recommendation. We didn't look at that this is a -- you
24 know, locked in, and this is exactly where we ought to be.
25 We looked at it as a recommended starting point. At least
26 that was my knowledge going into this project.

27 Q. But at least you are starting with a
28 recommendation from the model, but at the end of the day,



1 regardless of what went into that, your committee is
2 saying those numbers need to be the same?

3 A. Yeah. And I would also add that we're part of a
4 committee and part of a group, and four or five co-op
5 groups are participating in this. And so none of us went
6 in, like, we -- you know, we had every number to the
7 fourth decimal identified, and this had to be the number.
8 It was a collaborative effort and discussion. Everybody's
9 got different experiences serving different markets, and
10 so all that sort of percolated in terms of how we ended up
11 where we ended up.

12 Q. If I look at the model's differential for, I --
13 I'm going to say it wrong, Ozaukee, Wisconsin -- Ozaukee
14 County, which is Cedarburg --

15 THE COURT: Would you spell that county, please,
16 Mr. Miltner.

17 MR. MILTNER: I believe it is O-Z-A-U-K --

18 THE WITNESS: It's Ozaukee.

19 MR. MILTNER: Ozaukee, thank you.

20 THE COURT: OZ --

21 MR. MILTNER: O-Z-A-U-K-E-E.

22 THE COURT: Is that how you spell it?

23 THE WITNESS: Yes.

24 MR. MILTNER: I'll take any other recommendations.

25 BY MR. MILTNER:

26 Q. If the model differential, the average was \$3.20
27 for Cedarburg, and then the model was \$3.40 for Holland,
28 and then Proposal 19 recommends \$3 for Cedarburg and \$3.10



1 for Holland, it's those adjustments, right? That the
2 reduction of \$0.20 for Cedarburg and \$0.30 for Holland,
3 that's the competitive adjustment that the committee or
4 the working group had factored in, correct?

5 A. So the Mideast group -- so we're in Michigan, and
6 so we obviously identified Chicago is really not in our
7 market, so I would say the Upper Midwest group focused
8 more on what was their recommended differential for
9 Chicago. And we had a similar recommendation. And so we
10 didn't look to say that Wisconsin and West Michigan had to
11 be the same. We were specifically talking about Chicago
12 and what's the cost to serve the Chicago market. We
13 didn't drill down into, well, Upper Midwest, why -- you
14 know, why is your map of Wisconsin like it is versus
15 Michigan? We were just talking about Chicago.

16 Q. So you did not take into account the
17 recommendations from the group that was working on the
18 Upper Midwest when you looked at the Mideast order?

19 A. We did for the Mideast order, but we did not --
20 when we were talking about -- what I'm trying to
21 articulate is, when we were talking about Chicago, the
22 Upper Midwest group had input into Chicago, so did the
23 Mideast group, and we -- our discussions focused on
24 Chicago, not other markets in comparing Michigan to
25 Wisconsin. We didn't get into that discussion.

26 Q. I hope I'm not misstating it, but Mr. Hoeger's
27 testimony specifically called out that county in
28 Wisconsin, as well as Holland, Michigan, and about seven



1 or eight others, as examples of establishing a competitive
2 balance, I suppose, for Chicago. So he specifically
3 referenced all of those.

4 Is that -- do you have a different understanding
5 of the process?

6 A. No.

7 Q. Okay.

8 A. I still -- I didn't -- I don't recall that
9 specific testimony right now off the top of my head.

10 Q. So when there is a difference between the model's
11 differential for, say, Kent County, Michigan, and what is
12 in Proposal 19, is that adjustment -- was that adjustment
13 made to align with Chicago or was it made for another
14 reason?

15 A. So there's -- there's a few factors. We had the
16 idea of increasing the slope from north to south, and then
17 when we started to look at, let's say, ten city pairings,
18 we'd say, okay, let's look at Chicago, and started looking
19 at Elkhart and Grand Rapids and -- and Detroit, and how do
20 those relationships of those markets in terms of
21 mileage -- you know, does our recommended Class I
22 differential align, you know, geographically?

23 So there were some -- there was an opportunity to
24 make some adjustments for that, but specifically when we
25 looked at Kent County and West Michigan, we just felt like
26 that that market should align with Chicago. So we did
27 spend more time discussing Grand Rapids, Kent County, in
28 relationship to the Chicago market.



1 Q. How much of the milk that's bottled in Kent County
2 and Grand Rapids makes its way to Chicago?

3 A. I don't have a specific number. But I do know
4 when the two milk plants in Chicago closed, the large
5 chains in Chicago now are served both from West Michigan
6 and from other plants in Wisconsin and Iowa, but I don't
7 know the exact percentage or breakdown of that.

8 Q. Is it a majority of the packaged milk coming
9 from -- that's produced in those plants, do you think?

10 A. I've actually never seen any data, so I don't
11 know.

12 Q. You haven't seen any data on that?

13 A. No.

14 Q. But it was important enough that that was -- that
15 Chicago was the reason for setting the differential there,
16 but you don't have any data and you have never seen data
17 about how much packaged milk goes from that county to
18 Chicago?

19 A. That's correct.

20 Q. Now, next to Kent County, immediately to the
21 northwest is Ottawa County, correct?

22 A. Yes.

23 Q. And there's a Class I plant there as well,
24 correct?

25 A. Yes.

26 Q. So when you set the differential for Kent County,
27 did that provide a point for then adjusting the
28 differential in Ottawa County?



1 A. Yes.

2 Q. Ottawa County, the model suggested a differential
3 of \$3.40, and Proposal 19 is \$3.10.

4 Does that sound correct?

5 A. Yes.

6 Q. Same -- actually the same as for Kent County and
7 Grand Rapids, right?

8 A. Right.

9 Q. Does Michigan Milk Producers provide milk to the
10 plant in Ottawa County, the Class I plant? I'm sorry,
11 yes -- in --

12 A. No.

13 Q. They do not.

14 Do you provide the milk to the Class I plants in
15 Kent County?

16 A. No.

17 Q. I want to talk about depooling, if I could.

18 Now, if you could please turn to page 13 of your
19 statement.

20 Now, currently the difference in the Class I
21 differential from Cuyahoga County from Cleveland, the base
22 zone to Kent County is \$0.20, correct?

23 A. Correct.

24 Q. It's \$2 in Cleveland and \$1.80 in Grand Rapids,
25 right?

26 A. Correct.

27 Q. So in general, if the PPD is lower than \$0.20, it
28 would make sense to depool milk around the Grand Rapids



1 area, correct?

2 A. Well, to me you depool when the, like, Class II,
3 Class III, Class IV is above the Class III price. I have
4 never thought about it in terms of a straight PPD number.
5 You end up there, I guess.

6 Q. Okay. So let's think of just the Class III price
7 as kind of our base price.

8 Given the \$0.20 zone differential, that means that
9 if the PPD is \$0.20 or lower, it would make sense to
10 depool in Grand Rapids, correct?

11 You are nodding. Is that --

12 A. If you can. But, like, the Class I plant in Grand
13 Rapids, it's not even a question because they can't
14 depool.

15 Q. Absolutely. We know that.

16 A. So you are talking about -- yes.

17 Q. Yep. You agree with my general analysis? Yes
18 or --

19 A. I'd actually have to do the math, so I don't have
20 an opinion. Like I said, I don't -- I've never thought
21 about depooling as working off of the PPD number.

22 Q. Okay. Well, let me ask just kind of a -- maybe
23 back up a little bit.

24 Proposal 19 moves or increases the spread between
25 Cleveland and Grand Rapids from \$0.20 to \$0.90, correct?

26 A. I think it's \$0.60, \$3.70 versus \$3.10.

27 Q. You are correct. I misstated that and I
28 apologize.



1 THE COURT: I love it when that happens.

2 BY MR. MILTNER:

3 Q. So it goes to \$0.60?

4 A. Right.

5 Q. Have you analyzed about whether tripling the
6 difference between Grand Rapids and Cleveland will cause
7 additional milk to depool?

8 A. I have not. But I think if you increase the
9 Class I differential, you are going to reduce depooling.

10 Q. Well, if you hold all other things constant,
11 that's correct. But if you, then, increase the spread
12 between the base on other counties, you are going to
13 offset at least some of that benefit, won't you?

14 A. I don't believe so.

15 Q. You don't? Okay.

16 Thank you.

17 MR. MILTNER: I don't have any other questions,
18 Mr. Parks.

19 THE WITNESS: Thank you.

20 THE COURT: Is there other cross-examination
21 before I invite the Agricultural Marketing Service to ask
22 questions?

23 I see none. I invite the Agricultural Marketing
24 Service.

25 CROSS-EXAMINATION

26 BY MS. TAYLOR:

27 Q. Good morning.

28 A. Good morning.



1 Q. Thank you for being here today.

2 A. Thank you.

3 Q. Can we turn to page 8? Here you are talking
4 about, toward the top of the page, all the different plant
5 changes in the past ten years or so. In particular in
6 that second paragraph, you talk about new plants in
7 Indiana and Ohio, and you say they contributed to the
8 closing of two plants, Class I plants, in Michigan.

9 I was wondering if you could expand a little bit
10 on that.

11 A. So there's a new Class I plant that was
12 constructed in Tipp City, Ohio, near Dayton, which moved.
13 Previously that -- that fluid milk production was in
14 Michigan. And to me, that -- building those plants south,
15 just by removing the volume out of those Michigan plants,
16 contributed to their closing.

17 Q. And so that milk that used to go to those Michigan
18 plants now goes to some form of manufacturing?

19 A. Yes.

20 Q. And I know you indicated that, I think you were
21 not in the discussions of the runs of the models
22 necessarily; is that correct?

23 A. That's correct.

24 Q. So -- but do you know if this current layout of
25 Michigan and Ohio plants, were they reflected in the
26 model? Did that have the most up-to-date plants? Do you
27 know if some were added or removed from the original list
28 that Dr. Nicholson had?



1 A. I don't have specific knowledge, but my assumption
2 was that the existing plants are in the model.

3 Q. Okay. You testified about how Southeast Milk
4 goes -- excuse me -- Michigan Milk goes all the way down
5 to the Southeast when needed.

6 But if I heard correctly -- or MMPA, at least,
7 your costs -- what you receive for that milk covers your
8 costs to haul to get it there, or put it another way,
9 whoever buys that milk pays for the haul to get it there?

10 A. Correct.

11 Q. Okay. And then later down on the page you talk
12 about MMPA supplies milk to Marquette, Michigan, a Class I
13 plant there. Costs \$1.50 a hundredweight to get the milk
14 there.

15 How far is that haul?

16 A. Let me see if I have that.

17 I don't have the exact mileage. My estimate would
18 be, probably, again, it depends on where we're moving the
19 milk from, probably 120 miles, maybe 150, 120 to 150.

20 Q. Okay. Thank you.

21 And I wanted to talk on page 9 a little bit. And
22 your testimony talks about how there's been a lot of milk
23 production in Michigan, and it seems like Michigan --
24 should I -- I'll ask this.

25 Were you here for Mr. Stout's testimony last week
26 in regards to Colorado?

27 A. No.

28 Q. Okay. Are you familiar at all with the issues in



1 Colorado? I ask because it seems, as I kind of think of
2 this big picture, in Michigan you are talking about
3 there's a lot of milk in Michigan, and less Class I demand
4 in Michigan, and most of that milk serves the
5 manufacturing market there. And there's maybe difficulty
6 then getting milk to leave the manufacturing market to go
7 to the Class I plant.

8 A. Would that be an accurate summation of that?

9 A. Yes. I mean, when you look at the Michigan
10 market, you know, really we have a Class I plant in the
11 Detroit area, and then we have the plants in West
12 Michigan. There's four plants, and so that's serving the
13 whole Michigan market. And so, yes, that milk is going to
14 other uses.

15 Q. And you mention that Michigan Milk previously has
16 elected not to serve a Class I plant.

17 Did I hear that correctly?

18 A. Yes.

19 Q. So in your opinion, you know, what does it take to
20 get milk to leave a manufacturing plant up there to go to
21 Class I, if that seems to be an issue?

22 A. Well, I think it's -- it's just to cover the
23 economics. It depends on where that plant's located. But
24 just the economics to move milk, the way hauling costs
25 have increased, become a big factor in moving milk south.

26 And so, you know, we had the opportunity to serve
27 a customer that I mentioned, and we put forth the costs
28 that we would need to be covered to serve that plant, and



1 it was not an acceptable price, and so we end up then not
2 serving that plant. And that was farther south.

3 And so that just creates a situation where, okay,
4 that's not a viable opportunity right now. We're forced
5 to look at other opportunities in the Michigan market to
6 bring value to our members. And it just seems like with
7 the current economics of the Class I differential and
8 serving a Class I plant, it just feels like that continues
9 to drop down the list of viable options versus what else
10 may be out there.

11 So my opinion, I think to answer your question,
12 increasing the Class I differentials would help
13 incentivize for that milk to move and maybe get to those
14 plants where that -- in my scenario, that would be a
15 viable alternative at that point.

16 Q. And in Michigan, other than Michigan Milk
17 Producers Association, could you talk about, because I'm
18 not familiar with that market, just kind of how that
19 market is supplied? Are there other co-ops around? Is it
20 mostly MMPA or do you have -- is there a bigger number of
21 independent farms? What does that look like?

22 So when I ask, because when you say how -- well,
23 MMPA didn't want to supply that Class I plant. I'm
24 assuming they got milk from somebody else eventually. But
25 who would that be? And, you know, they -- I would -- do
26 they face the same economics you do and so --

27 A. Right. So in the Michigan market, so, yeah. It's
28 really a co-op state. So Michigan Milk is there, and DFA



1 has got member farms there and does business in Michigan.
2 Foremost Farms Cooperative. Ottawa, Wisconsin, has got
3 members in Michigan. And then Prairie Farms. And then
4 Select Milk Producers with the Fairlife plant there in
5 West Michigan is a -- is a co-op in Michigan. So we have
6 got a lot of competition in terms of member cooperatives
7 or members have options to look at co-ops.

8 Q. And plants have options to look for suppliers?

9 A. Yes.

10 Q. Would you say the economics, though, are
11 consistent?

12 A. I think -- I think the challenge that we're
13 discussing today with the Class I differential we all
14 face, because most of the plants -- most of the Class I
15 plants in Michigan closed, and that Class I volume moves
16 south into Northern Indiana, Ohio, and so more milk is
17 moving out of Michigan down to those plants is what's
18 changed since 2000.

19 Q. Okay. At the bottom of page 9 you talk about
20 Department of Transportation's hours of service revisions
21 in 2018. I wondered, for the record, if you could just
22 expand on what happened.

23 A. So the Department of Transportation, for all truck
24 drivers, mandated electronic logs be used. They decreased
25 the hours of service. So in a given day, a driver, their
26 on-duty services limited to 14 hours a day, actual driving
27 time is 11 hours per day, and that is less than what it
28 was previous to that.



1 They also are -- a driver is mandated to have a
2 30-minute break every eight hours. And so there are just
3 more restrictions, more restrictions on drivers in terms
4 of hours per day. And it became mandated and electronic
5 e-logs, where drivers could no longer cheat the system
6 probably was happening before to some extent.

7 Q. Okay. I'm moving to page 11. Towards the top you
8 talk about MMPA hauling cost transfer milk from
9 mid-Michigan to Eastern Ohio was \$1.60 per hundredweight
10 per 100 miles.

11 How far is that trip?

12 A. It's 287 miles.

13 Q. Earlier you discussed with Ms. Vulin about somatic
14 cell requirements of the EU.

15 Do you know what the requirement is? The EU
16 requirement is?

17 A. It's less than 400,000 on a rolling geometric
18 mean, they call it. It's 400,000.

19 Q. And you mention that "customers increasingly
20 discourage us from supplying milk" -- excuse me -- "from
21 supplying them with route milk or commingled loads of
22 milk."

23 Can you talk about how they discourage you from
24 doing that?

25 A. They put it in a requirement of their bid of
26 farm-direct milk as a requirement. And it's black and
27 white. No -- no deviations from that. So when you sign
28 up with that customer, that's the requirement.



1 Q. Okay. Towards the bottom of the page, and I think
2 in cross-examination you had talked about your producers
3 get a quality premium of \$0.50 a hundredweight, but that
4 comes from -- it doesn't come as an additional premium you
5 are charging to Class I handlers; is that correct?

6 A. That's correct.

7 Q. So can you talk, then, why aren't you able to get
8 that additional money out of Class I handlers?

9 A. That is a good question. I think it's -- it just
10 comes into play -- you know, there's just -- again, to me,
11 it -- a factor in that is the fact that going back to 2000
12 when we had a Class I plant in every market in Michigan,
13 and we were dealing with, let's say, a smaller plant, I
14 think the negotiations and discussions between a milk
15 cooperative like Michigan Milk Producers and that
16 individual plant, it was much easier to talk to that
17 plant, to talk about the local market, and talk about why
18 we needed to get what we need.

19 Today, that is a much more difficult discussion
20 when you are talking with national retailers, people that
21 operate plants around the country, you no longer are
22 talking about the Michigan market. It seems like you get
23 pushback on the fact that, you know, they start talking
24 about national statistics and other issues that just --
25 there's just more pushback in general. And to me, the
26 larger companies and larger organizations just have an
27 overall mentality of more volume demands lower price.
28 It's that simple.



1 And it's just more difficult to plead your case
2 and try to get those changes that you try to get. And you
3 end up, okay, you do the best you can, and -- and with
4 that comes high volume and some benefits there. But
5 that's why it's more difficult to get over-order premium
6 increases.

7 Q. For -- since there's a lot more manufacturing milk
8 up in Michigan, are you able to get premiums on that milk
9 in the -- to the cheese plants?

10 A. Yes.

11 Q. And you have similar difficulties than as you just
12 described for the Class I plants?

13 A. I would say we have less -- we have less
14 difficulties there than we do with a Class I plants today.

15 Q. And there's -- are those quality premiums or
16 volume premiums that -- for manufacturing plants, or both?

17 A. No, it's just a premium. It's just one number,
18 and so it's up to us to try to factor in everything that
19 we -- we need to get out of that, whether it be quality or
20 volume or -- yeah.

21 Q. And so then is that money distributed to all
22 Michigan Milk producers?

23 A. Yes.

24 Q. So you talk about in your -- for the somatic cell
25 costs, the way you have described it here, it doesn't seem
26 like that's a cost to meet the lower somatic cell
27 requirements. As more as I read it, a cost on the
28 paycheck over what they would have -- producers would have



1 gotten had they met this lower, in your example, 180,000
2 count; is that correct?

3 A. Yeah. So what I was trying to describe there,
4 looking at a -- to me, at a Class I plant where I -- I
5 spent most of my career, I never paid for lower SCC milk.
6 That -- that cost only gets charged to Class II, III, and
7 IV milk use.

8 And so the point I was trying to make here is that
9 this is the SCC levels in milk have dropped, and there's a
10 cost to get that milk. That -- there's a value for that
11 because of the SCC calculation that's coming out of the
12 pool dollars.

13 And Class I plants don't -- they don't participate
14 in paying that cost, yet it's -- ultimately, it's
15 reflected in the uniform price and it ends up being lower.

16 Q. Okay.

17 A. And so that's just another element that the only
18 thing that a farmer has is a Class I differential, and
19 that whole SCC calculation is another takeaway from that
20 Class I differential money.

21 Q. Okay. So if I put it another way just to make
22 sure I have got the point you are trying to make here is
23 that the adjustment basically comes out of the pool.

24 A. Yes.

25 Q. So any adjustment to producers with lower counts
26 comes out of the blended price that all producers receive,
27 it's not some extra money there?

28 A. Right. Correct.



1 Q. Okay. I got it.

2 I did -- on that same topic, though, I mean, do
3 you have any information on what it takes on the
4 producers' side to lower their somatic cell counts?

5 A. Yes.

6 Q. The actions they have to take or actual costs they
7 incur?

8 A. Yes. So we have a whole member services team as
9 other co-ops do as well, it's not unique to Michigan Milk,
10 where we -- we have people that visit farms that help
11 monitor quality, there's more testing required, there's
12 obviously a cost to those member services. But we spend
13 more time on farms that are serving Class I market, or
14 plants that have this lower SCC requirement, or lower
15 quality -- or higher quality standards.

16 And so it comes down to the basics. Cleaning. We
17 have to do more testing. We have to inspect bulk tanks
18 and tanks on farm more frequently. We have got people
19 that are monitoring cleaning that goes on at the farm.
20 And we help look at results in data and try to pinpoint
21 all of a sudden if SCC counts are going up or something.
22 We are in there working with them trying to figure out
23 basically what's not getting cleaned. Is there something
24 with their milking operation or something? And so it's
25 just boots-on-the-ground trying to help monitor and
26 maintain those results.

27 Q. And so are those costs borne equally by all
28 members?



1 A. Yes.

2 Q. Because you said that it takes more time on the
3 farm serving Class I to get that lower. But that's not
4 what -- that cost is kind of borne equally as a service to
5 all members, it's not --

6 A. Yeah. So I'd say in theory, a co-op theory of
7 existence is spread -- spread all revenues and spread all
8 costs amongst all members, and everybody works hard to do
9 the best they can. But, yeah, things generally get
10 spread.

11 But then we have quality premiums that we actually
12 will pay members based on their results. And that program
13 also has got -- we can take money away from their check if
14 they have got poor quality. So not only do we pay
15 premiums, we'll charge them back if they have got poor
16 results, as an incentive to try to achieve that higher
17 quality milk. And it averages -- our average right now
18 is -- is right around \$0.50 a hundredweight for that
19 program.

20 Q. Okay. Going from page 12 into 13. You say, "The
21 current Class I differentials do not provide sufficient
22 economic recovery for producers."

23 And in other parts of your testimony you talk in
24 particular about how Michigan has currently a very large,
25 I think you said \$1.80 zone? Yes.

26 A. Yes.

27 Q. And you feel that needed to be corrected, which is
28 why you added some additional slope in there.



1 So putting that all together, can you talk about
2 what would be sufficient? You talk about how the
3 differentials don't provide sufficient economic recovery.
4 So I wanted to ask the flip of that question, is what
5 would be sufficient economic recovery, or how does the
6 current slope not work for you, and that's why -- part of
7 the reason you went in and added some slope to what the
8 model suggests?

9 A. Yeah. So I think I would answer it in that I
10 think the recommendation that we came up with for the
11 Mideast for Michigan accomplishes that. I would also say
12 we -- it doesn't -- it doesn't achieve total cost
13 absorption, meaning we tried to recognize a lot of
14 proposals that National Milk has with increasing
15 Make Allowances and this Class I differential, that
16 it's -- it's sort of a happy medium and a
17 middle-of-the-road type of an approach.

18 And so I think, you know, looking at the change
19 from where we're at today to this proposed change, you
20 know, I think for -- for the Mideast market, you know,
21 we're looking at -- from where we're at today of \$1.80,
22 our average increase -- you know, we average today \$1.98.
23 We're proposing going to \$3.68 in the Mideast, and so
24 that's a \$1.70 increase.

25 So I'd say that that's where we're at in our --
26 that's what our recommendation is for, you know, USDA to
27 consider.

28 Q. So for the current \$1.80 larger zone that exists



1 now, how is milk moving despite what you see as a
2 deficiency in the current differential slopes?

3 A. To me that -- that cost -- the milk is moving
4 where it needs to, but that cost is being absorbed by
5 farmer cooperatives, and it ends up in this pool of money,
6 that basically farmers are absorbing that cost today.

7 Q. We were looking at the slope of what the model
8 suggested, and it looks like there was kind of this higher
9 band in Northern Michigan, down through like the top of
10 the thumb of Michigan. So it went from \$3.50, then down
11 where I think is most of the supply area, \$3.40, and then
12 three -- kind of increasing as you exit Michigan. I can
13 make some generalization.

14 A. Right.

15 Q. I was wondering if you could talk about having
16 that slope go from high to low to high. How does that
17 not -- how do you see that not working? Not the level,
18 the number specific levels, just that kind of variation
19 and direction.

20 A. So I think generally when you look at Michigan and
21 where the milk is at, we look to move milk -- milk needs
22 to move from the northwest part of Michigan to the
23 southeast. And so when you look at moving milk, and a lot
24 of our milk is in Central Lower Michigan, and there's milk
25 over in the thumb part of Michigan as well, and so that
26 milk all moves south and east.

27 And so we just looked at, well, what does it cost
28 to move that milk as we go south and east? And I think we



1 were also conscious of, in order to increase the slope,
2 obviously we reduced our recommended Class I differentials
3 from what the model recommended.

4 So we could have looked at this and said, well,
5 let's just increase everything south and east all the way
6 down to Florida. Well, we looked at the volume of milk
7 that we have in Michigan has increased substantially, and
8 we just felt like that should be factored in, and is
9 really how we ended up reducing our recommended amount.
10 But that slope then is created to go south and east, and
11 that's what's reflected in the differentials that we're
12 recommending.

13 And so transportation costs are a big part of that
14 in terms of miles and looking at how -- what that cost is
15 to move that milk.

16 Q. In the model's \$3.50 zone, I'm curious, are there
17 plants up there? I was trying to figure out why would the
18 model pick out a number higher up there than in the south.

19 A. No. In fact, as I mentioned, that's the
20 challenge. Most of the plants in Michigan closed. And so
21 there -- there's only a plant up in Marquette, Michigan,
22 which is in the Upper Peninsula of Michigan in Marquette,
23 Michigan, on Lake Superior. And then the next plants that
24 you have are in West Michigan. The Class I plant, the
25 Fairlife plant. We have got our balancing plants in
26 Central Michigan. And then the only other Class I plant
27 is in the Detroit market.

28 And so I can't really speak to why the model



1 started where it did, but we obviously reduced it. We're
2 still increasing the Class I differential, but we're
3 reducing it from what the model recommended.

4 Everybody questions us on why we just don't use
5 the model. In the Mideast, we'd love to use the model.
6 We'd be higher than what we're recommending. But we felt
7 compelled to make those adjustments to reduce that a bit.

8 Q. I think my last question centers around, you
9 talked in response to cross, I'm not sure who, but MMPA
10 balancing costs are anywhere from \$1.50 to \$1.75.

11 And I think you might have answered, and I missed
12 it. Just what -- what factors goes into the \$1.50?

13 A. So we look at that -- so when you look at -- we
14 got to take that milk and do something with it. So we
15 basically turn it into powder and butter. And so part of
16 that number incorporates market fluctuations. And if I
17 produce powder at a higher cost and sell it for a lower
18 cost, and all of those things are kind of embedded in that
19 number. And that number can move around a lot.

20 If we have got nowhere to go with milk and our
21 plant is full, then we end up selling distressed milk at
22 times, 2 to \$3 below class price can happen.

23 And so really in our market there's good demand
24 for cream and butter. The challenge always is what do you
25 do with the skim? And we all walk around every day with
26 the idea that if we're making powder, we're losing money
27 every single day making powder.

28 And, frankly, we're looking at other options to



1 get out of that whole scenario. Meaning, let's find a
2 better use for the milk. And we made investments in our
3 plant in Southwest Michigan that have done that. We no
4 longer run butter and powder at our plant in Southwest
5 Michigan. We have invested and have found better
6 alternatives for that milk than to balance the market.

7 Others have closed balancing plants in our market
8 for the same reasons, and so --

9 Q. Okay. Thank you. Thank you.

10 MS. TAYLOR: That's it from AMS.

11 THE WITNESS: Thank you.

12 THE COURT: Ms. Vulin?

13 CROSS-EXAMINATION

14 BY MS. VULIN:

15 Q. Just a follow-up on Ms. Taylor's question.

16 In your answer you said, "If we're making powder,
17 then we're losing money."

18 So why is there any reason to raise Class I
19 differentials if it's just going to stimulate more milk
20 production that then you have to find a home for?

21 A. I don't -- I don't believe it is going to
22 stimulate more milk production. It's going to compensate
23 a cost to move that milk to a Class I market.

24 Q. You think raising Class I differentials won't have
25 any impact on the volume of milk produced, it will only
26 shift milk from manufacturing plants to fluid plants?

27 A. I don't think it's going to do that, either. I
28 think it's just going -- to me it's compensating the cost



1 to move that milk. Now, we're not going to change the
2 Class I volume and demand. I don't see this changing
3 that.

4 Q. Okay. So raising -- and it's your testimony --
5 raising Class I differentials won't stimulate more milk
6 production, and it won't move milk to Class I plants, it's
7 purely about compensation to producers?

8 A. Yes.

9 MS. VULIN: Thank you. Nothing further.

10 THE COURT: Ms. Hancock?

11 MS. HANCOCK: I'm just going to follow-up on a few
12 random points. They might be a little bit scattered.

13 REDIRECT EXAMINATION

14 BY MS. HANCOCK:

15 Q. I just want to be clear. I think that you
16 clarified this with USDA, but I just want to be clear.

17 National Milk's proposal in the Michigan area is
18 to increase differentials; is that right?

19 A. Correct. Yes.

20 Q. Okay. And it was not just an academic exercise,
21 but the decision that National Milk is proposing for
22 increasing those differentials, although it is a reduction
23 off of what the model has recommended, that was based on
24 your boots-on-the-ground experience; is that right?

25 A. Yes.

26 Q. And when I say "boots-on-the-ground," that means
27 all of your kind of local and regional experience in the
28 area as to what it takes to move milk; is that fair?



1 A. Yes.

2 Q. And even as you suggested, a decrease over the
3 model which is not as beneficial for your members; is that
4 right?

5 A. Yes.

6 Q. And you made that recommendation knowing it wasn't
7 as beneficial to your members because you believed it was
8 the right amount of increase and differential, even though
9 the model came out with something higher?

10 A. Yes.

11 Q. If Make Allowances are increased through this --
12 through this hearing in the final decision, will that also
13 decrease the amount of Class I price that's paid to dairy
14 farmers?

15 A. Yes.

16 Q. So will that, in turn, create even more of a need
17 to increase the Class I differentials at the same time
18 that any Make Allowance would have a decreasing effect on
19 the pay price?

20 A. Yes. So obviously Class I differential increase
21 increases the Class I price, and then Make Allowances for
22 butter powder, cheese, ends up reducing the blend price
23 that a farmer sees. So, yes.

24 Q. And at one time Ms. Vulin was asking you, in her
25 questions, about whether the model had accounted for what
26 the state-regulated size of tankers were.

27 Do you recall that?

28 A. Yes.



1 Q. And to extent that the model accounts for what the
2 state -- which each state would allow for the size of
3 moving milk, that would -- that would just assume that
4 every tanker is at a full load; is that right?

5 A. Yes.

6 Q. And when you were talking about what your actual
7 local experience is, that was based on the fact that there
8 are some loads that are not full; is that right?

9 A. That's right.

10 Q. And can you talk about how the commingling -- or
11 the prohibitions against commingling by your clients,
12 commingling of that milk, impacts a tanker's ability to
13 transport a full load of milk?

14 A. So I mean, the inefficiencies that you get into
15 with less than full trucks just has to do with where the
16 farm's located and volume of milk being produced at those
17 farms. And I end up -- you know, you may end up
18 delivering a load of milk that's not full.

19 Where a customer requirement for a load of milk
20 from one farm limits what farms can you use to serve that
21 plant, because not every plant -- or not every farm may be
22 able to generate a one load of milk that that plant would
23 need. So it starts to build in restrictions and things
24 that have to be managed. And it's just not a perfect
25 efficient scenario when you get into those limitations.

26 Q. And that's the difference between a modeling
27 result and what that local boots-on-the-ground knowledge
28 can actually offer.



1 A. That is right.

2 Q. Another aspect of the cross-examination that was
3 posed to you was whether -- whether farmers shouldn't just
4 be reimbursed for the additional hauling costs directly so
5 that they get the full amount of compensation for the
6 hauling costs.

7 Do you remember that?

8 A. Yes.

9 Q. And you understand that one of the goals from the
10 Federal Order system is to ensure that dairy farmers
11 receive similar payments for their raw product milk cost
12 without regard to the end use; is that right?

13 A. That's right.

14 Q. That's all I have for questions for you.

15 MS. HANCOCK: Your Honor, we would move for the
16 admission of Exhibit 406.

17 THE COURT: Is there any objection?

18 There is none. Exhibit 406, also marked NMPF-45,
19 is admitted into evidence.

20 (Thereafter, Exhibit Number 406 was received
21 into evidence.)

22 THE COURT: Ms. Hancock, I would like you to tell
23 us what we'll do next and then take a break before you do
24 it.

25 MS. HANCOCK: Thank you, Your Honor.

26 We will have Mr. Ed Gallagher as our next witness.

27 THE COURT: All right. Good.

28 Now, do you need to distribute anything for his



1 testimony?

2 MS. HANCOCK: I believe that we -- I believe that
3 we have distributed it, or we will on the break if it
4 hasn't been.

5 THE COURT: Okay. Very good. I would assume
6 we -- I know that we're going to come back about half hour
7 before lunch, but that's fine with me.

8 Should we take 15 minutes now or do you want 10?
9 12 minutes. All right. Please come back at
10 11:30. We go off record at 11:18.

11 (Whereupon, a break was taken.)

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

13 We're back on record. It's 11:31.

14 Ms. Hancock, I have exhibits in front of me. I
15 believe our first number will be 407. Will that be the
16 testimony presented by Edward Gallagher?

17 MS. HANCOCK: Yes, Your Honor, it should be marked
18 as Exhibit NMPF-54.

19 THE COURT: All right. So marked.

20 (Thereafter, Exhibit Number 407 was marked
21 for identification.)

22 MS. HANCOCK: And then the next one should be a
23 spreadsheet, and we have a correction there. It's -- the
24 printed versions in the room, it's marked as Exhibit 46,
25 the upper right-hand corner, but it should actually say
26 NMPF-54A, and USDA's clarified that 54A is what is on the
27 website. NMPF-54A.

28 THE COURT: All right. So I'm going to call that



1 Exhibit 408.

2 (Thereafter, Exhibit Number 408 was marked
3 for identification.)

4 THE COURT: Also known as NMPF-54A.

5 MS. HANCOCK: And then there is an NMPF-54B that
6 on my printed version is a little chopped at the top, but
7 it's the Central Marketing Area Federal Order -- Federal
8 Milk Order Number 32, for May of 2022. That will be
9 Exhibit 409.

10 THE COURT: Yes. 409.

11 (Thereafter, Exhibit Number 409 was marked
12 for identification.)

13 THE COURT: I'm marking as 409, NMPF-54B.

14 MS. HANCOCK: And then there is an Exhibit
15 NMPF-54C, like cat. That would be Exhibit 410.

16 THE COURT: 410. All right. I'm marking as
17 Exhibit 410, NMPF-54C.

18 (Thereafter, Exhibit Number 410 was marked
19 for identification.)

20 THE COURT: All right. Good. I'd like you now
21 please to state and spell your name.

22 THE WITNESS: My name is Edward Gallagher,
23 E-D-W-A-R-D, G-A-L-L-A-G-H-E-R.

24 THE COURT: Have you previously testified in this
25 proceeding?

26 THE WITNESS: I have, Your Honor.

27 THE COURT: You remain sworn.

28 THE WITNESS: Thank you.



1 EDWARD GALLAGHER,

2 Having been previously sworn, was examined

3 and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. HANCOCK:

6 Q. Good afternoon, Mr. Gallagher. Thank you for
7 returning to the stand.

8 Did you prepare Exhibit 410 in support of your
9 testimony today?

10 A. 407?

11 Q. I'm sorry, 407.

12 A. I did prepare 407, yes.

13 Q. And Exhibits 408, 409, and 410 are the exhibits
14 that you have used in support of your testimony today?

15 A. Yes.

16 Q. And where appropriate, when you are reading your
17 testimony, if you can cross-reference those for us, and
18 then, if not, we'll catch it on the end.

19 A. Okay.

20 Q. Do you want to proceed with providing us your
21 statement?

22 A. Thank you.

23 My name is Edward Gallagher. I appear today on
24 behalf of Dairy Farmers of America (DFA) and the National
25 Milk Producers Federation (NMPF) in support of their
26 Proposal Number 19, to modernize the Class I differential
27 and producer pricing surfaces in all Federal Orders.

28 Dairy Farmers of America is a global dairy



1 industry leader and the largest U.S. dairy cooperative,
2 largest U.S. milk business, and largest U.S. Class I
3 processor. Exhibit NMPF -- well, Exhibit 407 provides a
4 series -- no, I'm sorry. Disregard that. Exhibit NMPF-48
5 provides a series of facts about DFA.

6 I am the president of DFA Risk Management, a
7 business unit of Dairy Farmers of America. As president
8 of DFA Risk Management, I lead the DFA business unit that
9 offers price risk management programs to members,
10 DFA-owned plants, and business units, and their customers.
11 My team and I offer the dairy industry's leading milk
12 price forward contracting program to our farmer-owners.
13 Additionally, I am responsible for DFA's federal dairy
14 revenue protection and other crop insurance programs. I
15 also lead DFA's Federal Order policies initiatives and
16 have done so since January 2022.

17 I have worked in the dairy industry my whole life,
18 having been raised on my family's dairy farm in Central
19 New York. I spent 13 years at the Northeast Milk Market
20 Administrator's office as an economist and their chief of
21 market analysis research and information, and joined
22 Dairylea Cooperative (Dairylea) in 1996 where I led them
23 through the Federal Order Reform process in the late 1990s
24 and later. I served in a variety of senior management
25 roles for Dairylea.

26 I have been in my present role leading DFA's risk
27 management program since 2010. I'm a frequent industry
28 speaker, imparting my knowledge of milk pricing, risk



1 management in the dairy industry. I'm a member of the
2 National Milk Producers Federation Board of Directors. I
3 serve on the Commodity Futures Trading Commission's
4 Agricultural Advisory Committee, the Risk Management
5 Committee for the National Council of Farmer Cooperatives,
6 the National Milk Producers Federation Cheese Pricing Task
7 Force and its Federal Order Task Force, and the New York
8 Commissioner of Agriculture's Milk Marketing Advisory
9 Council, among other activities.

10 I've testified before the U.S. House of Repres- --
11 U.S. House and Senate Agriculture Committees on milk
12 pricing and risk management issues, and have been an
13 expert witness at a variety of milk pricing regulatory and
14 legal matters. I hold a Bachelor's of science degree in
15 agricultural economics and farm business management from
16 Cornell University, and a master of science degree in
17 agricultural economics from The Ohio State University.

18 I appear here today to explain the importance of
19 implementing a price surface in Colorado that differs from
20 the results of the University of Wisconsin's model
21 analysis of a national pricing surface. The model's
22 results would unfairly and harmfully impact Colorado dairy
23 farmer milk prices. The model results show little change,
24 in some cases declines from their existing levels, while
25 other areas in the U.S. that have less Class I demand and
26 significant cheese manufacturing activity see
27 significantly increased price surfaces and improvements in
28 pay prices to dairy farmers in those states. Steve Stout



1 has previously testified to the marketplace dynamics in
2 and around Colorado that were not part of the model's
3 input and would suggest that the model has underpriced the
4 appropriate price surface in Colorado.

5 Additionally, we are on record to strongly object
6 to changes in pricing formulas emanating from this hearing
7 that would structurally decrease milk prices by any
8 significant amount. We have previously testified that an
9 increase in Make Allowances that result in a decrease in
10 milk prices by \$1.45 per hundredweight would significantly
11 reduce farm profit margins, if not wipe them out
12 completely, leading to a potential disorderly marketing
13 issue relative to an adequate supply of milk.

14 In the case of Colorado, DFA and NMPF have
15 proposed Make Allowance increases that would decrease raw
16 milk prices by about \$0.50 per hundredweight. The pricing
17 surface model in areas around the U.S. would generally
18 result in at least modest milk price increases. However,
19 in Colorado, the model's price surface results, if
20 implemented without adjustments to its output, would
21 reduce Colorado milk prices by close to \$0.40 per
22 hundredweight, in addition to the decrease from the
23 increase in Make Allowances. A decrease in Colorado milk
24 prices amounting to almost \$1 per hundredweight would
25 severely impact the state's milk production.

26 Dr. Stephen Koontz of Colorado State University
27 has testified about the milk production cost structure in
28 Colorado and how it is different and higher (more costly)



1 than similarly-situated states, and that this cost
2 structure is not expected to shift downward.
3 Additionally, supplementing his testimony, the J.D.
4 Heiskell witness has provided expert testimony of the
5 increased cost of bringing feed into the state.

6 The following table comparison of Class I
7 differentials at selected locations in Colorado and
8 Missouri provides important factors utilized in
9 determining the NMPF Class I differential and pricing
10 surface. The model's output suggests lowering the
11 differential in Denver County, Colorado, and Weld County,
12 Colorado, and modestly increasing the differential in
13 Morgan County, Colorado.

14 Particularly looking at the chart at the top of
15 page 3, I list four locations, I list the current Federal
16 Order differential for each one of those locations, and
17 then I show the model's output for the two months that the
18 University of Wisconsin used in their mathematical
19 analysis. And the final column is what the National Milk
20 Producers Federation has proposed for differentials for
21 those counties.

22 As can be seen, the Colorado locations currently
23 have differentials that are higher than Jackson County,
24 Missouri, the announced pricing zone. This results in
25 blend prices in Colorado that exceed the base zone. The
26 University of Wisconsin's models results, unadjusted,
27 would result in a significant increase in Jackson County,
28 Missouri, location values relative to Colorado locations.



1 For Denver, instead of being \$0.55 per
2 hundredweight higher than Jackson, it would be 70 to \$1
3 per hundredweight lower -- a decrease in location value of
4 \$1.25 to \$1.55 per hundredweight -- prior to any
5 adjustments for, on average, higher Class I prices
6 throughout the Central order.

7 THE COURT: Let me stop you there for just a
8 moment. So you mentioned it would be 70 to \$1, and that
9 was \$0.70 to \$1; is that correct?

10 THE WITNESS: Yes, it is.

11 THE COURT: Thank you.

12 THE WITNESS: Okay. There would be similar
13 declines for values in Morgan and Weld Counties. These
14 changes to the blend prices at Colorado locations would be
15 untenable and would cause significant harm to
16 profitability of all Colorado dairy farmers.

17 With all respect to the University of Wisconsin
18 researchers, we suggest that the model's output values for
19 Colorado are, perhaps, mathematically correct based on the
20 data used by the model, but not realistic relative to the
21 Colorado marketplace and the increases in production seen
22 there caused by demand from cheese, yogurt, and other
23 manufacturers.

24 Additionally, it would be wholly inappropriate and
25 unfair to burden Colorado dairy farmers with such a steep
26 decline in blend prices on top of the declines they will
27 face from the implementation of the Make Allowance
28 increases.



1 NMPF's proposal includes adjusted model results
2 for Colorado, as can be seen in the chart. We have
3 suggested a significant value decrease in the differential
4 value when compared to Jackson County, Missouri. For all
5 Colorado locations, the proposed differential values are
6 lower than, instead of higher than, the existing
7 differences.

8 Our proposal would suggest that Denver be, instead
9 of \$0.55 higher, \$0.05 lower, a loss of \$0.60 per
10 hundredweight in value. As discussed in Steve Stout's
11 expert testimony, the NMPF proposal keeps the same price
12 differences between the Colorado plants due to the unique
13 marketing situation and relationships in the Colorado
14 marketplace.

15 Based on some "mock pool" information shared by
16 USDA with DFA prior to the announcement of the hearing,
17 incorporating the University of Wisconsin model's results,
18 unadjusted, and using the average of May and October
19 values as the differentials, the blend prices at the
20 Colorado locations were estimated to be about \$0.40 per
21 hundredweight lower than currently being received.

22 USDA Exhibit 408 was developed by USDA at the
23 request of NMPF. It recalculates the blend price for each
24 Federal Order at each order's blend price announcement
25 zone and using the proposed NMPF Class I differentials for
26 the months of May and October 2022. It takes into account
27 higher Class I differentials and a changed pricing surface
28 at plants receiving pool milk. No other changes were



1 made, meaning no changes in Make Allowances, et cetera.
2 It is a point-in-time analysis that can be used to
3 identify blend price changes due to the NMPF Proposal 19
4 at each milk plant receiving that order's pool milk.

5 The following chart -- Estimated Changes in
6 Producer Price Differential Prices at Selected Colorado
7 and Kansas Locations Using the NMPF Class I Differential
8 and Price Surface Proposal -- uses the Central order
9 information from USDA Exhibit 408 and adjusts those prices
10 to the selected plant locations.

11 It compares the actual producer price
12 differentials (PPD) at the locations for May and
13 October 2022 and those based on the mock pools reported in
14 USDA Exhibit 408 for the NMPF Class I differential and
15 pricing surface proposal. The determination and
16 announcement of a Federal Order statistical uniform price
17 at standard component test is the addition of the PPD to
18 the Class III price, also at standard test.

19 By reviewing the PPD changes only, this will
20 result in the same analysis as reviewing the changes in
21 the blend prices. The chart shows the Jackson County,
22 Missouri, values identified as Kansas City PPD. Kansas
23 City PPD was \$0.01 per hundredweight in May 2022, and
24 \$0.98 per hundredweight in October 2022, which can be
25 evidenced looking at Exhibit 409 and Exhibit 410, which
26 are the statistical uniform price announcements for May
27 2022 and October 2022 from the Central Federal Order. It
28 was signed by Mr. Wilson.



1 Using the NMPF proposal, USDA's "mock pool"
2 results in a May 2022 PPD of \$0.74 per hundredweight and
3 an October 2022 value of \$1.68 per hundredweight,
4 increases of \$0.73 and \$0.70 per hundredweight,
5 respectively. Using current and proposed price
6 differences from Kansas City, the chart shows the current
7 PPDs at selective locations and the NMPF's proposals'
8 changes to those values.

9 For instance for May 2022, the Denver zone, with
10 its current \$0.55 positive zone adjustment from Kansas
11 City, had a PPD of \$0.56 per hundredweight. That would be
12 the actual for that month in May 2022. Using the NMPF
13 proposal, which has Denver at a \$0.05 per hundredweight
14 lower zone, the Denver PPD would be \$0.69 per
15 hundredweight, a modest \$0.13 per hundredweight
16 improvement from its current level. The changes for the
17 other selected locations in Colorado have similar
18 increases.

19 NMPF's strongly urges USDA to adopt the proposed
20 Class I differential in price surface in our Proposal 19
21 for Colorado. The divergence from the model's results is
22 modest and is needed to maintain blend price equity,
23 relative to current Colorado PPD and blend price levels.
24 Expecting other changes from this proceeding including
25 increases in Make Allowances, Colorado dairy farmers will
26 sustain a net reduced milk price, despite the modest
27 improvement in their prices from the NMPF Class I
28 differential and price surface proposal.



1 The following table comparison of differential and
2 selected dairy manufacturing counties identifies current
3 and NMPF proposed differential values in selected states
4 and in selected counties with cheese plants. It compares
5 the NMPF proposed changes in the pricing surface in areas
6 that are heavy cheese manufacturing states. I provided
7 this comparison as evidence that the proposed Colorado
8 values at its major dairy manufacturing locations is in
9 line with the proposed changes at other similarly situated
10 manufacturing areas in other states and that the increases
11 at the Colorado plants is less than the increases in the
12 other locations.

13 However, it also shows that Colorado's estimated
14 state Class I percentage continues to be significantly
15 higher than similar calculations for South Dakota,
16 Wisconsin, and Minnesota, and, in fact, up to seven times
17 the percentage as shown in the last column. See
18 Appendix 1 of my statement for information about the
19 calculation of state-level Class I percent.

20 Steve Stout's testimony provides compelling
21 evidence that the Colorado milk supply increased over the
22 last 20 years to meet the growing needs of manufacturing
23 plants filling national and international demand for
24 cheese yogurt and other products.

25 If I may just, make a comment.

26 THE COURT: Yes.

27 THE WITNESS: In the last 20 years, there's been a
28 large increase in the production in the state of Colorado.



1 Most of that increase is delivered to one manufacturing
2 plant in Colorado. In fact, more than -- much more than
3 half of the state's milk goes -- is delivered to Leprino
4 at Greeley, Colorado. That type of marketing
5 relationship, as Mr. Stout has previously testified, is a
6 constraint that isn't considered in the University of
7 Wisconsin's model. We can come back to that and talk
8 about that some more.

9 Back to my statement.

10 It also shows that there is less milk available to
11 supply Class I plants than existed 20-plus years ago.
12 That point shows that the calculation, the 14% in-state
13 Class I utilization belies the fact that despite the
14 growth in Colorado milk production, milk available to
15 Class I markets continues to be constrained as it was in
16 the year 2000.

17 And if I could deviate from my statement.

18 If you just assume half the milk production in
19 Colorado goes to one manufacturing plant, and that there
20 are constraints on our ability to have that as a fungible
21 milk supply, for it to go wherever we think it should go
22 to fill need somewhere else, I think if you back that out
23 of the equation, which I think would be an appropriate
24 thing to do, the actual Class I utilization in the state
25 without considering that is 28%. It's probably higher
26 than that.

27 Back to my statement.

28 The table of -- let me just go through the table.



1 So as an example, I'll read one line through for Morgan
2 County, Colorado. The current differential is \$2.35. The
3 NMPF proposed differential is \$3.10, an increase of 75%.
4 Using my methodology that I created to try to estimate
5 in-state Class I demand, in 2000 in-state Class I demand
6 would have been 44%, and without making any other
7 adjustments, as I just previously did, the in-state demand
8 is \$0.14 -- excuse me -- 14%. And I did that for a number
9 of different manufacturing locations in comparison, in
10 South Dakota, Minnesota, Wisconsin, and one in Kansas.

11 Columbia, where it says "Columbia, CO," that's
12 supposed to be Columbia, Wisconsin.

13 THE COURT: So in the chart on page 5, that is
14 entitled "Comparison of Differentials," and so on, the
15 next to the last entry that says "Columbia," should be
16 Columbia what?

17 THE WITNESS: "WI," for Wisconsin.

18 THE COURT: All right. I'd like to make that
19 change on the record copy. And it has been done.

20 THE WITNESS: The table above provides additional
21 evidence that the pricing surface NMPF proposes for
22 Colorado is appropriate. It does not excessively increase
23 the values and makes measured use of non-model dynamics:
24 To resolve PPD/blend price equity issues for Colorado in
25 relation to other areas of the Central Federal Order; to
26 provide similar increases relative to other competing
27 manufacturing areas; to substantiate the Colorado's
28 Class I use of its in-state milk is 2 to 7 times higher



1 than the other states shown; and to recognize that
2 Colorado has a much tighter milk supply available to
3 Class I plants than exists in the other states shown in
4 the comparison.

5 To me -- excuse me, let me start over on that
6 paragraph.

7 To maintain an appropriate alignment with Western
8 Kansas and the Colorado manufacturing plants and the
9 Kansas City PPD/blend price announcement zone, NMPF
10 proposes an \$0.80 per hundredweight increase for Finney
11 County, Kansas, from \$2.20 per hundredweight to \$3 per
12 hundredweight. Like Colorado, its zone is currently
13 higher by \$0.20 per hundredweight than the Kansas City
14 zone, and the NMPF proposal changes that relationship by
15 reducing the differential between Finney County and Kansas
16 City by \$0.55 per hundredweight, from \$0.20 per
17 hundredweight over to \$0.35 per hundredweight under. The
18 University of Wisconsin model's results showed an output
19 value of \$2.50 per hundredweight for May 2022 and \$2.60
20 per hundredweight for October 2022. Different from
21 Colorado, the model estimated an increase in value for
22 Finney County, Kansas.

23 In an effort to maintain blend price equity and
24 equity between dairy manufacturing regions in nearby
25 states, NMPF proposes Finney County to have a \$3 per
26 hundredweight price surface. This value will modestly
27 increase PPD/blend price values by \$0.15 to \$0.18 per
28 hundredweight and provide a modest offset to the negative



1 blend price impacts of adopting higher Make Allowances.

2 Let me ask a question. I have got Appendix 1.

3 Would you like me to read the narrative of Appendix 1 into
4 the record or --

5 THE COURT: I think so. Yes, please. We're on
6 page 7 of your Exhibit 407.

7 THE WITNESS: Okay. Appendix 1. DFA estimated
8 the Class I demand for each state and compared it to the
9 milk production in each state. We did this by dividing an
10 estimate of the state's Class I beverage demand by the
11 state's milk production to get a statistic we are calling
12 beverage demand in comparison to milk production. Our
13 intent was to provide a comparative statistic, to reveal
14 changes between the years 2000 and 2022. We used it as a
15 proxy to see how the percentage of beverage demand in the
16 state has changed relative to milk production.

17 We did not have data available about each state's
18 Class I beverage demand, and as a proxy we used USDA and
19 U.S. Census Bureau data for the years 2000 and 2022.
20 USDA's estimated fluid milk sales report was utilized to
21 estimate fluid milk consumption. The United States per
22 capita consumption of fluid milk averaged approximately
23 197 pounds in the year 2000. By the year 2022, this value
24 decreased 67 pounds to approximately 130 pounds per
25 person.

26 These figures were calculated by dividing the sum
27 of the monthly total fluid milk products for the USDA
28 AMS's estimated fluid milk sales page, by the sum of U.S.



1 Census Bureau resident population for each U.S. state and
2 Washington DC for the years 2000 and 2022.

3 And there's two footnotes. Footnote 1 gives the
4 citation "Estimated Fluid Milk Sales, previous releases
5 2022-12 and 2000-12." And it gives cite of the location
6 as <https://mymarketnews.am.usda.gov/viewReport/3358>. And
7 we retrieved that on May 18th, 2023.

8 The second citation is "U.S. Census Bureau,
9 Resident Population for each state, retrieved from
10 FRED" -- that's F-R-E-D -- which is the Federal Reserve
11 Bank of St. Louis, and the internet site is
12 <https://fred.stlouisfed.org>, retrieved May 18th, 2023.

13 Back to the narrative.

14 We recognized that this will not fully capture the
15 precise changes, but for our purposes is adequate. We
16 multiplied the per capita milk beverage demand by the
17 state's population in each year. This became our proxy
18 for total Class I beverage and demand for each year.
19 We then divided that value by the state's milk production.
20 The data and values are shown for 2000 in Appendix 1a and
21 for 2022 for Appendix 1b.

22 This data has been previously used in our
23 Northeast U.S. testimony by Ms. Ryll in support of NMPF
24 Proposal 19 to show the growing milk desert in some of the
25 eastern seaboard states. For instance, it shows that New
26 Jersey and Rhode Island are the second and third most milk
27 deficit regions and have gotten significantly more milk
28 deficit over the last 22 years.



1 And with that, I complete my testimony. Thank you
2 for allowing me to testify today.

3 And I am available for questions, Your Honor.

4 THE COURT: Mr. Gallagher, I certainly understand
5 how you have been used as an expert. I tried to
6 comprehend everything you presented. I won't get it on my
7 first run-through. All right.

8 Direct testimony continued?

9 MS. HANCOCK: Thank you, Your Honor. It's just
10 after noon. I don't know if this is the time for breaking
11 for lunch?

12 THE COURT: It is -- it is indeed. Yes. Yes.
13 Thank you, Ms. Hancock.

14 So we take an hour. Please be back ready to go at
15 1:05 p.m.

16 We go off record at 12:05 p.m.

17 (Whereupon, the lunch recess was taken.)

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1 MONDAY, DECEMBER 4, 2023 - - AFTERNOON SESSION

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

3 We're back on record at 1:07.

4 Ms. Hancock, you may resume direct.

5 MS. HANCOCK: Thank you, Your Honor.

6 BY MS. HANCOCK:

7 Q. Mr. Gallagher, your testimony in Exhibit 407 you
8 discussed a constraint with the model that was unique in
9 California with a handler, Leprino, and I'm wondering if
10 you could tell us -- I'm sorry?

11 UNIDENTIFIED SPEAKER: Colorado.

12 MS. HANCOCK: Oh. What did I say?

13 UNIDENTIFIED SPEAKER: California.

14 BY MS. HANCOCK:

15 Q. Let me start again.

16 In your testimony in Exhibit 407 you discussed a
17 constraint with a handler Leprino in Colorado, that the
18 model did not take into account, and it was one of the
19 driving factors in the deviations that were proposed by
20 National Milk for Colorado.

21 I'm wondering if you could tell us how that plant
22 in particular has created some constraints that weren't
23 accounted for in the model?

24 A. The model that we keep talking about, it's a
25 mathematical calculation.

26 THE COURT: Your voice isn't loud enough. You are
27 in a good position. So start again.

28 THE WITNESS: Okay. So the model is a



1 mathematical calculation that solves for a given set of
2 inputs, and it assumes, if I can use this term, that all
3 milk is fungible, meaning it can go wherever the model
4 suggests it should go, milk and dairy ingredients. And in
5 real life, that's not how things work.

6 And specifically, though, in Colorado, as
7 Mr. Stout previously testified -- and he'll return, I
8 think he's going to testify again tomorrow, or be
9 available for cross-examination -- that our marketing
10 relationship with Leprino Foods requires us to deliver
11 them contractual volumes of milk, and unless they have a
12 demand change, that they would require less milk. That
13 milk's just not available to be fungible in the milk
14 marketing system. And so the model doesn't take that into
15 account when solving its mathematical formula.

16 Q. And we have heard other testimony in this hearing
17 that the model doesn't account for contractual
18 arrangements for the business strategic decisions that are
19 made in the marketplace.

20 Is this an example of that?

21 A. Yes, it is.

22 Q. And then how does the changes that National Milk
23 has proposed in deviating from the model results in
24 Colorado, how does it solve or address for those
25 constraints that are created by that unique marketing
26 relationship?

27 A. Yeah. When you look at the actual model milk
28 that's available to supply Class I needs in Colorado, it's



1 the actual amount of milk is significantly less than the
2 model would take into account, and so I believe that would
3 result in the model values for the state of Colorado being
4 higher.

5 And when we looked at how we could come up with
6 some means of what would those values be, of course, we
7 first started at the current value of being \$0.55 for
8 Denver, \$0.55 higher than Kansas City, Missouri. Of
9 course, that's what our farmer-owners wanted. With
10 discussions within the industry, and within DFA, we came
11 to the conclusion that that wasn't a tenable solution.

12 And so through the process, we landed on a
13 solution that would be respectful of the model's results
14 and respectful of profitability for dairy farmers in
15 Colorado and would be consistent in the state of Colorado
16 with everywhere else across the country and that Class I
17 differentials would go up.

18 And we -- we came to -- the National Milk
19 Producers Federation team came to the conclusion that if
20 we priced Denver a nickel less than the proposal for
21 Kansas City, and kept the same adjustments between the
22 plants, the other plants in Colorado as currently exist,
23 we could come up with a pricing surface in Colorado that
24 would modestly impact, modestly improve, the PPD
25 distributed in Colorado even though the Class I price
26 surface in Colorado would -- let me back up -- even though
27 the adjustment for blend prices in Colorado would go from
28 a large number over the announced price for the Central



1 order to a modest decrease from the calculation in the
2 Central order, and at the same time, would be respectful
3 of all the Class I plants across the country, and that the
4 Class I differential for those plants would go up. And it
5 goes up modestly.

6 Other than Colorado, all the pool distributing
7 plants in the Central order would have their Class I
8 differential go up by more than \$1 a hundredweight, and in
9 Colorado we are suggesting that those values go up \$0.75
10 per hundredweight.

11 Q. So something less than the surrounding area but
12 still more reflective of what the actual market conditions
13 are in Colorado?

14 A. Yes.

15 Q. Okay. Let's turn --

16 A. Before we go there, I have got a couple
17 corrections on my exhibit. Can we cover those?

18 Q. Yeah, sure.

19 THE WITNESS: Your Honor, I apologize. Over lunch
20 I realized that I -- over lunch I realized that I
21 misstated some names of counties on page -- on the chart
22 on page 5, and I would like to correct them.

23 MS. HANCOCK: In Exhibit 407?

24 THE WITNESS: In Exhibit 407, that's correct. So
25 when you go down, you'll see a Melrose, Minnesota. That's
26 actually Stearns County, and the town of Melrose.

27 THE COURT: Oh, and we're supposed to show the
28 county.



1 THE WITNESS: Yeah.

2 THE COURT: All right. So I'm going to ask that
3 the record copy be adjusted accordingly. We're on page 5
4 of Exhibit 407. We're in the table that says "Comparison
5 of Differentials." And instead of saying -- tell me
6 again.

7 THE WITNESS: Instead of it being Melrose, it
8 should be Stearns.

9 THE COURT: Spelled?

10 THE WITNESS: S-T-E-R-N-S (sic).

11 THE COURT: Stearns, Minnesota.

12 THE WITNESS: It may be S-T-E-A-R-N-S. Yes, I'm
13 seeing a -- yes, it's S-T-E-A-R-N-S.

14 And then, I don't know, I must have had a brain
15 freeze when I was doing this because I also got the other
16 Minnesota location incorrect. And where it says Perham,
17 it should read Otter Tail, O-T-T-E-R, T-A-I-L. I
18 apologize for those errors.

19 THE COURT: And what you are telling me is that
20 the town is the proper town, but what belongs there is the
21 county?

22 THE WITNESS: Yes.

23 THE COURT: It is very helpful to know what the
24 town is.

25 THE WITNESS: I could go through those if you'd
26 like.

27 THE COURT: Would you?

28 THE WITNESS: I would.



1 THE COURT: That would be helpful.

2 THE WITNESS: I'll tell you the name of the town
3 and even the plant I was thinking about.

4 THE COURT: That would be great.

5 THE WITNESS: Okay. So to begin with, Morgan
6 County is the DFA plant in Fort Morgan, Colorado. Weld
7 County is the Leprino Foods plant in Greeley, Colorado.
8 Grant, South Dakota, is the Valley Queen plant in Milbank,
9 South Dakota. Hamlin is the Agropur, A-G-R-O-P-U-R, plant
10 in Lake Norden, South Dakota. The Stearns County, Melrose
11 is the Land O'Lake plant. Otter Tail, Perham, Minnesota,
12 is Bongards, B-O-N-G-A-R-D-S. Waupaca County plant is
13 Appleton, Wisconsin, and that is an Agropur plant as well.
14 The plant in Columbia, Wisconsin, is Wyoces (phonetic).
15 It's the Grande cheese plant.

16 THE COURT: And would you spell what you just
17 said?

18 THE WITNESS: I think it's W-Y-O-C-E-S.

19 And Finney, Kansas, is the Garden City, Kansas,
20 plant owned by Dairy Farmers of America.

21 THE COURT: I just want to confirm that we did
22 make those changes on page 5. We changed Melrose to
23 Stearns, and we changed Pekham (sic) to Otter Tail.

24 BY MS. HANCOCK:

25 Q. Let's turn really quickly to Exhibit 408.

26 I know you touched on this during your testimony.
27 I'm just wondering if you could give us an example of what
28 it is that is being impacted by the price surface changes



1 proposed by National Milk in Exhibit 408.

2 A. Okay. Well, since we have been talking about the
3 Central Federal Order, why don't we go to Order 32. And
4 so like, I believe -- I wasn't here when this exhibit was
5 originally entered into the record.

6 But what for -- for the month of May, what this
7 shows is what the actual Class I pooled pounds were; the
8 actual total producer receipts; the Class I percentage,
9 it's just the division of those two prior columns; the
10 actual Class I differential value; and under the National
11 Milk proposal what the new value would be, so you can see
12 it's \$4.3 million higher. That the average differential
13 currently across all the Class I plants in Central order
14 is \$2.16, and with the National Milk proposal it would be
15 increased to \$3.36, which is \$1.20 per hundredweight
16 increase.

17 That as I testified already, the actual PPD at the
18 announced zone is one -- was \$0.01 per hundredweight, and
19 with the changes that we have suggested through the pool
20 that was run by USDA, would suggest that it would have
21 been, everything else being equal, \$0.74 per
22 hundredweight, an improvement of \$0.73 per hundredweight.

23 And then you have what the actual PPD would be at
24 the average location of all the producers milk, and so
25 that's just what is the Class I differential change adding
26 to the total value of milk. Then you can easily get that
27 by multiplying the market average Class I differential by
28 the 26%. And you can see that it currently has been



1 adding \$0.22 per hundredweight. It will add \$0.51 per
2 hundredweight for a difference of \$0.30.

3 And so I know there's already been discussion by
4 other witnesses about how this -- our proposal to raise
5 the Class I differential will support higher blend prices
6 and reduce the incidences of depooling.

7 And so as an example, in this example, that you
8 can see that at \$0.01 per hundredweight, there could have
9 been some handlers that might have been trying to estimate
10 what that price would be. Right? They filed their
11 reports before -- you can't calculate the blend price
12 before you file the reports. And so you file the reports
13 before you know what the blend price is, and there's, you
14 know, some pretty sharp people that try to estimate what
15 that blend price would be. And sometimes they get it
16 right, and sometimes they get it wrong.

17 But -- so there might have actually been some
18 entities that depooled that month. But if this proposal
19 was in play, they wouldn't have depooled because it was
20 obvious that the price was going to be \$0.74 and there --
21 there would be -- those that would have made their
22 depooling decision wouldn't have done it, and so there
23 would be a reduced incidence of depool because of raising
24 the Class I values. Right? And so a handler that is --
25 has the ability to choose whether -- whether to pool milk
26 or not, would choose to pool, if the blend price at their
27 location is higher than their class price that they would
28 have to pay for the milk.



1 But if the class price was higher than the blend
2 price, they would probably choose to depool. And so by
3 raising the differential, would bring in the Central order
4 \$4.3 million of value to producers in the pool for one
5 month. It would reduce the number of incidences of
6 depooling because the blend price would be higher enough
7 more often, that it would then change the depooling
8 decisions of handlers from time to time.

9 Q. Okay. I want to talk about the model and -- and
10 differentials historically.

11 I want to know first if you have any historical
12 experience in dealing with differentials throughout the
13 course of your career?

14 A. Well, I do, actually. So in 1984 I was a freshly
15 minted graduate at Cornell University working in Midtown
16 Manhattan for the old New York-New Jersey Market
17 Administrators Office. And -- Chip may remember this --
18 about that time there was a consideration of changing the
19 transportation differentials in the old New York-New
20 Jersey Market Federal Order. And the analysis of that was
21 to collect hauling costs and run a linear regression
22 equation to determine the cost per hundredweight per ten
23 miles to move milk from sort of the Central New York area
24 into Midtown Manhattan or into the New York City market.
25 And so at that time, it was a strict analysis of what was
26 the cost of moving milk from point A to point B.

27 During Federal Order Reform, that changed. That
28 changed -- that's when -- right prior to that, right, when



1 we were having these open discussions amongst the industry
2 to determine what the appropriate Class I pricing surface
3 would be when we merged all the, you know, reduced number
4 of orders down to, I don't know what we got down to,
5 11-ish, how we would set the pricing surface.

6 And at the time Cornell University had been doing
7 some -- and Mark Stephenson -- had been doing some pretty
8 profound research on the spatial model, and the spatial
9 model was used to determine the pricing surface, which we
10 automatically ended up with, which would have been -- for
11 those of you who recall, there was a bit of a dispute
12 between one model result that was Option 1A and another
13 result that was Option 1B, and Congress mandated that USDA
14 must use Option 1A.

15 And that, though, deviated from the analysis I
16 talked about when I first came to the Market
17 Administrator's office because, as we know, that model,
18 that mathematical calculation takes into account all --
19 all raw bulk milk, all ingredients of milk that can be
20 moved around to use to create dairy products, as well as
21 transportation and costs and a number of other things, and
22 came up with a pricing surface that wasn't strictly tied
23 to what it cost to move milk between point A and point B.

24 Q. And how did that help you understand what the
25 model is doing in the Wisconsin model?

26 A. So it's -- it's similar. Right, it's a similar
27 mathematical calculation. Over time, as Dr. Nicholson
28 testified, they tweaked some things and updated some



1 things, but it is pretty much a similar analysis,
2 mathematical analysis. And it -- and it creates output.
3 And as Dr. Nicholson testified, the output is a base point
4 from where to start from, but it really needs the market
5 intelligence of the people that market the milk to
6 understand and to form the pricing surface in a way that
7 fits their industry, their region.

8 You know, I recall during Federal Order Reform,
9 participating in a group in the Northeast that included
10 Maryland and Virginia Milk Producers, Land O'Lakes,
11 Agri-Mark, St. Albans Cooperative at the time, Dairylea
12 Cooperative which I worked for at the time, Dairy Farmers
13 of America, and Upstate Farms.

14 And we were -- we were tasked with taking three
15 separate Federal Orders and merging them into one. And
16 when we looked at the output from what became Option 1A,
17 we had serious concerns about how the -- just taking the
18 model's output and overlaying it on those three Federal
19 Orders would adversely impact the marketing of milk in
20 those regions.

21 And of specific concern was that the model
22 suggested much lower and lower -- lower values in Northern
23 and Western New York than were actually adopted during
24 Federal Order Reform, and we, the group, decided that we
25 saw at that time -- right, so this is 1998, 1999 -- that
26 the Class I supply area was going to be moving further
27 away from the Class I demand area. And we recognized that
28 if we wanted to have an adequate supply of milk for the



1 Class I demand area, we couldn't have a price surface that
2 negatively impacted the price and the profitability of the
3 producers in the regions that were going to be producing
4 the milk to supply those areas.

5 And so we -- we developed a proposal that we
6 adjusted the output of the model to have higher
7 differentials from Central New York north and Central New
8 York most of the way west, to facilitate a production of
9 milk so that we would have milk available to supply the
10 Class I needs.

11 And so that was the market intelligence of the
12 cooperatives in the region coming to a determination of
13 how to best use the model as a base, but fit the model to
14 the needs of the marketplace. And that's no different
15 than what we're doing -- or what we have done in the
16 National Milk Producers Federation group to date in the
17 proposal that we have developed and our promoting here at
18 this hearing.

19 Q. How did that work out? Do you feel like that the
20 competitive marketplace and the differentials were set
21 properly in that instance?

22 A. I do. I do. And as we -- as we sort of had the
23 view back then, the market has moved -- the supply has
24 moved much farther away from where the Class I demand is.
25 So we made the right call. We made the right adjustments.

26 Q. In the current model that Dr. Nicholson has
27 produced, there is a model output that takes into account
28 both May and October.



1 And I'm wondering if you could give us some
2 insight as to why it was important to use the spring and
3 fall time period for the model results?

4 A. Yeah. There was an interest by the task force as
5 to whether the model would show different values for those
6 two different time periods, and May was selected because
7 it was the springtime, it was a flush month, and October
8 was selected because it was sort of during a tighter
9 supply time, just seasonally tighter supply, and
10 seasonally tighter demand, typically during -- you know,
11 being August-ish, through the fall there's additional
12 demand for the forthcoming holidays, end-of-the-year
13 holidays that generally are good demand points for dairy.
14 And so the market generally is tighter then, and generally
15 it is seasonally lower milk production. And so we were
16 curious if the model would show a different value between
17 the two time periods. And it we did, as we thought it
18 would.

19 Q. And is that why National Milk used the average of
20 those two, spring and fall?

21 A. Yes. So, now, you got to start somewhere to start
22 using your market intelligence. And so what we decided as
23 the starting point, right, we first started with
24 identifying what we wanted to use as anchor cities, and
25 the anchor cities were locations where order boundaries
26 merged.

27 And once we identified the anchor cities, then we
28 generally looked at what is the average between -- simple



1 average of the May month and the October month, and we
2 started there. And we started there in many areas across
3 the country -- in many regions across the country, we
4 started from that point to evaluate using our market
5 intelligence as to whether it was an appropriate value,
6 whether it should be higher or lower, whether the
7 differences between two plants were appropriate or not,
8 whether it unfairly impacted producer blend prices. So
9 there's many, many, things that were taken into
10 consideration to come up with the final -- the final
11 product.

12 And even the anchor cities -- again, everything
13 had a starting point to work from, and even the anchor
14 cities, you know, we used the term anchor. It didn't mean
15 we were, you know, putting an anchor in the ground and it
16 wasn't going to change. It was just -- it was a place for
17 us to start, and it just helped us think through the
18 process by just naming it something, and we called it
19 anchor cities. But even some of those anchor cities had
20 changes in the values from where we first started.

21 Q. And we have heard the model result numbers from
22 the model itself, and then even as far back as order
23 reform, referencing those model results referred to as
24 shadow pricing.

25 What do you understand shadow pricing to mean?

26 A. Shadow pricing it is a mathematical formula, that,
27 you know, the model acts like the milk marketing czar and
28 can direct where the milk and ingredients goes in this



1 least-cost process to sort of identify these values. And
2 what the model result output is, identifies after taking
3 into account all classes of milk, all types of -- you
4 know, all raw milk, all types of ingredients that can be
5 produced and used to produce other dairy products, it
6 takes into account all of these things and determines a
7 value.

8 And what the value is, is if there was 100 pounds
9 of additional milk at that particular location, that
10 shadow price then says, how much would the system cost,
11 the entire system cost, be reduced? And so if -- if the
12 value was \$3.70 for a particular location, the model --
13 then in the interpretation of the model, if there was
14 100 pounds of additional milk in that location, it would
15 reduce the cost of the system by \$3.70 per hundredweight.
16 And it's that value, it's -- in the prior model, in the
17 Federal Order Reform time period, it was those values that
18 USDA used to determine -- to start their consideration of
19 what the price surface would be across the United States.

20 Q. And is that shadow price the same thing as an
21 actual market value for the price of milk in any given
22 location?

23 A. No, it's not. It's a -- it's just -- it is a
24 statistical value. And it is -- it has relevance because
25 of the intricate analysis that goes on in the model, but
26 it also needs to have a view from the people marketing the
27 milk as to whether that really fits that location and the
28 locations around it.



1 Q. We have heard a line of questioning over the last
2 week or so where various witnesses have been asked, what's
3 the failing in the model, that suggests that National Milk
4 couldn't have just stuck with the model results.

5 Do you think that there are failings in the model
6 that says that the model is untrustworthy?

7 A. No. The -- there's --- the model doesn't have
8 failings. It just -- the model -- again, it's -- it
9 treats everything as fungible, and that's not the real
10 world. Right? So you have got -- I already described the
11 Colorado situation and -- you know, I know, organic.
12 Right? The organic Class I is going to go to an organic
13 Class I handler, it's not going to go to wherever, right?
14 You know, there's GMO-free milk. There's grassfed milk.
15 There's A2 milk.

16 One of the Chip's customers has a -- has a unique
17 producer supply of larger farms in the greater Ohio area
18 that they work with to develop a -- provide incentives to
19 develop a certain quality and certain characteristics in
20 the milk supply. That handler doesn't -- wants that milk
21 to come into their plant to make their product, so then
22 they can use those qualities to promote, to promote the
23 value of their product. And so they are not going to just
24 let anybody's milk come in or they are not going to want
25 to divert all their milk somewhere else. And so there's
26 these constraints that just are out there that go beyond
27 it just being this fungible marketplace.

28 And -- and so -- so the model needs to be -- the



1 model's results needs to be tweaked a little bit as -- as
2 those things are considered. And that's what the market
3 intelligence does or the people that market the -- market
4 the milk -- are the primary marketers of the milk, that
5 can add the value to make this even a better solution than
6 just relying on the model's results.

7 Q. And you just gave an example of some specific
8 purchasing characteristics of milk standards that a
9 customer might have.

10 In those instances, it would be important that
11 that milk is not commingled with other milk that doesn't
12 meet these standards; is that fair?

13 A. That's fair.

14 Q. And the model itself assumes that every -- every
15 truckload of milk is going to be filled to capacity in
16 order to achieve those efficiencies that are built into
17 the model?

18 A. Correct. And that doesn't always happen. And --
19 and Mr. Parks provided some really good testimony about
20 different sizes of tankers, and he did a very nice job
21 today.

22 Q. I'm wondering if you have any other examples of
23 aspects that the model does not -- or effects in the
24 marketplace that the model does not account for that were
25 important factors in considering whether deviations needed
26 to be made?

27 A. Yeah. Aside from the ones that I have mentioned,
28 not wanting to repeat those that were brought up by



1 Mr. Parks, no, I can't remember everything he talked
2 about.

3 Q. And what about receiving days and hours at the
4 plant?

5 A. I was just going to go there.

6 Q. Sorry.

7 A. So -- so, you know, there's still Class I plants
8 that only receive milk five or six days a week. It's not
9 unusual for plants to be down for a day or two. They have
10 different hours, especially in today's work world where it
11 becomes -- the labor situation is tight, and workers can
12 move for even better work times. They have to recognize
13 different work schedules. And so there's not necessarily
14 24 hours receiving of milk at every plant across the
15 United States, so that's a little different.

16 You know, something like even a simple -- so it's
17 been a while for me since I have been marketing milk -- or
18 in the process of working with a team that markets the
19 milk, that's probably a better characterization, but I
20 remember -- you know, I worked in the Northeast
21 marketplace, and there are a lot of Amish dairy farmers
22 who -- Lancaster County, Pennsylvania, and surrounding
23 environments. And, you know, they would even have
24 constraints because they wouldn't want their milk picked
25 up on Sundays. And so the model just assumes that all
26 kind of works out. Right? And it does all work out, but
27 it takes -- it takes, you know, people managing the system
28 to get it to work out.



1 Q. Are there tanker-size limitations at various
2 receiving plants as well that would come into place?

3 A. Yeah, I'm sure there are. But I leave it to
4 somebody else, maybe Mr. Stout can talk more about that
5 when he gets back tomorrow.

6 Q. What about non-pooled milk, how would that factor
7 in?

8 A. Yeah. So the model takes into account -- not --
9 the model does not recognize the existence of Federal
10 Orders, so there's no such -- there's no such thing as
11 non-pooled milk in the model. It is all milk. Right?
12 There's no such thing as pooled milk. It is all milk. It
13 doesn't take into account, you know, what types of
14 marketing relationships may be impacted by Federal Orders.

15 Q. And what about priority at receiving supply
16 plants, is that a factor as well?

17 A. It could be, yeah.

18 Q. Fair to say that there is a whole myriad of things
19 that actually happen in the real world that influence
20 strategic business decisions that are not accounted for in
21 the model?

22 A. Yes.

23 Q. Okay. And those are the factors that were taken
24 into account when setting -- when setting the proposed
25 National Milk differentials?

26 A. Yes.

27 Q. Okay. I want to talk for a minute about
28 whether -- what is happening at the retail level and



1 whether there is even room at the retail level to absorb
2 any of these prices with a variety of uses.

3 Did you do anything to evaluate that over our
4 break period?

5 A. I did. So I had a curiosity. I had a curiosity.
6 I go into the supermarket where I live -- and my wife and
7 my kids will tell you if they were here, that wherever I
8 go, I go some place and look at the price of milk.
9 Probably most of you do the same thing. So I have always
10 had this curiosity about what are different milk prices at
11 the retail.

12 And so I was looking at those different milk
13 prices, and I remember the testimonies from Coca-Cola,
14 Fairlife, HP Hood, Nestle, Schreiber talking about hedging
15 Class I milk for some of their fast food customers. And I
16 was looking at the types of milk that they probably would
17 hedge, and I was kind of curious about there's quite a bit
18 of a -- when you equate those volumes, those container
19 sizes to gallons, and look at the price of those gallons
20 to the price of regular milk, there is quite a difference
21 in value at the retail level.

22 And so I -- I asked my contemporaries working with
23 me on the National Milk task force if they wouldn't mind
24 going to a supermarket or two over their -- during the
25 month of November and just collecting some prices. So we
26 did that.

27 And so we -- we surveyed it. It's -- it was just
28 a simple survey of just, you know, give Gallagher some --



1 satisfy his curiosity. So --

2 Q. Mr. Gallagher, if you could just pause for a
3 moment.

4 MS. HANCOCK: Your Honor, Mr. Prowant is handing
5 out the summary of his price survey that we would like to
6 have marked as the next exhibit.

7 THE COURT: Very good. So that will be 411.
8 Let's go off record while that is distributed and get our
9 copies.

10 We are off record at 1:47.

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

12 THE COURT: Let's go back on record. We're back
13 on record at 1:48.

14 Ms. Hancock, I have marked my Exhibit 411, and I
15 have also marked the same document as NMPF-54D as in
16 David. 54D.

17 (Thereafter, Exhibit Number 411 was marked
18 for identification.)

19 MS. HANCOCK: Thank you, Your Honor.

20 BY MS. HANCOCK:

21 Q. Mr. Gallagher, do you want to proceed with telling
22 us about the survey that you conducted?

23 A. Yeah. So let me list the city areas where the
24 data was collected: Minneapolis, Minnesota; Buffalo, New
25 York; Cleveland, Ohio; Washington, D.C.; Boston,
26 Massachusetts; Detroit, Michigan; Dallas, Texas;
27 Fort Lauderdale, Florida -- who was in Fort Lauderdale,
28 Florida without me -- Los Angeles, California; Tucson,



1 Arizona; Roanoke and Lynchburg, Virginia; and
2 Fayetteville, New York, which is in the Syracuse, New York
3 area.

4 And I asked that they go and they collect data
5 that would show HTST whole milk gallons, the least
6 expensive they could find on the shelves. And then I
7 asked them to go and get the largest container they could
8 find and record the price for Fairlife, for their regular
9 Fairlife milk. Right? Lactaid, Nesquik. And then go to
10 a foodservice, McDonald's or Wendy's or Burger King or a
11 convenience store, and just look to see what a small
12 container of milk, a 16-ounce or an 8-ounce container of
13 milk was priced at.

14 And when we got the data back, we converted
15 everything from whatever size the jug was to the gallon
16 equivalent, and then adjusted the price to the gallon
17 equivalent price, and then we averaged everything
18 together.

19 And what this -- this information is on this
20 exhibit is the average of all the cities, all the data we
21 collected in all those cities.

22 And the point that I was interested in seeing and
23 the point that came out from this that satisfied my
24 curiosity was that the -- you know, the value-added milks,
25 the value-added milks like Fairlife, they've got a
26 tremendous product, Lactaid is a tremendous product,
27 Nesquik, the foodservice milks, when you converted that --
28 those to a per gallon value, they were significantly more



1 than conventional milk, conventional gallon of milk.

2 And so I know there is interest from Class I
3 handlers in being able to use risk management to manage
4 their profit margins for their businesses. And the ones
5 that testified, the entities that appear to testify
6 wanting everyone to understand that they use risk
7 management to manage their Class I price risk and to help
8 protect their profitability tended to be the producers of
9 these products, that I call higher value products.

10 And so in my risk management experience, right,
11 they will still be able to hedge if we return to the
12 higher-of. It, though, will cost them a little bit more
13 to execute the hedges. I do not know what kind of hedges
14 they are using now, but one of the strategies that I hope
15 they do is that they would look at using an option
16 strategy instead of a locked-in price strategy.

17 And with an option strategy, they can put a
18 ceiling on their milk price. And if the Class III, IV
19 average in the strategy is higher than where they put
20 their ceiling on, then they are protected against the
21 prices going up. But if the price doesn't go up, they
22 enjoy the lower milk price that they pay for the milk
23 coming into the plant. So they can get the best of both
24 worlds.

25 With the higher-of, they can still do that, but
26 they have to hedge an extra quantity of milk. So for
27 instance, right now, if they had 100 pounds of Class I
28 milk they wanted to hedge, they would cover 50 pounds with



1 a Class III hedge and 50 pounds with a Class IV hedge, 100
2 pounds. With the higher-of they would have to use this
3 option strategy on 100 pounds of Class III milk and
4 100 pounds of Class IV milk. So they'd basically have to
5 hedge an extra quantity of milk.

6 And the cost of that, using the options market,
7 would be -- recently during the month of November, to take
8 something that went out and looked at the first half of
9 2024, and then the second half of 2024, that extra option
10 transaction would have cost them about \$0.08 a gallon.
11 And when I look at -- you know, I don't know what their --
12 I don't -- I do not know what Fairlife sells to the retail
13 at and what the retail markup is. But I think there's
14 probably some decent margin there, and I think they can
15 afford to continue to hedge and continue to use the
16 strategy and pay \$0.08 a gallon more.

17 And there are other strategies that get more
18 involved in sort of the use of option strategies where
19 there are some transactions that you can take that you
20 limit how much the milk price can go down using an option,
21 and selling a put option, and you can use the revenue that
22 you get from selling that put option to reduce the cost of
23 the strategy of putting a ceiling that can -- can reduce
24 the cost of that even more.

25 So I bring this up solely to offer you USDA, some
26 comfort, in that there still will be opportunities for
27 entities to hedge Class I even when the higher-of.

28 Q. Thank you, Mr. Gallagher.



1 MS. HANCOCK: Your Honor, with that, we would make
2 him --

3 THE WITNESS: I have got one more thing I would
4 like to cover, if I could, if you don't mind.

5 BY MS. HANCOCK:

6 Q. Sure.

7 A. One of the -- one of the -- one of the topics that
8 we have been discussing is the reserve supply of milk.
9 And I'm not sure where the number 30% came from, but the
10 best I can come up with, there's two weekends in a week,
11 and two out of seven is almost 30%. I don't know if
12 that's where you get reserve supply or not. I'm open for
13 education on that.

14 But if you look at where the marketplace is right
15 now, you look at where the marketplace is right now, think
16 about -- first think about when -- when the model that was
17 used to determine the existing class price structure,
18 producer price structure, back in 2000, think about the
19 marketplace back in 2000. We had -- some of the younger
20 members of the USDA team -- we had something called the
21 Dairy Price Support Program.

22 Do you recall hearing when -- when the European
23 community got rid of their quotas, and it just -- market
24 dy- -- global market dynamics worked out that the European
25 Union had to buy mountains of powder to take off the
26 market because they didn't have a commercial demand, and
27 that mountain grew to be about 900 million pounds of
28 powder.



1 Back when we were doing Federal Order Reform and
2 first implementing it here in the United States, we had a
3 Dairy Price Support Program that bought nonfat dry milk
4 powder, and we had a bigger mountain of powder back then
5 than Europe had in the 2015 to 2018 time period. We had
6 over a billion pounds of powder in government storage. So
7 we had a lot of extra milk that didn't have a commercial
8 demand.

9 So the price support program doesn't exist
10 anymore. We have developed through a lot of hard work,
11 through a lot of dairy companies, the U.S. Dairy Export
12 Council, we have developed significant export markets
13 where businesses and consumers around the globe have a
14 regular demand for U.S. milk that is turned into nonfat
15 dry milk, whey, lactose, and cheese.

16 Back in the early 2000s, depending on the time
17 period, 1 to 5% of the U.S. milk production was surplus
18 milk that was bought by the federal government because it
19 had no commercial market. Now that's virtually zero. If
20 they are buying anything, it's for an actual food program
21 where there's a food demand that they are trying to meet.

22 And we have developed an export market that now
23 consumes about 18% of the milk produced in the United
24 States. That fulfills a regular demand from buyers and
25 consumers and in other countries.

26 So if you think about today's marketplace,
27 about -- when you think about all the milk in the United
28 States, about 20% of that milk is used for Class I, about



1 10% is used for Class II, about 55% is used for Class III,
2 and about 15% is used in Class IV.

3 The Class II milk, that 10%, is 100%
4 consumer-demand driven. Class II plants don't buy milk
5 that they don't need.

6 Class III has become 100% consumer-demand driven
7 marketplace. Cheese -- maybe a cheese manufacturer will
8 take a little inventory now and then, but they don't
9 have -- they are not buying a lot of extra milk. They are
10 buying the milk they need to meet a consumer demand.

11 So then you have 15% of the market is Class IV,
12 and about 65% of that gets exported. And then of what's
13 left, about at least half of that probably is a regular
14 consumer demand.

15 So when you sort of work through all that, you
16 get down to about 2.5% of the milk supply may be in what
17 could be considered a reserve. And 2.5% of 20% is about
18 11%.

19 We don't have a lot of extra milk that can easily
20 maneuver to meet surges in demand for anything. And we're
21 in a marketplace right now where milk production is
22 stagnant, dairy farmers have changed their breeding
23 programs to breed as much for beef, actually probably more
24 for beef than replacement cows, and that's not going to
25 change for a while. That's not going to change until the
26 price of beef declines significantly, and then it's going
27 to take two years after that before the -- maybe, at least
28 two years, before the milking herd changes, before they



1 change their breeding practices, and maybe don't breed as
2 significantly to beef.

3 And so we're going to have fairly flat cow numbers
4 here in the United States for years to come that's going
5 to result in not much of a change in milk production, and
6 yet we're still going to see -- granted, we hope we're
7 going to see demand growth in Class I. I can tell you
8 dairy brands -- DFA dairy brands works at that every
9 single day.

10 But we're going to see more milk demanded in the
11 United States for Class II, Class III, for butter, for
12 powder, for bakery opportunities. We're going to see the
13 demand of milk grow here. And there's going to be more of
14 our milk demanded by businesses and consumers in other
15 countries. We do not have a measurable reserve supply of
16 milk to fall back on. We're going to have to make sure we
17 have a pricing system that supports the growth of milk in
18 the United States to meet just the Class I demands we're
19 going to have even if the market doesn't grow beyond what
20 it is already.

21 And so we've got this tight marketplace, and I
22 wanted to make sure that -- that is an important factor,
23 and I wanted to make sure it was on the record.

24 Q. Thank you.

25 A. Thank you for giving me that opportunity.

26 Q. Of course.

27 And just so we can tie it back around into your
28 testimony in Exhibit 407, is the point there that, one,



1 even that -- with an increase in price differentials, that
2 we're not going to further compromise the Class I industry
3 in a way that would be harmful to the movement of fluid
4 milk -- to the demand for fluid milk?

5 A. Correct.

6 Q. And, further to that point, in your exhibit in
7 411, even increasing -- even increasing the Class I milk,
8 there still is room for that increased price even if it
9 was to be passed through all the way to the retail level
10 to absorb into those prices?

11 A. That's correct. The information from Dr. Kaiser
12 on demand elasticities shows that fluid milk is
13 significantly inelastic. Although, you know, there will
14 be some decrease in purchases because as prices go up, if
15 it will be a smaller, smaller change, and the overall
16 value of milk to dairy farmers will be improved.

17 Q. Thank you, Mr. Gallagher.

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

20 THE COURT: I'd like to take a five-minute stretch
21 break. Don't go very far. Please be back ready to go on
22 record at 2:10.

23 (Whereupon, a break was taken.)

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

25 All right. We're back on record at 2:13.

26 MS. VULIN: Thank you, Your Honor.

27 //

28 //



1 CROSS-EXAMINATION

2 BY MS. VULIN:

3 Q. Good afternoon, Mr. Gallagher.

4 A. Good afternoon, Ms. Vulin. How are you?

5 Q. I'm good. How are you doing?

6 A. I'm well, thank you. Happy holidays.

7 Q. Likewise.

8 A. Thank you.

9 Q. Ashley Vulin for the Milk Innovation Group, just
10 for the record.11 Just a couple quick questions about the last
12 exhibits -- or the last exhibit you introduced and
13 discussed, Exhibit 411.

14 A. Yep. Go ahead while I look for it.

15 Q. So you made some statements about Fairlife's
16 margins and what you think might be possible based on
17 their hedging, but then you said you don't have really any
18 insight into Fairlife's margins.19 So I just want to be clear on the record, do you
20 have any personal knowledge, any information about what
21 Fairlife's margins are?

22 A. I do not.

23 Q. And do you have any personal knowledge about what
24 Lactaid's margins are?

25 A. I do not.

26 Q. Do you have any percentage knowledge about what
27 Nesquik's margins are?

28 A. I do not.



1 Q. Okay. Thank you. You can set that aside.

2 And then just for my own understanding,
3 Exhibit 408, which is NMPF-54A that you attached to your
4 testimony, is that USDA Exhibit 46, the same document?

5 A. Help. Yes.

6 Q. I believe so. I just wanted to make sure you
7 hadn't changed anything or that it was the identical
8 document USDA produced.

9 A. Correct. I did not change anything. It's the --
10 it's the identical document. I took it off of the
11 website.

12 Q. And then just before we took a break you had
13 shared some utilizations of the various classes.

14 A. Yes.

15 Q. And these were from notes you had?

16 A. Yes.

17 Q. And were those -- I ask just because referencing
18 the exact numbers again I know is helpful.

19 Was that utilization of all milk in the United
20 States or utilization of pooled milk?

21 A. All milk in the United States. And it's -- it's
22 DFA -- it's a DFA analysis, and I would have referenced it
23 in my testimony when I testified about the
24 Make Allowances. You will see those percentages. I can't
25 remember the exact page but -- and I -- it's, you know,
26 DFA's view of what the national utilizations are of
27 everything: Pooled, non-pool, everything.

28 Q. And you had said that Class II and Class III are



1 consumer demand driven.

2 And I had missed, did you also say Class I is
3 consumer-demand driven?

4 A. I didn't say that, but it definitely is
5 consumer-demand driven, yes. Thank you for updating that
6 and reminding me of that. How silly of me not to mention
7 that even the largest Class I processor.

8 Q. So then turning to your testimony, I would like to
9 start with your role in developing the differentials.

10 So can you just tell us which pencil crew you were
11 on, and how early did you get involved and what was your
12 arc of that journey?

13 A. Sure. So I was involved from the beginning with
14 the task force, and participated in the first meeting, the
15 Chicago meeting, to talk about the anchor cities.

16 Q. Can I ask when was that?

17 A. August or September of 2021. September of 2021.
18 So -- so then the task force was split up into National
19 Milk members by region, and of course, being DFA and being
20 a national cooperative, we were -- we needed to have
21 representatives in every region. And so to some degree I
22 was involved in every region, but I -- you know, so since
23 2010 I have been the risk management person, and I haven't
24 been involved in marketing the milk, and certainly where I
25 would have had some historical knowledge would have been
26 prior to that with DairyLea, I really don't have a lot
27 anymore.

28 And so as I was asked to sort of lead this project



1 for DFA, I immediately knew I needed help. And so I
2 drafted individuals from each one of our council areas to
3 participate in the discussions for the regional
4 discussions. So you have already met Skylar, Ms. Ryll,
5 who is in the Northeast; Mr. Erba who was in the Mideast;
6 Mr. Brinker and Mr. Stout were in the Central area, Upper
7 Midwest area; Mr. Stout was also involved a little bit in
8 some of the non-pool areas; Mr. Hiramoto was involved out
9 West; Mr. Yates, Ernie Yates, was involved in the
10 Southeast and Southwest, as was Mr. Herting; and to some
11 degree, although not to a significant amount, Mr. John
12 Kang was also peripherally involved in the Southwest.

13 So my major role was in the Northeast and the
14 Mideast, getting things started. Sort of being the person
15 that got the groups together the first time, but I didn't
16 have much to add beyond that other than sort of
17 encouraging them and setting some timelines to get them
18 together.

19 I would say it would be similar to the other
20 regions, I obviously was a little bit more involved as we
21 got into Colorado as I have noted.

22 Late in the game, I can't remember what
23 Mr. Hoeger -- if he covered this, he probably did, but
24 late in the game -- so late in the game would have been,
25 you know, before we filed our final proposal -- but I
26 can't remember even when we did that anymore, it might
27 have been April of '22 -- we came to the conclusion that
28 when we looked at some of the Upper Midwest pricing, we



1 had a price difference between Chicago and Minnesota that
2 probably would result in most of the milk being depooled
3 most of the time.

4 And so after realizing that, we then, taking into
5 account the importance of more of an equitable pricing
6 surface to producers, we made some adjustments. And I
7 can't remember exactly what they were. You would have to
8 go back and look at Mr. -- you would have to go back and
9 look at Chris's testimony. He's -- he talked about how we
10 adjusted Chicago and how we would have -- I think he
11 probably would have talked about how we adjusted
12 Minneapolis -- well, I don't know if we adjusted
13 Minneapolis or just Chicago, I can't remember at this
14 point.

15 But once we did that, then we made some changes
16 and we needed to make some other adjustments. And so I
17 went and Chris went through and sort of made these
18 adjustments in Iowa, and I made some adjustments in
19 Eastern Nebraska to line up with Iowa. And I can't
20 remember if we lowered or raised. We probably lowered
21 them a little bit.

22 Q. Okay. And --

23 A. And then so let me -- and then -- you know, so
24 then I was peripherally involved in some of the
25 conversations in -- in the Western region, and I helped
26 sort of give support about how we would smooth prices in
27 the unregulated areas, so it looked like a smoother
28 pricing surface, relative to one that was choppy.



1 THE COURT: One that was what?

2 THE WITNESS: Choppier.

3 THE COURT: Choppier.

4 BY MS. VULIN:

5 Q. A lot of details there. I tried to write down
6 some questions, so I'll maybe go back a little bit and
7 then go through that.

8 You said that your expertise is not in marketing
9 milk, it's in risk management?

10 A. Correct.

11 Q. And so why are you leading the charge then in this
12 marketing endeavor?

13 A. DFA needed somebody to coordinate the entire
14 policy procedure, and so I was -- after some retirements
15 at DFA, I was sort of the next person standing with that
16 kind of experience, and so I got drafted in January 2022.
17 '22? 2021. When did we start? January 2022. '21?

18 Yeah, January 2021, I got drafted by our CEO to
19 sort of lead the process. And so I was using -- and we
20 have got a lot of expertise in the house, and I was -- I
21 was using the expertise, and I was trying to let them --
22 and I did, I let them figure this stuff out. I just sort
23 of pushed them along to get them to make sure they were
24 meeting and discussing and interacting with one another.

25 Q. And --

26 THE COURT: Say that again, leading and
27 discussing?

28 THE WITNESS: And interacting with one another.



1 BY MS. VULIN:

2 Q. Okay. And then you were involved in the
3 September 2021 meeting that selected the anchor cities and
4 set the differentials for those?

5 A. I wouldn't call it set. But we came up with
6 values to start with. As I remember that meeting, I had
7 something I had to do to get home for. It probably was
8 my -- my daughter's high school soccer game, and I left
9 that meeting before it was completed. And there was --
10 =we hadn't gotten to Kansas City yet by the time I had
11 left. So anyways, I've got limited information, and the
12 best person to ask questions about the determination of
13 the anchor cities is going to be Mr. Sims. He led the
14 Class I differential project for our task force. And
15 he's -- he'll be here soon. He's here. He'll be up here
16 soon.

17 Q. And then in April there were, at that point,
18 differentials set.

19 But then you noticed that some changes you believe
20 needed to be made, correct?

21 A. Somewhere around there, yeah. It was a live
22 document, right? So we tweaked it here and there as we
23 thought we needed to.

24 Q. And you said Mr. Hoeger made changes in Iowa; is
25 that correct?

26 A. Yes.

27 Q. And did he alone make those changes?

28 A. He -- he made adjustments and then had



1 conversations with, I'm not quite sure who all, but I know
2 Land O'Lakes and DFA.

3 Q. And you said you personally made changes then to
4 the Eastern Nebraska region?

5 A. Yep, and I -- yes. And I had conversations with
6 Mr. Hoeger.

7 Q. Anyone else?

8 A. The DFA team.

9 Q. Who is that?

10 A. Oh, Mr. Brinker would have been the individual
11 with DFA of most concern.

12 Q. When you and Mr. Hoeger -- sorry, I'll -- when you
13 made the changes to the Eastern Nebraska region, did you
14 consult anyone outside of DFA?

15 A. Mr. Hoeger.

16 Q. Anyone else?

17 A. Probably Mr. Sims to let him know, hey, we had
18 conversations within the task force about making some
19 changes. Maybe Mr. Sleper. I'm sure I did.

20 Q. Were you primarily the person that selected those
21 values though?

22 A. Yeah, I think so.

23 Q. After April was there anyone else who took on
24 changes to any regions similar to what you and Mr. Hoeger
25 did?

26 A. I'm not sure. I don't know. I can't remember.
27 It's a combination of I can't remember and I don't know.
28 And the timing is a little fuzzy too.



1 Q. And do you have Exhibit 300 and 301 in front of
2 you?

3 THE COURT: I can get them.

4 MS. VULIN: Thank you, Your Honor. And while --

5 THE WITNESS: I was hoping I wasn't going to be
6 left out.

7 MS. VULIN: And while you are there, if you
8 wouldn't mind Exhibit 353, which is the anchor cities.

9 THE COURT: So there are these.

10 And you want 353?

11 MS. VULIN: Yes, please, Your Honor.

12 THE COURT: So may we have a record copy of that
13 for the witness, please, 353.

14 MS. VULIN: May I approach?

15 THE COURT: You may. Thank you.

16 And I think I need a copy of 353. I -- I think
17 of -- never mind. I promise to give it back.

18 THE WITNESS: Me, too.

19 BY MS. VULIN:

20 Q. Let's start with Exhibit 353, which is the anchor
21 cities. You said you were involved in the meeting that
22 selected these and established the initial and potentially
23 final value, depending, correct?

24 A. Potentially. I don't know -- yeah. If they are
25 still the same, then I guess it was the final value.

26 Q. And the -- for Denver, Colorado which is where a
27 lot of your testimony focuses, that state, were you
28 involved in setting that differential?



1 A. No.

2 Q. Who was?

3 A. I don't know. I left before that had occurred.

4 Q. Are there any here you recall establishing?

5 A. Yes. So I didn't -- I -- I didn't have much to
6 say because I didn't know the marketing dynamics in those
7 regions, so I was more of an interested individual,
8 watching the process and trying to understand the process
9 knowing I was going to have to eventually go back and
10 relay it to a couple of teams -- actually probably more
11 than a couple, to some different -- at least to the DFA
12 people, and then a couple teams.

13 So when we first -- initial assignments coming out
14 of that, that I was the person responsible for getting the
15 Northeast and the Mideast together to go through the
16 differentials as a -- fortunately I had some good people
17 to help me, and I quickly ditched the process off to them.

18 Q. And so there aren't any anchor cities that you
19 recall specifically being part of the discussion to set?

20 A. I was listening, but I didn't have much
21 involvement in what the values would be, as I recall.

22 Q. And I'm just trying to get at that discussion
23 because we have been trying to find people who were at
24 that meeting.

25 I know you may not have contributed, but do you
26 recall hearing anything specific about how these values
27 were set?

28 A. It -- it -- Mr. Sims will be up to testify later.



1 Why don't we leave it for Mr. Sims, because he would have
2 been closer to all that.

3 Q. The Denver, Colorado, differential, do you know
4 when that was set, at the value here?

5 A. Where it says Proposal Number 19, row across to
6 Denver 330?

7 Q. Uh-huh. Yes.

8 A. When was that set?

9 Q. Yes.

10 A. Probably early 2022. So I would have been
11 involved in determining that value.

12 Q. Do you recall if it -- oh.

13 A. But that wasn't part of the anchor city discussion
14 in that first meeting. I can't recall what we -- what we
15 used for that anchor city in that first discussion.

16 Q. But it either wasn't Denver, Colorado, or it
17 wasn't Denver, Colorado at this value?

18 A. Yeah, I'm not sure what the value was.

19 Q. So then if you look at Exhibit 300, please.
20 Do you know who created this document?

21 A. I think it was you guys.

22 THE COURT: You think what?

23 THE WITNESS: It was MIG that printed this off,
24 right?

25 BY MS. VULIN:

26 Q. It was MIG who printed it off, but it was a
27 document posted on USDA's website as submitted by NMPF.

28 A. All right. So this mirrors a spreadsheet that DFA



1 was managing for National Milk. That mirrors the
2 spreadsheet. I don't know if it's exactly what we -- what
3 I -- I eventually shared with National Milk, if they made
4 changes to it or not. But it mirrors a spreadsheet that
5 was being kept at National Milk -- or excuse me -- at DFA,
6 because we needed -- we had a -- we had a mapping package
7 that made it easy for us to make maps.

8 Q. And so was DFA the author of this document?

9 A. DFA --

10 THE COURT: Start again and talk right into the
11 mic.

12 THE WITNESS: DFA created -- I don't know author.
13 What do you mean by "author"? We created -- we created a
14 spreadsheet that looked like this (indicating). That
15 would have contained information that looked like this
16 (indicating).

17 BY MS. VULIN:

18 Q. And there was a spreadsheet that was submitted to
19 USDA from NMPF, and we're just --

20 A. And this is what this is (indicating)?

21 Q. That is what this is. And we have asked every
22 witness, and we are nearing the end of this road, and yet
23 we still do not know who created and who filled in all the
24 numbers in this document.

25 And do you think it was -- was it you, or do you
26 know who it was?

27 A. It wasn't me, but it would have been somebody --
28 it would have been people at DFA.



1 Q. Who?

2 A. People at DFA.

3 THE COURT: Say it again.

4 THE WITNESS: People at DFA.

5 THE COURT: People at DFA?

6 THE WITNESS: People at DFA, yeah.

7 BY MS. VULIN:

8 Q. Do you have their names or their titles?

9 A. I'm not quite sure who in the end it was, but I
10 think that's immaterial.

11 Q. Well, if these --

12 A. It's a DFA document.

13 Q. Exhibit 301 are the differentials that NMPF is
14 proposing that USDA adopt. So let's turn and look at
15 that, which I think is quite material.

16 THE COURT: Which is quite what?

17 MS. VULIN: Material.

18 THE COURT: Material. Thank you.

19 So both of you, be a little more deliberate in
20 pronouncing what you are saying because it is important.

21 BY MS. VULIN:

22 Q. Now, is this similarly a DFA document?

23 A. Could be. I can't remember if we had two
24 different spread -- we may have had a second spreadsheet.
25 Yeah, it probably is.

26 Q. It's our understanding that Exhibit 300 is the
27 proposal that was submitted in May of 2023, and
28 Exhibit 301 is revised as submitted in June of 2023.



1 A. I can't recall when National Milk submitted the
2 documents.

3 Q. And you are not sure if this is a DFA document or
4 not?

5 A. I mean, it looks like a spreadsheet we would have
6 had, but I can't tell you for sure if there are any
7 changes made by National Milk on it.

8 Q. And if you go back to Exhibit 300, do you have
9 that in front of you?

10 A. I do.

11 Q. Okay. Looking at Column P, it says "Proposed
12 Versus Current," P as in Paul?

13 A. Yep. Got it.

14 Q. It's our understanding that that reflects a
15 proposal that was being shared, if not submitted to DFA,
16 but shared within the industry around March of 2023.

17 Do you know if that's accurate?

18 A. Could be. There was -- is this the document that
19 you -- was on the USDA website?

20 Q. Both 300 and 301 were.

21 A. Yeah. So it was being shared around then by USDA,
22 not by National Milk.

23 Q. This was not -- this was not posted by USDA in
24 March of 2023 is my understanding. I -- my understanding
25 is that this Column P -- and I'm trying to confirm -- was
26 a version of the differentials that NMPF was considering
27 in March of 2023, and I'm trying to see if you can confirm
28 that for me or not.



1 A. Okay. Let's -- help me out. Let's -- I need to
2 go through a line here so I understand.

3 So we have got proposed Class I in O and new
4 proposal in S, and I imagine somewhere there are
5 differences between O and S?

6 Q. Uh-huh.

7 A. All right. So then that would have been a change
8 that the task force, between whenever O came out and
9 whenever S -- that would have been a change in sort of the
10 values that the task force wanted to recommend.

11 Q. Thank you.

12 And I had been referencing P, but that was the
13 difference, not the original proposal --

14 A. So that's proposal -- and I'm not sure which --

15 Q. -- in O.

16 A. So P -- I don't know if --

17 Q. No, you corrected my mistake. I referenced P, and
18 I meant to reference O.

19 A. Very good.

20 Q. So then Column S -- well, sorry, let's go to
21 Column R as in Robert. It says "Average Monthly Pounds
22 2022." We also have not been able to find anyone who can
23 tell us what this column represents.

24 A. Yeah.

25 Q. Do you know?

26 A. I don't know.

27 Q. And we'll go through these a bit more, but that's
28 probably good for now until we can do it with a bit more



1 specificity.

2 A. I can put the ruler away for now?

3 Q. Set it aside, but don't get rid of it.

4 So then I'd like to talk about the USDSS.

5 Are you familiar with the University of Wisconsin
6 USDSS model?

7 A. To some degree I am, yes.

8 Q. You say to "some degree."

9 To what degree?

10 A. Well, I think I have testified to my knowledge
11 about it already, and probably -- I've probably given you
12 my in-total brain dump on it already.

13 THE COURT: And on what topic were you testifying?

14 THE WITNESS: On the Class I differential topic,
15 talking about the -- what I have been calling the
16 Wisconsin model and --so anyways.

17 BY MS. VULIN:

18 Q. And whether you call it failures or, you know,
19 shortcomings, what have you, our understanding is that --

20 THE COURT: Let me stop you. He didn't call it
21 either of those.

22 MS. VULIN: I'm referencing prior testimony. I
23 probably -- I can -- I'll do a better lead-in because that
24 was a quote from prior testimony, not his statement just
25 now.

26 THE COURT: Okay.

27 BY MS. VULIN:

28 Q. Your counsel had asked you earlier if there were



1 any failures that you believed existed in the USDSS.

2 Whether you call them failures or shortcomings or
3 limitations of the model, our understanding is that NMPF
4 believes that the model does not adequately address all
5 necessary factors for setting Class I differentials,
6 correct?

7 A. I'm not sure that's correct.

8 Q. Okay. How so?

9 A. There -- there are -- it forms -- it forms the
10 base in a really, you know, high level mathematical model
11 view of what sort of the value of milk is across the
12 United States. But as it's -- Dr. Nicholson mentioned, it
13 needs to be looked at with the intelligence of the people
14 marketing to see if it fits right and that there's --
15 would be some adjustments.

16 And so it's -- it's a mathematical model as a
17 start. And I wouldn't call any deviations from it
18 failures. I just call it using the market intelligence of
19 the major marketers of milk in the United States to fit
20 that outline to a better form that works for the U.S.
21 dairy industry.

22 Q. And NMPF's solution to that was to form the
23 committees, the regional committees, and utilize their
24 knowledge to fill in the gaps; is that accurate?

25 A. That is accurate.

26 Q. And did NMPF ever invite any proprietary Class I
27 processor to participate in that process in order to
28 ensure their knowledge was included in setting the Class I



1 differentials?

2 A. We couldn't do that.

3 Q. Why not?

4 A. They weren't members of the National Milk
5 Producers Federation.

6 Q. And was there a requirement that you could only
7 consult with members of the National Milk Producers
8 Federation in developing a proposal for FMMOs?

9 A. That's what we decided to do.

10 Q. NMPF conferred with IDFA in discussing
11 Make Allowances, correct?

12 A. Yes.

13 Q. They could have done so in the Class I processors
14 for setting Class I differentials, could they have not?

15 A. Yeah. I don't know. Maybe. But keep in mind,
16 you know, the -- you know, some of the large -- well, the
17 largest the Class I processor in the United States was
18 involved, maybe the second largest. The dairy
19 cooperatives probably process almost half of the beverage
20 milk in the United States, now, something close to that
21 anyways. I don't know if it is a little over half or
22 under half, and they market three-quarters of the milk in
23 the United States.

24 So we had -- we had the expertise to be able to
25 figure out how this thing would work and how it would work
26 best for the industry. I think we did a good job.

27 Q. You think small Class I processors would not have
28 regional expertise that could have contributed to



1 determining how to set the differentials?

2 A. They may have.

3 Q. And in pursuing the most accurate differentials
4 possible, wouldn't you want their input as well?

5 A. I think we came to a pretty -- pretty good
6 solution that is as accurate as you can come by with the
7 group we had.

8 Q. And we have got a lot of information on the basis
9 for the deviations from the model. And I'm just wondering
10 if you can provide me with a list that I can work off of
11 from your testimony of the principles or the bases for
12 deviating from the model.

13 I understand one is the business relationship that
14 allocates certain milk to certain customers. Is that
15 right?

16 A. That -- that can be one, yes. So --

17 Q. Okay.

18 A. -- you know, we got -- we got together. Initially
19 we came up with the anchor cities, and then we asked the
20 regional teams, made up of regional experts of the
21 National Milk cooperatives for those regions, to then work
22 through how the model output looked relative to their view
23 on how milk moved.

24 And so they -- they then looked at that, and they
25 looked at does -- do the differences move milk the way
26 they think they should move, is one of the considerations
27 that they would have talked about and discussed.

28 They would have looked at are there additional



1 costs in nearby areas that would suggest one area, one
2 county should be a little bit higher or a little bit lower
3 than another county because it might cost a little bit
4 more to serve that county.

5 We would have considered what the impacts would
6 be -- right, so you got to keep in mind that the Class I
7 price surface is also the producer price surface that,
8 right, divides up how the pool is shared across all
9 producers and all -- all milk that's pooled. And so there
10 was considerations about how that -- the price surface
11 would impact some of the pay prices at different locations
12 to make sure -- try to hope -- try to work out what would
13 be an equitable pay price situation. Our goal was not to
14 have the new price surface reduce milk prices anywhere. I
15 don't know -- I hope we got there.

16 And so those are some of the considerations.
17 Mr. Parks testified to some. Mr. Hoeger testified to
18 some. Ms. Ryll testified to some. Mr. Erba testified to
19 some. Mr. Sims has, and he'll be back up to testify to
20 some. Mr. Herting testified to some. Mr. Brinker. And
21 so we have got a lot of information, and there's just --
22 and each region had their own little nuances that they
23 were looking at.

24 Q. So I want to make sure I got the list correct, so,
25 please -- if I misstate anything, it's not intentional,
26 and let me know so I can make sure it's right.

27 The principles or factors that NMPF considered in
28 setting the differentials were: Business relationships



1 that allocated certain milk supplies; number two, anchor
2 cities and the relationship of differentials to those
3 anchor cities; number three, the personal views of
4 participants on how milk moves; number four, the slope or
5 differences between certain counties; number five,
6 additional costs of serving one county over another; and
7 number six, the price surface impacts on pay prices.

8 Is that correct?

9 A. Plus whatever my colleagues have already entered
10 into that I can't recall at the moment.

11 Q. And every regional committee considered these to
12 varying degrees, there were differences in how the
13 committees weighed or utilized these elements; is that
14 right?

15 A. Each committee was tasked with fitting the surface
16 that was most appropriate for their region. And then we
17 came back as -- as -- we came back as a group, task force
18 group, just to make sure that there weren't really -- I
19 don't think we found any really unusual outliers that we
20 said we needed to correct. And then we wanted to make
21 sure that as -- as these regions abutted to one another,
22 that there -- we didn't have two different prices for the
23 same location.

24 Q. And were you aware of whether or not the USDSS
25 already took into account sources of supply and demand
26 centers in the USDSS differentials?

27 A. Well, I don't follow the question. I'm sorry.

28 Q. So I'm talking now about factor three, the



1 personal view of participants on how milk moves, right,
2 where it starts -- my understanding is this is where it
3 starts, and then where the demand is and where it is sold
4 to, correct?

5 A. The model -- the model solves a mathematical
6 equation that allocates milk and ingredients to certain
7 demand nodes where -- and processing plants. And so it
8 takes into account this global -- as part of the
9 mathematical calculation, this sort of global -- U.S.
10 global supply/demand balancing.

11 Q. And let me know if I have this right. My
12 understanding is NMPF's critique of the model as the final
13 solution isn't that the model had incorrect data, that the
14 model was wrong about there was milk -- there's a farm
15 here when really there wasn't, right, or there's a
16 plant --

17 THE COURT: There's a farm here that what?

18 MS. VULIN: That really didn't exist.

19 BY MS. VULIN:

20 Q. Or there was an error in the model that it had a
21 plant that no longer existed?

22 A. No, we weren't --

23 Q. The shortcoming was that the model would allocate
24 milk efficiently, in ways that NMPF thought real world
25 business relationships were not going to allocate the
26 milk; is that accurate?

27 A. No.

28 Q. Okay.



1 A. So --

2 Q. Please correct me.

3 A. So we weren't worried -- we didn't -- we didn't --
4 we weren't worried about if a farm was in that spot or
5 not, or if a plant was in that spot or not. I think we
6 worked with the researchers to update their plant list, so
7 we were comfortable that there was an appropriate plant
8 location list.

9 And so, you know, USDA used the model's output
10 during Federal Order Reform as a basis to determine the
11 Class I differential or producer price surface, that for
12 the most part we're operating under now, 25 years later,
13 or will be 25-plus by the time we get a decision and get
14 something implemented, if indeed this gets implemented.

15 And so in doing that, they also took in
16 information from the industry, of the marketing expertise
17 of the individuals in the industry, and made some
18 adjustments in what they ended up implementing under
19 Federal Order Reform. And we just repeated the process
20 with an updated model.

21 Q. I'm still trying to get at "repeated the process."
22 When you -- when you deviated from the model -- I'll start
23 that again.

24 You testified specifically that the existence of
25 certain large cheese plants in Colorado justified your
26 deviation from the model, correct?

27 A. Yes.

28 Q. And what part of the Agricultural Marketing



1 Agreement Act speaks to considering cheese production when
2 setting Class I differentials?

3 A. So the Agricultural Marketing Agreement Act speaks
4 to an adequate supply of fluid milk to meet the demands of
5 the marketplace for all milk, for all types of milk. And
6 so if we -- if in Colorado we change the price surface
7 that results in a \$0.40 per hundredweight decrease in milk
8 prices to dairy farmers, on top of a Make Allowance change
9 that will be at least \$0.50 a hundredweight, we think,
10 that \$0.90 or more decline in milk prices is an untenable
11 value.

12 Mr. Podtburg testified a few months ago. He's a
13 DFA farmer-owner from Colorado. And he entered into the
14 record some accounting data from Genske Mulder for the
15 state of Colorado.

16 THE COURT: Genske what?

17 THE WITNESS: Genske Mulder is an accounting firm
18 who collected data from their clients in Colorado and
19 published the data, and he presented that in testimony a
20 couple months ago.

21 And it included what the net profit would be for
22 those dairies for the five years through 2022, and the
23 average was about \$1 a hundredweight.

24 And I can tell you most of the dairies in Colorado
25 this year have lost money. So if we re-computed the
26 six-year average, it would be less than \$1 a
27 hundredweight.

28 And so if we're going to make a material change to



1 Federal Order prices that reduces the profitability of
2 dairy farms in Colorado by something close to \$1, there
3 will be less milk produced in Colorado.

4 BY MS. VULIN:

5 Q. And I want to circle back then again to what part
6 of the Agricultural Marketing Agreement Act speaks to
7 adequate supply for all uses of milk, because my
8 understanding is that it speaks to adequate supply of milk
9 for fluid use.

10 A. It's adequate supply of milk for the marketplace.

11 Q. And it's your testimony that the AMAA tasks USDA
12 with ensuring that there's an adequate supply of fluid
13 milk for the entire milk marketplace?

14 A. For the Federal Order.

15 Q. You say "for the Federal Order."

16 Does that mean for all classes within the Federal
17 Order or Class I?

18 A. For all demands in that region.

19 Q. What does that mean, "all demands in that region"?
20 What --

21 A. So I'll say to meet --

22 Q. -- region and what demands?

23 A. I'm sorry. I spoke over you.

24 Could you repeat the question, please?

25 Q. Yes. When has USDA ever said that the AMAA
26 requires USDA to set Federal Milk Marketing Order policy
27 to fulfill milk needs for all classes and all uses as
28 opposed to Class I fluid use?



1 A. When have they ever not said it?

2 Q. And if the AMAA is silent, you believe that USDA
3 is tasked with doing what the AMAA is silent about?

4 A. Well, the AMAA isn't silent. It talks about an
5 adequate supply of milk.

6 Q. And my question is, for fluid use or all uses?

7 A. It goes beyond just fluid use.

8 Q. To what?

9 A. It goes to all the needs -- all the demands in
10 that marketing order. They have got multiple -- you have
11 got four -- you have now four classes of milk, and so it's
12 setting prices on all four classes of milk to bring forth
13 the supply. And there's lots of competing demands for
14 that supply. And if there's not enough milk to meet all
15 the supplies in that marketplace, then that's going to
16 create some disorderly marketing conditions, and Class I
17 may not get its milk.

18 MS. VULIN: I have an exhibit, Your Honor, two
19 exhibits. I'm not sure if you would like to go off the
20 record so we can hand those out.

21 THE COURT: Yes. Let's do that.

22 And while they are distributing, the rest of you
23 can stretch. We're doing five minutes right now. Please
24 be back and ready to go at 3:03.

25 (Whereupon, a break was taken.)

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

27 We're back on record at 3:04.

28 Ms. Vulin, you may proceed.



1 MS. VULIN: Thank you, Your Honor.

2 We circulated exhibits numbered MIG-62 and MIG-63,
3 and I know they were being marked. I'm not sure if they
4 are ready for -- are they on the table or should I come
5 grab them?

6 So, Your Honor, MIG-62, I think is Exhibit 10,384.
7 I actually don't remember, so that's what I guessed.

8 THE COURT: I think it is 412; is that right? All
9 right. So 412 will be MIG-62. And you had another one?

10 MS. VULIN: And MIG-63, which I believe would then
11 be Hearing Exhibit Number 413.

12 THE WITNESS: Legal humor is almost as funny as
13 Federal Order economist humor.

14 THE COURT: Does the witness have copies?

15 THE WITNESS: I do not.

16 THE COURT: The witness needs --

17 THE WITNESS: Look at all these willing people to
18 supply the information.

19 THE COURT: All right. Ms. Vulin, I have marked
20 as Exhibit 412, MIG-62.

21 (Thereafter, Exhibit Number 412 was marked
22 for identification.)

23 THE COURT: I have marked as Exhibit 413, MIG-63.

24 (Thereafter, Exhibit Number 413 was marked
25 for identification.)

26 THE COURT: And you may proceed.

27 MS. VULIN: Thank you, Your Honor.

28 ///



1 BY MS. VULIN:

2 Q. So looking at page 3 of your testimony, just to
3 get a reference for Weld, Colorado, because that's what I
4 would like to discuss next.

5 A. I'm sorry, what location?

6 Q. Weld, Colorado?

7 A. Weld.

8 Q. If you look in Exhibit 407 your testimony?

9 A. Yeah, I got it.

10 Q. On page 3?

11 A. Yep.

12 Q. I see here you listed Weld, Colorado, as one you
13 specifically called out in order to discuss or review why
14 you had adjusted the differential.

15 Is that correct?

16 A. Yes.

17 Q. And the current differential for Weld County is
18 \$2.45, correct?

19 A. Yes.

20 Q. And the average of the model output appears to be
21 \$2.35; is that correct?

22 A. Yes.

23 Q. And NMPF proposes \$3.20, correct?

24 A. Yes.

25 Q. So \$0.75 above what the model average is, I
26 believe.

27 A. Yes. Good mathematician.

28 Q. So looking at Weld County, what is the largest



1 city in Weld County, for those of us not from Colorado?
2 Anything we would know?

3 THE COURT: I'm sorry, I have to go back. So we
4 add \$0.75 to \$2.35; is that right?

5 MS. VULIN: It would be \$0.85, Your Honor.

6 THE COURT: Oh.

7 MS. VULIN: Is that right?

8 THE WITNESS: No, 75 -- 75 and 45 is --

9 THE COURT: Well, we're going from the model to
10 the proposal?

11 THE WITNESS: Oh.

12 THE COURT: The model average?

13 MS. VULIN: Correct, the model average.

14 THE WITNESS: Okay.

15 THE COURT: And what is the difference,
16 Mr. Witness, between the average of the model?

17 THE WITNESS: 60, 65 -- no, 85. You are correct.

18 THE COURT: Oh, good.

19 THE WITNESS: You're a mathematician as well.

20 THE COURT: Thank you very much.

21 MS. VULIN: For the record, no one approached,
22 Your Honor.

23 THE COURT: All right. Sorry. Okay.

24 BY MS. VULIN:

25 Q. Nonetheless, NMPF proposes, I'll call it
26 significant, but an increase above either the current
27 differential or the model average, correct?

28 A. There's a -- yes.



1 Q. And so if we could turn to Exhibit 412, please.

2 Do you recognize this document at all?

3 A. I have seen it for the first time today.

4 Q. Have you ever seen a document of this type before,
5 if not this specific one?

6 A. I have. I see it's issued by Dr. Nicholson. So I
7 know Dr. Nicholson, he's a good guy.

8 Q. And this is a Marketing Service Bulletin put out
9 by the Central FMMO, correct?

10 A. I believe it is, yes. It would be. Yep.

11 Q. And I'll represent to you that it is.

12 A. Yep. Good.

13 Q. And this -- if you look at the third row down --
14 or excuse me -- if you look at the side, in vertical text
15 you will see it says "May 2002."

16 Do you see that?

17 A. I do.

18 Q. And if you turn to page 2, please.

19 You will see that there's a table that has the
20 Title "14 Counties Marketed 25% of the California Plus
21 Federal Order Milk during December 2001."

22 Do you see that?

23 A. I do.

24 Q. And this was before there was a California Federal
25 Order, correct?

26 A. That is correct.

27 Q. And this is published in 2002 but based on data
28 from December 2001?



1 A. That's what it appears, yes.

2 Q. And so in this table we don't see any Colorado
3 counties represented in the top 14 counties, do we?

4 A. I do not see one.

5 Q. But a number of California counties are on there,
6 correct?

7 A. Yes.

8 Q. And then if we turn to Exhibit 413.

9 THE COURT: Now, let me ask you, Ms. Vulin.

10 MS. VULIN: Yes.

11 THE COURT: Are these the top producers of milk,
12 these 14 counties, are they the top ones?

13 MS. VULIN: That is my understanding, that these
14 14 counties, comprised 25% of the Federal Order, plus
15 California.

16 THE COURT: Right. But --

17 MS. VULIN: So they would be the largest, the top
18 14 -- the top largest 14.

19 THE COURT: And it says that somewhere in here,
20 these produced the most, that these are the top 14?

21 MS. VULIN: That's my understanding of what that
22 title is meant to indicate.

23 THE COURT: Okay. Thank you. Ah, I'm sorry, of
24 course. It says, in the title of the article, "Top Dairy
25 Counties." Thank you. I couldn't find it it's because it
26 is the most prominent feature.

27 THE WITNESS: I don't see that.

28 MS. VULIN: On page 1 in blue text, it says



1 "accelerated concentration in top dairy counties."

2 THE WITNESS: Okay. But -- but it could just be a
3 selection of counties that represent 25% of the milk.
4 That chart doesn't say it is the 14 largest counties.

5 THE COURT: That was my concern as well.

6 THE WITNESS: That's all I'm saying. I don't know
7 if it is or not. My historical knowledge, I can't confirm
8 or deny it.

9 BY MS. VULIN:

10 Q. All right. It appears the intent is to indicate a
11 high production in a small number of counties, so omitting
12 a single county that may have comprised a large portion or
13 been larger than one of those listed here would be
14 contrary to what appears to be the intent of the data.

15 And so if we could turn to Exhibit 413.

16 This is, likewise, a bulletin from the Central
17 Marketing Area. And if you --

18 A. Yes. That's what it says, yes.

19 Q. And if you turn to the second page, please.

20 You will see at the bottom of the page a very
21 similar table, not with identical necessarily columns, but
22 entitled "13 Counties Marketed 25% of the Federal Order
23 Milk During December 2022."

24 Do you see that?

25 A. I do see that.

26 Q. And I think we can surmise that California is not
27 called out separately because at this point it would be
28 part of a Federal Order; is that right?



1 A. I guess so. Yeah, it is part of the Federal
2 Order.

3 Q. And if we look at this December 2022 chart, we see
4 Weld, Colorado, is there at position six now; is that
5 right?

6 A. It is -- of the counties listed, with their
7 December 2022 marketings, it is listed as six of those
8 counties, number six of those counties.

9 Q. And so if -- and, again, I understand you didn't
10 create this document -- but if this document, these two
11 documents, do as the top dairy-producing counties, which
12 we propose they do, Weld County went from not being on the
13 list to being sixth of the 13 counties listed, correct?

14 A. It is sixth on that list, and it wasn't on the
15 list that you showed in 2002.

16 Q. That's consistent with your testimony that milk
17 production has grown significantly in that region,
18 correct?

19 A. Yes.

20 Could I make a calculation using my calculator?

21 THE COURT: Yes, you may do that at anytime, and
22 you are welcome to ask for a moment to do your
23 calculation, which I grant you now.

24 THE WITNESS: Yeah. So my calculation is that
25 Weld County represents 63% of the milk produced in
26 Colorado. And so anyways, I just thought I would throw
27 that in as a tidbit.

28 THE COURT: And so at what point in time is that



1 true?

2 THE WITNESS: I took the December volume,
3 multiplied it by 12, and I believe in 2022 Colorado
4 produced 5.3 billion pounds of milk. That comes out to
5 63%.

6 (Court Reporter clarification.)

7 THE COURT: All right. And is there any reason to
8 believe that the month of December would be different from
9 the year?

10 Did you use the month of December in both of your
11 calculations?

12 THE WITNESS: I used the month of December times
13 12, and so it probably overstates because there would be
14 more milk produced in December than say November, than say
15 June. You know, there would be more milk produced in a
16 31-day month than a 30-day month. So it's probably --
17 it's close, but it's -- I just was curious anyways.

18 BY MS. VULIN:

19 Q. Nonetheless, a significant portion of the milk in
20 Colorado and in the country is produced in Weld County,
21 correct?

22 A. Oh, I don't have the percentage of milk produced
23 in Weld County as relative to all the United States. That
24 would be a pretty small percentage.

25 Q. I was indicating its presence on this list
26 indicates that it's an important dairy-producing county
27 nationally.

28 A. It's an important dairy-producing county in the



1 state of Colorado. And to one of our very valuable
2 customers.

3 Q. And likewise there's a lot of demand for raw milk
4 fluid uses around Weld County, correct?

5 A. I'm sorry, could you repeat that?

6 Q. Likewise there's a lot of demand for raw milk in
7 the area surrounding Weld County?

8 A. Well, if -- if -- there's -- there is other demand
9 in the state of Colorado for milk.

10 Q. Say again, please?

11 A. There is other demand in the state of Colorado for
12 milk.

13 Q. Other demand besides fluid milk demand?

14 A. There's fluid milk demand. There's manufacturing
15 demand. Yeah.

16 Q. And just for our reference, as we look at
17 Exhibit 413, that table does provide a calculation of the
18 percent that a county makes up of Federal Orders in total.
19 Do you see that?

20 A. I do. Yes.

21 Q. And so Weld County makes up 1.69% of Federal Order
22 milk in total?

23 A. Yes. That's what that means. Yes.

24 Q. And when I was referencing fluid milk demand,
25 Kroger and Safeway have fluid plants in Denver, correct?

26 A. Yes.

27 Q. DFA has the medical plant in Englewood?

28 A. Which is suburban Denver.



1 Q. And during this time period when milk production
2 grew so significantly in Colorado, did conventional fluid
3 processing also grow?

4 A. I don't know the answer to that.

5 Q. Are you aware of any new fluid processing plants
6 in the state of Colorado from 2001 to present,
7 conventional fluid processing plants?

8 A. Why don't you ask Steve Stout that question when
9 he comes back. He would be better --

10 Q. And I will, but I want to know if you are aware of
11 any.

12 A. I -- I don't know. I don't know.

13 Q. Are you aware if organic fluid milk processing
14 grew in the state of Colorado during that time period?

15 A. I don't know.

16 Q. And if we look at Exhibit 413, the 2022 data, we
17 still see a number of California counties on here,
18 correct?

19 A. There are fewer California counties on this chart
20 than the last one.

21 Q. The top five of California though, correct?

22 A. The first five counties listed are all from the
23 state of California.

24 Q. And so this exercise, what I'm trying to work out
25 here is, given all of the data we have about milk
26 production growth since 2000 in Weld County, Colorado, why
27 would there be a need to raise the Class I differential in
28 that county at all?



1 A. There's contractual arrangements that -- that
2 prevent that milk from being fungible in our system.

3 Q. Other than DFA's contractual obligations that it
4 made, is there any other reason why Weld County, Colorado,
5 should have an increase in its Class I differential?

6 A. It's necessary to appropriately and equitably
7 distribute the proceeds of the pool back to producers, so
8 that producers in Colorado aren't financially harmed by
9 the new pricing surface.

10 Q. So if -- to distill that down, if other counties
11 are going up, it's only fair if Colorado counties go up as
12 well?

13 A. I don't know if that's -- that wasn't part --
14 when -- when we struck the values, it wasn't about
15 everybody else is going up. It was about the model didn't
16 appropriately -- the model didn't -- the model didn't
17 appropriately value what -- what the -- that value should
18 be in Colorado. It didn't have anything to do with
19 everybody else went up and Colorado didn't. It was just
20 the model didn't appropriately value the circumstances in
21 Colorado.

22 Q. And those circumstances that the model didn't
23 value is the business relationship that DFA has for its
24 milk supply?

25 A. Yes.

26 Q. Is there anything else?

27 A. Oh, so, yes. So, you know, a factor that is in
28 the Agricultural Marketing Agreement Act, too, is that --



1 and I can't quote line and verse, but it is that the
2 Secretary of Agriculture shall take into consideration the
3 cost of livestock feed. And so we have put expert
4 testimony evidence on the record that livestock feed, a
5 growing amount of livestock feed needs to be imported into
6 the state because of all the agricultural growth,
7 livestock growth in Colorado, and demands for biofuels in
8 Colorado.

9 And so that the costs of transporting that feed
10 has gone up significantly over the last few years. So the
11 cost of feed is higher now, significantly higher now, than
12 it would have been back in 2000 before we had biofuels of
13 any significance and before this -- the growth in
14 livestock production in Colorado to the degree that we
15 have seen it.

16 Q. Does livestock feed have to be imported into
17 Florida?

18 A. Yes, it does.

19 Q. Yet, Florida did not deviate from the USDSS model
20 results?

21 A. The Florida differential is the highest in the
22 country, and so it's amply pricing in the cost of
23 importing feed.

24 Q. Okay. So the USDSS sufficiently covered the cost
25 of feed to be imported into Florida, but the same model
26 didn't cover the cost of feed to be imported into
27 Colorado?

28 A. The USDSS model, the Wisconsin model, doesn't take



1 into consideration the cost of feed.

2 Q. In Florida or in Colorado?

3 A. Anywhere.

4 Q. And if you have Exhibit 301 in front of you, if
5 you could go to Row 1217, please.

6 THE COURT: Which one are we in?

7 MS. VULIN: Exhibit 301.

8 THE COURT: Thank you.

9 MS. VULIN: Headed to Row 1217, which is Clinton
10 County, Michigan.

11 THE WITNESS: Clinton?

12 MS. VULIN: Clinton.

13 THE WITNESS: Got it.

14 MS. VULIN: FIPS code 26037.

15 THE COURT: For those who have a paper copy it is
16 page 21. Wait, no, I'm in the wrong state, Minnesota.

17 MS. VULIN: Michigan.

18 THE COURT: You said Michigan.

19 MS. VULIN: I did I hope I did.

20 THE COURT: All right.

21 BY MS. VULIN:

22 Q. So looking at Clinton County, Michigan, the
23 USDSS -- or I'll start with the current differential is
24 \$1.80 correct? And that's in Column I.

25 A. Yep, got it.

26 Q. The model average in Column L has \$3.50, correct?

27 A. Yes.

28 Q. And NMPF's proposed differential is \$3.10,



1 correct?

2 A. Yes.

3 Q. And so what I'm trying to understand is my
4 understanding is Michigan also has fairly robust fluid --
5 or fairly robust raw milk supplies; is that correct?

6 A. What do you mean by "fairly robust raw milk
7 supplies"?

8 Q. That it is also a state that produces a lot of raw
9 milk.

10 A. It's one of the top 25 -- 24 milk production
11 states in the United States.

12 Q. And there's also a significant amount of
13 manufacturing milk in Michigan, correct?

14 A. Yes.

15 Q. And so when I'm looking at Weld County, and it's
16 similar circumstances of a lot of milk and a lot of
17 manufacturing, and we're bumping up the price \$0.85 from
18 the USDSS, and then I look at Clinton County, Michigan,
19 where we have a lot of milk and a lot of manufacturing,
20 and we're decreasing the price \$0.40 from the USDSS, how
21 do you harmonize or come to a consistent approach in how
22 those two counties were set?

23 A. That's easy. It is obvious. So the current
24 differential is \$1.80, and we're going up to 3.10, we are
25 increasing the differential by \$1.30. That's -- that's
26 quite a big increase. So they are getting a substantial
27 increase and substantially more than any area in Colorado.

28 Q. That explanation has nothing to do with the USDSS.



1 And so is -- is it your position that the setting
2 of the differential in Michigan is completely disregarding
3 the USDSS results and looking just at the increase from
4 the current propo- -- or the current differential?

5 A. I -- I can't -- I'm not -- I -- I don't know how
6 we came to the \$3.10 in Michigan. And that would be a
7 question for somebody -- either a question -- I believe
8 you probably did ask that same question of Mr. Parks, did
9 you?

10 Q. I believe we discussed some counties. I'm not
11 sure if that was one of them.

12 A. He or Mr. Erba would have been the right people to
13 ask those questions to.

14 Q. And --

15 A. That specific -- that specific county, I'm not
16 sure how we ended up with where we did.

17 Q. And really what I'm trying to figure out is if
18 there's anyone who can answer for us how to harmonize the
19 approaches in the various counties.

20 And it is sounding like, no, that was all done at
21 a regional level and there can't be a line drawn between
22 those?

23 A. A line drawn between -- so the first part of your
24 question, it was done at a regional level. The second
25 part of your question about a line drawn between those, I
26 don't know what you mean.

27 Q. I can state that clearer, hopefully.

28 I'm trying to figure out if I can take a



1 consistent set of principles, look at a county, and figure
2 out how that differential was selected.

3 A. Yes. And part of the consistent set of principles
4 is the market intelligence of the people that market the
5 milk in that region.

6 Q. And if there isn't testimony in the record as to
7 how Weld County was set, what are we to do when we go back
8 and look at all of this and USDA tries to set
9 differentials? If there isn't an explanation as to the
10 specific deviation for that county, are they to --

11 A. I'd ask you to --

12 Q. -- take testimony to cover that?

13 A. I'd ask you to go back and read my testimony and
14 read my cross-examination responses, and I provided that
15 information to USDA.

16 Q. And what about for Clinton County, Michigan, if
17 there isn't specific testimony, how do we vet or verify
18 the manner by which that deviation was determined?

19 A. So I'm going to ask a question I shouldn't ask,
20 but what milk plant is in Clinton County?

21 Q. There could be a milk plant built there, correct?

22 A. So you know there's not a milk plant there?

23 Q. I actually don't know, so I'm not going to say
24 either way.

25 A. You know, in -- there's -- let me think about
26 this. There were like 3100 counties, right? There's
27 something like 3100 counties in the United States. And in
28 less than 600 of those counties, and it is probably a lot



1 less than 600 of those counties, there are milk plants.

2 And so there's 2500 counties that things just sort
3 of -- you know, nothing's -- and there may not be any --
4 and I don't even know if there's producers in Clinton
5 County. I don't know, there might not be. I don't know.
6 There are some counties there aren't any producers that we
7 had to come up with -- we had to come up with a value.

8 And we did it the same way USDA did it back in
9 Federal Order Reform, is we looked at what seemed
10 reasonable, so we didn't have a crazy, choppy price
11 surface that would bring on all kinds of crazy questions
12 and scrutiny later on. We tried to smooth things over.
13 And if there wasn't a milk plant there, we -- we sort of
14 took an adjacent county value, and we sort of kept moving
15 it across the areas. And I believe that's what happened
16 in Federal Order Reform when USDA came up with the
17 existing price surface.

18 Q. And you had mentioned a couple times now what USDA
19 did during Federal Order Reform. I didn't see that cited
20 anywhere in your testimony.

21 So where could I go to figure out what USDA did to
22 deviate from the USDSS during Federal Order Reform?

23 Or let me try that again: What are you basing
24 your testimony on?

25 A. They had a series of -- what did they call it,
26 the -- I don't think they were -- I don't know if they
27 were decisions, but they had a series of at least two
28 responses to their informal rulemaking process that were



1 books, that were probably two inches thick. And so the
2 information's in there.

3 Q. Did you reference those in preparation for your
4 testimony?

5 A. I didn't.

6 Q. You are operating from having read them at some
7 previous point?

8 A. And the experience I had back then in the process.

9 Q. Another struggle that I'm having -- well, actually
10 here, let me grab Mr. Parks' testimony. Just a moment.

11 I couldn't quite locate what I'm looking for, so
12 we'll go on to Florida.

13 So the basis for increasing the differential in
14 Colorado is that although there is a sufficient supply of
15 milk, it's allocated to different buyers that aren't fluid
16 plants?

17 A. Those are your words. I never said "sufficient
18 supply of milk."

19 Q. Okay. Although there's been evidence, including
20 in your testimony, that there has been significant growth
21 in the supply of milk in Colorado, correct?

22 A. Correct.

23 Q. The deviation from the USDSS is to raise the
24 Class I differential, correct?

25 A. Our proposal sets the Class I differential at
26 \$0.75 a hundredweight higher than the existing
27 differentials.

28 Q. And \$0.85 higher than the USDSS average?



1 A. So I'd like to make a point of your use of the
2 average.

3 There is -- there is -- the average of the May and
4 October values was used as a convenient starting point for
5 us to consider changes, and that that by no way, shape, or
6 form would suggest that the model's output suggests that
7 it should be the average of the two. So in comparison to
8 what the market -- the output average is I don't think is
9 an appropriate analysis.

10 Q. And what do you think it should be compared to?

11 A. What the current differential is.

12 Q. And so why include the USDSS average in the NMPF
13 tables if -- if it's irrelevant to evaluating the current
14 proposal?

15 A. Because that's what we were starting from to look
16 at what we were going to set -- so -- so -- so,
17 theoretically, if our market intelligence said that there
18 is no adjustments or deviations from the model, we may
19 have just stuck with the average the whole way through,
20 but we -- we decided there needed to be some adjustments
21 and so -- but we started with the average. It was sort of
22 like the anchor city. We started with the average, the
23 anchor average.

24 Q. And so is it necessary to even look at the USDSS
25 to understand that NMPF's differentials then?

26 A. Yes.

27 Q. As one of the many data points considered by NMPF
28 in its process?



1 A. It is a significant data point that was used.

2 Q. And I did get to the bottom of the Clinton County,
3 Michigan, issue.

4 Mr. Parks did testify that MMPA's largest
5 balancing plant is in Ovid, Michigan, located in Clinton
6 County --

7 A. Oh, there you go.

8 Q. -- in Central Michigan, in the heart of its milk
9 shed.

10 A. He answered that question. I don't need to.
11 Perfect. Thank you.

12 Q. So it is likely --

13 A. I feel better. I'll sleep better today.

14 Q. It is likely that some careful thought then was
15 put into Clinton County, right?

16 THE COURT: Ms. Vulin, are you looking at
17 Exhibit 406?

18 MS. VULIN: I am, if -- I believe 406, page 7.

19 THE COURT: And let me -- do you have -- I don't
20 think you have 406, do you?

21 THE WITNESS: No, I don't. No.

22 THE COURT: Let me hand you this.

23 THE WITNESS: Okay.

24 BY MS. VULIN:

25 Q. And did you and Mr. Parks ever discuss -- it
26 sounds like no, but I just want to close the loop here now
27 that we know Clinton County is an important county to
28 consider -- did you and Mr. Parks ever discuss your



1 respective approaches to setting the differentials in Weld
2 County, Colorado, and Clinton County, Michigan?

3 A. No.

4 Q. Do you believe that it's necessary to have a
5 reserve supply of milk in order to meet Class I fluid milk
6 needs?

7 A. Class I demand is different depending on the
8 processor, depending on the region, different by day, by
9 week, by season of the year. And so if -- if the Class I
10 needs are going to be fully met, there needs to be more
11 milk produced than is needed for the Class I marketplace.

12 Q. How much more?

13 A. Sorry for the housekeeping.

14 Much more than 2.5%.

15 Q. And you're referencing something. Can you tell
16 me --

17 A. Yeah, 2.5%, 2.5%, 2.5% is much more than 11% --
18 I'm referencing a calculation I did earlier in cross with
19 Ms. Hancock that went through and determined that maybe we
20 had a reserve of 11%. And, you know, two divided seven --
21 two weekend days divided by seven days in a week is about
22 30%. And so -- and that gets into my testimony from
23 earlier that milk production is going to be flat, demand
24 for U.S. milk is going to grow, and it's going to be
25 tougher and tougher coming up with the milk for the
26 Class I marketplace --

27 Q. And what --

28 A. -- because we don't have enough of a reserve milk



1 supply.

2 Q. When you define "reserve milk supply," is the
3 definition milk -- raw milk above Class I use or raw milk
4 that is not being used by any class?

5 A. Neither.

6 Q. Okay. Can you tell me, how do you define reserve
7 supply?

8 A. It's -- it's -- it's raw milk not fulfilling a
9 consistent consumer demand.

10 Q. And I believe earlier you said Classes I, II, III,
11 and IV --

12 A. I --

13 Q. -- have a consistent consumer demand --

14 A. I -- I'm sorry.

15 Q. -- is that right?

16 A. Not all of IV.

17 Q. The export market --

18 A. Most of IV. No. The export market -- I'm sorry,
19 I'm speaking over you.

20 Q. I'm stepping over you as well, so I'm going to
21 give you some space. You said -- can you give me, again,
22 your definition of reserve supply and how that fits within
23 the classes as you discussed earlier.

24 A. Yeah. It is -- it is milk in Class IV, because
25 in -- I, II, and III is driven by consumer demand.
26 Class IV is made up of largely exports to other countries
27 that are fulfilling a consumer demand in other countries.
28 And then there's also a significant amount of butter,



1 which is fulfilling a significant consumer demand. And so
2 there is some Class IV that's -- in reserve, and it's much
3 less than would have existed when we had a very active
4 price support program that had significant quantities of
5 milk it was buying to take off the market, that had no
6 commercial demand anywhere. And so we -- so because of
7 that, because of that, we -- we don't have much of a
8 reserve supply anymore.

9 Q. How much reserve supply do you think is necessary,
10 as you define reserve supply, in order to ensure Class I
11 needs are met?

12 A. Something more than 30%.

13 Q. And what will happen to that 30% of reserve supply
14 if Class I needs continue to be met? Where will that
15 extra milk go if it's not needed by Class I?

16 A. So the -- it will go into a balancing plant, as
17 it -- as the suppliers, mainly National Milk cooperatives,
18 balance the Class I milk supply on their, you know, weekly
19 and seasonal needs.

20 Q. And is there sufficient processing capacity in
21 balancing plants to take on an additional 28% of reserve
22 supply milk?

23 A. There isn't that much reserve supply milk.

24 Q. But if you are setting differentials in order to
25 stimulate the amount of reserve supply you deem necessary,
26 what I'm trying to figure out is --

27 A. That's not -- that's not -- I don't think any of
28 us have testified at all. This -- we were just responding



1 to cross-examination from MIG about reserve supply. So
2 we're setting -- we're setting -- Class I differentials
3 need to go higher because, A, the valuation used by USDA
4 in 2000, rerun again for 2022, says that the Class I
5 pricing surface in the United States is about \$1.50 per
6 hundredweight too low. And we as marketers of milk in the
7 cooperatives recognize that, our farmer-owners recognize
8 that, because we recognize we're -- our dairy farmers, our
9 farmer-owners are subsidizing consumer demand, retail
10 consumer retail demand.

11 And so we have tried for about a quarter of a
12 century to create another pricing system of over-order
13 prices to raise those prices to get those values back, and
14 we just haven't been successful. And it's time for the
15 Federal Order to adjust its system to recognize the
16 subsidies that dairy farmers are providing a small group
17 of dairy farmers, 30,000, are providing to 300 million
18 people in the United States. And it's time to correct
19 that, and that's what this proposal's all about.

20 Q. Time for the American consumer to start paying
21 more for milk for dairy farmers?

22 A. It's time for -- it's -- it's time for dairy
23 farmers to get compensated for their costs in -- in
24 perfecting a marketing situation that results in Class I
25 getting their milk.

26 Q. And it's your --

27 A. And it doesn't mean that -- necessarily, that
28 those costs are going to get passed on to consumers. We



1 don't know that.

2 Q. If not the consumer, then who will pay those
3 costs?

4 A. Well, we will be -- I -- I think there -- there is
5 no correlation between Class I prices and retail prices
6 across the country. And so you tell me what you think is
7 going on, but what I think is going on is that retailers
8 are choosing to price differently. I don't know if they
9 are pricing -- what kind of margin they are getting when
10 they price. But retailers in Florida charge less for milk
11 than a retailer in Missouri, and the Class I differentials
12 between the two are significantly different, significantly
13 higher in Florida. There's no correlation between what
14 the Class I price is and what the price of retail is.
15 There just isn't.

16 Q. I want to revisit this issue of the voluntary
17 contract that DFA entered into that is tying up milk
18 supplies in Colorado and supporting the idea that because
19 of that, Class I differentials need to be higher.

20 Other than the DFA contract with the cheese plants
21 that you have discussed a few times now, did you
22 inquire -- and I mean NMPF when I say "you," the royal
23 you -- did NMPF inquire in any other market, any other
24 similar contractual arrangement that a supplier had with
25 the manufacturer that would have -- that NMPF determined
26 should impact Class I differentials?

27 A. I'm not sure, but let's think about the
28 significance of this in Colorado. I had stated earlier



1 that more than half the milk that's produced in Colorado
2 goes to our valued customer, Leprino Foods in Greeley,
3 Colorado. I don't think there is another major milk
4 producing state in the United States that has a singular
5 demand point of that significance for their state's milk
6 production. So it is different.

7 Q. So I would like to go back to the question if we
8 could.

9 Are you --

10 A. I'm sorry.

11 Q. Are you -- are you, testifying on behalf of DFA
12 and NMPF, aware of any other arrangement or instance where
13 NMPF considered a contractual arrangement between a
14 supplier and manufacturer in setting Class I
15 differentials?

16 A. I don't have any to enlighten you about.

17 Q. So the only one that you personally are aware of,
18 the only situation where NMPF set differentials based on a
19 business relationship is DFA's relationship with the
20 cheese plant in Colorado?

21 A. Yeah. I think that -- I -- I am going to punt on
22 that because I think those types of considerations went on
23 in -- with the others -- in the other regions. I'm just
24 not -- I just wasn't part of the discussions on those. So
25 I'm punting, if you don't mind.

26 Q. Well, I'm only asking on your personal knowledge.
27 So if you don't have personal knowledge, that's fine.

28 A. Yep.



1 Q. You are not aware of any specific other
2 consideration of a business relationship in setting
3 Class I differentials?

4 A. Yeah, I'm punting on that. I don't know.

5 Q. If --

6 THE WITNESS: Why -- why does the fly bug you and
7 me and not the person asking the question?

8 THE COURT: I'm comfortable now.

9 MS. VULIN: The fly and I have an arrangement.

10 THE WITNESS: Yeah, there you go. Good answer. I
11 like that.

12 BY MS. VULIN:

13 Q. Say DFA terminates the supply agreement. Should
14 the Class I differentials then be changed in Colorado?

15 A. That's not a realistic question, so I'm not going
16 to answer it.

17 Q. There's no legal way for either party to ever
18 terminate that arrangement?

19 A. That's not a realistic question.

20 Q. Say another supplier, with another major demand
21 point, in a region, as you said, maybe discussed by
22 another regional committee, say they terminated an
23 agreement that frees up a milk supply. Would that be a
24 basis to lower the Class I differentials in that area?

25 A. I don't know.

26 It's cruel of me to take that fly out during the
27 Christmas season.

28 THE COURT: Let's go off record for just a moment.



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

2 THE COURT: All right. Let's take -- so let's go
3 back on record so I can take us off.

4 All right. I'm going to take a break. Please be
5 back and ready to go at 4:05 p.m. We go off record at
6 3:54.

7 (Whereupon, a break was taken.)

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

9 We're back on record at 4:06 p.m.

10 Ms. Vulin, you may resume.

11 MS. VULIN: Thank you, Your Honor.

12 BY MS. VULIN:

13 Q. Mr. Gallagher, if you could have your testimony
14 and then Exhibit 301 in front of you, please.

15 A. Got it.

16 Q. And I -- if you could turn to page 5, please. I
17 wanted to talk about the table you had on that page.

18 A. Okay.

19 Q. So it's my understanding this table is meant to
20 show comparisons between Weld County and other counties
21 that demonstrate similar changes or approaches were taking
22 in raising the differentials between those counties.

23 Is that right?

24 A. It looks at other major manufacturing areas, and
25 looks at what the class -- the DFA estimated in-state
26 Class I utilization is for 2022, and then makes some
27 comparisons to our proposed differential levels relative
28 to those areas.



1 Q. That's a helpful clarification. So when it says
2 "Estimate State-Level Class I Percent," that is a DFA
3 specific number?

4 A. It is. And I did -- I did explain it in the
5 Appendix 1. And I apologize if that wasn't connected well
6 by me.

7 Q. It may have been on my end as well. There's a lot
8 of data to take in in this whole process.

9 A. There is.

10 Q. I did have one question about the chart. Looking
11 at Grant County, South Dakota, if you could go to
12 Row 2354, in Exhibit 301. 2354, it's on page 41.

13 THE COURT: Tell us again which line, 2354?

14 MS. VULIN: Grant County, South Dakota, 2354, FIPS
15 code 46051.

16 THE COURT: Thank you.

17 THE WITNESS: I am there.

18 BY MS. VULIN:

19 Q. The current differential for Grant County is
20 \$1.70, not \$1.80 as in your table, I believe.

21 A. Ah. Okay, I stand corrected then.

22 Q. So alongside the other corrections, would you like
23 us to make that correction here?

24 A. Hold on for one second.

25 Q. Uh-huh.

26 A. All right. Yes.

27 THE COURT: All right. We will make that change
28 on the record copy. Please turn to Exhibit 407, page 5.



1 And the third item down under county and state is "Grant,
2 South Dakota." And the first column is current
3 differential. We'll strike what's there and write in
4 instead "\$1.70."

5 BY MS. VULIN:

6 Q. So my interest is a bit more in Stearns, but I
7 just wanted to make sure that was accurate since I had
8 noted that.

9 So you discussed Stearns previously. I believe
10 DFA has a plant there; is that correct?

11 A. No.

12 Q. What -- was there a specific significance of that
13 county in your selection here?

14 A. I was looking for a Land O'Lakes plant.

15 THE COURT: You were looking for what?

16 THE WITNESS: A Land O'Lakes plant.

17 THE COURT: Oh, a Land O'Lakes plant.

18 THE WITNESS: So Melrose used to be partially DFA
19 owned.

20 BY MS. VULIN:

21 Q. And the reason you include Stearns County,
22 Minnesota, in this chart is to show that similar changes
23 were made in similar counties; is that right?

24 A. The reason I included Stearns was because it is a
25 similar manufacturing area, that is having a \$3 --

26 THE COURT: You're --

27 THE WITNESS: Having a \$3 differential -- thank
28 you -- \$3 differential proposed, despite the state having



1 a 7% Class I utilization. So the similarly situated
2 manufacturing county as Weld, where the state has a 14%
3 manufacturing -- excuse me -- Class I utilization, coming
4 up with something like \$3.20, which is only \$0.75 more
5 than what it is now, seems appropriate.

6 BY MS. VULIN:

7 Q. And if you could go to page 24, please, of
8 Exhibit 301 to Stearns County. It's going to be
9 line 1354, FIPS code 17245. Page 24, line 1354, Stearns
10 County, Minnesota.

11 A. I feel like we're playing Bingo.
12 1354. Okay. I am --

13 Q. My resident economist tells me I must include my
14 FIPS code.

15 A. Steams (sic) -- wait, 1354?

16 Q. 1354.

17 A. That's Steams County.

18 Q. I believe that is Stearns County, but the R and
19 the N are a little snug.

20 A. Ah.

21 THE COURT: Oh, you are correct. I thought that
22 was an M also. I was confused.

23 THE WITNESS: Very good. I'll take your word for
24 it.

25 THE COURT: All right. So --

26 BY MS. VULIN:

27 Q. So the current differential for Stearns County is
28 \$1.70?



1 A. Yes.

2 Q. The USDSS average is \$2.55, correct?

3 A. Of the May and October values, yes.

4 Q. And NMPF's proposed differential is \$3, correct?

5 A. Yes.

6 Q. And so if -- if NMPF is seeking to ensure
7 alignment or similarity between Colorado and like Midwest
8 counties, isn't the increase of the county in Minnesota
9 just dominoing the increase down westward to Colorado, and
10 frankly, ultimately, to California as well?

11 A. I don't know -- the -- those values -- the
12 determination of those values weren't connected in any way
13 like that. It is just a comparison that I'm making
14 between the Class I utilization for the state and the
15 values that we are -- we are proposing for that region.
16 And how Stearns County get determined, I wasn't part that
17 of that determination.

18 Q. But we did hear testimony, including regarding the
19 anchor cities, right, as well as from you, about
20 harmonizing between different regions and making sure that
21 everything fit together, that there were changes in other
22 counties, based on Chicago and what was going on in the
23 Midwest; isn't that right?

24 A. There's a lot there. What is the question?

25 Q. What I'm trying to understand is, if you rely upon
26 alignment or ensuring that Colorado producers are getting
27 paid the same as in the Midwest, if you raise the Midwest,
28 doesn't that just give you an excuse to then also raise



1 other prices on the basis of alignment or making sure the
2 counties match up in certain areas?

3 A. The determination of Weld County's differential
4 wasn't based on an alignment issue. It was just based on
5 an equity issue.

6 Q. Equity to what?

7 A. Equity that other manufacturing regions in
8 significantly lower Class I production areas have
9 similarly valued differentials.

10 Q. Isn't equity the same thing I'm saying here, that
11 because NMPF decided to raise Stearns County to \$3 on the
12 basis of equity, then Weld County in Colorado should go up
13 to \$3.20?

14 A. So I'm not sure, I wasn't -- I didn't participate
15 in the determination of the differential for Stearns
16 County, so I don't know what went into that. And your
17 definition of equity is not the same as mine.

18 Q. Give me again, then, please, your definition of
19 equity.

20 A. I did.

21 Q. Okay. One more time because I thought we were on
22 the same page, but I would ask, please.

23 A. So -- so it would be reasonable and appropriate
24 for the Weld County differential to be in alignment with
25 the Stearns County, in fact, higher than the Stearns
26 County, because it has -- so here it says 14% Class I
27 utilization. Remember if we -- if we -- if we take out
28 the milk that's not available to the Class I market, it



1 goes to Leprino, that utilization is probably in excess of
2 30%. Class I utilization available to the market is in
3 excess of -- or the milk that's available to supply the
4 market as the denominator, divided by the numerator, which
5 is the in-state Class I -- or excuse me -- yeah, the
6 numerator is Class -- would result in a percentage
7 probably in excess of 30%. So there's other things going
8 on that, then, to me, and to National Milk, would say this
9 is an equitable solution for Weld County, Colorado.

10 Q. And if NMPF had not deviated from the USDSS in
11 raising the Stearns County differential, if NMPF had
12 adopted the \$2.55 from the USDSS, would that have
13 justified keeping Weld County closer to its USDSS average
14 of \$2.35?

15 A. No.

16 Q. Why not?

17 A. Because we also are taking into consideration the
18 equitableness of pay prices in the Central order as they
19 affect dairy farmers in Colorado, and the model should not
20 result in changes to dairy farmer prices that
21 significantly put them at a profitability risk.

22 Q. And should the model -- or should the
23 differentials be set at a level that would put Class I
24 processors at a significant profitability risk?

25 A. I have yet to see that that's an issue for Class I
26 processors.

27 Q. If it were?

28 A. So in 2022, we had the highest Class I prices ever



1 in the history of the world. Let's see. The all-milk
2 price was \$25. The Class I price probably averaged 28.
3 And typically that Class I price would have been 20, 21,
4 so we're talking about a 6, \$7 per hundredweight change in
5 the Class I price versus what we're talking about here of
6 \$0.75. During the time when we saw 6 to \$7 per
7 hundredweight increase in the Class I price, there wasn't
8 one single Class I processor that went out of business.
9 So I'm calling BS on your profitability at Class I
10 clients.

11 Q. In your own testimony you said that in the last
12 20 years a number of Class I processors have gone out of
13 business, correct?

14 A. No. I don't believe it. I don't believe I said
15 that.

16 Q. In the last 20 years has there been an increase or
17 a decrease in Class I processors, nationwide?

18 A. There's been an excess capacity in Class I
19 processing over time as the costs -- the non-milk cost of
20 serving the marketplace have increased -- has caused --
21 resulted in a consolidation of Class I processors. But
22 it's not because of the milk prices. It is not because of
23 the \$0.75 per hundredweight increase in Class I
24 differential.

25 Q. Let's put a finer point on that: Are there more
26 or less Class I fluid plants in the country today than
27 there were 20 years ago?

28 A. I would suspect there's less.



1 Q. I'd like to talk about organic milk.

2 You had discussed a number of times in your
3 testimony that the Class I differentials need to take into
4 account real world limitations on the supplies of milk,
5 correct?

6 THE COURT: Would you ask that again, please?

7 BY MS. VULIN:

8 Q. You previously testified when referencing DFA's
9 contractual agreement with the cheese plant that the
10 Class I differentials should take into account real world
11 limitations on supplies, correct?

12 A. I specifically talked about an issue in Colorado,
13 and we referenced that as other regions reviewed their
14 pricing surface, that to some degree they probably took
15 that into consideration as well. Specifically I said I
16 don't know others though, if you recall.

17 Q. And I had asked about Colorado, and I believe --
18 again, I tried to write down what you had said, but if
19 not -- that you had said, it is important for the Class I
20 differentials in Colorado to take into account real world
21 supply limitations?

22 A. Yes.

23 Q. And you would agree with me that non-organic or
24 conventional milk cannot be sold to an organic processing
25 plant and ultimately sold as organic, correct?

26 A. Yes.

27 Q. And so would you agree with me that organic milk
28 would have a fairly significant real world limitation on



1 its supply?

2 A. Maybe.

3 Q. And are you aware that the USDSS does not
4 differentiate between organic and non-organic milk?

5 A. That is correct.

6 Q. And so in looking at, as you had discussed
7 earlier, this optimal solution of sending milk to the
8 closest plant, right, or the most efficient plant, that's
9 not going to be accurate for what can be done in the real
10 world in regards to organic milk, correct?

11 A. The organic milk may or may not go to an organic
12 plant in the model solution. I don't know how it -- I
13 don't know where the organic milk supplies would have
14 gone. But the market that -- the data would not have been
15 able to recognize -- to my knowledge, the data couldn't
16 recognize whether milk was organic or conventional at the
17 dairy farm.

18 Q. And so when we're looking at the data from the
19 USDSS in light of organic milk, there's a strong
20 probability that it's not going to match the actual flows
21 that that milk can take to plants?

22 A. I'd agree with that.

23 Q. And so if that's the case, then would you agree
24 that similar to the exception of carving out real world
25 relationships between suppliers and manufacturers, in
26 Colorado in your case, we should consider whether or not
27 organic belongs in the USDSS and the Class I
28 differentials?



1 A. I don't know what your question is. So -- so
2 should they not use organic plants and subtract out of the
3 state supply what is estimated to be the organic milk
4 production in that state and then run the model? Is that
5 what you are suggesting?

6 Q. Yes. Correct.

7 A. Oh, I don't know. Why don't you take that up with
8 Stephenson and Nicholson. I don't know.

9 Q. Was that something that NMPF raised with
10 Dr. Stephenson or Dr. Nicholson?

11 A. No.

12 Q. And would you agree with me to the extent that
13 those milk supplies weren't backed out, specifically in --
14 let me start that again.

15 Are you aware of any organic fluid milk plants in
16 Colorado?

17 A. Yes.

18 Q. Can you tell me about that, please?

19 A. Pardon?

20 Q. Which one?

21 A. Oh, man.

22 Q. I can help you out there. How about --

23 A. I got it right here. I can do it. Hold on a
24 second.

25 Aurora Organic in Weld County. How's that?

26 Q. And so to the extent that the differential is
27 being set in Weld County based on the USDSS, would you
28 agree with me that it is likely not going to accurately



1 reflect the efficient flow of milk to Aurora's organic
2 plant in Weld County, Colorado?

3 A. I -- I don't -- I don't know about efficient. But
4 it's -- the model couldn't discern between -- I do not
5 believe the model discerned that Aurora would have been an
6 organic processor, and I'm confident it didn't -- didn't
7 take into account a supply of organic milk anywhere.

8 Q. And likewise, the presence of that plant in Weld
9 County is likely to show a need for conventional, or
10 non-organic, milk that doesn't actually exist for that
11 plant, correct?

12 A. I don't know.

13 Q. Was it the U.S. --

14 A. Well, so I -- it's just going to -- it's just
15 going to solve the mathematical equation, and I don't know
16 where the flows of milk went. It could have gone -- it
17 could have gone into -- you know, in their mathematical
18 equation, it could have gone to Leprino.

19 Q. But as a data point in the model, you would agree
20 with me that the presence of that plant, that Aurora
21 organic plant in Weld County, is going to create a demand
22 in the model for conventional milk that doesn't exist in
23 the real world?

24 A. In that county?

25 Q. Correct.

26 A. Yeah. For that plant -- there's still a demand in
27 that county because there's people that live in that
28 county, and so the model sells for the -- for the people



1 that live in that county. So there is -- there is some
2 need for it. But your point is -- I get your point, but I
3 don't know enough about how the model solves for it to be
4 able to help you out. Mr. Stephenson will be on in a
5 couple days. You can ask him.

6 MS. VULIN: Nothing further. Thank you,
7 Mr. Gallagher, for your time.

8 THE WITNESS: You're welcome. Thank you.

9 THE COURT: Thank you, Ms. Vulin.

10 CROSS-EXAMINATION

11 BY MR. MILTNER:

12 Q. Good afternoon, Mr. Gallagher.

13 A. Good afternoon. How are you?

14 Q. I'm well.

15 A. Happy holidays.

16 Q. It is that season, isn't it?

17 A. It is.

18 Q. Festive in here as well.

19 You're much further away than I'm used to having
20 the witnesses from the past few weeks.

21 For the record, my name is Ryan Miltner
22 representing Select Milk Producers.

23 A. For the record, for MIG, we didn't consult with
24 Select on any of this stuff either. Just saying. You
25 don't have to feel like you are left out.

26 Q. So, Mr. Gallagher, did you consult with Select
27 Milk Producers in providing the Class I surface?

28 A. Not on the Class I price surface, we did not. We



1 would have loved to have you as National Milk members and
2 have you part of the team. We missed you. We really did.

3 Q. I'll pass that along.

4 I'm looking at Exhibit 407, your written
5 testimony. And the first full paragraph on page 2 sets
6 the stage for your testimony. It reads: "I am here today
7 to explain the importance of implementing a price surface
8 in Colorado that differs from the results of the
9 University of Wisconsin's model analysis of a national
10 pricing surface."

11 That's the main thrust of your testimony, correct?

12 A. Yes.

13 Q. And you had a lot of back-and-forth with counsel
14 for MIG about Colorado, but a lot of other places on the
15 map, but let's talk about just Colorado at least to get
16 started.

17 In Colorado, is there a better co-op than DFA to
18 talk about the market dynamics there?

19 A. No, there is not.

20 Q. Realistically, is there another significant milk
21 marketing cooperative in the state there?

22 A. No, there's not a better cooperative in New Mexico
23 either to talk about --

24 Q. Well, you know, we're not going to -- we're not
25 going to get too far afield from Colorado. We won't talk
26 about pay prices either so we don't have any
27 disagreements.

28 So in Colorado, DFA knows the market better than



1 anybody else, correct?

2 A. Yes.

3 Q. It's not the case throughout the entire Central
4 order, but certainly for that part of Order 32, the milk
5 supplied in Colorado is DFA milk supply?

6 A. Mr. Bebermeyer would take exception to your
7 comment about not having the expertise in the rest of the
8 Central order. He's a pretty smart guy. He's the DFA
9 Central Area Council coups, and him and his team are very
10 attuned to the marketplace in the rest of the area.

11 Q. Okay. In the other parts of the Central order,
12 there are cooperatives other than DFA which market not
13 insignificant quantities of milk, correct?

14 A. Yes.

15 Q. Where you have testified about the price impacts
16 of just the Class I surface on Weld County, Colorado, in
17 particular, you testified that the combination of the
18 differentials in the model, with an adjust to
19 Make Allowances as have been testified to previously in
20 the hearing, would cause substantial economic hardship on
21 your members in Colorado, correct?

22 A. If the resulting price surface only used the
23 model's output, yes.

24 Q. Okay. So it's the combination of the model output
25 along with adjustments to Make Allowances that would
26 impose that economic harm on your members that you have
27 described, correct?

28 A. If there were no Make Allowance change, and there



1 were a class price surface -- or excuse me -- a price
2 surface change, and they used the model's output in
3 Colorado, there still would be an economic hardship. But
4 the two combined will be an oppressive economic hardship
5 to dairy farmers in Colorado.

6 Q. Wonderful. Your answer was very close to my next
7 question, which is, if there were no changes to
8 Make Allowances, would the model results as to Weld County
9 and other points in Colorado be acceptable to DFA?

10 A. No.

11 Q. And taking --

12 A. Or -- or National Milk.

13 Q. So take the Make Allowance part of your argument
14 outside -- take that away and just articulate what with
15 the model's numbers are unacceptable to National Milk and
16 DFA.

17 A. As -- as the model would determine the values, if
18 you took them without any market intelligence, adjusting
19 it for any reason, the pricing surface in Colorado, the
20 pay price -- the PPD in Colorado would be reduced by about
21 \$0.40 a hundredweight. And that would be representative
22 of about 40% of the profitability on average of dairy
23 farmers in Colorado between 2018 and 2022. So it would be
24 significant.

25 Q. So let's walk through some of the numbers that get
26 us to that \$0.40 and change in the PPD that you have
27 predicted.

28 Currently, the differential in Weld County is



1 \$2.45, correct?

2 A. Yep. Yes, that's a yes. I'm sorry.

3 Q. Okay. And Jackson County, Missouri, currently is
4 \$2, correct?

5 A. Yes.

6 Q. So the differential in Weld County is \$0.45 higher
7 than the base zone for the Central order, correct?

8 A. Yes.

9 Q. Now, the model changes that significantly. It
10 puts the base zone at 3.35, Weld at 2.35.

11 And so Weld County goes from \$0.45 higher than the
12 base to \$1 lower than the base zone, correct?

13 A. It's 3.35. What did you have for Weld County?

14 Q. 2.35?

15 A. Yep. Yes. That's correct.

16 Q. Okay.

17 THE COURT: And just so everyone's on the same
18 page, you are looking at his chart on page 3, correct?

19 Mr. Miltner, are you looking at that?

20 THE WITNESS: No, he's not.

21 MR. MILTNER: No.

22 THE COURT: Oh.

23 MR. MILTNER: No, I'm -- well, some of the data is
24 on there. All of this data could be found in --

25 THE WITNESS: I guess you are. You can get it --

26 MR. MILTNER: -- 301.

27 THE WITNESS: But you can get it from that chart
28 actually.



1 MR. MILTNER: You'd have to average the numbers.
2 All the data is there.

3 THE WITNESS: Yeah.

4 THE COURT: Okay.

5 THE WITNESS: So if I may, you -- so -- well, what
6 your question is, how do you get to a price adjustment
7 that would lower the prices by \$0.40?

8 BY MR. MILTNER:

9 Q. We'll get there. I'm trying to establish how
10 we -- how this progresses, right?

11 A. Yep.

12 Q. Weld County goes from \$0.45 above the base zone.
13 The model would have placed it at \$1 behind the base zone.
14 So that's \$1.45 swing in the price relationship between
15 those two points if we only look at the model, correct?

16 A. Yep.

17 Q. Okay. Proposal 19 takes the \$3.35 differential
18 that the model proposes for Jackson County, Missouri, but
19 then it increases the differential to \$3.10 for Weld
20 County, Colorado, correct?

21 A. Yes.

22 Q. The change that was made by DFA or National Milk
23 or the working group, you left Jackson County, Missouri,
24 unchanged from the model, but you increased Weld County by
25 \$0.75, correct?

26 A. \$0.75 from what?

27 Q. From the model.

28 A. From the average?



1 Q. Yes.

2 A. Actually, Weld County is \$0.85 because the
3 differential would be 3.20.

4 Q. You are correct, \$0.85.

5 A. Yes.

6 Q. Now, the decision to move \$0.85 on Weld County,
7 but not to move Jackson County, Missouri, what is the
8 basis for that \$0.85 change if we're just looking at that
9 particular county?

10 A. I'm looking at it as a \$0.75 change from the
11 existing differential.

12 Q. Okay.

13 A. And it is to maintain blend price levels at a
14 similar level if just the Class I pricing surface was
15 adopted versus what the blend price level is currently.
16 And as I worked with the Market Administrator staff in the
17 Central order, they ran some models for me until it sort
18 of hit something that was kind of about the same for both
19 current and the new calculation.

20 Q. So the purpose was to arrive at a differential
21 that maintained the -- something close to a blend -- the
22 blend price relationship that exists today?

23 A. Yes. And to deviate to a level higher in Kansas
24 City would make it -- would -- would require a higher set
25 of numbers for Colorado. And so the Kansas City level
26 being the base zone was an important level to establish,
27 3.35.

28 Q. Okay. A lot -- a little -- well, I want to say a



1 lot to unpack there, but at least a few things.

2 Jackson County, Missouri, Proposal 19 sets at
3 3.35, and I believe you would describe that as not as an
4 acceptance of the model's 3.35 but an increase of \$1.35
5 over the current differential, correct?

6 A. Yes.

7 Q. So how do you arrive at \$1.35 as the appropriate
8 number for Jackson County?

9 A. It is -- I think is it -- I don't have the numbers
10 right in front of me, but I think it's the average of the
11 May and October values.

12 Q. I believe that's correct.

13 A. Yeah. That's how we decided. We stuck with the
14 average and worked from there.

15 Q. Okay. So you -- so --

16 A. Once upon a time, in one of our generations, we
17 had St. Louis, Kansas City, and Denver at \$3.70.

18 Q. Okay.

19 A. And we adjusted from there.

20 Q. So when you had those three cities at \$3.70, was
21 that derived from an average of the model or were those
22 numbers picked based on anchor cities or another reason?

23 A. So St. Louis was set at 3.70, and it currently has
24 a similar differential to Kansas City, so we made the
25 Kansas City value the same, recognizing -- as St. Louis,
26 and then recognizing that we were coming to the conclusion
27 that we were going to have to give up on the over for
28 Colorado, but we didn't want to decrease, so we also set



1 that at 3.70. With conversations we had after that, we
2 decided that the -- having Denver be 3.70 and Kansas City
3 be -- having Denver be 3.70, which would have been \$1 --
4 over \$1 increase from the model, we decided that would be
5 untenable, and so we went back and considered other
6 values.

7 Q. And you said St. Louis was currently at 3.70?

8 A. Yes. I believe that's the number.

9 Q. But that's not its current differential?

10 A. No. That's -- that's our proposal.

11 Q. Okay. So how did St. Louis start at 3.70 then?
12 Was that pulled from the model?

13 A. Yeah, I think that was the average of the two
14 numbers to get to St. Louis was 3.70, I think.

15 Q. Okay. So I feel like it's "Tinker to Evers to
16 Chance," but we have -- we have St. Louis at 3.70, and
17 that was the average of the model, correct?

18 A. Yep.

19 Q. And then the decision was made to align Denver and
20 Kansas City with 3.70, correct?

21 A. Yes.

22 Q. And then those were modified after some
23 consultation within the group and perhaps with USDA, for
24 the Market Administrators offices?

25 A. Yes.

26 Q. Okay. And then you have -- then at the point you
27 arrived at a number for Kansas City for Jackson County at
28 3.35, correct?



1 A. Yes.

2 Q. And now you go to Weld County.

3 Was that kind of the next thought process is let's
4 back into Colorado and see where that leads us?

5 A. Yes.

6 Q. And so would you have then looked at the current
7 differential at 2.45 or would you have looked at the model
8 to say, where does the model place Weld County?

9 A. I knew where the model placed it. It placed it at
10 too low of a level, and so we needed to -- for equitable
11 reasons, it needed to be higher. It needs to be higher.

12 Q. Now, if you are at 3.35 in Kansas City, and you
13 are currently saying, well, look, Weld County is \$0.45
14 higher than Kansas City, was your first inclination to
15 say, set Weld County at say 3.80 and where does that put
16 us?

17 A. No.

18 Q. So do you --

19 A. My first inclination was to set Denver at 3.70 and
20 make the -- keep the same difference between Weld County
21 and Denver as exists now.

22 Q. So it was alignment with Denver, not with Kansas
23 City, that was driving the process?

24 A. Initially.

25 Q. And then after that tell me what happened in the
26 evolution of the process, if you could.

27 A. I think we -- I think you hit it already. We --
28 we went to 3.35 in Kansas City and then worked backwards



1 to Denver to see what would result in a set of
2 differentials that were fair and equitable to Colorado
3 dairy industry.

4 Q. But at that point that's when you started working
5 with the MA to run some mock pools or things to fix that
6 number --

7 A. No, we started before that. But, yes. But, yes.

8 Q. Okay. Where did the mock pools come into the
9 process?

10 A. Well, the final one would have been to get to the
11 proposals that I have now -- or that we have now.

12 Q. I suppose this isn't my question, but it's been
13 asked so often. Is it possible that that strange column
14 about the previous proposals in spreadsheets 300 and 301,
15 that those numbers got thrown in as you were working
16 through the different pool iterations with the Market
17 Administrator offices?

18 A. You want to look at Denver in that?

19 Q. I was --

20 A. It could have, yeah. It could have very well. I
21 don't recall the timing of everything but...

22 Q. That's sufficient for me. We don't need to dig
23 them out unless -- no, we don't need to. All right.

24 A. All right.

25 Q. Now -- and then I'm really going to try not to
26 replot ground.

27 During Federal Order Reform, there was -- we had a
28 model that the industry was working from. It was notice



1 and comment rulemaking, correct?

2 A. Yes.

3 Q. And as part of that notice and comment rulemaking
4 process, USDA solicited input from the industry, correct?

5 A. Yes.

6 Q. And at one point there was issued a -- as you
7 described it, a book or a couple of books which -- but
8 they were essentially Federal Order register publications
9 of a proposed rule, correct?

10 A. Yes.

11 Q. And in those proposed rules did it contain
12 comments from the industry about the models as they were
13 presented?

14 A. Yes.

15 Q. And to your recollection were there additional
16 comments solicited?

17 A. Yes.

18 Q. And when you referred to the industry, in
19 particular the cooperatives in the Northeast offering
20 comments, would that have been the time at which point
21 your comments, those of Dairylea and other cooperatives,
22 were submitted?

23 A. Yes. As I recall.

24 Q. Now, would you agree that at that point there was
25 a final rule issued in April of 1999 as a part of order
26 reform?

27 A. I don't recall the date, but there was a final
28 rule.



1 Q. Do you know if that final rule articulated what
2 USDA did to deviate from the model and incorporate the
3 comments of cooperatives like DairyLea and others?

4 A. I can't recall. Was that Option 1B, that fateful
5 Option 1B reveal? I think it was, wasn't it? Can I ask
6 you a question?

7 Q. I was -- I was still an undergraduate, so I don't
8 know.

9 So I want to -- okay, let's revisit the Weld
10 County issue for just a second.

11 If you were just going to use the numbers that
12 were in the model for Weld County and Kansas City, just --
13 if you could summarize for us what that would mean to
14 producers in Colorado in terms of their pooling on the
15 Central order.

16 A. It would result in an increased incidence of
17 depooling of Colorado milk on the Central order.

18 Q. And why would that occur?

19 A. Because the blend price would be going down. The
20 PPD would be going down by about \$0.40 a hundredweight,
21 and so there would be more instances when the blend price
22 would be less than the Class III price or less than the
23 Class IV price or less than the Class II price, and so
24 there would be more incidences of depooling.

25 Q. Now, we already stated that the difference between
26 Weld County and the base zone under Proposal 19 is \$0.25,
27 correct?

28 A. Yes.



1 Q. Or \$0.15?

2 A. It is \$0.15.

3 Q. So if under Proposal --

4 A. Under our proposal.

5 Q. And also now under your proposal, Dallas County,
6 Texas, which is the base zone for Order 126, is \$4, and
7 Chavez County, New Mexico, where there's another
8 mozzarella plant, is at 2.70. So that difference is
9 \$1.30.

10 And so I'm wondering why the vast concern with
11 Weld County at a \$0.25 difference but not a concern with
12 Order 126 and that price relationship?

13 A. Yeah, I'm not aware of that relationship. I'll
14 have to go back and look at it.

15 Q. You didn't -- you didn't look at Order 126 at all?

16 A. I was not involved in the determination of the
17 pricing surface in the Southwest.

18 Q. Okay. So in Cuyahoga County, Cleveland, the base
19 zone for Order 33, the difference between that and Ottawa
20 County, Michigan, is \$0.20 under the current proposal, and
21 it goes to a \$0.60 difference under Proposal 19, more than
22 twice the difference in Weld County.

23 And -- and so my question is the same: Why the
24 concern so much with Weld County but not a similar concern
25 in Order 33?

26 A. I wasn't -- I didn't -- there may have been a
27 similar concern for Order 33. I wasn't involved in the
28 discussions of those values.



1 Q. At any point did the various working groups or
2 regional groups come together to attempt to harmonize the
3 changes they have made, because I have -- well, answer
4 that question if you could: Did they come together to
5 harmonize those changes?

6 A. Yes.

7 Q. In those discussions to harmonize those changes,
8 what was discussed in terms of the deviations from the
9 model output?

10 A. I don't recall a lot of discussion about that. We
11 were mainly concerned about how the orders of the regions
12 matched up.

13 Q. So the order regions were discussed, but the
14 operations within each of the orders or the regions were
15 of less import?

16 A. I wouldn't say less important. We -- we had to --
17 we had to make sure that the regions meshed together
18 appropriately, and so that was our focus.

19 Q. Why -- why would the border regions be more
20 important than the operations within the orders?

21 A. The National Milk -- the National Milk members
22 with the market intelligence in those regions worked
23 through their -- their process for those regions. And
24 certainly somebody that's very familiar with the Southwest
25 wouldn't be able to contemplate all the issues going on in
26 Michigan if they didn't have experience in Michigan. And
27 so it was left to the expertise of the regions to develop
28 the solution for those regions.



1 Q. Wouldn't it be important, though, for the people
2 in the Southwest to understand that those working on the
3 Central order worked very hard to not have a large
4 disparity between the base zone and a significant milk
5 production area, and maybe that concept ought to be pushed
6 through to the other regions?

7 A. Yeah. I wasn't aware that that happened.

8 Q. You were not aware that those discussions took
9 place?

10 A. No, that there is a severe disparity between a
11 base zone and a manufacturing area somewhere.

12 Q. That wasn't the case in Weld County?

13 A. Oh, I'm sorry, in the Southwest.

14 Q. Okay. But there was -- there was not thought that
15 because that issue had to be rectified in the Central
16 order, maybe that issue ought to be examined carefully in
17 the other orders?

18 A. I did -- I did look at some of our delivery
19 locations, and I didn't notice there was an issue. But
20 maybe I didn't cover all the right delivery locations.

21 Q. So you looked at delivery locations in Order 126?

22 A. Yes.

23 Q. And Order 33 as well?

24 A. I did not in Order 33. Let me think. No, I
25 don't -- I don't think I did in Order 33.

26 THE COURT: Mr. Miltner, remember where you are.

27 MR. MILTNER: Okay.

28 THE COURT: We have only got four minutes to talk



1 about what we do tomorrow.

2 MR. MILTNER: Very good. Thank you, Your Honor.

3 THE COURT: You're welcome.

4 You're available tomorrow?

5 THE WITNESS: Until the end of the day.

6 THE COURT: Very good.

7 THE WITNESS: I have to be in Kansas City

8 Wednesday morning.

9 THE COURT: Ah. All right.

10 Ms. Hancock, do you want to be the one that talks
11 about what order you would anticipate for tomorrow?

12 MS. HANCOCK: I can kick us off. I will see where
13 we land.

14 We would like to start with Steve Stout and finish
15 his cross-examination tomorrow, and then return to
16 Mr. Gallagher and finish his cross-examination. And then
17 we will turn to a combination between Peter Vitaliano and
18 Jeff Sims. Our goal is to get Mr. Brown on this stand on
19 Wednesday, though, so we'll -- we might have to look at
20 that order.

21 But those are our remaining witnesses, so it will
22 be some combination of those orders, and then I think
23 there's a dairy farmer that is coming.

24 THE COURT: Does anyone else want to add comments
25 to what we anticipate for tomorrow?

26 No one does. I'll see you at 8 o'clock tomorrow
27 morning, and we now go off record at 4:57.

28 Oh, Mr. English, can we go off record?



1 MR. ENGLISH: Yes, off record.

2 THE COURT: All right. Off record at 4:57.

3 (Whereupon, the proceedings were concluded.)

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1 STATE OF CALIFORNIA)
) SS
 2 COUNTY OF FRESNO)

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

9

10 DATED: January 12, 2024

11 FRESNO, CALIFORNIA

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16 MYRA A. PISH, RPR CSR
 17 Certificate No. 11613

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