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:

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

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SESSIONS

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IN CHRONOLOGICAL ORDER:

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MONDAY, DECEMBER 4, 2023 -- MORNING SESSION

THE COURT: Let's go back on record.

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

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

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

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

THE COURT: All right. Identify yourself, please.

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

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

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

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

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

Promptly thereafter we resubmitted electronically

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

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

MR. ENGLISH: May I approach, Your Honor?

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

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

THE COURT: Let's go back on record.

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

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

Thank you, Mr. English.

MR. ENGLISH: Thank you, Your Honor.

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

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

his examination.

THE COURT: Tomorrow morning at 8:00?

MS. HANCOCK: Yes.

THE COURT: Excellent.

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

THE COURT: For now?

MS. HANCOCK: For now.

THE COURT: Okay. Great. Thank you.

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

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

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

THE COURT: Let's go back on record.

We're back on record at 8:07.

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

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

MS. HANCOCK: Thank you, Your Honor.

THE COURT: Hello.

THE WITNESS: Good morning.

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

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

THE COURT: Have you previously testified in this proceeding?

THE WITNESS: I have not.

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

BRAD PARKS,

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

DIRECT EXAMINATION

BY MS. HANCOCK:

Q. Good morning, Mr. Parks.

Would you please provide your business address for the record.

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

Novi is spelled N-O-V-I.

Q. Thank you, Mr. Parks.

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

A. Yes.

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

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

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

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

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

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

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

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

THE WITNESS: 5 billion pounds per year.

THE COURT: Thank you.

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

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

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

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

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

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

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

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

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

The uniform milk price average was $12.08 per

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

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

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

Indiana has increased 2 billion pounds, or 82%.

Ohio has increased 1 billion pounds, or 24%.

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

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

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

Thank you. You may resume.

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

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

Tables 5 --

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

THE WITNESS: "See Table 4."

THE COURT: Thank you.

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

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

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

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

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

production in Michigan increased by 1.5 billion pounds.

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

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

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

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

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

THE WITNESS: Gratiot, which is spelled

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

THE COURT: Thank you.

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

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

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

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

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

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

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

THE WITNESS: Yes.

THE COURT: "Iowa." Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

gallon has offset a small portion of the fuel increases.

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

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

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

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

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

increased restrictions.

Medical benefit costs have increased 30% since 2016.

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

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

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

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

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

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

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

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

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

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

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

the results.

Achieving meaningful changes requires capital investment and additional resources.

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

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

2018, average was $0.60 per hundredweight; 2019, the average was $0.26 per hundredweight; 2020, the average was a negative $2.31 per hundredweight; 2021, average negative $0.38 per hundredweight; and 2022, average $1.21 per hundredweight.

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

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

Retailers selling Class I milk products have

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

Class I over-order premiums peaked in January 2012 at $2.37 per hundredweight, net of any performance credits to buyers. The base premium was $1.25 plus an rBST-free premium of $0.90, plus a fuel surcharge of $0.22. Over-order milk premiums slowly eroded from January of 2012 as rBST-free premiums were eliminated and buyers became more aggressive in premium negotiations.

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

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

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

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

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

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

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

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

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 8:54.

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

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

THE WITNESS: Thank you.

THE COURT: Thank you.

Ms. Hancock.

MS. HANCOCK: Thank you, Your Honor.

BY MS. HANCOCK:

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

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

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

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

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

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

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

A. Correct.

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

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

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

And so we constantly are challenged with, where

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

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

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

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

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

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

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

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

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

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

A. That's correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Thank you, Ms. Hancock.

CROSS-EXAMINATION

BY MS. VULIN:

Q. Good morning, Mr. Parks.

A. Good morning.

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

A. Nice to meet you.

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

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

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

A. Yes, I did.
Q. Can you tell me about that, please?
A. Yeah. So we were involved -- really Dr. Eric Erba was kind of the lead in our area, and then Jeff Sims from a national standpoint. But we -- we provided local input into the Class I differential changes. We looked at our markets and looked at every county and made recommendations up through our group in terms of a proposed change as we looked at this proposal.
Q. And were you involved at the outset or did you come in kind of midstream as some others did?
A. You know, I came in at -- at the beginning. I -- you know, there was a -- there was a task force above me, and I got brought in early on, but kind of as a sub-supportive group for Michigan, Ohio market. But I was involved early on, yes.
Q. Did you participate in the selection of the anchor cities?
A. I did not.
Q. That was done before you got involved?
A. Yes.
Q. And so your role, you said, was to provide local input for Michigan and Ohio?
A. We looked at the whole market, the Federal Order 33, the Mideast market. So it would be Michigan, Ohio, Indiana, Western Pennsylvania, and then West Virginia to the southeast.
Q. And you have talked a lot about Michigan. And I

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

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

A. Correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

So we tried to incorporate all of that. But at

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

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

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

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

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

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

Q. And you say detailed review of the market.

What were the specific factors that you considered

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

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

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

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

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

A. Sure.

Q. -- the cost of serving a market?

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

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

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

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

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

A. Go ahead.

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

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

Q. Right. And -- sorry.

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

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

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

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

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

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

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

Q. And that general knowledge was taken into account?

A. Yes.
Q. And in these discussions that had a number of factors considered, did you discuss whether or not the USDSS already took these factors into account?
A. We -- I would say no. We assumed that the model incorporated -- we knew that it incorporated something, and we went into this with the understanding that our role was to provide more local knowledge than what the model was able to incorporate.
Q. But how did you know what the model incorporated or didn't incorporate? Did you ask or did you not know?
A. Others at National Milk were more familiar with the model and provided some feedback. I mean, basically, that's why we were asked to participate, is to provide local feedback. Because this was just a -- you know, a model that could do what it could do. But, you know, we knew there were limitations in terms of what it could factor in.
Q. And what were those limitations, specifically?
A. Just -- yeah, the local -- the local market. Like, for instance, the model does not incorporate the fact that Michigan uses supertankers to move milk, as one example.
Q. Do you mean, are you talking about hauling weight limits on roads?
A. No. So a supertanker can haul 100,000 pounds of milk versus a traditional milk tanker is 50,000 pounds. And so --

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

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

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

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

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

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

A. Correct.

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

Are you familiar with those?

A. Yes.

THE COURT: I can provide him with them.

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

BY MS. VULIN:

Q. Were you involved --

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

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

Thank you, Your Honor.

BY MS. VULIN:

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

A. No.

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

Do you have any idea what Column R indicates?

A. I do not.

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

A. No.

Q. Thank you.

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

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

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

Does that -- is that true?

A. Yes.

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

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

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

A. No.

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

A. Correct. Yes.

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

A. Yes.

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

A. Yes.

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

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

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

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

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

A. No.

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

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

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

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

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

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

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

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

Michigan Milk Producers has a fluid milk plant, correct?

A. Yes.

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

A. We do.

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

A. Yes.

Q. How frequently?

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

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

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

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

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

A. Yes.

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

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

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

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

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

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

We go off record at 9:40.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

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

Ms. Vulin, you may proceed.

MS. VULIN: Thank you, Your Honor.

BY MS. VULIN:

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

A. Yes.

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

A. No.

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

Did you have any conversations with anyone about that?

A. I did not.

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

A. They did not.

Q. You said that in your testimony, that Michigan

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

A. Correct.

Q. Do you have any Grade B members?

A. No.

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

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

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

A. Yes.

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

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

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

A. Yes.

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

A. That is correct.

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

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

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

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

A. One.

Q. And where is that one?

A. Canton, Ohio.

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

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

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

A. Yes. We made adjustments.

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

Is that Mountaintop Beverage?

A. Yes, it is.

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

A. That's my understanding, yes.

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

A. I do not know the breakdown.

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

Did you mean Western Pennsylvania?

A. Yes.

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

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

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

MS. VULIN: Yes, Your Honor.

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

THE WITNESS: That's correct.

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

BY MS. VULIN:

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

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

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

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

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

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

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

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

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

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

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

A. Correct.

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

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

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

A. I would agree with that. Yes.

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

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

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

challenging.

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

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

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

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

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

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

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

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

A. Yes.

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

A. At times.

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

A. No.

Q. Why not?

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

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

A. In our experience.

Q. And so that's --

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

that because I'm --

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

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

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

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

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

A. I really haven't reflected on that.

Q. Do you charge premiums for quality?

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

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

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

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

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

A. It's not called out.

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

A. Yes.

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

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

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

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

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

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

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

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

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

A. You are talking about like the FARM program?

Q. Yeah. The all capital FARM, correct.

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

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

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

and so there's different elements of the program.

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

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

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

THE WITNESS: Thank you.

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

BY MS. VULIN:

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

A. Negative PPDs, yes.

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

A. We did not, no.

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

A. Yes.

Q. And then there was also a butter powder facility?
A. So we have got a butter powder facility in Ovid, Michigan, and then we have got the plant Canton, Ohio, and then our plant in Constantine, Michigan that does liquid bulk dairy products.
Q. And --
A. Cream and condensed skim, those types of products.
Q. Are those plants ever pooled?
A. Can you repeat that?
Q. The butter powder and the cheese plants, are they ever pooled?
A. The butter powder plant is depooled as market conditions warrant, yes.
Q. And so in order to -- you say when market conditions warrant.
You mean you are able to opportunistically pool and depool depending on what would bring the most return to your members, correct?
A. Yes.
Q. But Class -- an operation that's exclusively Class I like Turner Dairy, can't depool, right? Has to always participate in the market --
A. Yes.
Q. -- in the pool?
A. So our plant, our fluid plant in Canton, Ohio, never is depooled.
Q. And do you -- have you done any analysis that Class I differentials, as proposed, will have any kind of

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

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

MS. VULIN: Nothing further. Thank you.

CROSS-EXAMINATION

BY MR. MILTNER:

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

A. Good morning.

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

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

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

A. Yes.

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

A. Yes, I was.

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

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

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

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

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

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

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

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

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

A. Yes.

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

A. Yes.

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

A. Yes.

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

A. Yes.

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

A. Not necessarily.

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

A. Yes. Correct.

Q. Okay. And transportation from -- from Wisconsin

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

A. Different roads. Yes.

Q. Different tolls, correct?

A. Yes.

Q. Different traffic patterns.

A. Could be. Yep.

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

A. Yes.

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

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

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

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

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

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

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

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

THE WITNESS: It's Ozaukee.

MR. MILTNER: Ozaukee, thank you.

THE COURT: OZ --

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

THE COURT: Is that how you spell it?

THE WITNESS: Yes.

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

BY MR. MILTNER:

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

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

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

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

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

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

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

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

A. No.

Q. Okay.

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

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

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

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

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

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

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

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

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

A. No.

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

A. That's correct.

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

A. Yes.

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

A. Yes.

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

A. Yes.
Q. Ottawa County, the model suggested a differential of $3.40, and Proposal 19 is $3.10.
Does that sound correct?
A. Yes.
Q. Same -- actually the same as for Kent County and Grand Rapids, right?
A. Right.
Q. Does Michigan Milk Producers provide milk to the plant in Ottawa County, the Class I plant? I'm sorry, yes -- in --
A. No.
Q. They do not.
Do you provide the milk to the Class I plants in Kent County?
A. No.
Q. I want to talk about depooling, if I could.
Now, if you could please turn to page 13 of your statement.
Now, currently the difference in the Class I differential from Cuyahoga County from Cleveland, the base zone to Kent County is $0.20, correct?
A. Correct.
Q. It's $2 in Cleveland and $1.80 in Grand Rapids, right?
A. Correct.
Q. So in general, if the PPD is lower than $0.20, it would make sense to depool milk around the Grand Rapids

area, correct?

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

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

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

You are nodding. Is that --

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

Q. Absolutely. We know that.

A. So you are talking about -- yes.

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

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

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

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

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

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

THE COURT: I love it when that happens.

BY MR. MILTNER:

Q. So it goes to $0.60?

A. Right.

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

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

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

A. I don't believe so.

Q. You don't? Okay.

Thank you.

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

THE WITNESS: Thank you.

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

I see none. I invite the Agricultural Marketing Service.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good morning.

A. Good morning.

Q. Thank you for being here today.
A. Thank you.
Q. Can we turn to page 8? Here you are talking about, toward the top of the page, all the different plant changes in the past ten years or so. In particular in that second paragraph, you talk about new plants in Indiana and Ohio, and you say they contributed to the closing of two plants, Class I plants, in Michigan.
I was wondering if you could expand a little bit on that.
A. So there's a new Class I plant that was constructed in Tipp City, Ohio, near Dayton, which moved. Previously that -- that fluid milk production was in Michigan. And to me, that -- building those plants south, just by removing the volume out of those Michigan plants, contributed to their closing.
Q. And so that milk that used to go to those Michigan plants now goes to some form of manufacturing?
A. Yes.
Q. And I know you indicated that, I think you were not in the discussions of the runs of the models necessarily; is that correct?
A. That's correct.
Q. So -- but do you know if this current layout of Michigan and Ohio plants, were they reflected in the model? Did that have the most up-to-date plants? Do you know if some were added or removed from the original list that Dr. Nicholson had?

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

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

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

A. Correct.

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

How far is that haul?

A. Let me see if I have that.

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

Q. Okay. Thank you.

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

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

A. No.

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

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

Would that be an accurate summation of that?

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

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

Did I hear that correctly?

A. Yes.

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

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

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

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

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

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

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

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

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

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

Q. And plants have options to look for suppliers?

A. Yes.

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

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

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

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

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

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

How far is that trip?

A. It's 287 miles.

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

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

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

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

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

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

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

A. That's correct.

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

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

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

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

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

A. Yes.

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

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

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

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

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

A. Yes.

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

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

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

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

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

Q. Okay.

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

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

A. Yes.

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

A. Right. Correct.

Q. Okay. I got it.

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

A. Yes.

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

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

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

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

A. Yes.

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

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

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

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

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

A. Yes.

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

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

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

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

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

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

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

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

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

A. Right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q. Okay. Thank you. Thank you.

MS. TAYLOR: That's it from AMS.

THE WITNESS: Thank you.

THE COURT: Ms. Vulin?

CROSS-EXAMINATION

BY MS. VULIN:

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

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

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

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

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

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

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

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

A. Yes.

MS. VULIN: Thank you. Nothing further.

THE COURT: Ms. Hancock?

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

REDIRECT EXAMINATION

BY MS. HANCOCK:

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

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

A. Correct. Yes.

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

A. Yes.

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

A. Yes.
Q. And even as you suggested, a decrease over the model which is not as beneficial for your members; is that right?
A. Yes.
Q. And you made that recommendation knowing it wasn't as beneficial to your members because you believed it was the right amount of increase and differential, even though the model came out with something higher?
A. Yes.
Q. If Make Allowances are increased through this -- through this hearing in the final decision, will that also decrease the amount of Class I price that's paid to dairy farmers?
A. Yes.
Q. So will that, in turn, create even more of a need to increase the Class I differentials at the same time that any Make Allowance would have a decreasing effect on the pay price?
A. Yes. So obviously Class I differential increase increases the Class I price, and then Make Allowances for butter powder, cheese, ends up reducing the blend price that a farmer sees. So, yes.
Q. And at one time Ms. Vulin was asking you, in her questions, about whether the model had accounted for what the state-regulated size of tankers were.
Do you recall that?
A. Yes.

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

A. Yes.

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

A. That's right.

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

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

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

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

A. That is right.
Q. Another aspect of the cross-examination that was posed to you was whether -- whether farmers shouldn't just be reimbursed for the additional hauling costs directly so that they get the full amount of compensation for the hauling costs.
Do you remember that?
A. Yes.
Q. And you understand that one of the goals from the Federal Order system is to ensure that dairy farmers receive similar payments for their raw product milk cost without regard to the end use; is that right?
A. That's right.
Q. That's all I have for questions for you.
MS. HANCOCK: Your Honor, we would move for the admission of Exhibit 406.
THE COURT: Is there any objection?
There is none. Exhibit 406, also marked NMPF-45, is admitted into evidence.
(Thereafter, Exhibit Number 406 was received into evidence.)
THE COURT: Ms. Hancock, I would like you to tell us what we'll do next and then take a break before you do it.
MS. HANCOCK: Thank you, Your Honor.
We will have Mr. Ed Gallagher as our next witness.
THE COURT: All right. Good.
Now, do you need to distribute anything for his

testimony?

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

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

Should we take 15 minutes now or do you want 10?

12 minutes. All right. Please come back at 11:30. We go off record at 11:18.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

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

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

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

THE COURT: All right. So marked.

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

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

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

Exhibit 408.

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

THE COURT: Also known as NMPF-54A.

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

THE COURT: Yes. 409.

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

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

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

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

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

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

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

THE COURT: Have you previously testified in this proceeding?

THE WITNESS: I have, Your Honor.

THE COURT: You remain sworn.

THE WITNESS: Thank you.

EDWARD GALLAGHER,

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

DIRECT EXAMINATION

BY MS. HANCOCK:

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

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

A. 407?

Q. I'm sorry, 407.

A. I did prepare 407, yes.

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

A. Yes.

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

A. Okay.

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

A. Thank you.

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

Dairy Farmers of America is a global dairy

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE WITNESS: Yes, it is.

THE COURT: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If I may just, make a comment.

THE COURT: Yes.

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

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

Back to my statement.

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

And if I could deviate from my statement.

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

Back to my statement.

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

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

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

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

THE WITNESS: "WI," for Wisconsin.

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

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

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

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

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

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

blend price impacts of adopting higher Make Allowances.

Let me ask a question. I have got Appendix 1. Would you like me to read the narrative of Appendix 1 into the record or --

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

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

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

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

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

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

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

Back to the narrative.

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

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

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

And I am available for questions, Your Honor.

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

Direct testimony continued?

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

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

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

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

(Whereupon, the lunch recess was taken.)

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MONDAY, DECEMBER 4, 2023 - - AFTERNOON SESSION

THE COURT: Let's go back on record.

We're back on record at 1:07.

Ms. Hancock, you may resume direct.

MS. HANCOCK: Thank you, Your Honor.

BY MS. HANCOCK:

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

UNIDENTIFIED SPEAKER: Colorado.

MS. HANCOCK: Oh. What did I say?

UNIDENTIFIED SPEAKER: California.

BY MS. HANCOCK:

Q. Let me start again.

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

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

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

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

THE WITNESS: Okay. So the model is a

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

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

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

Is this an example of that?

A. Yes, it is.

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

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

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

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

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

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

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

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

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

A. Yes.

Q. Okay. Let's turn --

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

Q. Yeah, sure.

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

MS. HANCOCK: In Exhibit 407?

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

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

THE WITNESS: Yeah.

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

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

THE COURT: Spelled?

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

THE COURT: Stearns, Minnesota.

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

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

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

THE WITNESS: Yes.

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

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

THE COURT: Would you?

THE WITNESS: I would.

THE COURT: That would be helpful.

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

THE COURT: That would be great.

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

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

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

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

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

BY MS. HANCOCK:

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

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

proposed by National Milk in Exhibit 408.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

And so that was the market intelligence of the cooperatives in the region coming to a determination of how to best use the model as a base, but fit the model to the needs of the marketplace. And that's no different than what we're doing -- or what we have done in the National Milk Producers Federation group to date in the proposal that we have developed and our promoting here at this hearing.

Q. How did that work out? Do you feel like that the competitive marketplace and the differentials were set properly in that instance?

A. I do. I do. And as we -- as we sort of had the view back then, the market has moved -- the supply has moved much farther away from where the Class I demand is. So we made the right call. We made the right adjustments.

Q. In the current model that Dr. Nicholson has produced, there is a model output that takes into account both May and October.

And I'm wondering if you could give us some insight as to why it was important to use the spring and fall time period for the model results?

A. Yeah. There was an interest by the task force as to whether the model would show different values for those two different time periods, and May was selected because it was the springtime, it was a flush month, and October was selected because it was sort of during a tighter supply time, just seasonally tighter supply, and seasonally tighter demand, typically during -- you know, being August-ish, through the fall there's additional demand for the forthcoming holidays, end-of-the-year holidays that generally are good demand points for dairy. And so the market generally is tighter then, and generally it is seasonally lower milk production. And so we were curious if the model would show a different value between the two time periods. And it we did, as we thought it would.

Q. And is that why National Milk used the average of those two, spring and fall?

A. Yes. So, now, you got to start somewhere to start using your market intelligence. And so what we decided as the starting point, right, we first started with identifying what we wanted to use as anchor cities, and the anchor cities were locations where order boundaries merged.

And once we identified the anchor cities, then we generally looked at what is the average between -- simple

average of the May month and the October month, and we started there. And we started there in many areas across the country -- in many regions across the country, we started from that point to evaluate using our market intelligence as to whether it was an appropriate value, whether it should be higher or lower, whether the differences between two plants were appropriate or not, whether it unfairly impacted producer blend prices. So there's many, many, things that were taken into consideration to come up with the final -- the final product.

And even the anchor cities -- again, everything had a starting point to work from, and even the anchor cities, you know, we used the term anchor. It didn't mean we were, you know, putting an anchor in the ground and it wasn't going to change. It was just -- it was a place for us to start, and it just helped us think through the process by just naming it something, and we called it anchor cities. But even some of those anchor cities had changes in the values from where we first started.

Q. And we have heard the model result numbers from the model itself, and then even as far back as order reform, referencing those model results referred to as shadow pricing.

What do you understand shadow pricing to mean?

A. Shadow pricing it is a mathematical formula, that, you know, the model acts like the milk marketing czar and can direct where the milk and ingredients goes in this

least-cost process to sort of identify these values. And what the model result output is, identifies after taking into account all classes of milk, all types of -- you know, all raw milk, all types of ingredients that can be produced and used to produce other dairy products, it takes into account all of these things and determines a value.

And what the value is, is if there was 100 pounds of additional milk at that particular location, that shadow price then says, how much would the system cost, the entire system cost, be reduced? And so if -- if the value was $3.70 for a particular location, the model -- then in the interpretation of the model, if there was 100 pounds of additional milk in that location, it would reduce the cost of the system by $3.70 per hundredweight. And it's that value, it's -- in the prior model, in the Federal Order Reform time period, it was those values that USDA used to determine -- to start their consideration of what the price surface would be across the United States.

Q. And is that shadow price the same thing as an actual market value for the price of milk in any given location?

A. No, it's not. It's a -- it's just -- it is a statistical value. And it is -- it has relevance because of the intricate analysis that goes on in the model, but it also needs to have a view from the people marketing the milk as to whether that really fits that location and the locations around it.

Q. We have heard a line of questioning over the last week or so where various witnesses have been asked, what's the failing in the model, that suggests that National Milk couldn't have just stuck with the model results.

Do you think that there are failings in the model that says that the model is untrustworthy?

A. No. The -- there's --- the model doesn't have failings. It just -- the model -- again, it's -- it treats everything as fungible, and that's not the real world. Right? So you have got -- I already described the Colorado situation and -- you know, I know, organic. Right? The organic Class I is going to go to an organic Class I handler, it's not going to go to wherever, right? You know, there's GMO-free milk. There's grassfed milk. There's A2 milk.

One of the Chip's customers has a -- has a unique producer supply of larger farms in the greater Ohio area that they work with to develop a -- provide incentives to develop a certain quality and certain characteristics in the milk supply. That handler doesn't -- wants that milk to come into their plant to make their product, so then they can use those qualities to promote, to promote the value of their product. And so they are not going to just let anybody's milk come in or they are not going to want to divert all their milk somewhere else. And so there's these constraints that just are out there that go beyond it just being this fungible marketplace.

And -- and so -- so the model needs to be -- the

model's results needs to be tweaked a little bit as -- as those things are considered. And that's what the market intelligence does or the people that market the -- market the milk -- are the primary marketers of the milk, that can add the value to make this even a better solution than just relying on the model's results.

Q. And you just gave an example of some specific purchasing characteristics of milk standards that a customer might have.

In those instances, it would be important that that milk is not commingled with other milk that doesn't meet these standards; is that fair?

A. That's fair.

Q. And the model itself assumes that every -- every truckload of milk is going to be filled to capacity in order to achieve those efficiencies that are built into the model?

A. Correct. And that doesn't always happen. And -- and Mr. Parks provided some really good testimony about different sizes of tankers, and he did a very nice job today.

Q. I'm wondering if you have any other examples of aspects that the model does not -- or effects in the marketplace that the model does not account for that were important factors in considering whether deviations needed to be made?

A. Yeah. Aside from the ones that I have mentioned, not wanting to repeat those that were brought up by

Mr. Parks, no, I can't remember everything he talked about.

Q. And what about receiving days and hours at the plant?

A. I was just going to go there.

Q. Sorry.

A. So -- so, you know, there's still Class I plants that only receive milk five or six days a week. It's not unusual for plants to be down for a day or two. They have different hours, especially in today's work world where it becomes -- the labor situation is tight, and workers can move for even better work times. They have to recognize different work schedules. And so there's not necessarily 24 hours receiving of milk at every plant across the United States, so that's a little different.

You know, something like even a simple -- so it's been a while for me since I have been marketing milk -- or in the process of working with a team that markets the milk, that's probably a better characterization, but I remember -- you know, I worked in the Northeast marketplace, and there are a lot of Amish dairy farmers who -- Lancaster County, Pennsylvania, and surrounding environments. And, you know, they would even have constraints because they wouldn't want their milk picked up on Sundays. And so the model just assumes that all kind of works out. Right? And it does all work out, but it takes -- it takes, you know, people managing the system to get it to work out.

Q. Are there tanker-size limitations at various receiving plants as well that would come into place?

A. Yeah, I'm sure there are. But I leave it to somebody else, maybe Mr. Stout can talk more about that when he gets back tomorrow.

Q. What about non-pooled milk, how would that factor in?

A. Yeah. So the model takes into account -- not -- the model does not recognize the existence of Federal Orders, so there's no such -- there's no such thing as non-pooled milk in the model. It is all milk. Right? There's no such thing as pooled milk. It is all milk. It doesn't take into account, you know, what types of marketing relationships may be impacted by Federal Orders.

Q. And what about priority at receiving supply plants, is that a factor as well?

A. It could be, yeah.

Q. Fair to say that there is a whole myriad of things that actually happen in the real world that influence strategic business decisions that are not accounted for in the model?

A. Yes.

Q. Okay. And those are the factors that were taken into account when setting -- when setting the proposed National Milk differentials?

A. Yes.

Q. Okay. I want to talk for a minute about whether -- what is happening at the retail level and

whether there is even room at the retail level to absorb any of these prices with a variety of uses.

Did you do anything to evaluate that over our break period?

A. I did. So I had a curiosity. I had a curiosity. I go into the supermarket where I live -- and my wife and my kids will tell you if they were here, that wherever I go, I go some place and look at the price of milk. Probably most of you do the same thing. So I have always had this curiosity about what are different milk prices at the retail.

And so I was looking at those different milk prices, and I remember the testimonies from Coca-Cola, Fairlife, HP Hood, Nestle, Schreiber talking about hedging Class I milk for some of their fast food customers. And I was looking at the types of milk that they probably would hedge, and I was kind of curious about there's quite a bit of a -- when you equate those volumes, those container sizes to gallons, and look at the price of those gallons to the price of regular milk, there is quite a difference in value at the retail level.

And so I -- I asked my contemporaries working with me on the National Milk task force if they wouldn't mind going to a supermarket or two over their -- during the month of November and just collecting some prices. So we did that.

And so we -- we surveyed it. It's -- it was just a simple survey of just, you know, give Gallagher some --

satisfy his curiosity. So --

Q. Mr. Gallagher, if you could just pause for a moment.

MS. HANCOCK: Your Honor, Mr. Prowant is handing out the summary of his price survey that we would like to have marked as the next exhibit.

THE COURT: Very good. So that will be 411. Let's go off record while that is distributed and get our copies.

We are off record at 1:47.

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

THE COURT: Let's go back on record. We're back on record at 1:48.

Ms. Hancock, I have marked my Exhibit 411, and I have also marked the same document as NMPF-54D as in David. 54D.

(Thereafter, Exhibit Number 411 was marked for identification.)

MS. HANCOCK: Thank you, Your Honor.

BY MS. HANCOCK:

Q. Mr. Gallagher, do you want to proceed with telling us about the survey that you conducted?

A. Yeah. So let me list the city areas where the data was collected: Minneapolis, Minnesota; Buffalo, New York; Cleveland, Ohio; Washington, D.C.; Boston, Massachusetts; Detroit, Michigan; Dallas, Texas; Fort Lauderdale, Florida -- who was in Fort Lauderdale, Florida without me -- Los Angeles, California; Tucson,

Arizona; Roanoke and Lynchburg, Virginia; and Fayetteville, New York, which is in the Syracuse, New York area.

And I asked that they go and they collect data that would show HTST whole milk gallons, the least expensive they could find on the shelves. And then I asked them to go and get the largest container they could find and record the price for Fairlife, for their regular Fairlife milk. Right? Lactaid, Nesquik. And then go to a foodservice, McDonald's or Wendy's or Burger King or a convenience store, and just look to see what a small container of milk, a 16-ounce or an 8-ounce container of milk was priced at.

And when we got the data back, we converted everything from whatever size the jug was to the gallon equivalent, and then adjusted the price to the gallon equivalent price, and then we averaged everything together.

And what this -- this information is on this exhibit is the average of all the cities, all the data we collected in all those cities.

And the point that I was interested in seeing and the point that came out from this that satisfied my curiosity was that the -- you know, the value-added milks, the value-added milks like Fairlife, they've got a tremendous product, Lactaid is a tremendous product, Nesquik, the foodservice milks, when you converted that -- those to a per gallon value, they were significantly more

than conventional milk, conventional gallon of milk.

And so I know there is interest from Class I handlers in being able to use risk management to manage their profit margins for their businesses. And the ones that testified, the entities that appear to testify wanting everyone to understand that they use risk management to manage their Class I price risk and to help protect their profitability tended to be the producers of these products, that I call higher value products.

And so in my risk management experience, right, they will still be able to hedge if we return to the higher-of. It, though, will cost them a little bit more to execute the hedges. I do not know what kind of hedges they are using now, but one of the strategies that I hope they do is that they would look at using an option strategy instead of a locked-in price strategy.

And with an option strategy, they can put a ceiling on their milk price. And if the Class III, IV average in the strategy is higher than where they put their ceiling on, then they are protected against the prices going up. But if the price doesn't go up, they enjoy the lower milk price that they pay for the milk coming into the plant. So they can get the best of both worlds.

With the higher-of, they can still do that, but they have to hedge an extra quantity of milk. So for instance, right now, if they had 100 pounds of Class I milk they wanted to hedge, they would cover 50 pounds with

a Class III hedge and 50 pounds with a Class IV hedge, 100 pounds. With the higher-of they would have to use this option strategy on 100 pounds of Class III milk and 100 pounds of Class IV milk. So they'd basically have to hedge an extra quantity of milk.

And the cost of that, using the options market, would be -- recently during the month of November, to take something that went out and looked at the first half of 2024, and then the second half of 2024, that extra option transaction would have cost them about $0.08 a gallon. And when I look at -- you know, I don't know what their -- I don't -- I do not know what Fairlife sells to the retail at and what the retail markup is. But I think there's probably some decent margin there, and I think they can afford to continue to hedge and continue to use the strategy and pay $0.08 a gallon more.

And there are other strategies that get more involved in sort of the use of option strategies where there are some transactions that you can take that you limit how much the milk price can go down using an option, and selling a put option, and you can use the revenue that you get from selling that put option to reduce the cost of the strategy of putting a ceiling that can -- can reduce the cost of that even more.

So I bring this up solely to offer you USDA, some comfort, in that there still will be opportunities for entities to hedge Class I even when the higher-of.

Q. Thank you, Mr. Gallagher.

MS. HANCOCK: Your Honor, with that, we would make him --

THE WITNESS: I have got one more thing I would like to cover, if I could, if you don't mind.

BY MS. HANCOCK:

Q. Sure.

A. One of the -- one of the -- one of the topics that we have been discussing is the reserve supply of milk. And I'm not sure where the number 30% came from, but the best I can come up with, there's two weekends in a week, and two out of seven is almost 30%. I don't know if that's where you get reserve supply or not. I'm open for education on that.

But if you look at where the marketplace is right now, you look at where the marketplace is right now, think about -- first think about when -- when the model that was used to determine the existing class price structure, producer price structure, back in 2000, think about the marketplace back in 2000. We had -- some of the younger members of the USDA team -- we had something called the Dairy Price Support Program.

Do you recall hearing when -- when the European community got rid of their quotas, and it just -- market dy- -- global market dynamics worked out that the European Union had to buy mountains of powder to take off the market because they didn't have a commercial demand, and that mountain grew to be about 900 million pounds of powder.

Back when we were doing Federal Order Reform and first implementing it here in the United States, we had a Dairy Price Support Program that bought nonfat dry milk powder, and we had a bigger mountain of powder back then than Europe had in the 2015 to 2018 time period. We had over a billion pounds of powder in government storage. So we had a lot of extra milk that didn't have a commercial demand.

So the price support program doesn't exist anymore. We have developed through a lot of hard work, through a lot of dairy companies, the U.S. Dairy Export Council, we have developed significant export markets where businesses and consumers around the globe have a regular demand for U.S. milk that is turned into nonfat dry milk, whey, lactose, and cheese.

Back in the early 2000s, depending on the time period, 1 to 5% of the U.S. milk production was surplus milk that was bought by the federal government because it had no commercial market. Now that's virtually zero. If they are buying anything, it's for an actual food program where there's a food demand that they are trying to meet.

And we have developed an export market that now consumes about 18% of the milk produced in the United States. That fulfills a regular demand from buyers and consumers and in other countries.

So if you think about today's marketplace, about -- when you think about all the milk in the United States, about 20% of that milk is used for Class I, about

10% is used for Class II, about 55% is used for Class III, and about 15% is used in Class IV.

The Class II milk, that 10%, is 100% consumer-demand driven. Class II plants don't buy milk that they don't need.

Class III has become 100% consumer-demand driven marketplace. Cheese -- maybe a cheese manufacturer will take a little inventory now and then, but they don't have -- they are not buying a lot of extra milk. They are buying the milk they need to meet a consumer demand.

So then you have 15% of the market is Class IV, and about 65% of that gets exported. And then of what's left, about at least half of that probably is a regular consumer demand.

So when you sort of work through all that, you get down to about 2.5% of the milk supply may be in what could be considered a reserve. And 2.5% of 20% is about 11%.

We don't have a lot of extra milk that can easily maneuver to meet surges in demand for anything. And we're in a marketplace right now where milk production is stagnant, dairy farmers have changed their breeding programs to breed as much for beef, actually probably more for beef than replacement cows, and that's not going to change for a while. That's not going to change until the price of beef declines significantly, and then it's going to take two years after that before the -- maybe, at least two years, before the milking herd changes, before they

change their breeding practices, and maybe don't breed as significantly to beef.

And so we're going to have fairly flat cow numbers here in the United States for years to come that's going to result in not much of a change in milk production, and yet we're still going to see -- granted, we hope we're going to see demand growth in Class I. I can tell you dairy brands -- DFA dairy brands works at that every single day.

But we're going to see more milk demanded in the United States for Class II, Class III, for butter, for powder, for bakery opportunities. We're going to see the demand of milk grow here. And there's going to be more of our milk demanded by businesses and consumers in other countries. We do not have a measurable reserve supply of milk to fall back on. We're going to have to make sure we have a pricing system that supports the growth of milk in the United States to meet just the Class I demands we're going to have even if the market doesn't grow beyond what it is already.

And so we've got this tight marketplace, and I wanted to make sure that -- that is an important factor, and I wanted to make sure it was on the record.

Q. Thank you.

A. Thank you for giving me that opportunity.

Q. Of course.

And just so we can tie it back around into your testimony in Exhibit 407, is the point there that, one,

even that -- with an increase in price differentials, that we're not going to further compromise the Class I industry in a way that would be harmful to the movement of fluid milk -- to the demand for fluid milk?

A. Correct.

Q. And, further to that point, in your exhibit in 411, even increasing -- even increasing the Class I milk, there still is room for that increased price even if it was to be passed through all the way to the retail level to absorb into those prices?

A. That's correct. The information from Dr. Kaiser on demand elasticities shows that fluid milk is significantly inelastic. Although, you know, there will be some decrease in purchases because as prices go up, if it will be a smaller, smaller change, and the overall value of milk to dairy farmers will be improved.

Q. Thank you, Mr. Gallagher.

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

THE COURT: I'd like to take a five-minute stretch break. Don't go very far. Please be back ready to go on record at 2:10.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

All right. We're back on record at 2:13.

MS. VULIN: Thank you, Your Honor.

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CROSS-EXAMINATION

BY MS. VULIN:

Q. Good afternoon, Mr. Gallagher.

A. Good afternoon, Ms. Vulin. How are you?

Q. I'm good. How are you doing?

A. I'm well, thank you. Happy holidays.

Q. Likewise.

A. Thank you.

Q. Ashley Vulin for the Milk Innovation Group, just for the record.

Just a couple quick questions about the last exhibits -- or the last exhibit you introduced and discussed, Exhibit 411.

A. Yep. Go ahead while I look for it.

Q. So you made some statements about Fairlife's margins and what you think might be possible based on their hedging, but then you said you don't have really any insight into Fairlife's margins.

So I just want to be clear on the record, do you have any personal knowledge, any information about what Fairlife's margins are?

A. I do not.

Q. And do you have any personal knowledge about what Lactaid's margins are?

A. I do not.

Q. Do you have any percentage knowledge about what Nesquik's margins are?

A. I do not.

Q. Okay. Thank you. You can set that aside.

And then just for my own understanding, Exhibit 408, which is NMPF-54A that you attached to your testimony, is that USDA Exhibit 46, the same document?

A. Help. Yes.

Q. I believe so. I just wanted to make sure you hadn't changed anything or that it was the identical document USDA produced.

A. Correct. I did not change anything. It's the -- it's the identical document. I took it off of the website.

Q. And then just before we took a break you had shared some utilizations of the various classes.

A. Yes.

Q. And these were from notes you had?

A. Yes.

Q. And were those -- I ask just because referencing the exact numbers again I know is helpful.

Was that utilization of all milk in the United States or utilization of pooled milk?

A. All milk in the United States. And it's -- it's DFA -- it's a DFA analysis, and I would have referenced it in my testimony when I testified about the Make Allowances. You will see those percentages. I can't remember the exact page but -- and I -- it's, you know, DFA's view of what the national utilizations are of everything: Pooled, non-pool, everything.

Q. And you had said that Class II and Class III are

consumer demand driven.

And I had missed, did you also say Class I is consumer-demand driven?

A. I didn't say that, but it definitely is consumer-demand driven, yes. Thank you for updating that and reminding me of that. How silly of me not to mention that even the largest Class I processor.

Q. So then turning to your testimony, I would like to start with your role in developing the differentials.

So can you just tell us which pencil crew you were on, and how early did you get involved and what was your arc of that journey?

A. Sure. So I was involved from the beginning with the task force, and participated in the first meeting, the Chicago meeting, to talk about the anchor cities.

Q. Can I ask when was that?

A. August or September of 2021. September of 2021. So -- so then the task force was split up into National Milk members by region, and of course, being DFA and being a national cooperative, we were -- we needed to have representatives in every region. And so to some degree I was involved in every region, but I -- you know, so since 2010 I have been the risk management person, and I haven't been involved in marketing the milk, and certainly where I would have had some historical knowledge would have been prior to that with Dairylea, I really don't have a lot anymore.

And so as I was asked to sort of lead this project

for DFA, I immediately knew I needed help. And so I drafted individuals from each one of our council areas to participate in the discussions for the regional discussions. So you have already met Skylar, Ms. Ryll, who is in the Northeast; Mr. Erba who was in the Mideast; Mr. Brinker and Mr. Stout were in the Central area, Upper Midwest area; Mr. Stout was also involved a little bit in some of the non-pool areas; Mr. Hiramoto was involved out West; Mr. Yates, Ernie Yates, was involved in the Southeast and Southwest, as was Mr. Herting; and to some degree, although not to a significant amount, Mr. John Kang was also peripherally involved in the Southwest.

So my major role was in the Northeast and the Mideast, getting things started. Sort of being the person that got the groups together the first time, but I didn't have much to add beyond that other than sort of encouraging them and setting some timelines to get them together.

I would say it would be similar to the other regions, I obviously was a little bit more involved as we got into Colorado as I have noted.

Late in the game, I can't remember what Mr. Hoeger -- if he covered this, he probably did, but late in the game -- so late in the game would have been, you know, before we filed our final proposal -- but I can't remember even when we did that anymore, it might have been April of '22 -- we came to the conclusion that when we looked at some of the Upper Midwest pricing, we

had a price difference between Chicago and Minnesota that probably would result in most of the milk being depooled most of the time.

And so after realizing that, we then, taking into account the importance of more of an equitable pricing surface to producers, we made some adjustments. And I can't remember exactly what they were. You would have to go back and look at Mr. -- you would have to go back and look at Chris's testimony. He's -- he talked about how we adjusted Chicago and how we would have -- I think he probably would have talked about how we adjusted Minneapolis -- well, I don't know if we adjusted Minneapolis or just Chicago, I can't remember at this point.

But once we did that, then we made some changes and we needed to make some other adjustments. And so I went and Chris went through and sort of made these adjustments in Iowa, and I made some adjustments in Eastern Nebraska to line up with Iowa. And I can't remember if we lowered or raised. We probably lowered them a little bit.

Q. Okay. And --

A. And then so let me -- and then -- you know, so then I was peripherally involved in some of the conversations in -- in the Western region, and I helped sort of give support about how we would smooth prices in the unregulated areas, so it looked like a smoother pricing surface, relative to one that was choppier.

THE COURT: One that was what?
THE WITNESS: Choppier.
THE COURT: Choppier.
BY MS. VULIN:
Q. A lot of details there. I tried to write down some questions, so I'll maybe go back a little bit and then go through that.
You said that your expertise is not in marketing milk, it's in risk management?
A. Correct.
Q. And so why are you leading the charge then in this marketing endeavor?
A. DFA needed somebody to coordinate the entire policy procedure, and so I was -- after some retirements at DFA, I was sort of the next person standing with that kind of experience, and so I got drafted in January 2022. '22? 2021. When did we start? January 2022. '21?
Yeah, January 2021, I got drafted by our CEO to sort of lead the process. And so I was using -- and we have got a lot of expertise in the house, and I was -- I was using the expertise, and I was trying to let them -- and I did, I let them figure this stuff out. I just sort of pushed them along to get them to make sure they were meeting and discussing and interacting with one another.
Q. And --
THE COURT: Say that again, leading and discussing?
THE WITNESS: And interacting with one another.

BY MS. VULIN:

Q. Okay. And then you were involved in the September 2021 meeting that selected the anchor cities and set the differentials for those?

A. I wouldn't call it set. But we came up with values to start with. As I remember that meeting, I had something I had to do to get home for. It probably was my -- my daughter's high school soccer game, and I left that meeting before it was completed. And there was -- =we hadn't gotten to Kansas City yet by the time I had left. So anyways, I've got limited information, and the best person to ask questions about the determination of the anchor cities is going to be Mr. Sims. He led the Class I differential project for our task force. And he's -- he'll be here soon. He's here. He'll be up here soon.

Q. And then in April there were, at that point, differentials set.

But then you noticed that some changes you believe needed to be made, correct?

A. Somewhere around there, yeah. It was a live document, right? So we tweaked it here and there as we thought we needed to.

Q. And you said Mr. Hoeger made changes in Iowa; is that correct?

A. Yes.

Q. And did he alone make those changes?

A. He -- he made adjustments and then had

conversations with, I'm not quite sure who all, but I know Land O'Lakes and DFA.

Q. And you said you personally made changes then to the Eastern Nebraska region?

A. Yep, and I -- yes. And I had conversations with Mr. Hoeger.

Q. Anyone else?

A. The DFA team.

Q. Who is that?

A. Oh, Mr. Brinker would have been the individual with DFA of most concern.

Q. When you and Mr. Hoeger -- sorry, I'll -- when you made the changes to the Eastern Nebraska region, did you consult anyone outside of DFA?

A. Mr. Hoeger.

Q. Anyone else?

A. Probably Mr. Sims to let him know, hey, we had conversations within the task force about making some changes. Maybe Mr. Sleper. I'm sure I did.

Q. Were you primarily the person that selected those values though?

A. Yeah, I think so.

Q. After April was there anyone else who took on changes to any regions similar to what you and Mr. Hoeger did?

A. I'm not sure. I don't know. I can't remember. It's a combination of I can't remember and I don't know. And the timing is a little fuzzy too.

Q. And do you have Exhibit 300 and 301 in front of you?

THE COURT: I can get them.

MS. VULIN: Thank you, Your Honor. And while --

THE WITNESS: I was hoping I wasn't going to be left out.

MS. VULIN: And while you are there, if you wouldn't mind Exhibit 353, which is the anchor cities.

THE COURT: So there are these.

And you want 353?

MS. VULIN: Yes, please, Your Honor.

THE COURT: So may we have a record copy of that for the witness, please, 353.

MS. VULIN: May I approach?

THE COURT: You may. Thank you.

And I think I need a copy of 353. I -- I think of -- never mind. I promise to give it back.

THE WITNESS: Me, too.

BY MS. VULIN:

Q. Let's start with Exhibit 353, which is the anchor cities. You said you were involved in the meeting that selected these and established the initial and potentially final value, depending, correct?

A. Potentially. I don't know -- yeah. If they are still the same, then I guess it was the final value.

Q. And the -- for Denver, Colorado which is where a lot of your testimony focuses, that state, were you involved in setting that differential?

A. No.
Q. Who was?
A. I don't know. I left before that had occurred.
Q. Are there any here you recall establishing?
A. Yes. So I didn't -- I -- I didn't have much to say because I didn't know the marketing dynamics in those regions, so I was more of an interested individual, watching the process and trying to understand the process knowing I was going to have to eventually go back and relay it to a couple of teams -- actually probably more than a couple, to some different -- at least to the DFA people, and then a couple teams.

So when we first -- initial assignments coming out of that, that I was the person responsible for getting the Northeast and the Mideast together to go through the differentials as a -- fortunately I had some good people to help me, and I quickly ditched the process off to them.
Q. And so there aren't any anchor cities that you recall specifically being part of the discussion to set?
A. I was listening, but I didn't have much involvement in what the values would be, as I recall.
Q. And I'm just trying to get at that discussion because we have been trying to find people who were at that meeting.

I know you may not have contributed, but do you recall hearing anything specific about how these values were set?
A. It -- it -- Mr. Sims will be up to testify later.

Why don't we leave it for Mr. Sims, because he would have been closer to all that.

Q. The Denver, Colorado, differential, do you know when that was set, at the value here?

A. Where it says Proposal Number 19, row across to Denver 330?

Q. Uh-huh. Yes.

A. When was that set?

Q. Yes.

A. Probably early 2022. So I would have been involved in determining that value.

Q. Do you recall if it -- oh.

A. But that wasn't part of the anchor city discussion in that first meeting. I can't recall what we -- what we used for that anchor city in that first discussion.

Q. But it either wasn't Denver, Colorado, or it wasn't Denver, Colorado at this value?

A. Yeah, I'm not sure what the value was.

Q. So then if you look at Exhibit 300, please.

Do you know who created this document?

A. I think it was you guys.

THE COURT: You think what?

THE WITNESS: It was MIG that printed this off, right?

BY MS. VULIN:

Q. It was MIG who printed it off, but it was a document posted on USDA's website as submitted by NMPF.

A. All right. So this mirrors a spreadsheet that DFA

was managing for National Milk. That mirrors the spreadsheet. I don't know if it's exactly what we -- what I -- I eventually shared with National Milk, if they made changes to it or not. But it mirrors a spreadsheet that was being kept at National Milk -- or excuse me -- at DFA, because we needed -- we had a -- we had a mapping package that made it easy for us to make maps.

Q. And so was DFA the author of this document?

A. DFA --

THE COURT: Start again and talk right into the mic.

THE WITNESS: DFA created -- I don't know author. What do you mean by "author"? We created -- we created a spreadsheet that looked like this (indicating). That would have contained information that looked like this (indicating).

BY MS. VULIN:

Q. And there was a spreadsheet that was submitted to USDA from NMPF, and we're just --

A. And this is what this is (indicating)?

Q. That is what this is. And we have asked every witness, and we are nearing the end of this road, and yet we still do not know who created and who filled in all the numbers in this document.

And do you think it was -- was it you, or do you know who it was?

A. It wasn't me, but it would have been somebody -- it would have been people at DFA.

Q. Who?
A. People at DFA.
THE COURT: Say it again.
THE WITNESS: People at DFA.
THE COURT: People at DFA?
THE WITNESS: People at DFA, yeah.
BY MS. VULIN:
Q. Do you have their names or their titles?
A. I'm not quite sure who in the end it was, but I think that's immaterial.
Q. Well, if these --
A. It's a DFA document.
Q. Exhibit 301 are the differentials that NMPF is proposing that USDA adopt. So let's turn and look at that, which I think is quite material.
THE COURT: Which is quite what?
MS. VULIN: Material.
THE COURT: Material. Thank you.
So both of you, be a little more deliberate in pronouncing what you are saying because it is important.
BY MS. VULIN:
Q. Now, is this similarly a DFA document?
A. Could be. I can't remember if we had two different spread -- we may have had a second spreadsheet. Yeah, it probably is.
Q. It's our understanding that Exhibit 300 is the proposal that was submitted in May of 2023, and Exhibit 301 is revised as submitted in June of 2023.

A. I can't recall when National Milk submitted the documents.

Q. And you are not sure if this is a DFA document or not?

A. I mean, it looks like a spreadsheet we would have had, but I can't tell you for sure if there are any changes made by National Milk on it.

Q. And if you go back to Exhibit 300, do you have that in front of you?

A. I do.

Q. Okay. Looking at Column P, it says "Proposed Versus Current," P as in Paul?

A. Yep. Got it.

Q. It's our understanding that that reflects a proposal that was being shared, if not submitted to DFA, but shared within the industry around March of 2023.

Do you know if that's accurate?

A. Could be. There was -- is this the document that you -- was on the USDA website?

Q. Both 300 and 301 were.

A. Yeah. So it was being shared around then by USDA, not by National Milk.

Q. This was not -- this was not posted by USDA in March of 2023 is my understanding. I -- my understanding is that this Column P -- and I'm trying to confirm -- was a version of the differentials that NMPF was considering in March of 2023, and I'm trying to see if you can confirm that for me or not.

A. Okay. Let's -- help me out. Let's -- I need to go through a line here so I understand.

So we have got proposed Class I in O and new proposal in S, and I imagine somewhere there are differences between O and S?

Q. Uh-huh.

A. All right. So then that would have been a change that the task force, between whenever O came out and whenever S -- that would have been a change in sort of the values that the task force wanted to recommend.

Q. Thank you.

And I had been referencing P, but that was the difference, not the original proposal --

A. So that's proposal -- and I'm not sure which --

Q. -- in O.

A. So P -- I don't know if --

Q. No, you corrected my mistake. I referenced P, and I meant to reference O.

A. Very good.

Q. So then Column S -- well, sorry, let's go to Column R as in Robert. It says "Average Monthly Pounds 2022." We also have not been able to find anyone who can tell us what this column represents.

A. Yeah.

Q. Do you know?

A. I don't know.

Q. And we'll go through these a bit more, but that's probably good for now until we can do it with a bit more

specificity.

A. I can put the ruler away for now?

Q. Set it aside, but don't get rid of it.

So then I'd like to talk about the USDSS.

Are you familiar with the University of Wisconsin USDSS model?

A. To some degree I am, yes.

Q. You say to "some degree."

To what degree?

A. Well, I think I have testified to my knowledge about it already, and probably -- I've probably given you my in-total brain dump on it already.

THE COURT: And on what topic were you testifying?

THE WITNESS: On the Class I differential topic, talking about the -- what I have been calling the Wisconsin model and --so anyways.

BY MS. VULIN:

Q. And whether you call it failures or, you know, shortcomings, what have you, our understanding is that --

THE COURT: Let me stop you. He didn't call it either of those.

MS. VULIN: I'm referencing prior testimony. I probably -- I can -- I'll do a better lead-in because that was a quote from prior testimony, not his statement just now.

THE COURT: Okay.

BY MS. VULIN:

Q. Your counsel had asked you earlier if there were

any failures that you believed existed in the USDSS.

Whether you call them failures or shortcomings or limitations of the model, our understanding is that NMPF believes that the model does not adequately address all necessary factors for setting Class I differentials, correct?

A. I'm not sure that's correct.

Q. Okay. How so?

A. There -- there are -- it forms -- it forms the base in a really, you know, high level mathematical model view of what sort of the value of milk is across the United States. But as it's -- Dr. Nicholson mentioned, it needs to be looked at with the intelligence of the people marketing to see if it fits right and that there's -- would be some adjustments.

And so it's -- it's a mathematical model as a start. And I wouldn't call any deviations from it failures. I just call it using the market intelligence of the major marketers of milk in the United States to fit that outline to a better form that works for the U.S. dairy industry.

Q. And NMPF's solution to that was to form the committees, the regional committees, and utilize their knowledge to fill in the gaps; is that accurate?

A. That is accurate.

Q. And did NMPF ever invite any proprietary Class I processor to participate in that process in order to ensure their knowledge was included in setting the Class I

differentials?

A. We couldn't do that.

Q. Why not?

A. They weren't members of the National Milk Producers Federation.

Q. And was there a requirement that you could only consult with members of the National Milk Producers Federation in developing a proposal for FMMOs?

A. That's what we decided to do.

Q. NMPF conferred with IDFA in discussing Make Allowances, correct?

A. Yes.

Q. They could have done so in the Class I processors for setting Class I differentials, could they have not?

A. Yeah. I don't know. Maybe. But keep in mind, you know, the -- you know, some of the large -- well, the largest the Class I processor in the United States was involved, maybe the second largest. The dairy cooperatives probably process almost half of the beverage milk in the United States, now, something close to that anyways. I don't know if it is a little over half or under half, and they market three-quarters of the milk in the United States.

So we had -- we had the expertise to be able to figure out how this thing would work and how it would work best for the industry. I think we did a good job.

Q. You think small Class I processors would not have regional expertise that could have contributed to

determining how to set the differentials?

A. They may have.

Q. And in pursuing the most accurate differentials possible, wouldn't you want their input as well?

A. I think we came to a pretty -- pretty good solution that is as accurate as you can come by with the group we had.

Q. And we have got a lot of information on the basis for the deviations from the model. And I'm just wondering if you can provide me with a list that I can work off of from your testimony of the principles or the bases for deviating from the model.

I understand one is the business relationship that allocates certain milk to certain customers. Is that right?

A. That -- that can be one, yes. So --

Q. Okay.

A. -- you know, we got -- we got together. Initially we came up with the anchor cities, and then we asked the regional teams, made up of regional experts of the National Milk cooperatives for those regions, to then work through how the model output looked relative to their view on how milk moved.

And so they -- they then looked at that, and they looked at does -- do the differences move milk the way they think they should move, is one of the considerations that they would have talked about and discussed.

They would have looked at are there additional

costs in nearby areas that would suggest one area, one county should be a little bit higher or a little bit lower than another county because it might cost a little bit more to serve that county.

We would have considered what the impacts would be -- right, so you got to keep in mind that the Class I price surface is also the producer price surface that, right, divides up how the pool is shared across all producers and all -- all milk that's pooled. And so there was considerations about how that -- the price surface would impact some of the pay prices at different locations to make sure -- try to hope -- try to work out what would be an equitable pay price situation. Our goal was not to have the new price surface reduce milk prices anywhere. I don't know -- I hope we got there.

And so those are some of the considerations. Mr. Parks testified to some. Mr. Hoeger testified to some. Ms. Ryll testified to some. Mr. Erba testified to some. Mr. Sims has, and he'll be back up to testify to some. Mr. Herting testified to some. Mr. Brinker. And so we have got a lot of information, and there's just -- and each region had their own little nuances that they were looking at.

Q. So I want to make sure I got the list correct, so, please -- if I misstate anything, it's not intentional, and let me know so I can make sure it's right.

The principles or factors that NMPF considered in setting the differentials were: Business relationships

that allocated certain milk supplies; number two, anchor cities and the relationship of differentials to those anchor cities; number three, the personal views of participants on how milk moves; number four, the slope or differences between certain counties; number five, additional costs of serving one county over another; and number six, the price surface impacts on pay prices.

Is that correct?

A. Plus whatever my colleagues have already entered into that I can't recall at the moment.

Q. And every regional committee considered these to varying degrees, there were differences in how the committees weighed or utilized these elements; is that right?

A. Each committee was tasked with fitting the surface that was most appropriate for their region. And then we came back as -- as -- we came back as a group, task force group, just to make sure that there weren't really -- I don't think we found any really unusual outliers that we said we needed to correct. And then we wanted to make sure that as -- as these regions abutted to one another, that there -- we didn't have two different prices for the same location.

Q. And were you aware of whether or not the USDSS already took into account sources of supply and demand centers in the USDSS differentials?

A. Well, I don't follow the question. I'm sorry.

Q. So I'm talking now about factor three, the

personal view of participants on how milk moves, right, where it starts -- my understanding is this is where it starts, and then where the demand is and where it is sold to, correct?

A. The model -- the model solves a mathematical equation that allocates milk and ingredients to certain demand nodes where -- and processing plants. And so it takes into account this global -- as part of the mathematical calculation, this sort of global -- U.S. global supply/demand balancing.

Q. And let me know if I have this right. My understanding is NMPF's critique of the model as the final solution isn't that the model had incorrect data, that the model was wrong about there was milk -- there's a farm here when really there wasn't, right, or there's a plant --

THE COURT: There's a farm here that what?

MS. VULIN: That really didn't exist.

BY MS. VULIN:

Q. Or there was an error in the model that it had a plant that no longer existed?

A. No, we weren't --

Q. The shortcoming was that the model would allocate milk efficiently, in ways that NMPF thought real world business relationships were not going to allocate the milk; is that accurate?

A. No.

Q. Okay.

A. So --
Q. Please correct me.
A. So we weren't worried -- we didn't -- we didn't -- we weren't worried about if a farm was in that spot or not, or if a plant was in that spot or not. I think we worked with the researchers to update their plant list, so we were comfortable that there was an appropriate plant location list.

And so, you know, USDA used the model's output during Federal Order Reform as a basis to determine the Class I differential or producer price surface, that for the most part we're operating under now, 25 years later, or will be 25-plus by the time we get a decision and get something implemented, if indeed this gets implemented.

And so in doing that, they also took in information from the industry, of the marketing expertise of the individuals in the industry, and made some adjustments in what they ended up implementing under Federal Order Reform. And we just repeated the process with an updated model.
Q. I'm still trying to get at "repeated the process." When you -- when you deviated from the model -- I'll start that again.

You testified specifically that the existence of certain large cheese plants in Colorado justified your deviation from the model, correct?
A. Yes.
Q. And what part of the Agricultural Marketing

Agreement Act speaks to considering cheese production when setting Class I differentials?

A. So the Agricultural Marketing Agreement Act speaks to an adequate supply of fluid milk to meet the demands of the marketplace for all milk, for all types of milk. And so if we -- if in Colorado we change the price surface that results in a $0.40 per hundredweight decrease in milk prices to dairy farmers, on top of a Make Allowance change that will be at least $0.50 a hundredweight, we think, that $0.90 or more decline in milk prices is an untenable value.

Mr. Podtburg testified a few months ago. He's a DFA farmer-owner from Colorado. And he entered into the record some accounting data from Genske Mulder for the state of Colorado.

THE COURT: Genske what?

THE WITNESS: Genske Mulder is an accounting firm who collected data from their clients in Colorado and published the data, and he presented that in testimony a couple months ago.

And it included what the net profit would be for those dairies for the five years through 2022, and the average was about $1 a hundredweight.

And I can tell you most of the dairies in Colorado this year have lost money. So if we re-computed the six-year average, it would be less than $1 a hundredweight.

And so if we're going to make a material change to

Federal Order prices that reduces the profitability of dairy farms in Colorado by something close to $1, there will be less milk produced in Colorado.

BY MS. VULIN:

Q. And I want to circle back then again to what part of the Agricultural Marketing Agreement Act speaks to adequate supply for all uses of milk, because my understanding is that it speaks to adequate supply of milk for fluid use.

A. It's adequate supply of milk for the marketplace.

Q. And it's your testimony that the AMAA tasks USDA with ensuring that there's an adequate supply of fluid milk for the entire milk marketplace?

A. For the Federal Order.

Q. You say "for the Federal Order."

Does that mean for all classes within the Federal Order or Class I?

A. For all demands in that region.

Q. What does that mean, "all demands in that region"? What --

A. So I'll say to meet --

Q. -- region and what demands?

A. I'm sorry. I spoke over you.

Could you repeat the question, please?

Q. Yes. When has USDA ever said that the AMAA requires USDA to set Federal Milk Marketing Order policy to fulfill milk needs for all classes and all uses as opposed to Class I fluid use?

A. When have they ever not said it?
Q. And if the AMAA is silent, you believe that USDA is tasked with doing what the AMAA is silent about?
A. Well, the AMAA isn't silent. It talks about an adequate supply of milk.
Q. And my question is, for fluid use or all uses?
A. It goes beyond just fluid use.
Q. To what?
A. It goes to all the needs -- all the demands in that marketing order. They have got multiple -- you have got four -- you have now four classes of milk, and so it's setting prices on all four classes of milk to bring forth the supply. And there's lots of competing demands for that supply. And if there's not enough milk to meet all the supplies in that marketplace, then that's going to create some disorderly marketing conditions, and Class I may not get its milk.

MS. VULIN: I have an exhibit, Your Honor, two exhibits. I'm not sure if you would like to go off the record so we can hand those out.

THE COURT: Yes. Let's do that.

And while they are distributing, the rest of you can stretch. We're doing five minutes right now. Please be back and ready to go at 3:03.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 3:04.

Ms. Vulin, you may proceed.

MS. VULIN: Thank you, Your Honor.

We circulated exhibits numbered MIG-62 and MIG-63, and I know they were being marked. I'm not sure if they are ready for -- are they on the table or should I come grab them?

So, Your Honor, MIG-62, I think is Exhibit 10,384. I actually don't remember, so that's what I guessed.

THE COURT: I think it is 412; is that right? All right. So 412 will be MIG-62. And you had another one?

MS. VULIN: And MIG-63, which I believe would then be Hearing Exhibit Number 413.

THE WITNESS: Legal humor is almost as funny as Federal Order economist humor.

THE COURT: Does the witness have copies?

THE WITNESS: I do not.

THE COURT: The witness needs --

THE WITNESS: Look at all these willing people to supply the information.

THE COURT: All right. Ms. Vulin, I have marked as Exhibit 412, MIG-62.

(Thereafter, Exhibit Number 412 was marked for identification.)

THE COURT: I have marked as Exhibit 413, MIG-63.

(Thereafter, Exhibit Number 413 was marked for identification.)

THE COURT: And you may proceed.

MS. VULIN: Thank you, Your Honor.

///

BY MS. VULIN:

Q. So looking at page 3 of your testimony, just to get a reference for Weld, Colorado, because that's what I would like to discuss next.

A. I'm sorry, what location?

Q. Weld, Colorado?

A. Weld.

Q. If you look in Exhibit 407 your testimony?

A. Yeah, I got it.

Q. On page 3?

A. Yep.

Q. I see here you listed Weld, Colorado, as one you specifically called out in order to discuss or review why you had adjusted the differential.

Is that correct?

A. Yes.

Q. And the current differential for Weld County is $2.45, correct?

A. Yes.

Q. And the average of the model output appears to be $2.35; is that correct?

A. Yes.

Q. And NMPF proposes $3.20, correct?

A. Yes.

Q. So $0.75 above what the model average is, I believe.

A. Yes. Good mathematician.

Q. So looking at Weld County, what is the largest

city in Weld County, for those of us not from Colorado? Anything we would know?

THE COURT: I'm sorry, I have to go back. So we add $0.75 to $2.35; is that right?

MS. VULIN: It would be $0.85, Your Honor.

THE COURT: Oh.

MS. VULIN: Is that right?

THE WITNESS: No, 75 -- 75 and 45 is --

THE COURT: Well, we're going from the model to the proposal?

THE WITNESS: Oh.

THE COURT: The model average?

MS. VULIN: Correct, the model average.

THE WITNESS: Okay.

THE COURT: And what is the difference, Mr. Witness, between the average of the model?

THE WITNESS: 60, 65 -- no, 85. You are correct.

THE COURT: Oh, good.

THE WITNESS: You're a mathematician as well.

THE COURT: Thank you very much.

MS. VULIN: For the record, no one approached, Your Honor.

THE COURT: All right. Sorry. Okay.

BY MS. VULIN:

Q. Nonetheless, NMPF proposes, I'll call it significant, but an increase above either the current differential or the model average, correct?

A. There's a -- yes.

Q. And so if we could turn to Exhibit 412, please.

Do you recognize this document at all?

A. I have seen it for the first time today.

Q. Have you ever seen a document of this type before, if not this specific one?

A. I have. I see it's issued by Dr. Nicholson. So I know Dr. Nicholson, he's a good guy.

Q. And this is a Marketing Service Bulletin put out by the Central FMMO, correct?

A. I believe it is, yes. It would be. Yep.

Q. And I'll represent to you that it is.

A. Yep. Good.

Q. And this -- if you look at the third row down -- or excuse me -- if you look at the side, in vertical text you will see it says "May 2002."

Do you see that?

A. I do.

Q. And if you turn to page 2, please.

You will see that there's a table that has the Title "14 Counties Marketed 25% of the California Plus Federal Order Milk during December 2001."

Do you see that?

A. I do.

Q. And this was before there was a California Federal Order, correct?

A. That is correct.

Q. And this is published in 2002 but based on data from December 2001?

A. That's what it appears, yes.
Q. And so in this table we don't see any Colorado counties represented in the top 14 counties, do we?
A. I do not see one.
Q. But a number of California counties are on there, correct?
A. Yes.
Q. And then if we turn to Exhibit 413.
THE COURT: Now, let me ask you, Ms. Vulin.
MS. VULIN: Yes.
THE COURT: Are these the top producers of milk, these 14 counties, are they the top ones?
MS. VULIN: That is my understanding, that these 14 counties, comprised 25% of the Federal Order, plus California.
THE COURT: Right. But --
MS. VULIN: So they would be the largest, the top 14 -- the top largest 14.
THE COURT: And it says that somewhere in here, these produced the most, that these are the top 14?
MS. VULIN: That's my understanding of what that title is meant to indicate.
THE COURT: Okay. Thank you. Ah, I'm sorry, of course. It says, in the title of the article, "Top Dairy Counties." Thank you. I couldn't find it it's because it is the most prominent feature.
THE WITNESS: I don't see that.
MS. VULIN: On page 1 in blue text, it says

"accelerated concentration in top dairy counties."

THE WITNESS: Okay. But -- but it could just be a selection of counties that represent 25% of the milk. That chart doesn't say it is the 14 largest counties.

THE COURT: That was my concern as well.

THE WITNESS: That's all I'm saying. I don't know if it is or not. My historical knowledge, I can't confirm or deny it.

BY MS. VULIN:

Q. All right. It appears the intent is to indicate a high production in a small number of counties, so omitting a single county that may have comprised a large portion or been larger than one of those listed here would be contrary to what appears to be the intent of the data.

And so if we could turn to Exhibit 413.

This is, likewise, a bulletin from the Central Marketing Area. And if you --

A. Yes. That's what it says, yes.

Q. And if you turn to the second page, please.

You will see at the bottom of the page a very similar table, not with identical necessarily columns, but entitled "13 Counties Marketed 25% of the Federal Order Milk During December 2022."

Do you see that?

A. I do see that.

Q. And I think we can surmise that California is not called out separately because at this point it would be part of a Federal Order; is that right?

A. I guess so. Yeah, it is part of the Federal Order.

Q. And if we look at this December 2022 chart, we see Weld, Colorado, is there at position six now; is that right?

A. It is -- of the counties listed, with their December 2022 marketings, it is listed as six of those counties, number six of those counties.

Q. And so if -- and, again, I understand you didn't create this document -- but if this document, these two documents, do as the top dairy-producing counties, which we propose they do, Weld County went from not being on the list to being sixth of the 13 counties listed, correct?

A. It is sixth on that list, and it wasn't on the list that you showed in 2002.

Q. That's consistent with your testimony that milk production has grown significantly in that region, correct?

A. Yes.

Could I make a calculation using my calculator?

THE COURT: Yes, you may do that at anytime, and you are welcome to ask for a moment to do your calculation, which I grant you now.

THE WITNESS: Yeah. So my calculation is that Weld County represents 63% of the milk produced in Colorado. And so anyways, I just thought I would throw that in as a tidbit.

THE COURT: And so at what point in time is that

true?

THE WITNESS: I took the December volume, multiplied it by 12, and I believe in 2022 Colorado produced 5.3 billion pounds of milk. That comes out to 63%.

(Court Reporter clarification.)

THE COURT: All right. And is there any reason to believe that the month of December would be different from the year?

Did you use the month of December in both of your calculations?

THE WITNESS: I used the month of December times 12, and so it probably overstates because there would be more milk produced in December than say November, than say June. You know, there would be more milk produced in a 31-day month than a 30-day month. So it's probably -- it's close, but it's -- I just was curious anyways.

BY MS. VULIN:

Q. Nonetheless, a significant portion of the milk in Colorado and in the country is produced in Weld County, correct?

A. Oh, I don't have the percentage of milk produced in Weld County as relative to all the United States. That would be a pretty small percentage.

Q. I was indicating its presence on this list indicates that it's an important dairy-producing county nationally.

A. It's an important dairy-producing county in the

state of Colorado. And to one of our very valuable customers.

Q. And likewise there's a lot of demand for raw milk fluid uses around Weld County, correct?

A. I'm sorry, could you repeat that?

Q. Likewise there's a lot of demand for raw milk in the area surrounding Weld County?

A. Well, if -- if -- there's -- there is other demand in the state of Colorado for milk.

Q. Say again, please?

A. There is other demand in the state of Colorado for milk.

Q. Other demand besides fluid milk demand?

A. There's fluid milk demand. There's manufacturing demand. Yeah.

Q. And just for our reference, as we look at Exhibit 413, that table does provide a calculation of the percent that a county makes up of Federal Orders in total.

Do you see that?

A. I do. Yes.

Q. And so Weld County makes up 1.69% of Federal Order milk in total?

A. Yes. That's what that means. Yes.

Q. And when I was referencing fluid milk demand, Kroger and Safeway have fluid plants in Denver, correct?

A. Yes.

Q. DFA has the medical plant in Englewood?

A. Which is suburban Denver.

Q. And during this time period when milk production grew so significantly in Colorado, did conventional fluid processing also grow?

A. I don't know the answer to that.

Q. Are you aware of any new fluid processing plants in the state of Colorado from 2001 to present, conventional fluid processing plants?

A. Why don't you ask Steve Stout that question when he comes back. He would be better --

Q. And I will, but I want to know if you are aware of any.

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

Q. Are you aware if organic fluid milk processing grew in the state of Colorado during that time period?

A. I don't know.

Q. And if we look at Exhibit 413, the 2022 data, we still see a number of California counties on here, correct?

A. There are fewer California counties on this chart than the last one.

Q. The top five of California though, correct?

A. The first five counties listed are all from the state of California.

Q. And so this exercise, what I'm trying to work out here is, given all of the data we have about milk production growth since 2000 in Weld County, Colorado, why would there be a need to raise the Class I differential in that county at all?

A. There's contractual arrangements that -- that prevent that milk from being fungible in our system.

Q. Other than DFA's contractual obligations that it made, is there any other reason why Weld County, Colorado, should have an increase in its Class I differential?

A. It's necessary to appropriately and equitably distribute the proceeds of the pool back to producers, so that producers in Colorado aren't financially harmed by the new pricing surface.

Q. So if -- to distill that down, if other counties are going up, it's only fair if Colorado counties go up as well?

A. I don't know if that's -- that wasn't part -- when -- when we struck the values, it wasn't about everybody else is going up. It was about the model didn't appropriately -- the model didn't -- the model didn't appropriately value what -- what the -- that value should be in Colorado. It didn't have anything to do with everybody else went up and Colorado didn't. It was just the model didn't appropriately value the circumstances in Colorado.

Q. And those circumstances that the model didn't value is the business relationship that DFA has for its milk supply?

A. Yes.

Q. Is there anything else?

A. Oh, so, yes. So, you know, a factor that is in the Agricultural Marketing Agreement Act, too, is that --

and I can't quote line and verse, but it is that the Secretary of Agriculture shall take into consideration the cost of livestock feed. And so we have put expert testimony evidence on the record that livestock feed, a growing amount of livestock feed needs to be imported into the state because of all the agricultural growth, livestock growth in Colorado, and demands for biofuels in Colorado.

And so that the costs of transporting that feed has gone up significantly over the last few years. So the cost of feed is higher now, significantly higher now, than it would have been back in 2000 before we had biofuels of any significance and before this -- the growth in livestock production in Colorado to the degree that we have seen it.

Q. Does livestock feed have to be imported into Florida?

A. Yes, it does.

Q. Yet, Florida did not deviate from the USDSS model results?

A. The Florida differential is the highest in the country, and so it's amply pricing in the cost of importing feed.

Q. Okay. So the USDSS sufficiently covered the cost of feed to be imported into Florida, but the same model didn't cover the cost of feed to be imported into Colorado?

A. The USDSS model, the Wisconsin model, doesn't take

into consideration the cost of feed.
Q. In Florida or in Colorado?
A. Anywhere.
Q. And if you have Exhibit 301 in front of you, if you could go to Row 1217, please.
THE COURT: Which one are we in?
MS. VULIN: Exhibit 301.
THE COURT: Thank you.
MS. VULIN: Headed to Row 1217, which is Clinton County, Michigan.
THE WITNESS: Clinton?
MS. VULIN: Clinton.
THE WITNESS: Got it.
MS. VULIN: FIPS code 26037.
THE COURT: For those who have a paper copy it is page 21. Wait, no, I'm in the wrong state, Minnesota.
MS. VULIN: Michigan.
THE COURT: You said Michigan.
MS. VULIN: I did I hope I did.
THE COURT: All right.
BY MS. VULIN:
Q. So looking at Clinton County, Michigan, the USDSS -- or I'll start with the current differential is $1.80 correct? And that's in Column I.
A. Yep, got it.
Q. The model average in Column L has $3.50, correct?
A. Yes.
Q. And NMPF's proposed differential is $3.10,

correct?
A. Yes.
Q. And so what I'm trying to understand is my understanding is Michigan also has fairly robust fluid -- or fairly robust raw milk supplies; is that correct?
A. What do you mean by "fairly robust raw milk supplies"?
Q. That it is also a state that produces a lot of raw milk.
A. It's one of the top 25 -- 24 milk production states in the United States.
Q. And there's also a significant amount of manufacturing milk in Michigan, correct?
A. Yes.
Q. And so when I'm looking at Weld County, and it's similar circumstances of a lot of milk and a lot of manufacturing, and we're bumping up the price $0.85 from the USDSS, and then I look at Clinton County, Michigan, where we have a lot of milk and a lot of manufacturing, and we're decreasing the price $0.40 from the USDSS, how do you harmonize or come to a consistent approach in how those two counties were set?
A. That's easy. It is obvious. So the current differential is $1.80, and we're going up to 3.10, we are increasing the differential by $1.30. That's -- that's quite a big increase. So they are getting a substantial increase and substantially more than any area in Colorado.
Q. That explanation has nothing to do with the USDSS.

And so is -- is it your position that the setting of the differential in Michigan is completely disregarding the USDSS results and looking just at the increase from the current propo- -- or the current differential?

A. I -- I can't -- I'm not -- I -- I don't know how we came to the $3.10 in Michigan. And that would be a question for somebody -- either a question -- I believe you probably did ask that same question of Mr. Parks, did you?

Q. I believe we discussed some counties. I'm not sure if that was one of them.

A. He or Mr. Erba would have been the right people to ask those questions to.

Q. And --

A. That specific -- that specific county, I'm not sure how we ended up with where we did.

Q. And really what I'm trying to figure out is if there's anyone who can answer for us how to harmonize the approaches in the various counties.

And it is sounding like, no, that was all done at a regional level and there can't be a line drawn between those?

A. A line drawn between -- so the first part of your question, it was done at a regional level. The second part of your question about a line drawn between those, I don't know what you mean.

Q. I can state that clearer, hopefully.

I'm trying to figure out if I can take a

consistent set of principles, look at a county, and figure out how that differential was selected.

A. Yes. And part of the consistent set of principles is the market intelligence of the people that market the milk in that region.

Q. And if there isn't testimony in the record as to how Weld County was set, what are we to do when we go back and look at all of this and USDA tries to set differentials? If there isn't an explanation as to the specific deviation for that county, are they to --

A. I'd ask you to --

Q. -- take testimony to cover that?

A. I'd ask you to go back and read my testimony and read my cross-examination responses, and I provided that information to USDA.

Q. And what about for Clinton County, Michigan, if there isn't specific testimony, how do we vet or verify the manner by which that deviation was determined?

A. So I'm going to ask a question I shouldn't ask, but what milk plant is in Clinton County?

Q. There could be a milk plant built there, correct?

A. So you know there's not a milk plant there?

Q. I actually don't know, so I'm not going to say either way.

A. You know, in -- there's -- let me think about this. There were like 3100 counties, right? There's something like 3100 counties in the United States. And in less than 600 of those counties, and it is probably a lot

less than 600 of those counties, there are milk plants.

And so there's 2500 counties that things just sort of -- you know, nothing's -- and there may not be any -- and I don't even know if there's producers in Clinton County. I don't know, there might not be. I don't know. There are some counties there aren't any producers that we had to come up with -- we had to come up with a value.

And we did it the same way USDA did it back in Federal Order Reform, is we looked at what seemed reasonable, so we didn't have a crazy, choppy price surface that would bring on all kinds of crazy questions and scrutiny later on. We tried to smooth things over. And if there wasn't a milk plant there, we -- we sort of took an adjacent county value, and we sort of kept moving it across the areas. And I believe that's what happened in Federal Order Reform when USDA came up with the existing price surface.

Q. And you had mentioned a couple times now what USDA did during Federal Order Reform. I didn't see that cited anywhere in your testimony.

So where could I go to figure out what USDA did to deviate from the USDSS during Federal Order Reform?

Or let me try that again: What are you basing your testimony on?

A. They had a series of -- what did they call it, the -- I don't think they were -- I don't know if they were decisions, but they had a series of at least two responses to their informal rulemaking process that were

books, that were probably two inches thick. And so the information's in there.

Q. Did you reference those in preparation for your testimony?

A. I didn't.

Q. You are operating from having read them at some previous point?

A. And the experience I had back then in the process.

Q. Another struggle that I'm having -- well, actually here, let me grab Mr. Parks' testimony. Just a moment.

I couldn't quite locate what I'm looking for, so we'll go on to Florida.

So the basis for increasing the differential in Colorado is that although there is a sufficient supply of milk, it's allocated to different buyers that aren't fluid plants?

A. Those are your words. I never said "sufficient supply of milk."

Q. Okay. Although there's been evidence, including in your testimony, that there has been significant growth in the supply of milk in Colorado, correct?

A. Correct.

Q. The deviation from the USDSS is to raise the Class I differential, correct?

A. Our proposal sets the Class I differential at $0.75 a hundredweight higher than the existing differentials.

Q. And $0.85 higher than the USDSS average?

A. So I'd like to make a point of your use of the average.

There is -- there is -- the average of the May and October values was used as a convenient starting point for us to consider changes, and that that by no way, shape, or form would suggest that the model's output suggests that it should be the average of the two. So in comparison to what the market -- the output average is I don't think is an appropriate analysis.

Q. And what do you think it should be compared to?

A. What the current differential is.

Q. And so why include the USDSS average in the NMPF tables if -- if it's irrelevant to evaluating the current proposal?

A. Because that's what we were starting from to look at what we were going to set -- so -- so -- so, theoretically, if our market intelligence said that there is no adjustments or deviations from the model, we may have just stuck with the average the whole way through, but we -- we decided there needed to be some adjustments and so -- but we started with the average. It was sort of like the anchor city. We started with the average, the anchor average.

Q. And so is it necessary to even look at the USDSS to understand that NMPF's differentials then?

A. Yes.

Q. As one of the many data points considered by NMPF in its process?

A. It is a significant data point that was used.
Q. And I did get to the bottom of the Clinton County, Michigan, issue.
Mr. Parks did testify that MMPA's largest balancing plant is in Ovid, Michigan, located in Clinton County --
A. Oh, there you go.
Q. -- in Central Michigan, in the heart of its milk shed.
A. He answered that question. I don't need to. Perfect. Thank you.
Q. So it is likely --
A. I feel better. I'll sleep better today.
Q. It is likely that some careful thought then was put into Clinton County, right?
THE COURT: Ms. Vulin, are you looking at Exhibit 406?
MS. VULIN: I am, if -- I believe 406, page 7.
THE COURT: And let me -- do you have -- I don't think you have 406, do you?
THE WITNESS: No, I don't. No.
THE COURT: Let me hand you this.
THE WITNESS: Okay.
BY MS. VULIN:
Q. And did you and Mr. Parks ever discuss -- it sounds like no, but I just want to close the loop here now that we know Clinton County is an important county to consider -- did you and Mr. Parks ever discuss your

respective approaches to setting the differentials in Weld County, Colorado, and Clinton County, Michigan?

A. No.

Q. Do you believe that it's necessary to have a reserve supply of milk in order to meet Class I fluid milk needs?

A. Class I demand is different depending on the processor, depending on the region, different by day, by week, by season of the year. And so if -- if the Class I needs are going to be fully met, there needs to be more milk produced than is needed for the Class I marketplace.

Q. How much more?

A. Sorry for the housekeeping.

Much more than 2.5%.

Q. And you're referencing something. Can you tell me --

A. Yeah, 2.5%, 2.5%, 2.5% is much more than 11% -- I'm referencing a calculation I did earlier in cross with Ms. Hancock that went through and determined that maybe we had a reserve of 11%. And, you know, two divided seven -- two weekend days divided by seven days in a week is about 30%. And so -- and that gets into my testimony from earlier that milk production is going to be flat, demand for U.S. milk is going to grow, and it's going to be tougher and tougher coming up with the milk for the Class I marketplace --

Q. And what --

A. -- because we don't have enough of a reserve milk

supply.

Q. When you define "reserve milk supply," is the definition milk -- raw milk above Class I use or raw milk that is not being used by any class?

A. Neither.

Q. Okay. Can you tell me, how do you define reserve supply?

A. It's -- it's -- it's raw milk not fulfilling a consistent consumer demand.

Q. And I believe earlier you said Classes I, II, III, and IV --

A. I --

Q. -- have a consistent consumer demand --

A. I -- I'm sorry.

Q. -- is that right?

A. Not all of IV.

Q. The export market --

A. Most of IV. No. The export market -- I'm sorry, I'm speaking over you.

Q. I'm stepping over you as well, so I'm going to give you some space. You said -- can you give me, again, your definition of reserve supply and how that fits within the classes as you discussed earlier.

A. Yeah. It is -- it is milk in Class IV, because in -- I, II, and III is driven by consumer demand. Class IV is made up of largely exports to other countries that are fulfilling a consumer demand in other countries. And then there's also a significant amount of butter,

which is fulfilling a significant consumer demand. And so there is some Class IV that's -- in reserve, and it's much less than would have existed when we had a very active price support program that had significant quantities of milk it was buying to take off the market, that had no commercial demand anywhere. And so we -- so because of that, because of that, we -- we don't have much of a reserve supply anymore.

Q. How much reserve supply do you think is necessary, as you define reserve supply, in order to ensure Class I needs are met?

A. Something more than 30%.

Q. And what will happen to that 30% of reserve supply if Class I needs continue to be met? Where will that extra milk go if it's not needed by Class I?

A. So the -- it will go into a balancing plant, as it -- as the suppliers, mainly National Milk cooperatives, balance the Class I milk supply on their, you know, weekly and seasonal needs.

Q. And is there sufficient processing capacity in balancing plants to take on an additional 28% of reserve supply milk?

A. There isn't that much reserve supply milk.

Q. But if you are setting differentials in order to stimulate the amount of reserve supply you deem necessary, what I'm trying to figure out is --

A. That's not -- that's not -- I don't think any of us have testified at all. This -- we were just responding

to cross-examination from MIG about reserve supply. So we're setting -- we're setting -- Class I differentials need to go higher because, A, the valuation used by USDA in 2000, rerun again for 2022, says that the Class I pricing surface in the United States is about $1.50 per hundredweight too low. And we as marketers of milk in the cooperatives recognize that, our farmer-owners recognize that, because we recognize we're -- our dairy farmers, our farmer-owners are subsidizing consumer demand, retail consumer retail demand.

And so we have tried for about a quarter of a century to create another pricing system of over-order prices to raise those prices to get those values back, and we just haven't been successful. And it's time for the Federal Order to adjust its system to recognize the subsidies that dairy farmers are providing a small group of dairy farmers, 30,000, are providing to 300 million people in the United States. And it's time to correct that, and that's what this proposal's all about.

Q. Time for the American consumer to start paying more for milk for dairy farmers?

A. It's time for -- it's -- it's time for dairy farmers to get compensated for their costs in -- in perfecting a marketing situation that results in Class I getting their milk.

Q. And it's your --

A. And it doesn't mean that -- necessarily, that those costs are going to get passed on to consumers. We

don't know that.

Q. If not the consumer, then who will pay those costs?

A. Well, we will be -- I -- I think there -- there is no correlation between Class I prices and retail prices across the country. And so you tell me what you think is going on, but what I think is going on is that retailers are choosing to price differently. I don't know if they are pricing -- what kind of margin they are getting when they price. But retailers in Florida charge less for milk than a retailer in Missouri, and the Class I differentials between the two are significantly different, significantly higher in Florida. There's no correlation between what the Class I price is and what the price of retail is. There just isn't.

Q. I want to revisit this issue of the voluntary contract that DFA entered into that is tying up milk supplies in Colorado and supporting the idea that because of that, Class I differentials need to be higher.

Other than the DFA contract with the cheese plants that you have discussed a few times now, did you inquire -- and I mean NMPF when I say "you," the royal you -- did NMPF inquire in any other market, any other similar contractual arrangement that a supplier had with the manufacturer that would have -- that NMPF determined should impact Class I differentials?

A. I'm not sure, but let's think about the significance of this in Colorado. I had stated earlier

that more than half the milk that's produced in Colorado goes to our valued customer, Leprino Foods in Greeley, Colorado. I don't think there is another major milk producing state in the United States that has a singular demand point of that significance for their state's milk production. So it is different.

Q. So I would like to go back to the question if we could.

Are you --

A. I'm sorry.

Q. Are you -- are you, testifying on behalf of DFA and NMPF, aware of any other arrangement or instance where NMPF considered a contractual arrangement between a supplier and manufacturer in setting Class I differentials?

A. I don't have any to enlighten you about.

Q. So the only one that you personally are aware of, the only situation where NMPF set differentials based on a business relationship is DFA's relationship with the cheese plant in Colorado?

A. Yeah. I think that -- I -- I am going to punt on that because I think those types of considerations went on in -- with the others -- in the other regions. I'm just not -- I just wasn't part of the discussions on those. So I'm punting, if you don't mind.

Q. Well, I'm only asking on your personal knowledge. So if you don't have personal knowledge, that's fine.

A. Yep.

Q. You are not aware of any specific other consideration of a business relationship in setting Class I differentials?

A. Yeah, I'm punting on that. I don't know.

Q. If --

THE WITNESS: Why -- why does the fly bug you and me and not the person asking the question?

THE COURT: I'm comfortable now.

MS. VULIN: The fly and I have an arrangement.

THE WITNESS: Yeah, there you go. Good answer. I like that.

BY MS. VULIN:

Q. Say DFA terminates the supply agreement. Should the Class I differentials then be changed in Colorado?

A. That's not a realistic question, so I'm not going to answer it.

Q. There's no legal way for either party to ever terminate that arrangement?

A. That's not a realistic question.

Q. Say another supplier, with another major demand point, in a region, as you said, maybe discussed by another regional committee, say they terminated an agreement that frees up a milk supply. Would that be a basis to lower the Class I differentials in that area?

A. I don't know.

It's cruel of me to take that fly out during the Christmas season.

THE COURT: Let's go off record for just a moment.

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

THE COURT: All right. Let's take -- so let's go back on record so I can take us off.

All right. I'm going to take a break. Please be back and ready to go at 4:05 p.m. We go off record at 3:54.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 4:06 p.m.

Ms. Vulin, you may resume.

MS. VULIN: Thank you, Your Honor.

BY MS. VULIN:

Q. Mr. Gallagher, if you could have your testimony and then Exhibit 301 in front of you, please.

A. Got it.

Q. And I -- if you could turn to page 5, please. I wanted to talk about the table you had on that page.

A. Okay.

Q. So it's my understanding this table is meant to show comparisons between Weld County and other counties that demonstrate similar changes or approaches were taking in raising the differentials between those counties.

Is that right?

A. It looks at other major manufacturing areas, and looks at what the class -- the DFA estimated in-state Class I utilization is for 2022, and then makes some comparisons to our proposed differential levels relative to those areas.

Q. That's a helpful clarification. So when it says "Estimate State-Level Class I Percent," that is a DFA specific number?

A. It is. And I did -- I did explain it in the Appendix 1. And I apologize if that wasn't connected well by me.

Q. It may have been on my end as well. There's a lot of data to take in in this whole process.

A. There is.

Q. I did have one question about the chart. Looking at Grant County, South Dakota, if you could go to Row 2354, in Exhibit 301. 2354, it's on page 41.

THE COURT: Tell us again which line, 2354?

MS. VULIN: Grant County, South Dakota, 2354, FIPS code 46051.

THE COURT: Thank you.

THE WITNESS: I am there.

BY MS. VULIN:

Q. The current differential for Grant County is $1.70, not $1.80 as in your table, I believe.

A. Ah. Okay, I stand corrected then.

Q. So alongside the other corrections, would you like us to make that correction here?

A. Hold on for one second.

Q. Uh-huh.

A. All right. Yes.

THE COURT: All right. We will make that change on the record copy. Please turn to Exhibit 407, page 5.

And the third item down under county and state is "Grant, South Dakota." And the first column is current differential. We'll strike what's there and write in instead "$1.70."

BY MS. VULIN:

Q. So my interest is a bit more in Stearns, but I just wanted to make sure that was accurate since I had noted that.

So you discussed Stearns previously. I believe DFA has a plant there; is that correct?

A. No.

Q. What -- was there a specific significance of that county in your selection here?

A. I was looking for a Land O'Lakes plant.

THE COURT: You were looking for what?

THE WITNESS: A Land O'Lakes plant.

THE COURT: Oh, a Land O'Lakes plant.

THE WITNESS: So Melrose used to be partially DFA owned.

BY MS. VULIN:

Q. And the reason you include Stearns County, Minnesota, in this chart is to show that similar changes were made in similar counties; is that right?

A. The reason I included Stearns was because it is a similar manufacturing area, that is having a $3 --

THE COURT: You're --

THE WITNESS: Having a $3 differential -- thank you -- $3 differential proposed, despite the state having

a 7% Class I utilization. So the similarly situated manufacturing county as Weld, where the state has a 14% manufacturing -- excuse me -- Class I utilization, coming up with something like $3.20, which is only $0.75 more than what it is now, seems appropriate.

BY MS. VULIN:

Q. And if you could go to page 24, please, of Exhibit 301 to Stearns County. It's going to be line 1354, FIPS code 17245. Page 24, line 1354, Stearns County, Minnesota.

A. I feel like we're playing Bingo.

1354. Okay. I am --

Q. My resident economist tells me I must include my FIPS code.

A. Steams (sic) -- wait, 1354?

Q. 1354.

A. That's Steams County.

Q. I believe that is Stearns County, but the R and the N are a little snug.

A. Ah.

THE COURT: Oh, you are correct. I thought that was an M also. I was confused.

THE WITNESS: Very good. I'll take your word for it.

THE COURT: All right. So --

BY MS. VULIN:

Q. So the current differential for Stearns County is $1.70?

A. Yes.
Q. The USDSS average is $2.55, correct?
A. Of the May and October values, yes.
Q. And NMPF's proposed differential is $3, correct?
A. Yes.
Q. And so if -- if NMPF is seeking to ensure alignment or similarity between Colorado and like Midwest counties, isn't the increase of the county in Minnesota just dominoing the increase down westward to Colorado, and frankly, ultimately, to California as well?
A. I don't know -- the -- those values -- the determination of those values weren't connected in any way like that. It is just a comparison that I'm making between the Class I utilization for the state and the values that we are -- we are proposing for that region. And how Stearns County get determined, I wasn't part that of that determination.
Q. But we did hear testimony, including regarding the anchor cities, right, as well as from you, about harmonizing between different regions and making sure that everything fit together, that there were changes in other counties, based on Chicago and what was going on in the Midwest; isn't that right?
A. There's a lot there. What is the question?
Q. What I'm trying to understand is, if you rely upon alignment or ensuring that Colorado producers are getting paid the same as in the Midwest, if you raise the Midwest, doesn't that just give you an excuse to then also raise

other prices on the basis of alignment or making sure the counties match up in certain areas?

A. The determination of Weld County's differential wasn't based on an alignment issue. It was just based on an equity issue.

Q. Equity to what?

A. Equity that other manufacturing regions in significantly lower Class I production areas have similarly valued differentials.

Q. Isn't equity the same thing I'm saying here, that because NMPF decided to raise Stearns County to $3 on the basis of equity, then Weld County in Colorado should go up to $3.20?

A. So I'm not sure, I wasn't -- I didn't participate in the determination of the differential for Stearns County, so I don't know what went into that. And your definition of equity is not the same as mine.

Q. Give me again, then, please, your definition of equity.

A. I did.

Q. Okay. One more time because I thought we were on the same page, but I would ask, please.

A. So -- so it would be reasonable and appropriate for the Weld County differential to be in alignment with the Stearns County, in fact, higher than the Stearns County, because it has -- so here it says 14% Class I utilization. Remember if we -- if we -- if we take out the milk that's not available to the Class I market, it

goes to Leprino, that utilization is probably in excess of 30%. Class I utilization available to the market is in excess of -- or the milk that's available to supply the market as the denominator, divided by the numerator, which is the in-state Class I -- or excuse me -- yeah, the numerator is Class -- would result in a percentage probably in excess of 30%. So there's other things going on that, then, to me, and to National Milk, would say this is an equitable solution for Weld County, Colorado.

Q. And if NMPF had not deviated from the USDSS in raising the Stearns County differential, if NMPF had adopted the $2.55 from the USDSS, would that have justified keeping Weld County closer to its USDSS average of $2.35?

A. No.

Q. Why not?

A. Because we also are taking into consideration the equitableness of pay prices in the Central order as they affect dairy farmers in Colorado, and the model should not result in changes to dairy farmer prices that significantly put them at a profitability risk.

Q. And should the model -- or should the differentials be set at a level that would put Class I processors at a significant profitability risk?

A. I have yet to see that that's an issue for Class I processors.

Q. If it were?

A. So in 2022, we had the highest Class I prices ever

in the history of the world. Let's see. The all-milk price was $25. The Class I price probably averaged 28. And typically that Class I price would have been 20, 21, so we're talking about a 6, $7 per hundredweight change in the Class I price versus what we're talking about here of $0.75. During the time when we saw 6 to $7 per hundredweight increase in the Class I price, there wasn't one single Class I processor that went out of business. So I'm calling BS on your profitability at Class I clients.

Q. In your own testimony you said that in the last 20 years a number of Class I processors have gone out of business, correct?

A. No. I don't believe it. I don't believe I said that.

Q. In the last 20 years has there been an increase or a decrease in Class I processors, nationwide?

A. There's been an excess capacity in Class I processing over time as the costs -- the non-milk cost of serving the marketplace have increased -- has caused -- resulted in a consolidation of Class I processors. But it's not because of the milk prices. It is not because of the $0.75 per hundredweight increase in Class I differential.

Q. Let's put a finer point on that: Are there more or less Class I fluid plants in the country today than there were 20 years ago?

A. I would suspect there's less.

Q. I'd like to talk about organic milk.

You had discussed a number of times in your testimony that the Class I differentials need to take into account real world limitations on the supplies of milk, correct?

THE COURT: Would you ask that again, please?

BY MS. VULIN:

Q. You previously testified when referencing DFA's contractual agreement with the cheese plant that the Class I differentials should take into account real world limitations on supplies, correct?

A. I specifically talked about an issue in Colorado, and we referenced that as other regions reviewed their pricing surface, that to some degree they probably took that into consideration as well. Specifically I said I don't know others though, if you recall.

Q. And I had asked about Colorado, and I believe -- again, I tried to write down what you had said, but if not -- that you had said, it is important for the Class I differentials in Colorado to take into account real world supply limitations?

A. Yes.

Q. And you would agree with me that non-organic or conventional milk cannot be sold to an organic processing plant and ultimately sold as organic, correct?

A. Yes.

Q. And so would you agree with me that organic milk would have a fairly significant real world limitation on

its supply?

A. Maybe.

Q. And are you aware that the USDSS does not differentiate between organic and non-organic milk?

A. That is correct.

Q. And so in looking at, as you had discussed earlier, this optimal solution of sending milk to the closest plant, right, or the most efficient plant, that's not going to be accurate for what can be done in the real world in regards to organic milk, correct?

A. The organic milk may or may not go to an organic plant in the model solution. I don't know how it -- I don't know where the organic milk supplies would have gone. But the market that -- the data would not have been able to recognize -- to my knowledge, the data couldn't recognize whether milk was organic or conventional at the dairy farm.

Q. And so when we're looking at the data from the USDSS in light of organic milk, there's a strong probability that it's not going to match the actual flows that that milk can take to plants?

A. I'd agree with that.

Q. And so if that's the case, then would you agree that similar to the exception of carving out real world relationships between suppliers and manufacturers, in Colorado in your case, we should consider whether or not organic belongs in the USDSS and the Class I differentials?

A. I don't know what your question is. So -- so should they not use organic plants and subtract out of the state supply what is estimated to be the organic milk production in that state and then run the model? Is that what you are suggesting?

Q. Yes. Correct.

A. Oh, I don't know. Why don't you take that up with Stephenson and Nicholson. I don't know.

Q. Was that something that NMPF raised with Dr. Stephenson or Dr. Nicholson?

A. No.

Q. And would you agree with me to the extent that those milk supplies weren't backed out, specifically in -- let me start that again.

Are you aware of any organic fluid milk plants in Colorado?

A. Yes.

Q. Can you tell me about that, please?

A. Pardon?

Q. Which one?

A. Oh, man.

Q. I can help you out there. How about --

A. I got it right here. I can do it. Hold on a second.

Aurora Organic in Weld County. How's that?

Q. And so to the extent that the differential is being set in Weld County based on the USDSS, would you agree with me that it is likely not going to accurately

reflect the efficient flow of milk to Aurora's organic plant in Weld County, Colorado?

A. I -- I don't -- I don't know about efficient. But it's -- the model couldn't discern between -- I do not believe the model discerned that Aurora would have been an organic processor, and I'm confident it didn't -- didn't take into account a supply of organic milk anywhere.

Q. And likewise, the presence of that plant in Weld County is likely to show a need for conventional, or non-organic, milk that doesn't actually exist for that plant, correct?

A. I don't know.

Q. Was it the U.S. --

A. Well, so I -- it's just going to -- it's just going to solve the mathematical equation, and I don't know where the flows of milk went. It could have gone -- it could have gone into -- you know, in their mathematical equation, it could have gone to Leprino.

Q. But as a data point in the model, you would agree with me that the presence of that plant, that Aurora organic plant in Weld County, is going to create a demand in the model for conventional milk that doesn't exist in the real world?

A. In that county?

Q. Correct.

A. Yeah. For that plant -- there's still a demand in that county because there's people that live in that county, and so the model sells for the -- for the people

that live in that county. So there is -- there is some need for it. But your point is -- I get your point, but I don't know enough about how the model solves for it to be able to help you out. Mr. Stephenson will be on in a couple days. You can ask him.

MS. VULIN: Nothing further. Thank you, Mr. Gallagher, for your time.

THE WITNESS: You're welcome. Thank you.

THE COURT: Thank you, Ms. Vulin.

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Good afternoon, Mr. Gallagher.

A. Good afternoon. How are you?

Q. I'm well.

A. Happy holidays.

Q. It is that season, isn't it?

A. It is.

Q. Festive in here as well.

You're much further away than I'm used to having the witnesses from the past few weeks.

For the record, my name is Ryan Miltner representing Select Milk Producers.

A. For the record, for MIG, we didn't consult with Select on any of this stuff either. Just saying. You don't have to feel like you are left out.

Q. So, Mr. Gallagher, did you consult with Select Milk Producers in providing the Class I surface?

A. Not on the Class I price surface, we did not. We

would have loved to have you as National Milk members and have you part of the team. We missed you. We really did.

Q. I'll pass that along.

I'm looking at Exhibit 407, your written testimony. And the first full paragraph on page 2 sets the stage for your testimony. It reads: "I am here today to explain the importance of implementing a price surface in Colorado that differs from the results of the University of Wisconsin's model analysis of a national pricing surface."

That's the main thrust of your testimony, correct?

A. Yes.

Q. And you had a lot of back-and-forth with counsel for MIG about Colorado, but a lot of other places on the map, but let's talk about just Colorado at least to get started.

In Colorado, is there a better co-op than DFA to talk about the market dynamics there?

A. No, there is not.

Q. Realistically, is there another significant milk marketing cooperative in the state there?

A. No, there's not a better cooperative in New Mexico either to talk about --

Q. Well, you know, we're not going to -- we're not going to get too far afield from Colorado. We won't talk about pay prices either so we don't have any disagreements.

So in Colorado, DFA knows the market better than

anybody else, correct?

A. Yes.

Q. It's not the case throughout the entire Central order, but certainly for that part of Order 32, the milk supplied in Colorado is DFA milk supply?

A. Mr. Bebermeyer would take exception to your comment about not having the expertise in the rest of the Central order. He's a pretty smart guy. He's the DFA Central Area Council coups, and him and his team are very attuned to the marketplace in the rest of the area.

Q. Okay. In the other parts of the Central order, there are cooperatives other than DFA which market not insignificant quantities of milk, correct?

A. Yes.

Q. Where you have testified about the price impacts of just the Class I surface on Weld County, Colorado, in particular, you testified that the combination of the differentials in the model, with an adjust to Make Allowances as have been testified to previously in the hearing, would cause substantial economic hardship on your members in Colorado, correct?

A. If the resulting price surface only used the model's output, yes.

Q. Okay. So it's the combination of the model output along with adjustments to Make Allowances that would impose that economic harm on your members that you have described, correct?

A. If there were no Make Allowance change, and there

were a class price surface -- or excuse me -- a price surface change, and they used the model's output in Colorado, there still would be an economic hardship. But the two combined will be an oppressive economic hardship to dairy farmers in Colorado.

Q. Wonderful. Your answer was very close to my next question, which is, if there were no changes to Make Allowances, would the model results as to Weld County and other points in Colorado be acceptable to DFA?

A. No.

Q. And taking --

A. Or -- or National Milk.

Q. So take the Make Allowance part of your argument outside -- take that away and just articulate what with the model's numbers are unacceptable to National Milk and DFA.

A. As -- as the model would determine the values, if you took them without any market intelligence, adjusting it for any reason, the pricing surface in Colorado, the pay price -- the PPD in Colorado would be reduced by about $0.40 a hundredweight. And that would be representative of about 40% of the profitability on average of dairy farmers in Colorado between 2018 and 2022. So it would be significant.

Q. So let's walk through some of the numbers that get us to that $0.40 and change in the PPD that you have predicted.

Currently, the differential in Weld County is

$2.45, correct?

A. Yep. Yes, that's a yes. I'm sorry.

Q. Okay. And Jackson County, Missouri, currently is $2, correct?

A. Yes.

Q. So the differential in Weld County is $0.45 higher than the base zone for the Central order, correct?

A. Yes.

Q. Now, the model changes that significantly. It puts the base zone at 3.35, Weld at 2.35.

And so Weld County goes from $0.45 higher than the base to $1 lower than the base zone, correct?

A. It's 3.35. What did you have for Weld County?

Q. 2.35?

A. Yep. Yes. That's correct.

Q. Okay.

THE COURT: And just so everyone's on the same page, you are looking at his chart on page 3, correct?

Mr. Miltner, are you looking at that?

THE WITNESS: No, he's not.

MR. MILTNER: No.

THE COURT: Oh.

MR. MILTNER: No, I'm -- well, some of the data is on there. All of this data could be found in --

THE WITNESS: I guess you are. You can get it --

MR. MILTNER: -- 301.

THE WITNESS: But you can get it from that chart actually.

MR. MILTNER: You'd have to average the numbers. All the data is there.

THE WITNESS: Yeah.

THE COURT: Okay.

THE WITNESS: So if I may, you -- so -- well, what your question is, how do you get to a price adjustment that would lower the prices by $0.40?

BY MR. MILTNER:

Q. We'll get there. I'm trying to establish how we -- how this progresses, right?

A. Yep.

Q. Weld County goes from $0.45 above the base zone. The model would have placed it at $1 behind the base zone. So that's $1.45 swing in the price relationship between those two points if we only look at the model, correct?

A. Yep.

Q. Okay. Proposal 19 takes the $3.35 differential that the model proposes for Jackson County, Missouri, but then it increases the differential to $3.10 for Weld County, Colorado, correct?

A. Yes.

Q. The change that was made by DFA or National Milk or the working group, you left Jackson County, Missouri, unchanged from the model, but you increased Weld County by $0.75, correct?

A. $0.75 from what?

Q. From the model.

A. From the average?

Q. Yes.
A. Actually, Weld County is $0.85 because the differential would be 3.20.
Q. You are correct, $0.85.
A. Yes.
Q. Now, the decision to move $0.85 on Weld County, but not to move Jackson County, Missouri, what is the basis for that $0.85 change if we're just looking at that particular county?
A. I'm looking at it as a $0.75 change from the existing differential.
Q. Okay.
A. And it is to maintain blend price levels at a similar level if just the Class I pricing surface was adopted versus what the blend price level is currently. And as I worked with the Market Administrator staff in the Central order, they ran some models for me until it sort of hit something that was kind of about the same for both current and the new calculation.
Q. So the purpose was to arrive at a differential that maintained the -- something close to a blend -- the blend price relationship that exists today?
A. Yes. And to deviate to a level higher in Kansas City would make it -- would -- would require a higher set of numbers for Colorado. And so the Kansas City level being the base zone was an important level to establish, 3.35.
Q. Okay. A lot -- a little -- well, I want to say a

lot to unpack there, but at least a few things.

Jackson County, Missouri, Proposal 19 sets at 3.35, and I believe you would describe that as not as an acceptance of the model's 3.35 but an increase of $1.35 over the current differential, correct?

A. Yes.

Q. So how do you arrive at $1.35 as the appropriate number for Jackson County?

A. It is -- I think is it -- I don't have the numbers right in front of me, but I think it's the average of the May and October values.

Q. I believe that's correct.

A. Yeah. That's how we decided. We stuck with the average and worked from there.

Q. Okay. So you -- so --

A. Once upon a time, in one of our generations, we had St. Louis, Kansas City, and Denver at $3.70.

Q. Okay.

A. And we adjusted from there.

Q. So when you had those three cities at $3.70, was that derived from an average of the model or were those numbers picked based on anchor cities or another reason?

A. So St. Louis was set at 3.70, and it currently has a similar differential to Kansas City, so we made the Kansas City value the same, recognizing -- as St. Louis, and then recognizing that we were coming to the conclusion that we were going to have to give up on the over for Colorado, but we didn't want to decrease, so we also set

that at 3.70. With conversations we had after that, we decided that the -- having Denver be 3.70 and Kansas City be -- having Denver be 3.70, which would have been $1 -- over $1 increase from the model, we decided that would be untenable, and so we went back and considered other values.

Q. And you said St. Louis was currently at 3.70?

A. Yes. I believe that's the number.

Q. But that's not its current differential?

A. No. That's -- that's our proposal.

Q. Okay. So how did St. Louis start at 3.70 then? Was that pulled from the model?

A. Yeah, I think that was the average of the two numbers to get to St. Louis was 3.70, I think.

Q. Okay. So I feel like it's "Tinker to Evers to Chance," but we have -- we have St. Louis at 3.70, and that was the average of the model, correct?

A. Yep.

Q. And then the decision was made to align Denver and Kansas City with 3.70, correct?

A. Yes.

Q. And then those were modified after some consultation within the group and perhaps with USDA, for the Market Administrators offices?

A. Yes.

Q. Okay. And then you have -- then at the point you arrived at a number for Kansas City for Jackson County at 3.35, correct?

A. Yes.
Q. And now you go to Weld County.
Was that kind of the next thought process is let's back into Colorado and see where that leads us?
A. Yes.
Q. And so would you have then looked at the current differential at 2.45 or would you have looked at the model to say, where does the model place Weld County?
A. I knew where the model placed it. It placed it at too low of a level, and so we needed to -- for equitable reasons, it needed to be higher. It needs to be higher.
Q. Now, if you are at 3.35 in Kansas City, and you are currently saying, well, look, Weld County is $0.45 higher than Kansas City, was your first inclination to say, set Weld County at say 3.80 and where does that put us?
A. No.
Q. So do you --
A. My first inclination was to set Denver at 3.70 and make the -- keep the same difference between Weld County and Denver as exists now.
Q. So it was alignment with Denver, not with Kansas City, that was driving the process?
A. Initially.
Q. And then after that tell me what happened in the evolution of the process, if you could.
A. I think we -- I think you hit it already. We -- we went to 3.35 in Kansas City and then worked backwards

to Denver to see what would result in a set of differentials that were fair and equitable to Colorado dairy industry.

Q. But at that point that's when you started working with the MA to run some mock pools or things to fix that number --

A. No, we started before that. But, yes. But, yes.

Q. Okay. Where did the mock pools come into the process?

A. Well, the final one would have been to get to the proposals that I have now -- or that we have now.

Q. I suppose this isn't my question, but it's been asked so often. Is it possible that that strange column about the previous proposals in spreadsheets 300 and 301, that those numbers got thrown in as you were working through the different pool iterations with the Market Administrator offices?

A. You want to look at Denver in that?

Q. I was --

A. It could have, yeah. It could have very well. I don't recall the timing of everything but...

Q. That's sufficient for me. We don't need to dig them out unless -- no, we don't need to. All right.

A. All right.

Q. Now -- and then I'm really going to try not to replow ground.

During Federal Order Reform, there was -- we had a model that the industry was working from. It was notice

and comment rulemaking, correct?

A. Yes.

Q. And as part of that notice and comment rulemaking process, USDA solicited input from the industry, correct?

A. Yes.

Q. And at one point there was issued a -- as you described it, a book or a couple of books which -- but they were essentially Federal Order register publications of a proposed rule, correct?

A. Yes.

Q. And in those proposed rules did it contain comments from the industry about the models as they were presented?

A. Yes.

Q. And to your recollection were there additional comments solicited?

A. Yes.

Q. And when you referred to the industry, in particular the cooperatives in the Northeast offering comments, would that have been the time at which point your comments, those of Dairylea and other cooperatives, were submitted?

A. Yes. As I recall.

Q. Now, would you agree that at that point there was a final rule issued in April of 1999 as a part of order reform?

A. I don't recall the date, but there was a final rule.

Q. Do you know if that final rule articulated what USDA did to deviate from the model and incorporate the comments of cooperatives like Dairylea and others?

A. I can't recall. Was that Option 1B, that fateful Option 1B reveal? I think it was, wasn't it? Can I ask you a question?

Q. I was -- I was still an undergraduate, so I don't know.

So I want to -- okay, let's revisit the Weld County issue for just a second.

If you were just going to use the numbers that were in the model for Weld County and Kansas City, just -- if you could summarize for us what that would mean to producers in Colorado in terms of their pooling on the Central order.

A. It would result in an increased incidence of depooling of Colorado milk on the Central order.

Q. And why would that occur?

A. Because the blend price would be going down. The PPD would be going down by about $0.40 a hundredweight, and so there would be more instances when the blend price would be less than the Class III price or less than the Class IV price or less than the Class II price, and so there would be more incidences of depooling.

Q. Now, we already stated that the difference between Weld County and the base zone under Proposal 19 is $0.25, correct?

A. Yes.

Q. Or $0.15?
A. It is $0.15.
Q. So if under Proposal --
A. Under our proposal.
Q. And also now under your proposal, Dallas County, Texas, which is the base zone for Order 126, is $4, and Chavez County, New Mexico, where there's another mozzarella plant, is at 2.70. So that difference is $1.30.

And so I'm wondering why the vast concern with Weld County at a $0.25 difference but not a concern with Order 126 and that price relationship?
A. Yeah, I'm not aware of that relationship. I'll have to go back and look at it.
Q. You didn't -- you didn't look at Order 126 at all?
A. I was not involved in the determination of the pricing surface in the Southwest.
Q. Okay. So in Cuyahoga County, Cleveland, the base zone for Order 33, the difference between that and Ottawa County, Michigan, is $0.20 under the current proposal, and it goes to a $0.60 difference under Proposal 19, more than twice the difference in Weld County.

And -- and so my question is the same: Why the concern so much with Weld County but not a similar concern in Order 33?
A. I wasn't -- I didn't -- there may have been a similar concern for Order 33. I wasn't involved in the discussions of those values.

Q. At any point did the various working groups or regional groups come together to attempt to harmonize the changes they have made, because I have -- well, answer that question if you could: Did they come together to harmonize those changes?

A. Yes.

Q. In those discussions to harmonize those changes, what was discussed in terms of the deviations from the model output?

A. I don't recall a lot of discussion about that. We were mainly concerned about how the orders of the regions matched up.

Q. So the order regions were discussed, but the operations within each of the orders or the regions were of less import?

A. I wouldn't say less important. We -- we had to -- we had to make sure that the regions meshed together appropriately, and so that was our focus.

Q. Why -- why would the border regions be more important than the operations within the orders?

A. The National Milk -- the National Milk members with the market intelligence in those regions worked through their -- their process for those regions. And certainly somebody that's very familiar with the Southwest wouldn't be able to contemplate all the issues going on in Michigan if they didn't have experience in Michigan. And so it was left to the expertise of the regions to develop the solution for those regions.

Q. Wouldn't it be important, though, for the people in the Southwest to understand that those working on the Central order worked very hard to not have a large disparity between the base zone and a significant milk production area, and maybe that concept ought to be pushed through to the other regions?

A. Yeah. I wasn't aware that that happened.

Q. You were not aware that those discussions took place?

A. No, that there is a severe disparity between a base zone and a manufacturing area somewhere.

Q. That wasn't the case in Weld County?

A. Oh, I'm sorry, in the Southwest.

Q. Okay. But there was -- there was not thought that because that issue had to be rectified in the Central order, maybe that issue ought to be examined carefully in the other orders?

A. I did -- I did look at some of our delivery locations, and I didn't notice there was an issue. But maybe I didn't cover all the right delivery locations.

Q. So you looked at delivery locations in Order 126?

A. Yes.

Q. And Order 33 as well?

A. I did not in Order 33. Let me think. No, I don't -- I don't think I did in Order 33.

THE COURT: Mr. Miltner, remember where you are.

MR. MILTNER: Okay.

THE COURT: We have only got four minutes to talk

about what we do tomorrow.

MR. MILTNER: Very good. Thank you, Your Honor.

THE COURT: You're welcome.

You're available tomorrow?

THE WITNESS: Until the end of the day.

THE COURT: Very good.

THE WITNESS: I have to be in Kansas City Wednesday morning.

THE COURT: Ah. All right.

Ms. Hancock, do you want to be the one that talks about what order you would anticipate for tomorrow?

MS. HANCOCK: I can kick us off. I will see where we land.

We would like to start with Steve Stout and finish his cross-examination tomorrow, and then return to Mr. Gallagher and finish his cross-examination. And then we will turn to a combination between Peter Vitaliano and Jeff Sims. Our goal is to get Mr. Brown on this stand on Wednesday, though, so we'll -- we might have to look at that order.

But those are our remaining witnesses, so it will be some combination of those orders, and then I think there's a dairy farmer that is coming.

THE COURT: Does anyone else want to add comments to what we anticipate for tomorrow?

No one does. I'll see you at 8 o'clock tomorrow morning, and we now go off record at 4:57.

Oh, Mr. English, can we go off record?

MR. ENGLISH: Yes, off record.

THE COURT: All right. Off record at 4:57.

(Whereupon, the proceedings were concluded.)

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STATE OF CALIFORNIA)
) ss
COUNTY OF FRESNO)

I, MYRA A. PISH, Certified Shorthand Reporter, do hereby certify that the foregoing pages comprise a full, true and correct transcript of my shorthand notes, and a full, true and correct statement of the proceedings held at the time and place heretofore stated.

DATED: January 12, 2024

FRESNO, CALIFORNIA

MYRA A. PISH, RPR CSR
Certificate No. 11613