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 8, 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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M A S T E R I N D E X

SESSIONS

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M A S T E R I N D E X

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M A S T E R I N D E X

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IN CHRONOLOGICAL ORDER:

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FRIDAY, DECEMBER 8, 2023 -- MORNING SESSION

THE COURT: Let's go back on record.

We're back on record. It's 2023, December 8. It is Friday. It is Day 43 of this hearing.

Are there any preliminary matters before we continue with where we -- with what we described yesterday?

There are none.

Mr. Rosenbaum.

MR. ROSENBAUM: Steve Rosenbaum for the International Dairy Foods Association.

We would call as our next witness, Mr. Tim Galloway.

Your Honor, I have distributed copies of Mr. Galloway's written testimony to the parties and the government. Let me grab an extra copy for Your Honor.

THE COURT: Thank you so much. Is this going to be Exhibit 439? I'm looking at Exhibit 439, also shown as IDFA Exhibit 63.

(Thereafter, Exhibit Number 439 was marked for identification.)

THE COURT: I'd like the witness, please, to state and spell your name.

THE WITNESS: Tim Galloway, G-A-L-L-O-W-A-Y.

THE COURT: Very good. You have a robust voice, and so even though you are not close to the microphone, I think we're good.

THE WITNESS: Okay.

THE COURT: We may need just a little more volume or you could scoot a little closer, if you would like.

THE WITNESS: Okay. Sure.

THE COURT: That's good. That will do. All right.

Have you previously testified in this proceeding?

THE WITNESS: Not in this proceeding.

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

TIM GALLOWAY,

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

DIRECT EXAMINATION

BY MR. ROSENBAUM:

Q. Good morning, Mr. Galloway.

Before you is Hearing Exhibit 439, which is also IDFA Exhibit 63.

Is this a copy of your written testimony today?

A. It is, but I think I have a different copy in front of me than what you have.

THE COURT: And let's go off record for just a moment. We're off record at 8:04.

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

THE COURT: Let's go back on record.

We're back on record at 8:04.

MR. ROSENBAUM: This is Steve Rosenbaum for the International Dairy Foods Association.

BY MR. ROSENBAUM:

Q. Do you now have before you the document that has

been marked as IDFA Exhibit 63, which is also Hearing Exhibit 439?

A. Yes, I have.

Q. And is that your written testimony today?

A. It is.

Q. Could you please read it into the record?

A. Thank you.

This is my testimony in opposition to Proposal 21, increasing the Class II differential.

Good morning. My name is Tim Galloway. I'm CEO of Galloway Company, a four-generation processor of concentrated dairy ingredients for further food and beverage manufacturing. We are located in Neenah, Wisconsin.

The milk in our products are regulated by Federal Order 30. Galloway Company and our wholly-owned subsidiary, Classic Mix Partners, only manufactures industrial ingredients that are considered Class II items by the Federal Milk Marketing Order. Specifically, we make sweetened condensed milk, ice cream mixes, beverage bases, and non-sweetened concentrated dairy products. We primarily use local milk, but in some months we have to use some additional cream for condensed skim milk. We make no retail items, and our ingredients are sold nationwide.

I have testified at every FMMO hearing since 1990. At times, it seems like the hearings are similar to the movie Groundhog Day, as the same supposed issues and

solutions come up each time. A good example is the Farm Bureau Class II differential proposal. I'm not here to debate their economic analysis, I'm here to explain why, as a real-world processor of Class II items, their proposal will not attract more milk to Class II uses, increase the blend price, reduce depooling and negative PPDs.

In fact, it has the likelihood of taking more Class II milk out of the pool, replaced by regulated Class IV ingredients or milk ingredients from unregulated areas. In Federal Order 30, milk purchases have to be competitive to the dominant Class III market, and on the sales side, we have to be competitive to competing ingredients such as condensed skim milk, nonfat dry milk, concentrated milk fat, and anhydrous milk fat.

There is no financial justification for the rewetting of solids theory. Let me give you just two examples from the real world of manufacturing food and beverage products. The first is ice cream mix. Some manufacturers, like our Classic Mix, think the flavor and functionality of the ice cream is better if made with liquid dairy components. But as was abundantly clear when the Class II price was tied to the Class III cheese price back in the 1990s, many retail and ice cream mix manufacturers switched to dry dairy solids and anhydrous milk fat due to the vast discrepancy in price between Class III and Class II.

To make ice cream, you need to combine a number of

ingredients, both liquid and dry, hydrate to the proper total solids, and pasteurize. No rewetting needs to be done as the corn sweetener and the liquid sugar are at high enough temperature to fully hydrate the dry milk solids.

To make the point even finer, we do not, in the industry, take nonfat dry milk and make tanks of condensed skim milk out of it, we just put it in the vat and make the product. Therefore, if the Class II ingredient differential gets more expensive in the proponent's scheme of more than doubling the differential than it gives an incentive to use Class IV ingredients.

The customer makes the ultimate decision on cost. The implication that there would be more Class II milk at a higher differential is speculative and I think counterproductive -- and may be counterproductive. The FMMO would be creating ingredients manufactured -- manufacturers, winners and losers, and promote disorderly marketing.

The same can be said for sweetened condensed milk as an ingredient for further food manufacturing. This is an industrial product used in unregulated food products, unlike retail yogurt, cottage cheese, frozen ice cream, and other Class II retail products.

As I testified in the 2006 hearing, in 2005, the sweetened condensed milk industry for industrial use had lost over 65 million pounds of production over the prior ten years. At an average of 28% total milk solids, that

equates to 54 million pounds of milk not going into Class II, but instead, going into Class IV. Our competitors' sweetened uncondensed milk is butter powder, it's not other manufacturers'.

We finally got this right at the 2006 hearing, even if the differential jumped from $0.30 to $0.70 a hundredweight. Our customers didn't like the increase, but have stuck with us to date. I don't think they will at $1.56 on raw milk, particularly when that equates to $2.58 of finished sweetened condensed milk.

THE COURT: And that's $1.56 per hundredweight, and when you say it equates to $2.58, that's also per hundredweight?

THE WITNESS: That is correct, ma'am.

As testified at the last hearing, when a food manufacturer makes the decision to put processing equipment in place to blend and hydrate butter and powder, they don't switch back and forth with liquid ingredients. The capital investment has now some cost that needs to be amortized over time. Again, it is the FMMO that is causing the disorderly marketing.

Regulations of the FMMO should not result in arbitrary or capricious results, but let me give you two examples. One, the end user or retail manufacturer should be able to select the best ingredients for their product. The FMMO should not decide what that ingredient is based on arbitrary pricing mechanism.

To the point of being capricious, I can state that

due to capacity restraints in the sweetened condensed milk industry, Galloway Company, two years ago, decided to build the first sweetened condensed milk evaporator since 1998.

THE COURT: Say --

THE WITNESS: Or '88.

THE COURT: Read the year again.

THE WITNESS: 1988, which was also built by Galloway Company. We did the design work, purchased the equipment, purchased the concrete panels, and on August 22nd of 2023, had the groundbreaking ceremony for that $65 million expansion. If the proponents' plan prevails, all this effort and expense may be for naught.

What is the benefit to the producer and the pool? The proponents state it is the upcharge from $0.70 a hundredweight to $1.56 a hundredweight, for an increase of $122 million to the pool. I contend it is just the opposite, where the current $0.70 a hundredweight differential equating to $99.4 million may be lost to Class IV sales. Be very careful what you wish for.

MR. ROSENBAUM: Your Honor, Mr. Galloway is available for cross-examination.

THE COURT: Who first has cross-examination for Mr. Galloway?

I see no one. I invite questions from the Agricultural Marketing Service.

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CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good morning.

A. Good morning.

Q. Thank you for being here today.

A. Thank you.

Q. I appreciate your testimony on Proposal 21. I just want to make sure I kind of recapture the main message you're telling us.

The first is, in your real-world examples, as I read it, you don't need -- the rewetting theory, as you called it in the Farm Bureau proposal, isn't reflective of what happens today because you don't actually need to rewet the solids as -- because the process of how you manufacture your product, that's not a necessary step; is that correct?

A. I am a little uncertain as to what the term "rewetting" means. We hydrate dried dairy ingredients all the time, and dry stabilizers and emulsifiers and other items that go into ice cream mix. If rewetting means taking nonfat dry milk and making a tank of condensed skim milk to be used in the process, that's not done. It would be -- make no economic sense at all because you already have the hot corn syrup or hot liquid sugar. You have to pasteurize the ice cream mix and the sweetened condensed milk anyway, so you are getting it up to temperatures where that, if you are using nonfat dry milk, we just put it in the vat.

Q. On the top of page 3, that last full sentence, at the very top of the page you say, "The Federal Orders would create ingredient manufacturer winners and losers and promote disorderly marketing."

I wondered, can you just expand on why you think this would promote disorderly marketing and how you would define disorderly marketing?

A. We have local milk available to us. It needs to be used. And the farmers need the processors in their area to be able to most efficiently market their milk. If you -- if your regulated pricing forces people to use nonfat dry milk because of cost or anhydrous milk fat, those aren't necessarily made in the area in which you are located, so now you are bringing in product across the country potentially.

There are many fewer manufacturers of nonfat dry milk at scale than there are ice cream mix manufacturers. So that, to me, is disorderly marketing, because you are moving dry ingredients or concentrated butterfat over tremendous distances when it can be used right from local milk in your own market.

Q. And for your company, how close is your milk supply to you?

A. The majority is within 100 miles. It's from the Upper Peninsula of Michigan down to Central Wisconsin.

Q. Okay. You talk in the beginning about -- and you just mentioned -- instead of using Class II milk, you -- manufactures will switch to powder because it be cheaper.

You also mentioned you might get milk ingredients from unregulated markets.

Can you just talk a little bit about that situation?

A. Idaho.

Q. Idaho?

A. They have an awful lot of milk out there. It's unregulated. We -- they have called on us numerous times to use their solids. We prefer to get it from local sources. But if -- if we get into a competitive situation where our competitors, particularly in ice cream mix, are using all dry ingredients, we may have to go there as well, because the price differential is that great.

Q. Okay. And you talk about your main competitor for sweetened condensed milk, at least, is butter powder.

A. We have another manufacturer who is a competitor, and a good competitor. But we have to be more concerned about butter powder as being put right into the caramel, right into the syrup, whatever the sweetened and condensed -- the pie.

And as I stated that once the manufacturer makes the investment to use dry ingredients, they are not going to switch back to sweetened condensed milk, they are not going to have two separate processes.

The largest -- I would state that the largest user of sweetened condensed milk up through the mid-'90s did switch to butter powder, and they haven't bought -- they buy a little sweetened condensed milk at one factory, but

they have got ten of them.

Q. Okay.

THE COURT: They have got ten of what?

THE WITNESS: Factories making candy.

BY MS. TAYLOR:

Q. In your last paragraph of your statement you say, "The current differential" -- if you increased the differential as proposed in 21, it would equate to 99.4 million lost to Class IV sales.

Just, can you explain how you comprised that number?

A. I took the $0.70 hundredweight differential and multiplied it by the pounds of Class II milk that was used in the Federal Milk Marketing Orders. That isn't necessarily all the milk, because obviously some might have been depooled and not reported. So it was just strictly a calculation of the Class II milk utilization that is reported.

Q. Okay. All Class II milk?

A. Yes.

Q. For 2022?

A. I believe those are the numbers I was using, yes.

Q. Okay. That's it from AMS.

MS. TAYLOR: Again, thank you for coming and giving us your statement.

THE WITNESS: Thank you.

THE COURT: Mr. Rosenbaum.

MR. ROSENBAUM: Your Honor, I don't have any

questions. I would simply move Hearing Exhibit 439 into evidence.

THE COURT: Is there any objection to the admission into evidence of Exhibit 439?

There is none. Exhibit 439 is admitted into evidence.

(Thereafter, Exhibit Number 439 was received into evidence.)

THE COURT: Is there anything you would like to add, Mr. Galloway, or emphasize?

THE WITNESS: You know, yesterday morning I went out to the barn and petted my Class II cows, and they were feeling kind of down in the dumps because they knew what their butterfat or their skim solids price was for the month, but they don't know what their fat is. And they're sitting next to their Class I sisters who know both their fat and solids before the month starts. But I told them that, you know what, it could be worse, you could be the largest utilization in the entire dairy industry in Class III and not know anything until the month is over. And then the poor Class IV cows get $0.70 a hundredweight less. So I said, you know, you are not doing too bad.

I -- I make that parable up because that is the state of our industry, and it is -- milk is milk is milk. There's absolutely no difference between Class II milk, Class I, Class III. It all goes into the same bulk tank. So why do we have these fictions?

THE COURT: Thank you.

Mr. Rosenbaum.

MR. ROSENBAUM: Nothing further, Your Honor.

THE COURT: Keep coming.

THE WITNESS: That's it.

MR. ROSENBAUM: Your Honor, the IDFA calls as its next witness, Mr. Mike Brown.

We do have a PowerPoint presentation.

THE COURT: Let's go off record while our sound technician works with the laptop that Mr. Brown has brought to the witness stand.

Everyone may take a five-minute stretch break. Let's be back ready to go at 8:30.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 8:32.

I have before me two exhibits. I have Exhibit 433, which is also IDFA Exhibit 57; and I have Exhibit 434, also IDFA Exhibit 58.

(Thereafter, Exhibit Numbers 433 and 434 were marked for identification.)

THE COURT: I'd like the witness please to state and spell your name.

THE WITNESS: My name is Mike Brown, M-I-K-E, B-R-O-W-N.

THE COURT: You remain sworn.

THE WITNESS: Thank you.

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MIKE BROWN,

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

DIRECT EXAMINATION

BY MR. ROSENBAUM:

Q. Steve Rosenbaum for the International Dairy Foods Association.

Good morning, Mr. Brown.

Is IDFA Exhibit 57, which has been marked as Hearing Exhibit 433, your written testimony on Proposal 19?

A. Yes, it is.

Q. And is Hearing Exhibit 434 the PowerPoint presentation that you are about to present that summarizes that written testimony?

A. Yes.

Q. Could you please take us through your PowerPoint.

A. Okay. Let's -- let's start -- and I guess I can't really see it here, so I -- hopefully it's all there.

Cover page, of course, is our testimony in opposition to Proposal 19.

THE COURT: And, yes, we see it on the screen.

THE WITNESS: Okay. Good.

Proposal 19 would significantly increase Class I differentials nationwide. The facts do not support an increase, and the methods by which the proponents have established their specific increases are internally inconsistent, lack factual support, and are often based on

considerations irrelevant to setting the Class I differentials.

THE COURT: Now, your volume is great. Your pacing could be just a bit slower. Slower, please.

THE WITNESS: Thank you. We'll fix that now.

The current supply of milk is more than adequate to serve Class I needs. Temporal fluctuations in milk production and incongruity between milk production and fluid milk consumption require a sufficient reserve supply of milk serving non-fluid milk needs in order to ensure an adequate supply of milk to serve fluid needs.

USDA has said a reserve milk supply equal to 30 to 35% of the total milk in the market appears to be a reasonable reserve requirement. This is from Milk in the New England and Other Marketing Areas; Decision on Proposed Amendments to Tentative Marketing Agreements and Orders, March -- 58 FR 12634, 12646, March 5th, 1993.

THE COURT: Now, I'm going to have you do that again slowly, beginning with F -- with the identification --

THE WITNESS: The identification? Okay. The identification for that decision is 58 FR 12634, 12646, dated March 5th, 1993.

THE COURT: Thank you.

THE WITNESS: Same title. Class I utilization is only 27% of FMMO milk and 20% of total milk. The reserve supply is 73% of pooled milk and 80% of total milk. This amount is more than double the 30 to 35% supply reserve

that USDA deemed to constitute a reasonable reserve.

All but three of the 11 Federal Orders have reserve supplies in excess of 35%. The exceptions are the three Southeastern orders. Special transportation and delivery credits recently adopted -- and I would say the final rule has been submitted, the adoption has not, the vote has not taken place yet -- for the specific purpose of encouraging the supply of Class I milk to these three orders eliminates any need to raise the Class I differentials there.

Again, same title: Current milk Supply is more than adequate to serve Class I needs. The consistent decline in shipping requirements confirms the adequacy of the Class I milk supply. Since 2010, not a single Federal Milk Order has increased the percentage of pooled milk that must be shipped to Class I plants.

The requisite Class I shipping percentage was lowered, not raised, in Orders 1, 33, 30, 124, and 131. This can only be attributed to the degree to which the milk supply is increasingly more than adequate to serve Class I needs. Relatedly, "no order received any call or had any issuance of milk to be shipped to Class I plants in their order."

Fluid milk sales have undergone severe declines.

BY MR. ROSENBAUM:

Q. This is now a now topic?

A. Yes.

THE COURT: And just tell us the page number,

Mr. Rosenbaum.

MR. ROSENBAUM: This is page 6, Your Honor.

THE COURT: Thank you.

THE WITNESS: National fluid milk sales have fallen over 21% from their peak of 55,165,000,000 pounds in 1991 --

THE COURT: Now -- now --

THE WITNESS: 55 -- I'll repeat that.

THE COURT: Yes. You are in numbers, so really slowly on these numbers.

THE WITNESS: Yes, ma'am.

THE COURT: So let's start from the beginning of that bullet.

THE WITNESS: Okay. National fluid milk sales have fallen over 21% from their peak of 55,165,000,000 pounds in 1991 to only 43,448,000,000 pounds in 2022. On a per capita basis, annual consumption fell from 247 pounds in 1975 to 130 pounds in 2022. No national retailer would materially increase the price of a product undergoing such a steady substantial decline in sales, nor should the government do so by mandatory edict.

Next topic: The retail demand for fluid milk products is elastic and the proposed Class I differential increases will materially harm sales. Three 2023 studies by leading agricultural economists demonstrate that the retail own-price demand in milk is quite elastic. The emergence and strengthening of plant-based beverages and other substitutes is a recent phenomenon that many earlier

studies did not capture.

Same topic. Dr. Capps' predicted retail sales declines from Proposal 19's $1.49 per hundredweight increase in the Class I differential are startling.

THE COURT: Now, so that we have $1.49, just make sure that the transcript captures what you are saying there.

THE WITNESS: Okay. I'll repeat the sentence.

Dr. Capps' predicted retail sales declines from Proposal 19's $1.49 per hundredweight increase in the Class I differential are startling.

And these numbers are from Dr. Capps' testimony, the different categories in the declining sales: Total milk decline, 5.98%; traditional white milk is 6.28%; organic milk is 4.11%; health-enhanced milk is 5.67%; lactose-free milk, 2.75%; and traditional flavored milk, 2.4%.

Again, the retail demand for fluid milk products is elastic. The proposed Class I differential increases will materially harm sales.

Next points. Demand would be further compromised by NMPF Proposal 1. And Proposal 1, you may all recall, was changing the skim solids formulas. That was a long time ago. That was August. It was about 100 degrees here.

Recent years show Proposal 1 would increase Class I prices by an additional $0.53 per hundredweight. Using Dr. Kaiser's electricity of price transmission and

Dr. Capps' own-price elasticities, this would result in an additional 2.08% decline in total retail milk sales.

Proposal 19 would significantly increase USDA food program costs. But we --

THE COURT: Now we're on page 10.

THE WITNESS: Yes. Page 10.

And we have a table. I will read through the table.

Estimated impacts of Proposal 19 differential increase on the federal government direct purchase cost for beverage milk. What this chart looks at is what the program costs have been based on volume of milk, and we -- what we did was we took that volume of milk, just added simply the change in cost of milk, and what that might do to program costs.

Reading across. Total gallons of milk for school breakfast and lunch is 403 million; daycare and preschool is 24; food banks and USDA are 38; military is 23. The totals are 488. And these are for 2022, these numbers.

BY MR. ROSENBAUM:

Q. Mr. Brown, I think we probably can not have to read all the numbers in specifically. Just tell us how the chart -- finish telling us how the chart was put together and give us what the total numbers are, if you will.

A. Okay. I'm glad to hear that.

The chart was put together, there is a firm, you have heard of them already, Prime Consulting did a report

on all channel tracking. It's some of the same information that Dr. Capps used for when you were looking at use of product in different categories. It was published in May of '23. It was put together for the dairy milk promotion groups.

What we did is, we simply looked at the total pounds of milk, and we had gallons -- of course, pounds is -- 8.6 pounds per gallon -- to get a total milk used in each of the different programs. We simply averaged the cost of increase that Proposal 19 would incur, and that cost was $1.49 based on National Milk's own estimates. The total milk increase -- and this is, again, assuming that you would have a transfer cost, it reflects that cost change in milk -- would be 51.8 for school breakfast and lunch; 3.1 --

THE COURT: Now -- now, these are the most important numbers.

THE WITNESS: Yes. It's the last line on the table.

THE COURT: Yes. And we want to make sure that the transcript, which won't have the table right in the transcript, computes.

So what you are telling us is in millions of dollars, what?

THE WITNESS: I'm telling you how much the cost for that milk would increase --

THE COURT: All right.

THE WITNESS: -- based on Proposal 19.

THE COURT: So when you tell me the numbers, for every number you tell me, tell me in millions of dollars.

THE WITNESS: Yes, ma'am.

THE COURT: All right.

THE WITNESS: So total milk increased in millions of dollars: For school breakfast and lunch program, it would be 51.8 million; daycare and preschool, 3.1 million; food banks and USDA, 4.9 million; military, 3.0 million; for a total of increasing cost of purchasing beverage milk of $62.7 million per year.

BY MR. ROSENBAUM:

Q. And are these annual figures?

A. Yes, they are.

Q. And did you attach to your written testimony an excerpt from the Prime Consulting report that provided the channel distribution numbers upon which you relied?

A. Yes. The source data is in the attachment from Prime Consulting.

Q. All right. Let's go on to the next topic, please.

A. Topic 4?

THE COURT: Now --

THE WITNESS: Yes, ma'am.

THE COURT: Now, let me just make sure. So the sentence below the chart reads what?

THE WITNESS: The sentence below the chart needs corrected. The 149 increase in Class I differential --

THE COURT: Now, again, "the 149," I want you to read that --

THE WITNESS: Per hundredweight.
THE COURT: No, but it's $1.49 --
THE WITNESS: Okay. Yes.
THE COURT: -- per hundredweight increase; is that correct?
THE WITNESS: Yes.
THE COURT: So begin again.
THE WITNESS: I will.
The $1.49 per hundredweight increase in Class I differentials would cost the government -- the slide says over 67 million, it should be 62.7 million. So that 67 is -- needs to be adjusted.
MR. ROSENBAUM: Your Honor, if we could have the exhibit corrected so that that number reads 62.7 rather than 67. That obviously was a typo that got left out.
THE COURT: All right. And do you want it to say "over" or do you want it just to say "62.7 million"?
THE WITNESS: Just "62.7."
THE COURT: All right. So we'll make that correction right now on the record copy of Exhibit 434, also known as IDFA-58, page 10. We're striking the word "over," and instead of "$67" we will have "$62.7" as is shown in the table; is that correct?
THE WITNESS: Yes, it is.
THE COURT: And it has been done.
THE WITNESS: Thank you.
BY MR. ROSENBAUM:
Q. Go on to the next slide, please, and I believe

this is a new topic.

A. This is a new topic.

Proposal 19 is based on unevenly applied criteria, many of which bear no relevance to Class I differentials. USDA, in order reform, set Class I differentials based on the combination of the base differential plus a location differential.

The base differential comprised of costs unique to Class I: Cost of obtaining Grade A milk, recognition of balancing costs, and portion of the competitive actual -- excuse me -- portion of the actual competitive costs incurred by fluid plants to simply compete with manufacturing plants for a supply of milk.

The location differential reflects some of the costs of moving milk from areas of production to Class I processing facilities.

Again, same topic, Proposal 19 is based on unevenly applied criteria. The University of Wisconsin U.S. Dairy Sector Stimulator -- or the U.S. Simulator, excuse me, S-I-M-U-L-A-T-O-R -- USDSS study did not address the base differential, but rather it looked at location differentials by addressing, e.g., the costs of moving milk from supply areas to processing facilities.

Proposal 19 makes material revisions to the Class I differentials calculated by the University of Wisconsin model based on criteria, many of which bear no relevance to Class I differentials.

USDA used in setting Class I differentials, what

did they -- what did they do? USDA, long ago, determined that it would set one manufacturing price per manufacturing class, which would apply uniformly across the country. At the same time, the Class I differentials that would be added to those manufacturing prices to set the Class I price varied considerably based upon each location's need to move milk from other areas. Blend prices among orders necessarily did not align.

Same topic: NMPF criteria for setting Proposal 19's Class I differentials. Multiple witnesses have provided extensive information regarding the cost of producing milk in general. Their testimony did not relate to any special cost of producing milk for Class I purposes. These general costs have not been considered by USDA in setting Class I differentials themselves, but are captured through the Class III and IV price to which the Class I differential is added to set the Class I price.

A quote from USDA in 2008: "In the aggregate, the costs of producing milk are reflected in the supply and demand conditions for the dairy products. When the supply of milk is insufficient to meet the demand for Class III and IV products" -- "the Class III and Class IV products" -- correction -- "the prices for these products increase as the regulated minimum milk price is paid to dairy farmers because the milk is more valuable and its greater milk value is captured in the pricing formulas."

Again, a quote from USDA, 2008.

THE COURT: All right. Now, you varied a tiny bit

from what you have quoted here.

THE WITNESS: Okay. Thank you.

THE COURT: So if the transcript is slightly different in wording, it's your slide that we should rely on.

THE WITNESS: Yes, ma'am.

THE COURT: It didn't change the meaning, just the words were --

THE WITNESS: As I said them, I realized that. I apologize.

THE COURT: No worries. All right. And that was on page 14.

THE WITNESS: Yes, ma'am.

THE COURT: All right. You may proceed.

THE WITNESS: Active proposal -- or comments on unevenly applied criteria.

NMPF criteria for setting Class I Proposal 9's [sic] differentials, regional competition in the sale of manufactured products. Witnesses insisted that Class I differentials reflect regional composition at the farm level, so that California (with its low Class I utilization) needed to have Class I differentials such that the blend price in California was similar to the blend price in the Upper Midwest.

In other words, Class I differentials should be set based upon the competitive relationship between regions 1500 miles apart, with no respect to the sale of manufactured milk products -- oh, excuse me -- with

respect to the sale of manufactured milk products.

Would you care to have me re-read that?

THE COURT: Yes, please.

THE WITNESS: Okay.

THE COURT: And, again, what you are saying in this slide on page 15 is what you believe that NMPF's criteria are?

THE WITNESS: That is correct.

THE COURT: And you --

THE WITNESS: They are our views based on testimony.

THE COURT: Yes.

THE WITNESS: That's correct.

THE COURT: And you may re-read that bullet.

THE WITNESS: Okay. In other words, Class I differentials should be set based upon the competitive relationship between regions 1500 miles apart -- again, 1,500 miles apart -- with respect to the sale of manufactured milk products. No such concept had previously -- has previously been adopted by USDA with the respect to the setting of Class I differentials.

Next point. Again, I'm -- NMPF criteria for setting Proposal 19's Class I differentials, basing the Class I on -- basing Class I on the milk supply for manufacturing plants. Other witnesses supported higher Class I differentials in specific locations because their cooperative had contractually committed to sell most of its milk to a large Class III cheese plant, and a higher

differential was needed to attract additional milk to serve Class I customers.

We have not, nor historically has USDA, seen this as a basis to increase, via federal legal mandate, the amount Class I members in the order would have to pay for their milk supply.

Give me just a minute. I need to wet my throat.

THE COURT: Yes. And I would like us to take a five-minute stretch break. We're about to begin page 17. Just five minutes. We'll go back on record at 9 o'clock.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 9:00 a.m.

Mr. Rosenbaum.

BY MR. ROSENBAUM:

Q. Mr. Brown, could you please continue?

A. I certainly can. We're on Slide 17, same -- same topic: Proposal 19 is based on unevenly applied criteria, many of which bear no relevance to Class I differentials.

Again, next topic: NMPF -- or next issue -- NMPF criteria used in setting Proposal 19's Class I differentials, increase blend prices in areas with limited Class I needs. Witnesses discussed the need to discourage milk from moving from Minnesota and Maine, respectively, in order to maintain blend price equivalence in their local markets, even though milk in both locations may well be needed to the south of those locations. This position contradicts the fundamental purpose of establishing

Class I differentials in order to encourage movement to where it is needed.

Next slide: NMPF criteria used in setting Proposal 19's differentials, an undefined base differential. As the lead "umbrella witness" providing overview, Dr. Vitaliano suggested that the base differential should be raised from $1.60 $2.20 per hundredweight. Other proponents did not include any change in the base differential for the Nashville, Winchester, Virginia, and Charleston, West Virginia.

Proposal 19, again, on unevenly applied criteria, inconsistent approaches to transportation cost data. Dr. Vitaliano indicated that Proposal 19 differential increases were conservative because the University of Wisconsin study and Proposal 19 itself utilized 2021 transportation cost data, even though 2022 related transportation cost data would supposedly show higher transportation costs.

But many proponent witnesses relied upon 2022 and 2023 transportation cost data as justification for Proposal 19, including in support of Class I differentials in excess of those that the University of Wisconsin study supported.

Proponents argued that the University of Wisconsin model does not account for traffic delays, but never provide a specific analysis of the dollar amount by which the study's transportation costs are allegedly understated for this reason.

Next issue under this topic: A refusal to allow the "fundamental determinants" of changes in milk supply locations and costs of transportation to actually play a role in setting Class I differentials. Dr. Nicholson testified that there have been considerable changes to where milk is produced and where population growth has taken place.

Yet many proponents abjured Class I differential changes that would reflect these new realities in the location and quantity of milk production, and the impacts of higher transportation costs, demanding instead that the new differentials preserve existing relationships, although, this principle was not uniformly applied to all areas, such as Western Pennsylvania.

Q. We're up to Slide 21. Are you now introducing a new topic?

A. Yes, I am. And I'm giving my throat a chance to moisten up here.

USDA should not raise Class I differentials in a doomed effort to reduce or eliminate depooling. Depooling becomes a realistic option when the Class III or Class IV price exceeds the blend price. In the largest FMMO, Order 30, there were 34 months (out of 46), between January 2020 and October 2023, in which either the Class III or Class IV price exceeded the blend price. If Proposal 19's $1.26 increase in the Class I price for Order 30 had been in place, there would still have been 33 months in which either the Class III or Class IV exceeded

the blend price.

THE COURT: All right. I want you to read that one again. That's important, and I want you to go slowly.

THE WITNESS: Yes, I will. Thank you.

If Proposal 19's $1.26 per hundredweight increase in the Class I price in Order 30 had been in place, there would still have been 33 months in which either the Class III or Class IV price exceeded the blend price.

The Class I differential would have to increase to $41.32 in order to decentivize [sic] pooling entirely in Order 30 and to provide some clarification.

That was a maximum month, would have been 41.32 to completely eliminate depooling incentives during that period of time.

THE COURT: Do you remember the month?

THE WITNESS: July 2020.

THE COURT: July 2020.

MR. ROSENBAUM: And, Mr. Brown, does your written testimony include as attachments, spreadsheets that show all the calculations?

THE WITNESS: Yes. There's detail in the attachment, that is correct.

THE COURT: All right. And -- and rather than "decentivize," your actual word there is "disincentivize"; is that correct?

THE WITNESS: Yes, it is. Thank you.

THE COURT: They probably mean the same thing. Okay.

THE WITNESS: One is probably better grammar, but I'm not the one to ask.

BY MR. ROSENBAUM:

Q. Next slide, please.

A. All right. Thank you.

My testimony thus far explains why Proposal 19 should be rejected in its entirety. Now I will -- I will now address some specific shortcomings in that proposal were USDA, nonetheless, to consider adopting any aspects of it.

Q. Now we're on a new topic.

A. New topic: USDA should not raise Class I differentials in the three Southeastern orders. This -- this topic I'll walk through a couple of slides. And, again, we did some analysis to our best estimates and what the cost increases of that proposal would -- would provide to -- or charge to our processors.

USDA recently published in a final decision to adopt significantly increased current and new transportation and delivery credits for those bringing milk to fluid milk plants in the three Southeastern orders, subject to, of course, to producer referendum approval.

We'll walk through a chart which is at the bottom of Slide 23. And this is -- chart is titled "Current Credits versus Combined New Transportation and Plant Delivery Credits." Again, these --

THE COURT: So, and what kind of plants?

THE WITNESS: Distributing plant, fluid milk plant.

And these are in dollars per hundredweight, and we have three different Federal Orders. We show the current delivery credit, the new one, and what the change would be.

So, for example, in Order 5, which is the Appalachian order, the current delivery credit is $0.07, the new would be $0.90, and the increase is $0.83 per hundredweight.

In Order 6, which is the Florida Federal Order, there is no current transportation in-plant delivery credit. The new would be $0.85, with an increase of $0.85.

In Order 7, the Southeast Federal Order, the current combined credit is $0.30, or -- $0.30, which is -- just one. The new would be $1.10, with an increase of $0.80 per hundredweight.

Same topic. These credits will be paid on top of Class I prices, including Class I differentials. They are not netted against Class I differentials. These credits were not taken into account when the University of Wisconsin created this model or when the proponents developed 19.

And that's an important point. This information was not available then, but it certainly can impact changes that may or may not be made.

BY MR. ROSENBAUM:

Q. Next slide, still same topic.
A. These credits are equal to more than 40% of the Proposal 19's proposed Class I differential increases.
Q. I think you just -- I don't think there's a need to do the precise numbers, just tell us what the percentage is that the new credits represent or new credit increases represent of the proposed --
A. Of the current Class I differential. Okay.
So the numbers I'll be giving you is a percent increase from these credits to the current Class I differential in these different markets.
In Order 5, Appalachian --
Q. Actually, I think that's slightly -- I think this is a percentage that the new credits represent of the proposed increase for Class I.
A. Yes. Thank you for that clarification.
So these indicate the percentage from this transportation change in the order that is in the final decision relative to the request for increase in differential. Thank you for that.
Order 5, Appalachian, is 43%; Order 6, Florida, is 46% of the proposed new differentials; Order 7, the Southeast, is equals to 42% of the proposed change in differentials.
Q. All right. Let's go on now to a new topic, the next page, 26.
A. New topic: The $0.40 Grade A adjustments -- adjustment is archaic and no longer relevant and should be

eliminated.

In earlier times, only a fraction of milk produced in the United States was Grade A and eligible for fluid use. Only 60% in 1960 was Grade A; only 84% in 1980.

Today, by contrast, over 99% of all milk produced is Grade A milk, and in the vast majority of states, there is no Grade B milk whatsoever. With 99% of all United States-produced milk already being Grade A, there is no longer any need to incentivize farmers to become Grade A.

Next page, same topic. And there's a chart on this page which compares the Class I utilization with a Grade A share of total milk sales.

And to give you a point of reference, in 1976, we were roughly 80% Grade A, and for the last 11 years we have been 99% Grade A. Class I utilization of Federal Order milk has gone from around 55% in 1976, to last year it was 27%. So becoming a Grade A farm no longer has any real relationship between serving the fluid market. It serves all markets.

The percentage of milk that is Grade A has steadily risen, even as the percentage of FMMO milk that is Class I has steadily fallen.

Q. Next slide, same topic.

A. Same topic. Many uses of milk other than Class I products require Grade A milk. The PMO itself defines Grade A milk products to include cottage cheese and whey and whey products, as well as all milk products with the standard of identity provided in 21 Code of Federal

Regulations Part 131 (excluding sweetened condensed milk), including yogurt, sour cream, eggnog, and other products.

Continuing on this topic. Many plants producing manufactured products have extra butterfat in the form of cream. If they themselves use that cream to make packaged cream products or sell the cream to customers that do so, then the plant milk needs to have been Grade A milk.

Similarly, if the plant makes whey products that then go into a product that must be Grade A, such as yogurt, the whey must be made from Grade A milk.

Furthermore, many manufacturers of Grade AA butter require that their supply be Grade A whether the milk comes directly from farmers or their cooperatives or from a manufacturing plant that has extra cream to sell.

Q. So next slide I think you are going to put some facts behind these, some numbers behind these statements.

Can you please explain that.

A. Yes, I can. And for your reference, the plant list we refer here is an attachment. It's actually a digital Excel spreadsheet attachment to the testimony.

Q. This list you reference is an attachment to your written testimony?

A. Yes. The October IMS plant list, based on our analysis --

THE COURT: So that we're sure that's correct in the transcript, what are you saying after the word October?

THE WITNESS: IMS, Interstate Milk Shippers.

THE COURT: Ah, that's what IMS is.

THE WITNESS: Yeah, sorry. There's too many acronyms in our industry, and we all think everybody knows what they are. And of course sometimes we forget what they are.

THE COURT: I think everyone in this room knew that but me. But you may start again with that bullet point.

THE WITNESS: I will. And everybody has to -- everybody has to be able to read the record, whether they are in this room or not.

The October IMS, Interstate Milk Shippers, plant list includes around 131 plants that primarily manufacture Class III and IV products. IMS rules require that these plants use only Grade A milk, even though they are not fluid milk plants.

BY MR. ROSENBAUM:

Q. And, Mr. Brown, did you personally review that list and make those determinations?

A. Yes. It was quite a chore. Yes.

Q. Okay.

A. I think we -- it was kind of like Santa Claus, we made a list and checked it probably three or four times.

This includes all of the large mozzarella plants, the large Hilmar and Glanbia cheddar cheese plant, and to the best of my belief, all of the large mozzarella cheese and butter powder plants.

1,748 bulk tank unit, or BTU, facilities also

appear on the IMS list. Not surprising is 99% plus of all milk is Grade A.

For point of reference, bulk tank units are the inspection units that are used to determine that farms are meeting Grade A qualifications. So any farm that ships Grade A milk is part of a bulk tank unit.

Q. So just to be clear here, to be on the IMS list, the Interstate Milk Shippers list, you have to be Grade A, correct?

A. Absolutely. Both your milk supply and your plant has to pass inspection.

Q. So for Hilmar and Glanbia's cheddar cheese plants to be on that list, which they are, they have to be receiving nothing but Grade A milk; is that right?

A. That is correct. And it's for different reasons. Some -- some cheese customers want Grade A milk, but in a lot of cases it's the sale of cream that requires the plant be IMS certified and the milk be Grade A.

Q. That is to say that what you referred to on the previous slide, that cheddar cheese companies like Hilmar and Glanbia end up with something they want to sell to somebody else?

A. And the price -- the price is significantly higher if it's Grade A cream versus Grade B cream.

On to Slide 31. Again, commenting on the Grade A adjustments. 99% of milk already being Grade A, the only real cost is maintaining Grade A status. And we looked at the USDA requirements for plants for grading, and compared

that to the IMS list to come up with a -- what we thought were differences that could significantly -- not even significantly, but it would be recognizable costs. And we really came up with two.

One, with Grade A you have to be inspected twice a year, biannual, rather than annual farm inspections, which are required for Grade B.

Another one, which I have personal experience with as a kid, is that barn walls with permeable surfaces need to be painted once a year. So that was always fun getting ready for the whitewashing the barn as I was a kid.

Q. Just to be clear about this, you -- in making this list, you were comparing the USDA guidelines for, what do you call it, manufacture? Strike that, let me start that again.

You were comparing the USDA guidelines for -- that applied to a farm, even if it's not Grade A, correct?

A. That is correct.

Q. And you were comparing that to the PMO requirements applicable to plants that are Grade A, correct?

A. Yes. And when you look at maintenance, these are the two costs that you could identify.

Q. Okay. So that what you are focusing here on, given that 99% of milk is already Grade A, you are asking the question, what do these farms need to do to maintain Grade A status as opposed to what they would have to be doing if they weren't Grade A, correct?

A. Yes. And just a little color on this -- on this slide.

Farms don't go back from Grade A to Grade B unless they fail their inspection and they become Grade B. I mean, they simply don't make that decision, except in cases where pricing regulations, specifically in California, more in the past, if they wanted not to participate in the pool, they would become Grade B so they didn't have to participate. So it was -- it was an economic decision unrelated to milk quality, it was all about price regulation.

Q. And did they actually even change their farms in order --

A. No, they didn't do anything, other than they only had one inspection a year instead of two. That was it. Because the plant requirements for milk remain strong.

And Hilmar is the best example in California, they actually no longer allow that because of Grade A needs for -- particularly marketing cream and some of their whey products.

Q. Let's go on to the next slide, and slightly different topic, although it still relates to the question of what requirements are imposed on milk. So please talk to us about that.

A. Okay. Back to Grade A, but this is more specifically talking also about the -- the requirements for milk quality and what reality is as an industry. And so let's walk through these points.

The privately-negotiated agreements to supply Class I processors milk with somatic cell counts lower than the 750,000 cell limit imposed by the PMO are not a relevant consideration.

Q. And let me just interrupt you. The reason you are covering this topic is because some of the proponents of Proposal 19 have pointed to the fact that some of their Class I customers have imposed requirements regarding somatic cell count that are more stringent than the 750,000 limit that the PMO itself imposes in order to qualify for Grade A, correct?

A. I would observe all of their Class III and Class IV customers are doing the same thing, yes.

Q. That's --

A. Yes.

Q. But that's --

A. We'll talk about that.

Q. But that's why you are raising this topic.

A. That's right. Because it's -- and this really -- again, this 750,000 cell limit is a federal limit, but in reality, it's not really a limit anymore, and there's a couple reasons.

First of all, cooperatives or other companies exporting manufacturing -- manufactured dairy products to any of the 27 European countries of the EU must already meet the European standard of no more than 400,000 somatic cell count.

And a really important point: Lower somatic cell

counts directly benefit farmers themselves. Reducing somatic cell counts, for example, from 400,000 to 200,000 increases milk production by 312 pounds per cow. And there's a reference to that, where that article came from, it's from Ohio State, in the written testimony.

Q. So just to orient ourselves. To the extent that there are Class I handlers who have imposed a private obligation on their suppliers to meet a somatic cell count limit lower than 750,000, you have made two points here.

One is, they already have to meet lower limits if they are going to be trying to export anything to Europe because Europe has a lower limit, right?

A. Correct.

Q. Of 400,000, correct?

A. Yes.

Q. And then second, there -- there are all kinds of incentives why farmers would want to have lower somatic cell counts completely apart from whether that obligation is being imposed by Class I handlers; is that what you are saying?

A. That is correct. And a lot of the reason for that is cream, again. Because products with cream in them are sent to Europe. So any plant, as we talked earlier, a lot of plants sell cream, any of those plants would need to meet that EU requirement. So it's not just Class I, it's all plants.

Q. So the last point you have said, even going below the 700,000 limit that Europe imposes, that actually is

something a farmer would want to do for his own purposes?

A. Yes. I referenced the most recent study I could find, which is 2017, so it's pretty recent. But they have been doing studies on somatic cell counts for decades, showing that it affects the productivity. Lower the count, the healthier the cow, the more milk you get.

Q. And lower somatic cell counts reflect health considerations for the cow?

A. They do. And as our next slide would show, farmers have been very successful managing somatic cell counts.

As we mentioned, lower cell counts mean healthier, more productive cows. Data from Federal Orders with the somatic cell count, or SCC, programs show dairy farmers are achieving very low cell counts in all parts of the country serving all different types of milk processors.

And, again, the chart shows averages for Federal Orders with somatic cell count programs in 2018 to 2022. Six Federal Orders currently have a somatic cell count adjustment on price, again, rewarding lower counts.

So as a result, they have got very complete data of somatic cell for all six orders, because it's tested along with their butterfat and their protein.

And what you find is that all of them are below 250,000 based on the last five years, and they continue to get lower. Three are under 200,000, three of the orders. But the Southeast, which are heavy -- heavy Class I use. The other three orders are very heavy cheese use,

particularly Upper Midwest. So we have all different kinds of farms and all different kinds of locations shipping to all different kinds of plants, and they have all achieved very good somatic cell counts.

So when you look at, for example, Class I utilization based on order pools, they range from 9.6% in the Upper Midwest in Class I to as high as just under 83% in Florida. So, again, these are -- these are dairies, different locations, different markets, all have achieved very low somatic cell count. So it isn't just one farm that's doing this in the market, it's the entire market has done a very good job getting their counts down.

And they have dropped over the years. Again, there's milk production incentives to do it, and your cows are healthier.

Q. So bottom line, even in orders that have very low Class I utilization, the Upper Midwest being the prime example, with only 9.6% Class I utilization, there the average somatic cell count is under -- well under 200,000, in fact, it's 173,000; is that correct?

A. That is correct.

Q. Okay. And so what conclusion do you draw as to whether it's reasonable for proponents of Proposal 19 to say, well, Class I processors are imposing somatic cell count limits under the -- more stringent than the 750,000 in the PMO and so they should have to pay for that?

A. I think all plants require quality milk, and it is very evident, all producers, with few exceptions, are

making very high quality milk. It's in everyone's benefit, including the producer.

I think the other -- the other thing I would -- I would observe on other qualifications as well, it's all about making milk that lasts in the store. Gives you better cheese yield because your protein quality is better if your cell counts are low. There's all kinds of reasons to do this, and it's good for the industry.

There's been a lot of frustration, including with National Milk, on -- on the FDA not being willing to lower somatic cell count from 750,000. I think we all realize it's become very, very irrelevant. It may be legal milk, but nobody wants it. So basically it's become standard practice across the entire industry to have high quality milk, and our dairymen in this country have done a remarkable job providing it.

Q. And they get more milk out of their cows as a result?

A. Yeah. And the cows are happier, too. That's right.

MR. ROSENBAUM: Your Honor, that completes Mr. Brown's PowerPoint presentation. You may recall that there was one exhibit I used when Dr. Scott Brown --

THE WITNESS: Yes, Scott Brown. No relation. He's got a lot more degrees than I do.

MR. ROSENBAUM: -- testified that I explained that Mr. Brown, Mr. Mike Brown, had put together, and he would testify about. It's been a couple of days. You may have

forgotten.

But in any event, I can do that right now or we could have that separate after we finish the cross on these topics. I will leave it to Your Honor how you want to --

THE COURT: I think it would be good if we revisit that now.

MR. ROSENBAUM: Okay. Your Honor, that was -- the document that I referenced was Hearing Exhibit 423, which was marked as IDFA Exhibit 59, when -- in Mr. Brown getting ready to testify today about this, he noted that the list of data sources had been inadvertently cut short. There was one additional data source. The numbers themselves are absolutely unchanged, but I do have a corrected version of the Hearing Exhibit, which I would like to distribute, and which I would like to end up being the official version.

As I say, the numbers are completely unchanged, it's just adding a third reference source, data source.

So I will distribute that now.

THE COURT: All right. And we'll take a five-minute stretch break while that happens.

Please move around and come back by 9:35.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 9:35.

Mr. Rosenbaum.

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BY MR. ROSENBAUM:

Q. Mr. Brown, before I turn to corrected Hearing Exhibit 423, I do want to clarify one thing so that IDFA's position is clear.

You are here today testifying in opposition to Proposal 19, which would increase Class I differentials; is that correct?

A. That is correct.

Q. IDFA is not at these hearings advocating a decrease in the current Class I differentials; is that correct?

A. We are not.

Q. When you talk about how you believe the $0.40 component of the base differential is archaic and should be eliminated, the concept here is that if USDA is otherwise inclined to increase the Class I differentials, under that circumstance, it should deduct $0.40 from what otherwise the increase would be; is that right?

A. That is correct. And let me clarify that for a second.

If we're going to use real market conditions, we have to recognize, we can discuss that differentials need to change. We have had a lot of evidence. We'll hear more. But at the same time, I think it's important that we recognize that when we're looking at what the base would be, whatever that is, there certainly isn't room to raise Grade A. And I think you could argue there's no reason for it, just because all milk's Grade A.

Q. I'm sorry, there's a reason to eliminate Grade A; is that what you said?

A. Yes. There is a reason to eliminate it. If we're going to recognize real cost, it's not a real cost anymore. So as you are evaluating all the options at USDA, and I don't want to -- I don't want to put a lot of weight on anybody's shoulder, but differentials is going to be a difficult topic. It was difficult for all of us, and it's going to be difficult for -- it's just a lot of work there, a lot to go through, and I think you got to look at everything. If you are going to change it, you got to look at everything.

Q. Including, for example, the elasticity results that you provided from Dr. Capps, correct?

A. Yes. And in my experience -- and, again, you can talk about time periods. As working for a retailer, milk's elastic. And I think the big thing is substitutions, is that cross-elasticity with other products, it's real, and it does -- it does affect -- it does affect sales.

Q. And when you say as "a retailer," you are referring to your --

A. My previous employment at Kroger, we talked about that all the time, because my dairy team -- and don't anybody get offended -- we also bought the plant beverages, I won't call it milk, but we bought the plant beverages as well within our team. And so we're very aware of retail strategy on those products as well. And

Kroger does a lot of internal elasticity work as well. I can't share numbers, but I can assure you I wasn't surprised at what Dr. Capps' numbers shows.

THE COURT: And, again, just listening to both of you, it's very hard to distinguish between a person saying "elastic" and a person saying "inelastic." So when you do talk about that, please emphasize whether it's inelastic you are talking about, or elastic.

MR. ROSENBAUM: I believe both of us were using the word "elastic" in our colloquy.

THE WITNESS: Yeah, we were using the general term, which is elastic, which can include the whole range of elasticities. But I will be very sure if I use the word inelastic, I will make it clear so we -- I don't want -- I don't want to cause any more trouble than it is. And we all have to review this record, and so we need to make sure we get it right the first time.

THE COURT: Amen. Thank you.

BY MR. ROSENBAUM:

Q. So now, Mr. Brown, retur- -- turning to corrected Hearing Exhibit 423, which is also IDFA Exhibit 59, just if you'd turn to the last page which shows the data sources.

Is it the third data source that you have added to the original Hearing Exhibit 423?

A. Yes. Yes, it is the third one. You could actually calculate -- in some of the older months, looking at block and barrel, we had to do that. You can calculate

the weighted average from the data in the other two reports, but it's much simpler just to pull the numbers from USDA. And so they are pulled out of that Table 5, Exhibit 16. That's where the weighted average cheddar price comes from.

Q. All right. Let's then turn back to page 1 --

THE COURT: Now, I just have to ask. I'm just looking at the old one and the new one. So in the old one, your next to the last page ended with Row 314, and then on the final page you started over with -- with different numbers for your rows.

Does that make any -- does that -- is that going to foul us up? If we don't keep the old one, is it going to foul us up when we look at the testimony of a witness who was looking at the old one?

MR. ROSENBAUM: Your Honor, I -- I -- I think the answer is I don't believe so, because they are all -- the numbers in the tables are still the same. I see the Roman -- I don't have the old version in front of me, but I -- I will take your word for the renumbering, which was not intentional.

THE WITNESS: It's --

THE COURT: No, no. Do you understand? Let's say a witness was telling me about page 9.

MR. ROSENBAUM: Yes.

THE COURT: And the witness referred to Row 19, which is on the old version on page 9. But now the row numbers are a continuum between page 8 and 9, and so they

have different number for the row. The contents of the row may be identical, but I -- if I have testimony in the record, I maybe need this not to replace the old one. In other words, I may need to hang on to the old one in order to understand the testimony.

MR. ROSENBAUM: Your Honor, I think I understand your point. Why don't we -- I would suggest that we call -- change the name of this to corrected Hearing Exhibit 423A.

THE COURT: Perfect.

MR. ROSENBAUM: That's the document that we just distributed, and let's go ahead and call it also IDFA Exhibit 59A.

THE COURT: Excellent.

MR. ROSENBAUM: And they will both be there.

THE COURT: Thank you. That solves my problem.

Now, and you may continue, if you have any other questions for this witness on this document.

MR. ROSENBAUM: Yes, I do.

BY MR. ROSENBAUM:

Q. I simply want to go through the columns one by one and just ask you what source each column came from if someone wants to duplicate your effort.

So once again, the document as a whole is called "Comparison of Monthly NDPSR Block Cheddar Price with the Barrel Cheddar and Weighted Average NDPSR Cheddar Prices."

So Column A is obviously just a list of months.

Where does the information from Column B come

from?

A. Column B comes from USDA Exhibit 16, which is Table 5, which is the Announcement of Monthly Class and Component Prices. The numbers were cut and pasted from that spreadsheet into this one.

Q. Then Column C, which is the block prices, where did that come from?

A. Two different places, because it was reported originally by NASS, and then in 2000 -- I think it was March of 2012, NDPSR picked up the reporting of those prices. The reason for that was to provide audits, make sure they were accurate, and it was a good change.

But the two pieces of information we were never put together. So, for example, you could go to Datamark where you can get infor- -- some of this, particularly pricing information. It's a nice database. It only goes back to 2012. And the reason for that is because before that, that data was NASS, it wasn't NDPSR. Same use -- used for the same purpose, but it was a different agency reporting it, and the two were never put together, which is why you have the two sources. If you look at page 3 -- I mean, page 9, the very end, you have National Dairy Product Sales Report, which is the current NDPSR, and you have the dairy products prices report, which previous to the change was used to determine these prices. So we used both. It's a lot more work with the old dairy product pricing report.

Now, I have been collecting those for a long time,

so I had the data. But if you need to check it -- we did some randoms to be sure. We just pull up months, and calculate it, and figure out what the price was to make sure they were correct, because there wasn't available digital sources previous to 2012.

So we did it -- we did it -- we took what I had and I made sure that the data was correct at its source. I did random spot checks.

Q. Now, you've been describing what you used for Column C, which is the block price?

A. And D is the same.

Q. D is the same?

A. Yeah.

Q. All right.

A. And they both come from the same report.

Q. And then E, which is barrel plus $0.03?

A. Yeah. Again, using Column D as the base and the formula for Class III protein adds $0.03 to the barrel price. So it's simply that barrel price reported plus $0.03.

Q. All right. What about Column G, which is under the subheading "NDPSR Cheese Price Comparisons," and Column G specifically is block versus barrel.

How was that calculated?

A. That is the barrel price is subtracted from the block price. So Column D is subtracted from Column C.

Q. And block versus barrel plus $0.03, how was that calculated?

A. The barrel plus $0.03 price is subtracted from the block price.

Q. Just tell us what columns you are dealing with.

A. Yeah. So Column E is subtracted from Column C.

Q. And then Column I, how is that calculated?

A. That is calculated by subtracting the weighted average price, Column B, from Column C, which is the block price.

MR. ROSENBAUM: Your Honor, that completes my examination, and the witness is available for cross-examination.

THE COURT: Thank you. And when we talk about what exhibits we're going to consider, I'll wait until after cross-exam, but it will include not only today's exhibits, but also the previous version of Exhibit 423.

Who would like to go first with cross-examination?

CROSS-EXAMINATION

BY MS. HANCOCK:

Q. Good morning, Mr. Brown.

Nicole Hancock with National Milk.

A. Good morning.

Q. Just want to -- I want to maybe bounce around a little bit.

You had, at the very tail end of your testimony, clarified that your -- IDFA is not advocating for a reduction in Class I differentials; is that right?

A. We are not advocating for -- we're advocating for, if they are going to be evaluated, then other parts than

just the mileage change, differential change, needs to be looked at. That's what we're saying.

So we're not saying they need to go away. We're just saying if you are going to do an evaluation, you look at everything.

Q. So will you be coming back to testify in opposition to Proposal 20?

A. We are neutral on Proposal 20. We have members on both sides, so we are taking no position.

Q. Okay. But other than taking into account the transportation credits that are the subject of being voted on, you are not proposing a decrease in the Class I differentials; is that correct?

A. We are not. Let's put it this way: If you look at the current differential map, we are not proposing any decreases from the way it's currently done.

Q. Okay. Does that mean that you believe that those differentials, other than taking into account those changes in the transportation credits, are properly set where they are right now?

A. I think what I would say is that when you start to look at changing them, you need to look at things, for example, is Grade A relevant anymore? I think not. Do you need to change it? IDFA's view is, within the current differentials, we wouldn't change it. If you are going to look at putting other changes in, it should be part of that decision.

As you know, we had no proposal on differential

map, so -- so we don't have a proposal to remove Grade A. We just ask that it be considered as part of the broader picture of the differential map if there's going to be changes need.

Q. Okay. I'm just going to walk through maybe -- I'm going to walk through Exhibit 434, which is your PowerPoint presentation.

I want to start with page 3. And this is in both your testimony and in your PowerPoint presentation, but you quote from the 19- -- that March 5th of 1993, the USDA -- talking about a reserve supply of milk.

Do you see where I'm at?

A. Yes, ma'am.

Q. Okay. And at the time that this quote was published, USDA was using a 70% Class I utilization as a threshold; is that right?

A. I honestly -- I don't recall that specific. I'd take your word for it.

Q. Do you think that this criteria that you have quoted from 1993 is still relevant today?

A. I do.

Q. And why is that?

A. Because if you look at -- first of all, seasonality of milk isn't as bad as it was at that point in time, so that reserve supply doesn't vary as much month to month as it used to. I think that's -- I think that's part of it.

And I think the other part, in erring on the side

of plenty, we are nowhere close to that as far as non-Class I use and -- in any market but III. And so I believe there's plenty of milk. And going back to the final decision that was just released on transportation credits for the Southeast, that's working to identify where there's reserve milk is needed, to get help to get that milk to the market.

Q. In 1993, was there a government dairy supply price support program that was --

A. There was.

THE COURT: Whoa, whoa.

THE WITNESS: I'm sorry. Go ahead.

BY MS. HANCOCK:

Q. That's okay. You probably know where I'm going, but it will be better if the sentence is complete.

A. That's right.

Q. In 1993, was there a government Dairy Price Support Program that was the market-clearing outlet for any surplus milk converted into cheese, milk powder, and butter?

A. There was. Was it effective, I think is the question. Did it really function at that point with the level -- at a level that really created a lot of use of that market? And it was waning by that time. So it -- it did exist. Its function wasn't near as -- it wasn't used near as heavily example as it was used in the early '80s.

Q. And then that was repealed by the 2002 Farm Bill?

A. Yes.

Q. And the domestic commercial market and world markets today are the market-clearing locations; is that right?

A. That would be correct from my -- from my point of view.

Q. So there is a competitive market difference than what it was back in 1993; is that fair?

A. We've certainly grown our participation in the world market. That would be true.

Q. And then we have also had other market changing factors, such as construction of new manufacturing plants adjacent to where the milk supply is the greatest?

A. Generally, you are not going to build a plant without knowing you are going to have a milk supply. And generally there's agreements on supply that are made either with individual producers or cooperatives before the first -- first piece of stainless is put in the building. I mean, that is true.

But as you can imagine, the risk of supply that they -- try to working -- work really hard to make sure you have a supply before you start to build anything.

Q. And there's good examples that have already been put into the record such as Greenville Venture Partners in Greenville.

Is that an example of where there's a new plant that was built near the milk supply?

A. Yes.

Q. And Glanbia at St. Johns?

A. Yes.
Q. And Daisy at Wooster, Ohio?
A. I'm not familiar with that one. I mean, I know what the plants there, but I don't know the story behind it.
Q. Okay. And when dairy farmers are selling their milk, who is usually the one that is paying those delivery costs?
A. It's directly paid by the co-op or the farmer. But generally, the service charge that you pay to purchase milk, it may not be a direct, but it's in there. But you do find more and more transportation, particularly in energy costs, fuel costs, you will see adjustments in that premium that's calculated on a per hundredweight or per truck basis.

So as far as directly paying it, it's farmers or their co-ops. How they divide that money up is -- really varies from my experience. Sometimes plants do pay that cost, but generally, it's not direct, it's just -- it's considered as part of the premium. If there's an additional cost to move milk, they'll try to negotiate that in premium.
Q. And the ability to negotiate that in a premium, that has a big contributing factor in determining where the best place is to deliver that milk; is that fair?
A. I think it is. But we can talk more about negotiating premiums. But certainly -- certainly I'm sure different customers are different to work with. I would

expect nothing but that. So I would say, yes, that's true.

Q. And those are, again, additional differences as compared to the market circumstances back in -- or the market factors back in 1993?

A. Well, there's two things that have happened since then. The -- your buyers are bigger companies, but so are your cooperatives. You have a lot less of them. There's been a lot of very successful mergers, which does help.

And the other thing, I'm going to insert my own personal experience, is how effective the marketing agencies in common are in different markets. They were all fighting back around 2015, we saw premiums drop. They have coordinated and done an effective job working together. They are starting to rise again.

And so a lot of that, again, we're talking a minimum price here, that -- that ability to negotiate price, which Federal Orders do give marketing agencies in common, which is a great asset I think to the cooperative industry. It plays a big role in how effective that happens. If those agencies work, then premiums generally are easier to get.

Q. And even with what you described as an increase in the size of the buyers, and an increase in the size of cooperatives, even with that market dynamics, cooperatives, even though they have grown, are still cooperatives, and the dairy farmers are still the ones who are primarily responsible for those hauling costs; is that

right?

A. They are. But those costs are often included in, again, the negotiation premiums, but they are not direct. It's not necessarily X cents to get the truck from A to B. It's part of that overall negotiation.

Q. So if they have sufficient bargaining power and can negotiate that into over-order premium, they might be able to get their ultimate buyer to cover some of those costs; is that what you are saying?

A. I say yes. And it's going to depend on market. It depends on the market power of the cooperatives. If they are all working together, it's a lot easier to do than if they are not. I know they have, for certain.

Q. Okay. Let's turn to -- let's move to page 5 of your PowerPoint presentation in Exhibit 434.

A. Okay.

Q. On this slide you are talking about how the current supply of milk is more than adequate to serve the Class I needs, and you describe what you believe proves that that current supply is justification for not needing to increase differentials.

Is that a fair characterization?

A. The characterization is when you -- when you change shipping percentages, when you lower them, that means in order to make sure milk can access the pool, you have to be more generous in diversions, what can be allowed, not to be -- the shipping requirement has to be weaker.

So I would say yes. Again, market to market is different, but overall, yes, we do believe that.

Is that the only reason? No. It's an example, I think, of one that's evident because we have evidentiary record of the request and the granting of the changes.

Q. You describe in the third bullet point that the shipping percentages in the orders that you cite here was lowered, not raised. And in the next bullet point you say, "This can only be attributed to the degree to which the milk supply is increasingly more than adequate to serve the Class I needs."

Do you see that?

A. Yes.

Q. It can also be because the demand for Class I conventional fluid milk has just decreased at the retail level; is that fair?

A. It is. But when it's decreased, that means that you have more supply, unless the supply also responds.

I thought one of the most interesting things that Dr. Brown talked about was the inelasticity of supply. There's no question as farms have gotten bigger and very modern and the way they produce, you don't have the elasticity, you don't have the supply response, you don't have the 50-cow dairy farms around anymore. They just say, I'm done. I'm going to quit. I'm going to retire.

So there is -- that supply tends to be a little more consistent, you know. Weather and price, obviously, plays a big role in that.

So from my perspective, the -- the -- when the Class I percentages are lower, it's because Class I sales are lower, which is unfortunate. I think we all would love to see that change. But it also means the milk supply is remaining the same or it's increased.

Q. And you have worn a lot of hats in the dairy industry, so it's fair to say that when we see that consolidation in those smaller dairy farmers that are -- are not as prevalent as they used to be, that's due, in part, because they have gone out of business because they haven't been able to financially survive in the current economic conditions.

A. Yeah. They -- their cost structure, unfortunately, doesn't always -- isn't always competitive today, which is unfortunate, but it's the case. Particularly when you reach retirement, you have an asset that its best value isn't a 50-cow dairy. The land to grow corn for the 1,000-cow dairy next door may be a better use. So they are making good economic decisions, but those dairies aren't being passed on to generations like the larger ones generally are.

Q. And the financial pressures that the dairy farmers face are just increasingly more difficult to absorb when you have a smaller farm as opposed to a larger farm, that can -- that can absorb some of those additional increases?

A. You know, I was raised on one of those smaller farms, so, yes, you are -- you are correct. But that's -- that's not -- that's an issue of an overall supply/demand.

We can't forget that butter, powder, whey, and cheese determine our milk price, and those markets are ultimately going to determine what the value of the products are, which will determine, depending how you disseminate it, what the value of the milk is.

Q. And the only -- the only control factor for a dairy farmer is at the price for which it sells its milk; is that right?

A. I didn't catch the price.

Q. Yeah. The only way that the dairy farmer can capture the increase in its costs to service the market, is through the price through which it sells its product?

A. They either have to find ways to make milk a little more efficiently, which we all know is very difficult, or they have to -- they have to, you know, hopefully find a better market.

I spent a lot of time in my life working on specialty cheese plants, both from the standpoint of small processors as well as farming groups, and it sounds great until you realize the dent that makes in total milk demand is tiny. Those little -- you are not going to build an 8-million-pound-a-day specialty cheese plant. And so unfortunately, the overall impact on the industry isn't as great, plus they tend to cost more to operate.

Q. And if we just walk through that supply chain and we get to the fluid milk handlers, they have the ability to affect their margins by controlling expenses, right?

A. As does the farm.

Q. Yes.
A. To an extent -- and we all know there's limits to that. But, yes.
Q. Yeah.
A. And they try their best to do that.
Q. And -- and then also, the fluid milk handler has the ability to control its prices and negotiate prices to which its selling its product?
A. Yeah. Let's just discuss that for a minute, because those fluid suppliers are facing the same larger buyers as we talked about farms. In fact, I'd argue it's worse. And so they have limited -- they have limited ability to do that, and you would think they would.

And a good example, quite honestly, we had the witness from United Dairy talking about that $0.06 per hundredweight. I have never bought packaged milk where a difference between the number one and number two bid was more than a cent and a half. Most of the times it's under a penny. It's an extremely competitive business, just like farming is. And so they struggle with this common fear of the same margin issues.

And if you look at the shrinkage in the number of Class I plants, and currently it's just like farms, if they were really profitable, numbers wouldn't be dropping. But they are.

Q. And -- and certainly, when -- that -- I want to talk for a second about that very competitive environment that handlers have to operate within in order to sell

their fluid milk products, because that's -- that's really where their biggest pinch is in order to continue to survive, is being able to sell at a price point that is commensurate with where their competitors are selling; is that fair?

A. It's very -- true across most industries, and milk is no exception, for certain.

Q. And so by increasing price differentials across the board as opposed to just trying to negotiate one-off contracts, that is a levelling of the playing field amongst those competitors; is that fair?

A. Depends how you do it. I would argue the proposals that have been made by National Milk, a lot of them maybe make good sense, they are not very consistent from market to market, and you are creating winners and losers. And there will be more testimony on that coming up, but that's one of the biggest concerns is changing the competitive surface.

Q. Okay. But assuming that we're in the same market and we're talking about the same differentials between two fluid milk handlers, having the differentials raised for both is -- means that when they both go to negotiate or provide bids to their retail outlets, they are on the same playing field; is that fair?

A. Couple things. First of all, if that was always the case, they were always in the same differential zone, but they are not. And that's -- and that's the -- that's the struggle. It's a function -- just like with milk with

transportation.

But when you are setting a -- actual rather and a negotiated value, for example, serving a plant that's maybe a little more difficult to -- when I worked for Kroger, we had a plant in Atlanta, and we always had people wanting to sell that milk, but they often didn't think about the traffic, and they were right, it's horrible.

But the -- the -- I guess the point I would make is that we can't -- we shouldn't, by regulation, change that competitive -- and that's difficult, but we have to be very careful we don't change that the competitive difference.

And the other thing I would get into, again, having -- is making sure milk, to the extent it can, because we all know the majority of the milk price is based on the commodity markets --

THE COURT: Based on commodity what?

THE WITNESS: Commodity markets for butter, cheese, powder, and whey. And so you're always going to have fluctuation. But I think there's a -- there's a -- I think, a legitimate concern that we make sure we keep milk products as competitive as we possibly can, with, unfortunately, our competitors who would love to take our markets away from us.

MS. HANCOCK: Okay. And then can we have Exhibit 301?

THE COURT: Yes. I think this is -- remember

where you are. This is a perfect time for us to take our 15-minute break.

So please be back and ready to go at 10:21.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 10:22.

Now, Ms. Hancock, you mentioned Exhibit 301.

MS. HANCOCK: Made everybody run out of the room.

THE COURT: I have appreciated so much how whether you are the questioner or the witness, you really don't have enough surface area for everything you need in front of you. And you may proceed.

MS. HANCOCK: Thank you, Your Honor.

BY MS. HANCOCK:

Q. Mr. Brown, I want to just look at a couple of locations.

If we just turn to, under -- I'm going to use Column A, and turn to 712, which is Marion County, Indiana.

A. Okay.

Q. Kroger has a fluid milk plant in Marion County, Indiana; is that right?

A. I'm sorry?

Q. Kroger has a fluid milk plant in Indianapolis, which is in Marion County?

A. Yes, they do.

Q. And that if we look at 712, under Column A, that is current -- the model average for that one, that county,

is $3.75; is that right?
A. Yes, Column L.
Q. And the proposal from National Milk is $3.70; is that right?
A. Yes.
Q. And so that's $0.05 under what the model average is; is that right?
A. Uh-huh. Yes.
THE COURT: I'm getting your questions beautifully. I'm not getting the responses.
THE WITNESS: Okay. Yes, it is. It's $0.05 difference.
BY MS. HANCOCK:
Q. And to the extent we're measuring if that's a good thing or a bad thing for Kroger, the winners or losers, that's a 5% better price for Kroger than what the model would suggest that National Milk is proposing; is that right?
A. It's $0.05 -- in this market, yes.
Q. Okay. And let's look at 752, which is Wayne County, Indiana.
Prairie Farms has a fluid milk plant in Wayne County, in Richmond; is that right?
A. I don't know. I have no reason not to believe you.
Q. Okay. And the model average for Richmond, Indiana, or Wayne County, is $3.60; is that right?
A. Yes.

THE COURT: I got the question; I didn't hear the answer.

THE WITNESS: Yes.

BY MS. HANCOCK:

Q. And the proposal from National Milk is $3.70; is that right?

A. Yes.

Q. And so that's $0.10 more than what the model average --

A. In this specific example, yes, it's $0.10 more.

Q. And those two locations are about 70 miles apart.

Does that sound right?

A. I honestly don't know where Wayne County is, so I can't speak to that. Is Fort Wayne where Wayne County is? I mean, I just don't know.

Q. Richmond, Indiana.

A. Oh, Richmond. Okay.

Yeah, that sounds about right, distance-wise.

Q. Let's go to Tennessee. We'll go to 2469. That's on page 43 of Exhibit 301.

A. Uh-huh. I'm about there. Robertson? No, Rutherford County. Okay.

Q. And Kroger has a plant in Rutherford County?

A. That's Murfreesboro, yes.

Q. And in that scenario, the model average came out with $5.05 a hundredweight; is that right?

A. Yes.

Q. And the proposal by National Milk is $4.85; is

that right?
A. Yes.
Q. And so that's a 20% improvement over what the model average is; is that right?
A. $0.20, yes.
Q. Sorry. $0.20 is what I meant to say.
A. Yeah.
Q. Okay. Let's look at 2413 --
THE COURT: Wait, now, I'm not reading this right. We're on Row 2470, correct?
MS. HANCOCK: The far column on the left is 2470, but Column A is what I have been using just because I can say A, and that's 2469 for Rutherford, Tennessee.
THE WITNESS: Yes. That's the reference I was using, yes.
THE COURT: And the model average is $5.05?
MS. HANCOCK: I think that's what he agreed with under Column L.
THE COURT: And the proposed is lower?
MS. HANCOCK: At $4.85.
THE COURT: Yes.
BY MS. HANCOCK:
Q. So National Milk's proposal for Rutherford, for Rutherford County, Tennessee, is $0.20 less than the model average; is that right?
A. In this, again, we've got lots of lines here. In this case, that is true.
Q. Okay. And that is a location in which Kroger has

a fluid milk plant; is that right?
A. Yes, they do.
Q. And about 34 miles away in Nashville, DFA has a competing fluid milk plant; is that right?
A. Yes.
Q. Okay. If you go to Column A, 2413 --
A. Davidson.
Q. -- in Davidson County, Tennessee, that's where Nashville is; is that right?
A. Yes. Best of my recollection it is, yes.
Q. And the model average is $4.85; is that right?
A. Yes.
Q. And National Milk's recommendation is $4.85; is that right?
A. That is correct.
Q. And so in that case where DFA has a plant, National Milk recommended what the model average is; is that right?
A. Yes.
Q. Whereas, 34 miles away where Kroger's plant was located, National Milk recommended a price differential that was $0.20 less than the model average; is that right?
A. Yes. And I believe both markets, the proposal was $4.85. It was the same.
Q. And so that would mean that both Kroger and DFA would be on a level playing field in selling that milk?
A. As far as minimum cost, yes.
Q. Okay. And let's look at Ohio. I want to go to

Column A, 2054.

A. I feel like I'm doing Bible drills here. Find the page and the chapter.

THE COURT: How are you doing?

THE WITNESS: Well, my eyes are saying, I hope we don't do too many of these, but I'm doing fine so far.

I'm -- excuse me, Nicole, could you give me the line number again?

MS. HANCOCK: Sure. 2054. It's on page 36.

THE WITNESS: Thank you. It's Licking County.

THE COURT: Would you spell that, please, Mr. Witness?

THE WITNESS: Just like you think, L-I-C-K-I-N-G. Got some very creative county names, particularly in the East.

BY MS. HANCOCK:

Q. And in Newark, Ohio, which is Licking County --

A. Yes.

Q. -- Kroger has a fluid milk plant; is that right?

A. Yes, they do.

Q. And in Licking County, Ohio, the model average is $4 a hundredweight; is that right?

A. Yes.

Q. And the proposal from National Milk is $4 a hundredweight; is that right?

A. Yes.

Q. And if we look at Springfield, Ohio, which is in Clark County, and that is under Column A, 2021, so the

prior page, on page 35, DFA has a fluid milk plant in Springfield, Ohio, Clark County; is that right?

A. Yes, they do.

Q. And that's about 86 miles from Kroger's plant in Newark, Ohio?

A. How many miles?

Q. 86.

A. I would -- it could be right. I thought it would be a little farther than that, but it might be correct. I won't argue with that.

Q. Under 100 miles, how about if we say that?

A. Yep.

Q. Okay. So within a competitive range; is that fair?

A. I think so. They are both going to serve some of the same metropolitan markets.

Q. And in Springfield, Ohio, the model average was $3.80?

A. Yes.

Q. And the recommendation by National Milk was to increase that to $4 a hundredweight; is that right?

A. Yes.

Q. And so the delta difference between those two competing plants is that the model predicted $4, National Milk recommended $4 where Kroger's plant was located, but National Milk actually recommended $0.20 more a hundredweight for the competing DFA plant location; is that right?

A. Yes.
Q. Okay. Let's look at -- I'm just going to look at one more example, in Texas.
A. If I can get my vision back here in a minute?
Q. In a minute.
A. What page is it on, Nicole?
Q. It's going to be 2704 for Fort Worth.
A. All right.
Q. And that's on page 47.
A. Almost there. Okay.
Q. I said 2704. I meant 2709, sorry.
A. Yeah. Tarrant County, yes.
Q. Yeah.
THE COURT: 2709?
MS. HANCOCK: 2709. Same page, 47, Tarrant, T-A-R-R-A-N-T, County, Texas.
BY MS. HANCOCK:
Q. And Kroger has a plant located in Fort Worth, Texas, which is in Tarrant County; is that right?
A. That is true.
Q. And if we look at the model average for Tarrant County, it was $3.70?
A. Yes.
Q. And the recommendation was $4 a hundredweight by National Milk; is that right?
A. Yes.
Q. If we go to 2701, so just a few lines up, in Smith County, Texas, that's Tyler, Texas; is that right?

A. Yes.
Q. And there is a fluid milk plant there, Hiland.
Are you familiar with that?
A. Yes, I'm familiar with that. I'm familiar with Tyler. Been there a couple of times visiting farmers.
Q. And that's a joint venture between Prairie Farms and DFA?
A. I would expect that's true. I don't know what those ownerships -- I know there's a lot of relationships. I don't know what they all are, but I have no reason not to believe you.
Q. And the model in Tyler, Texas, averaged $3.85; is that right?
A. Yes.
Q. And National Milk's recommendation is $4.35?
A. Yes.
Q. And that's an increase of $0.50 over the model recommendation?
A. It is.
Q. And whereas, if we contrast that with Tarrant County, that was only a $0.30 increase over what the model recommendation was?
A. Yes. Can you tell me how far Fort Worth is from Tyler?
Q. By my calculations, it's 132 miles.
A. Yeah.
Q. Does that sound right?
A. It does sound about right. I have never driven

it, but I know about where they are. Yes, that sounds about right. I was just curious.

Q. Within a competitive range for fluid milk plants; is that fair?

A. Some degree. Milk movement may be a little different out in Tyler than it would be out of -- you are going to have more south and east from Tyler than you're going to from Fort Worth, but --

Q. And you would --

A. I do know all of these plants have some overlap, they do, if they are reasonably close to each other.

Q. You would agree with me in the examples that we have just covered for Kroger milk plants as compared to DFA plants, or a DFA-Prairie Farms joint venture plant, Kroger benefitted from National Milk's recommended proposal as compared to the DFA plants; is that right?

A. With the simple examples you gave, yes, but there's exceptions.

Let me just say, I don't think there was a lot of evil intent with the differential map. I just think it's extremely difficult to do.

Q. Yeah. And I appreciate that. And I think that that's just kind of the point, right?

A. Yes.

Q. That there's a lot of ways to slice and dice this information and look at it through different lenses; is that fair?

A. It is. And I would say, because I know a couple

of your witnesses said, you know, we're all giving poor D- -- I- -- USDA to help us solve this dilemma. So I would say the same thing, that it's extremely difficult to do.

Q. And we looked at --

A. It is.

Q. Oh, I'm sorry.

A. No, no, that's fine. That's it.

Q. And we looked at some examples from other witnesses where there are some examples where you can see that there might be a cooperative plant where the proposal looks more beneficial than other plants in some neighboring area; is that fair?

A. Yes.

Q. And so it really is just a lens that you look through trying to make the right adjustments for the entire country; is that fair?

A. It is. But you can really kill or help a single plant, and that's why it's so important that this be -- whatever changes, if changes are elected to be made by USDA, that there's a lot of diligence that we don't -- we don't disadvantage through -- you know, if you can't compete because you are not good at what you do or your shelf life is lousy is one thing. But if it's a regulated price that's keeping you from being competitive or changing that surface, you got to be really careful. And that's, I think, one of our -- certainly our biggest concern is there's so many changes. And the size of the

spreadsheet kind of defines how big the problem is, how big the -- how big the solve is.

Q. And in your experience as a buyer for Kroger, did Kroger require something in excess of Grade A quality standards?

A. Everybody requires something in excess of Grade A quality standards. But, yes, they did.

Q. Okay. Do you -- do you have the ability to share what those standards were that were in excess of Grade A?

A. I can't because I don't have them all memorized. Certainly I think cell count is 250, and they are not real rigorous in enforcing it, because when a load milk shows up, you are not going to reject a load of milk under the cell count.

Temperature is 41. Temperature is more rigorous.

And, again, it's the same with cheese, you just get better product quality and shelf life.

Beyond that, those are the two that we always talked about. I know there's others, obviously. But -- but -- and some of the plants, depending what they make in Class II, may have slightly different requirements. But they are generally the same for everybody, for all the plants.

Q. And in your experience, did Kroger sell its conventional milk product as a loss leader?

A. At times. It's -- you know, we had that discussion yesterday on -- it's all about to do with competition. If -- if Walmart and Target, Aldi, all

want -- want the business, Kroger is going to compete. And if you don't -- if you are the only store in town, it's kind of like if you are the only supplier in town for milk or for raw milk, you have a different leverage. And so it plays a role.

But, yes, they do. And I can tell you when they do that, they sell -- if you look in aggregate, people buy a lot of milk when it's -- when you are running a real deep discount sale. And what's interesting with that is that -- it's kind of like it's true with cheese, it's true with butter. In aggregate, they buy more product. Because once they buy that, they consume it. And then the next week some are going to need milk again anyways.

So -- but, you know, it's an old joke, it's easy to sell if you lose money, so you try not to do that more than you have to. It is an incentive. For example, this time of year, it's butter. Everybody loses money on butter. But they are hoping when you come and buy your butter, you are going to buy your ham, you're going to buy your vegetables, you're going to buy everything else to go with it.

I can speak from experience, butter and eggs and milk are probably the biggest tools for loss leaders in, I think, most grocery stores. They run big specials to get people in the door. And you have butter makers that are willing to cooperate with that as far as the national brands.

Q. And in your experience, are the health-enhanced

fluid milk ever used as a loss leader?

A. No.

Q. In your experience, are the organic milks ever used as a loss leader?

A. At times, yes.

Q. Not as frequent as the conventional milk?

A. No, but they are.

Q. In your experience, is the lactose-free used as a loss leader?

A. Not really. But it -- again, it depends on the market. Kroger has some markets where they actually offer HTST gallon of lactose-free milk, where we have large amounts of populations that want -- who need lactose-free, and they will run it with a promotion.

But in most markets, it's a -- it's in ESL half gallons. And, no, they don't. I mean, they are competitive, they are well below the cost generally of the national brands, but they don't necessarily run a lot of specials. But they do some. They do some.

A lot of that specials on those kinds specialty milks, or high-protein, high-nutrition milks, is competing with the national brand, try the Kroger brand.

Whereas, with regular milk, it's more like, milk is milk. Our milk's good if you have good quality, and come buy it from us, and, oh, by the way, please fill the rest of your grocery basket while you are at it.

Q. And is the -- is your understanding of the requirement for something in excess of Grade A by Kroger,

is that so that that conventional milk has an extended shelf life or can extend it out as much as possible?

A. It's to keep the shelf life as consistent as possible. I would argue, pretty much everybody does that. That's not unique to Kroger.

Q. Yeah.

A. It's not unique to non-co-ops because it just makes good business sense.

Q. That's the market for fluid milk today?

A. It is. I would argue in a lot of places it's the market for cheese milk, too. They have -- they have standards as well.

Same with -- even with powder, because of mold spore formations, you may have some special requirements on -- on even some powder milk in some markets.

Now, those plants tend to be run by co-ops, so it's within the co-op. There will be -- there will be incentives or disincentives if you can't keep your spore counts at a point where they can export.

Q. You performed some calculations and talked about increasing the differentials will lower -- or increasing the differentials will -- will raise those Class I prices, and on page 10 --

A. Of the testimony or the overhead?

Q. Page 10 of the PowerPoint presentation in Exhibit 434.

A. Yeah. Overheads, I'm aging myself here.

Q. Overheads.

A. At least I didn't say acetates.

THE COURT: Can we put our Exhibit 301 away for now?

MS. HANCOCK: You can.

THE COURT: That would be good.

THE WITNESS: Thank you.

BY MS. HANCOCK:

Q. When you were performing your calculations on the prior page, on page 9 as well, did you take into account that there's a potential for increased Make Allowance costs?

A. I did not. It was an absence -- it was looking at the single proposal.

Q. You would agree with me that if Make Allowances are increased, that that would have a corresponding effect on --

A. It would -- it would change --

THE COURT: Whoa.

THE WITNESS: Sorry.

BY MS. HANCOCK:

Q. -- it would have a corresponding effect on the Class I prices as well?

A. It would change what that chart looked like, yes.

Q. Okay. I want to turn to page 31 of your PowerPoint presentation in Exhibit 434.

A. Okay. I am there.

Q. And you talk about the cost of maintaining the Grade A status on this slide; is that fair?

A. Yes.

Q. And you understand that that cost of maintaining the Grade A status is one of the costs that is -- that was used to set the current differentials?

A. Yes.

Q. And that's why you are discussing it here?

A. We just think in the broader context you need to look at it, because it's no longer -- it's no longer a cost. It's in addition, because there's no B milk to speak of, just a few -- a few farms left. And because the -- both the economic incentive on milk price, just regulated price -- because I can assure you Grade B milk is not sold at the regular price. And the -- and just the need -- incentive to keep a clean, well-running dairy, you just -- you just don't see it.

And it's everybody. I mean, Glanbia went to Grade A in 2008. They had a few Grade B farms left, and they went to Grade A simply because they had cream to sell, its component tests went up, they had cream to sell, and they also had some whey customers that wanted Grade A. So they went to Grade A.

And for the most part it's interesting, because I talked to them, because there's really two things we saw when people converted: It was well location, or honest to God, a milk house sink to wash your hands, which is kind of amazing.

And so most of them just changed over. It was a minimum cost. But no one, once you are there, you don't

go back, because you run a better dairy. Your cows are healthier if you eat Grade A. And it's just common husbandry. Actually, I would argue Grade A, you can be pretty sloppy and still be Grade A standard. So I think it's become irrelevant.

But it is in context of the overall cost. We're not saying just remove this no matter what happens. We're saying, if you are looking at the overall differential map, this needs to be considered as part of what that level should be.

Q. And --

A. And it certainly doesn't need to be increased.

Q. And you say that there's only these two items that are referenced on page 31 as the cost that would be incurred by a dairy farm in maintaining Grade A?

A. Yes, basically that's correct. There's a lot of other costs to maintaining a good dairy. But they're really -- we don't view them as being B versus A, again, and we compared -- we compared the export guide, and basically that's the standard for grading guide for -- for products. They have their own set of standards. Because you can use Grade B milk and make graded -- a lot of graded products, versus the NCIMS, the Interstate Milk Shippers rules. And we compared the two. And there's a -- there's more -- there's some, of course, obviously if you are going to convert --

(Court Reporter clarification.)

THE WITNESS: So there's things if you are going

to convert, it's true, you need to change, but that's pretty much been done.

As far as normal maintenance, if you are in a traditional barn, you got to keep the barn painted. Although from talking to friends of mine, they still milk cows in stall barns in New York State. They say they don't get too worried about it anymore. And then, of course, you have two inspections a year. Although a lot of them -- a lot of the people that still buy B milk do two inspections a year just because of the standpoint of keeping those farms in conformance, they just feel --

(Court Reporter clarification.)

THE WITNESS: There's a lot of B dairies that their buyers still require twice-annual inspections. In fact, most of the time, those inspections are paid for by the farm -- I mean, by the plant, or they're paid for by the state. Some states actually do it for free, or as part of their licensing to get your -- get your milk shipper license. So it isn't necessarily an additional cost.

And then with the barns, everything else is smooth concrete. Other things that, for the most part, again, if you are already -- if you are already Grade A, you are already there.

So -- and if you look at the -- and I don't have numbers on production per cow on Grade B, but if it's 70% of what Grade A is, I'd be shocked. I mean, your modern progressive -- well, 90% of the milk is following those

practices.

And they are fairly lenient. A lot of that is because NCIMS, the states fight, so they have trouble making it stricter, even though even National Milk often advocated for stronger restrictions.

THE COURT: I hope she got that whole sentence.

THE WITNESS: Let me try again.

THE COURT: You know, there's a chance that I could appoint a bailiff and have the bailiff stand near you. Would that help?

THE WITNESS: I can -- "I've got COVID. Can I go? See ya." No.

THE COURT: Do that explanation again.

THE WITNESS: Of course I will. Yes.

A couple things. Again, at the risk of being too repetitive. The Grade A standard, even a lot of the buyers of Grade B milk enforce the Grade A standards, which aren't that different, particularly the inspection frequency, because they just think it's good business practice to have two inspections a year, or more if they are needed.

The -- as far as farms converting from B to A, they have pretty much all done that. My experience with that is limited really to two groups of people. One is small farms going Grade A, often organic, and often, a lot of times in the Midwest, and that's often putting in a well. And with the difference in price of milk, it doesn't take long to pay for that.

The other thing is, basically milk house setup has to change slightly. They may have to put in an extra sink, they may have to redo their walls, but they are fairly minor. But that's already been done, because almost all farms are already -- are already Grade A.

BY MS. HANCOCK:

Q. And once -- once the cow is milked, there's additional costs that the dairy farm incurs in order to maintain that Grade A status, like maintaining the temperature.

A. Yes. But, again, if you look at requirements for milk versus -- we talk a lot about super-high quality milk. I wouldn't call it super-high quality, but most plants enforce, for example, temperature requirements. Again, if you look at the shipping export requirements, some of that is in there, even though it's not technically always in the Grade B.

Very few states have Grade B regs anymore.

Q. Yeah, I'm just talking about what actual costs are incurred at the farm level. In addition to what you are talking about here, there are additional costs, such as the sanitation and the temperature control, in order to maintain that Grade A status until the point of delivery?

A. I would argue, if you are running a good dairy, there aren't, because you are going to do that regardless. If you are currently B, you may have some savings. If you are A and want to go to B, there's really no savings.

Q. Okay. So you are just saying it was already going

to be done anyway, so we don't have to talk about that in differentials?

A. I know it. I know it's already being done --

Q. Okay.

A. -- because it's expected of them by their milk buyers, whether they are a co-op or a private plant.

Q. That's your point, though, is that because it's already being done, we don't have compensate for it?

A. Exactly. I think everybody is expecting Grade A.

Back when you had people who were converting, you go back to 1950, when 60% of the milk was B, it probably was a real issue. Today, it's not.

And the reason it's not is because everybody who is practicing good husbandry and good sanitation is there, and because so many of the manufacturing plants require Grade A now and are IMS certified, it's becoming ubiquitous. To say it's an added cost anymore, I don't think it really is.

Q. Okay. If you turn to page 33 of Exhibit 434. You're talking, on this slide you have a chart there that says, "Averages for Federal Orders with Somatic Sell Count Programs."

Do you see that?

A. Yes.

Q. And you have Appalachian, Florida, and Southeast as the first three there.

Are you saying that those three orders have a somatic cell count requirement?

A. They apparently do because they have reported data. I took the counties based on USDA's -- it was the sheet -- it was the -- I should have had the reference on here, it's in the document. It's the report of all the pounds of components that are produced by class, and the very last column is somatic cell count. That's the only one that it's on.

Q. And you didn't include Southwest order.

Why not?

A. Because I missed it. If it should be there, I missed it. It's my mistake.

Q. Okay. Do you believe that -- does -- does IDFA believe or support Class I prices being higher than manufacturing prices?

A. We support the current differential program. So the answer would be yes.

Q. And does IDFA support the continuation of having a Federal Order in general?

A. Well, you will hear more testimony from more of our members, and members of MIG, and you will find that, again, some think they don't need it anymore. A lot of them -- like you heard, even though he has a lot of concerns, our witness from United Dairy -- they still see value. It's just to make sure that they're structured properly.

Q. And that's the delicate line that you are walking the balance between; is that fair?

A. It is. And it's -- it's very interesting,

particularly in manufacturing. Because if you are not in a Federal Order, you often have a competitive advantage, particularly in the West where there isn't. I mean, Idaho is 3% Class I maybe. If you count organic, it may be 4.

So it's -- it's kind of relevant to the market. You get further east, particularly, for example, the Northeast, where being part of the pool is more important. And, of course, they have regulations there to keep that pool more disciplined on depooling. And then you'll find that most of the cheese manufacturers there believe it is still important. And so it really depends on the market.

Q. Do you know what percentage of your membership supports the continuation of the Federal Order system?

A. We don't. But we haven't had a vote to get rid of it, so that should tell you. If someone wanted to, they'd bring it up. And we haven't had -- we haven't had that discussion. The discussion's been about, how do we make it work better.

Q. You just know that you have a split in opinion in your membership; is that fair?

A. Yes. And you do in yours, too, but you might not know it.

Q. Okay.

MS. HANCOCK: Thank you for your time, Mr. Brown.

THE WITNESS: Thank you very much.

MR. ENGLISH: Your Honor, my name is Chip English, good morning. I represent the Milk Innovation Group. I had not intended on getting up today.

And unfortunately, Mr. Brown, I'll keep it as short as possible.

But I need, Your Honor, to give him back spreadsheet 301. I'm sorry.

THE COURT: You are setting a very good example for the pace of speaking. Thank you.

MR. ENGLISH: I will try to hold up.

THE WITNESS: If he's going to make me look at that again, he has to be nice. Here we go.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. I'm going to limit this to two states.

A. Okay. Very good.

Q. And partly because maybe I got confused, but now I think the record may be confused, I want to start with Ohio.

So we use row --

A. Okay.

Q. -- so let's use Row 2055, which is Licking, Ohio, where Kroger has an operation.

A. Yes.

Q. Correct?

A. They do.

Q. Okay. Row 2055.

A. Just a second.

THE COURT: Do you know the page, Mr. English?

MR. ENGLISH: I'm using my computer, Your Honor.

THE WITNESS: I have got it right here. You are

good. 2055. Okay. That is -- that's Licking -- again, that's Licking County, yes.

BY MR. ENGLISH:

Q. And so I only want to look at Column L, which is the University of Wisconsin three-year average, and Column O.

And so for Licking, where Kroger has a plant, for the average, I see they are both at $4, correct?

A. Yes.

Q. So National Milk proposed no change for the model for Kroger's operation in Licking, Ohio, correct?

A. Yes.

Q. So now please turn to Row 2086 --

A. Okay.

Q. -- Stark County, Ohio --

(Court Reporter clarification.)

MR. ENGLISH: Stark, S-T-A-R-K.

BY MR. ENGLISH:

Q. And there is a cooperative-owned plant recently purchased there, correct?

A. I believe -- I know where it is, so if it's Stark County, yes. That's Canton, I think.

Q. Yes. That's Canton.

A. Yes.

Q. City of Canton. All right.

So let's go again and look at the University of Wisconsin average under Column L, and then the National Milk under O, and I believe you will find that the average

was $4, just like Kroger, but the proposal was $3.70, correct?

A. That is correct.

Q. Which is $0.30 down, correct?

A. That is correct.

Q. While Kroger was held the same, correct?

A. Yes.

Q. So, now, you and NMPF counsel discussed the DFA plant in Wayne County, Ohio, just east of here, and that is Row 2095.

Do you see Row 2095?

A. Yep, that's Wooster.

THE COURT: He's using the farthest left column.

THE WITNESS: Oh, I found it.

MR. ENGLISH: I'm using the row.

THE WITNESS: It's Wayne County. Wooster's a town in Wayne County.

BY MR. ENGLISH:

Q. And the plant there is known as Smith Foods.

But that's the one now owned by DFA, correct?

A. I believe so, yes.

Q. All right. So now let's look again at Column L for University of Wisconsin average, which was $3.95, correct?

A. Yes.

Q. And then let's look at Column O.

And this is where I may have got confused, but I see $3.70, correct?

A. I do, too -- 3.70.
Q. Which is actually down $0.25, correct?
A. Yes.
Q. And maybe we don't have to do this by row, but you have been here for most of the hearing, correct?
A. I'm a Hilton Diamond for the first time of my life, yes. I'm not sure it was worth it.
Q. Kroger has a plant in Lynchburg, Virginia, correct?
A. They sure do.
Q. And you have heard the testimony that your Kroger plant in Lynchburg and a cooperative-owned plant in Newport News have been set by -- proposed by National Milk to have the same value in terms of proposal, correct?
A. That is true.
Q. And that was a $0.50 divergence from the model, correct?
A. Yes.
MR. ENGLISH: That's all I have. Thank you, Your Honor.
Thank you for your time.
THE COURT: Thank you.
When we were on Wayne County, Ohio, you mentioned Wooster.
THE WITNESS: Wooster is the county seat. It's the city of any size in Wayne County, Ohio. I just gave myself a point of reference.
THE COURT: Spell it.

THE WITNESS: Wooster, just like "Rooster" with a "W." W-O-O-S-T-E-R. It isn't like the sauce from Britain. W-O-O-S-T-E-R.

THE COURT: Excellent.

Who next has questions? Is there anyone else who would like to ask questions before I call on the Agricultural Marketing Service?

Mr. Rosenbaum.

MR. ROSENBAUM: Steve Rosenbaum for the International Dairy Foods Association.

I just want to ask a question to help make sure we have IDFA's position clear on various proposals.

REDIRECT EXAMINATION

BY MR. ROSENBAUM:

Q. So in your testimony you point out the fact that there has been a recent decision by USDA to increase the transportation credits in the Southeast orders, as well as provide, for the first time, an additional set of credits in those orders, correct?

A. Yes.

Q. And you have calculated what the dollar amount of those are, correct?

A. We -- best I could figure it out, yes, we have.

Q. Okay. And you also provided an indication of what the percentage those numbers represent of Proposal 19 increases, correct?

A. That is correct.

Q. So just -- but to get -- be clear about this, IDFA

is not proposing that the current differentials be reduced as a result of the adoption of these new credits; is that correct?

A. Yeah. We -- we are supporting the current differential map as it exists everywhere.

Q. The point you are making with your testimony regarding the increased credits in Florida and the other Southeast orders, is that if USDA were to consider increasing the Class I differentials, as Proposal 19 would do, USDA should take into account the fact that -- that all these additional credits are, upon referendum approval, going to be provided for as a wholly separate mechanism, correct?

A. Yes. And -- and just -- in -- it's all a matter of timing. When the proposals were made, there wasn't the final decision. Now there is a final decision, so we believe that that decision should be part of the determination, because it is significantly raising costs for the Southeast three orders.

MR. ROSENBAUM: Okay. That's all I have.

THE COURT: All right. I'm going to remove the 301. I'll give it back to him, but it just gives him more space to look at his prepared testimony if I have it off his witness stand. All right.

The Agricultural Marketing Service may ask questions.

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CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good morning.

A. Good morning.

Q. I want to go through your Exhibit 434, is your PowerPoint presentation. I'm going to stick to that, and I promise to not make you look at Exhibit 301, so --

A. That's great, because you are kind of blurry right now.

Q. All right. Let's see. I want to start on slide 4, and this is where you are talking about an adequate supply. And you have some numbers in there, both looking at reserve supply based on pooled milk and a reserve supply based on total milk.

A. That's based our estimates on current production, current order participation, yes.

Q. So when you -- when IDFA thinks about a reserve supply, which one of those do you think should be looked at to determine an adequate reserve supply?

A. Since all milk is Grade A, and all milk is NBTU, it's all eligible to supply the market, we know with depooling those numbers move up and down depending what class has got an advantage. We'd all love it if that didn't happen, but it does. So we believe it's -- it's actually closer to 80, but we still think 73% is ample.

Q. And can you speak about how pricing versus pooling provisions in Federal Orders affect what that reserve supply looks like, at least when you are looking at the

pooled milk number?

A. Well, it really depends on the market. It depends on performance requirements as far as -- but -- and, again, I can't remember when we last had an order call. I don't know even if they even exist anymore.

Q. I don't believe they do.

A. Yeah. So which is kind of weird, because that's one of the premises of having orders, to make sure there's a supply. But thankfully we haven't needed it. We have had a supply of milk, and it's worked.

So in -- in our minds, or at least in my personal mind, and, again, my experience in manufacturing markets is mostly cheese, my experience in fluid milk markets is more the South because that's where Kroger's plants are.

But in general, we believe that that milk is available, because it's a function, particularly if you have fairly liberal repooling requirements, they can pull that milk back on, if they need to, fairly quickly. And, again, when you have the ample supplies, and in particularly the Northern markets where you are mostly 25% or less Class I -- I'm sorry, thank you, thank you, Erin -- 25% or less Class I, there's more than enough milk, because the milk, it is there.

I -- we just -- my personal experience, I have had not had trouble getting milk. Couple snowstorms once in a while, but I'll tell you -- and that's -- that's challenging for everyone. And that's one of the things with the universal receiving credits, which are so common,

if it causes delays and you need more milk to get to your stores in a hurry, you pay for that. And you should, because it's causing some disruption to your supplier. So in my mind, is there really isn't -- really isn't a concern.

The Southeast is different. I guess, from my opinion, that's one of the reasons we now have our new final rule for the Southeast, is to help move that milk because those markets don't have adequate reserve supply, especially some times a year.

So I don't know if I answered your question, but I generally find that that milk, it needs to be found, it will be found. And they will -- and they will move into the market. We have so much extra in a lot of the markets. Depending what class is pooled, we still seem to have adequate supply if there is depooling.

Q. So another way, in your opinion, neither of those really affect what you consider to be a reserve supply?

A. No, I don't. I think empirically I haven't. You know, I have certainly seen ups and downs, particularly with the opening of the big new cheese plant in Michigan, which really tightened up supply. We still had no trouble getting milk.

And we had, to their credit, excellent suppliers. Very good suppliers.

Q. Okay. On the next page, page 5, talking again, on the same topic of adequate supply for Class I needs. There's been discussion in this hearing about there is a

lot of milk, but now maybe it's not where it needs to be, and maybe the suppliers who have been supplying the milk might not be willing to supply it in the future because of the cost they incur to get it to those plants.

Can you -- can you talk about how that should be, or not be, a consideration?

A. When you start looking at individual markets with differential maps, you get yourself in trouble. I mean, that's some of the things that we're seeing. Again, we -- we think National Milk's proposal was made with great intentions, there's a lot of good work there, but you can create winners and losers. That's where market premiums play a role.

If you're difficult to serve, if you are in a city, if your receipts, from my experience --

(Court Reporter clarification.)

THE WITNESS: If you're in a city where it's difficult to get to, or if your receipts, your daily milk intake isn't consistent, you pay for that, and you should because you're incurring costs.

I think the same thing is true when you move milk from distances. Before the final decision we now have, which we fully expect will be implemented, we had seen significant increases in transportation charges, and they were fair, I mean, because their costs had gone up.

So to me, that's a role -- we can't encase every dollar into the regulated price. This is a minimum price system. It's to help promote orderly flow of milk. And

as part of that, I think, again, you got to look at what those -- a couple things.

Are we putting the dollars in differentials where the milk really needs to be or are we putting the dollars in the differentials where the differentials are low so it helps raise that price, even if utilization is very, very low?

The second thing: So, is that slope right? Are we getting that slope right? And that's a huge challenge. I don't -- I don't envy anybody that job.

I think the other part of that, though, is expectations that we shouldn't have the Federal Order system build in the premium programs. They should be separate. There should be minimum pricing. I don't care if it's butter, powder, cheese, yogurt, or milk. So let's leave room for that market to make those movements where milk needs to go.

And then one final comment is that when you have marketing agencies in common, which are very effective in negotiating, and they are legal. And they do help farmers, there's no doubt about that. But they also tend to make it more difficult to customize needs for certain plants, because a lot of times you even ask for that, they don't want to do it. You know, this is the rules.

And -- and I think, for example, in the case of Kroger, there's places having adjustments would help Kroger, there's places it would probably hurt Kroger, but it makes it kind of inflexible. And that's not a Federal

Order issue, that's a marketing issue. And, again, that's between our milk suppliers and us. We are 100% co-op. We -- I'm no longer at Kroger. Kroger is 100% co-op supply, so they -- they understand that value of the market, the service that it brings.

Q. So if I take what you just said, and I want to go one step further, right? What I'm hearing, I think, from you is, I think maybe everyone in the room, we might agree, Federal Orders are kind of a foundation for the industry to operate under.

But what I'm hearing is, the differentials should never be updated to reflect current market realities, that it should always be left up to the market to operate on top of that, and so we would never recalibrate these things to reflect structural changes in the industry?

A. I expect we'll see recalibration. I think, from our position, it's got to be right, and if you can't get it right, you do more damage by overvaluing milk and making plants uncompetitive than you do by undervaluing it, because markets can make up that difference.

So it would be dishonest to say we don't think there's times we need adjustments, just like we need adjustments in Make Allowances.

But it's just -- it's a -- it's a job I don't envy anyone having, but I think it's very, very important that -- that there's a lot of investment, a lot of infrastructure that's been built around the current differential map. So when we make adjustments to that

map, we need to be careful that we're not creating winners and losers.

And I don't think that's wicked or intentional, but you still need to be careful because it can happen. That's my view.

Q. So how would you suggest getting it right? I mean, it's been 25 years.

A. My suggestion would have been if we had a broader conversation, maybe it would have helped.

I think you have got lots of -- you know, we're pretty fond of Mark Stephenson and Chuck Nicholson's work. You can argue over the $1.60. But as far as the way the map works, we're fond of it. And I understand there needs to be tinkering to that to make things work, we just need to be careful that we don't create winners and losers.

I don't know what that answer is. I think we have got a good record that will hopefully help USDA figure out what that needs to be. I don't envy you and your team that job, Erin, but --

Q. I don't envy us, either.

A. Okay. So --

Q. So --

A. I don't want to pawn it off on you, but in the end, you are the folks who are going to help us figure this out.

Q. Okay. So it's important to get it right. And what I heard from that is, there might be tinkering that needs to be done, but you are not quite sure what that is?

A. Personally, I'm not. I think you are going to have testimony from people that are affected. I mean, we just had some discussion on different markets and how they relate, and how those changes -- changes occur.

I do have a lot of faith in the Wisconsin model, just because it's become more sophisticated. I thought Mark's presentation yesterday really helped me better understand how that model worked. And so there's a lot of good information there.

I also think that it's -- it's hard to do something that complicated without a broader conversation reflecting all sides of the industry. We really didn't have that, unfortunately.

Q. Well, luckily this hearing provides that as part of that broader --

A. Oh, you are getting it now. That's why we are -- that's why I'm Hilton Diamond, you are getting lots of good information, so --

Q. All right.

A. Yeah.

Q. If I can turn to page 7. Let me turn to page 6 first.

And here you are talking about the decline in milk sales, which I think everyone acknowledges those facts. And there's been discussion at the hearing about, what does that mean for the Federal Order program?

And so what I read from your slide is, we shouldn't make changes to the differentials because fluid

milk sales have declined.

So my question is: Where in the Act does it say that an objective of Federal Orders is to increase, or in some ways, not -- at least not impact fluid milk consumption?

A. I don't think it is there. But through -- it is -- it is -- it is a reality. And Class I is the only milk class that isn't really based on ingredient costs as far as relative to other products.

I mean, Class III and IV are based basically on, this is the commodity value for those products. What you want to do in your plant to add value is up to you, but we kind of set that base.

Class I is set on the premise -- again, correct me if I'm wrong -- my understanding has been one of the reasons we have differentials and we have a differential map is to make sure the Class I market is fully, fully served. And I think that's a -- that's important. It's absolutely important.

I think the argument over what that level is, is what we're having this discussion about. And I also think that unconsumption, we need -- we've always kind of viewed Class I as being this higher value-added product. I can assure you in the grocery business, it's the lowest margin section of the dairy case by far. So it is not -- it's a declining market.

When I was at Darigold years ago -- as we all know, I've worked everywhere -- when I was at Darigold

years ago, we -- we kind of joked that, because Darigold's a very good, nonfat dry milk manufacturer as well, that fluid milk was really no different than powder. It's a commodity. And it is a very, very competitive market, and it's tough to make it work.

And so I do -- I -- again, we are not opposing Federal Orders, we're not opposing eliminating differentials at IDFA, but any changes need to be proposed for -- frankly, with extreme cautions.

And kind of the physician's oath, first do no harm. Let's not make -- as best we can help it -- not make winners and losers. Because investments have been made based on the current map, so how you change that could -- could really change that, what that could look like.

Q. You mentioned, in your experience in the Class I sales with Kroger at least, Class I isn't the highest value product because it has the thinnest margins, I think you just said.

And so are you equating value with margin?

A. I'm equating -- I am equating -- equating -- there isn't -- we don't have a market value for fluid milk, we derive one --

Q. Uh-huh.

A. -- based on the other markets. And what that added value of fluid is, if you look at how -- I mean, people are eating more dairy, but they are eating it, not drinking it. So what -- what is the added value to that

milk? I think it is a fair question to ask: If we lowered the price, how much would it -- we think it does have an effect.

I do know from the standpoint of promotions, it's a lot easier to do obviously when prices are lower. But I also think that you need to be cognizant.

And I think the thing we haven't talked about as much at this hearing, as I thought, is the competitors to milk, because they are real. I mean, I was in Meijer the other day, and they're running a sale on almond milk. It's cheaper than two quarts of milk. And that gets scary for me. And -- and I think that's one of the things we have to be cognizant of, make sure we keep milk competitive because it competes with products that aren't dairy.

Again, you can't build a formula around that, Erin, but it's something to keep in the back of your mind.

Q. That is a great thought, leads me to my next set of questions on page 7.

A. Okay.

Q. Where you are talking about own-price demand, and there's been a lot of discussion about elasticities at this hearing. And I -- you know, the model that we used -- well, the USDSS model, back in reform, didn't contain any type of elasticities. We didn't necessarily, to my knowledge, consider own-price elasticities or cross-price elasticities when setting differentials.

But is it your opinion that those should be

considered now?

A. Again, not an easy task, but, yes, I would say that they do. Again, we're looking at adjustments to differentials, we're not looking at removing them. There are some things there that we can see that may help guide us to what the best decision is, and I don't have the answer from that. If I did, I would have been happy to present it. I won't pretend I know.

Q. On the next slide 8, you list the elasticities that came from Dr. Capps' presentation. And if I remember correctly, they were for about 75% of what he considered total fluid milk sales. It didn't contain schools, foodservice, prisons, et cetera.

A. That is correct.

Q. And so how do you think we should consider that, the kind of -- like, that missing piece that's not in these numbers?

A. Well, I think -- might be one that other 25% is declining, but I don't think it's necessarily elastic. And neither does Dr. Capps, and he said that in his paper.

So you have to kind of look at the other three-quarters, I guess, in a great way. And so if you are saying, how much milk is in package? Say we had, you know, 40 billion pounds of Class I sales, realistically, the top 70 covers 3 billion of it -- 30 billion of it. And that's how we viewed it as we did analysis, internally figuring out what we thought it could do.

We just assumed there was no elasticity in

foodservice and schools, which probably isn't true, but it's probably close to true, so -- and that -- that lowers the impact overall if you -- if you exclude a fourth of the sales.

Q. Okay. Can we turn to slide 11.

And here you have outlined kind of the three components of the base differential. There's been a lot of talk about Grade A costs. There's been some talk about balancing costs.

But I wanted to talk a bit about the competitive costs you list in that third bullet there and what you do believe makes up competitive costs incurred by fluid plants to get a supply and compete with manufacturing plants that also need a supply.

A. I think often the biggest difference, and the differential map talks about that, is acces to those plants isn't always quite as easy. Those plants don't necessarily take milk as even. So it takes a little more money if you are going to serve that market. The incentive to serve a market isn't quite as consistent as, for example, some of your manufacturing markets are.

Fluid milk plants -- I mean, ice cream plants aren't demand plants. They are, but you make use -- you store stuff. When -- you make ice cream in December when you have product, in January in particular, to sell in June, because you can't possibly make enough in the summer.

Just like you can't make enough butter in the

fourth quarter to meet consumer demand, so you make it all year-round to have it ready.

Of course, fluid is pretty much, depending on the product, it's somewhere between, you know, 20- and 120-day shelf life. Most of it's around 20-day, 25. And so that demand just fluctuates more.

And I -- in my view, that's part of that competitive thing, if you want someone to observe that market. Obviously, cream is a part of that. But it's a recognition, it isn't as consistent to the buyer generally, and plants is exception, than, for example, a cheese plant would likely be.

Q. So do you think the competitive environment is different now than it was 25 years ago, that would make the costs be more or less than the assumption in the base differential?

A. I really don't think so. No, I didn't say I didn't think transportation hasn't changed. But I think that competitiveness really hasn't, and some of it is self-imposed, quite honestly. If you make commitments to large sales, to large manufacturing plants, and your milk is tight, is that the Federal Order's fault if you are still below utilization? I would say it's not. That's a problem they have to negotiate and they need to work with. That's not the Federal Order's job.

So, in my mind, that competitive -- a lot of that competitiveness, again, is local. And, again, I can assure you that is part -- a lot part of when you

negotiate additional charges for milk, no matter what class it is. In my experience, every class but IV tends to have additional handling costs, which is fine. That it can -- it can be -- a lot of that can be negotiated. Having it be a portion of this, and what that is, as we all know, exactly what makeup is, that differential, is subject to opinion, quite honestly. And I'm among those, that we all recognize there's a reason for it. Exactly how many X cents is which and which, I think we can discuss.

But -- so I think allowing for some of that is -- is fair. It doesn't need to cover all of it. And I would say that the amount that is there now is fair.

To me, the biggest differential map -- the differentials, the biggest issue isn't the base. The biggest issue is, how do we keep that surface working from the standpoint of meeting producer needs.

Again, the Southeast decision, three orders on -- on transportation. I can assure you no plant that buys milk necessarily likes that. But they didn't come and complain, so I guess they are -- they understand it's necessary.

So I -- so I kind of think of this is the same way. We need to leave room for the market to work. I mean --

(Court Reporter clarification.)

THE WITNESS: I'm sorry. We need to leave room for the market to work.

BY MS. TAYLOR:

Q. So what I heard, I think, too, is you said that maybe competitive costs do vary locally, and in your opinion that is handled locally through premiums, negotiations?

A. On all classes of milk that would be my experience.

Q. Okay. On slide 13, that last bullet, this is kind of going back to what was -- what happened during reform, but you said, at that time, I think, the last sentence there, "blend prices among orders necessarily did not align."

And I was wondering if you could expand on that statement.

A. Because utilizations, your map for -- your map for Class I value, competitive value among regions is different, and the value of that pool is very different, depending on utilizations. So a good example would be Mideast milk that moves into the Southeast. You have a significant transportation cost. They also get to pool some reserve supply milk.

And so -- and we -- and it's become, as you know, more extreme. You look at the utilizations in the three Southeast orders, it's markedly different by multiples from utilization just to the north. And so your blends aren't going to be the same, even though your Class I prices are going to have a continuous kind of flow to them.

So that creates -- well, it does a couple things. Actually creates incentive to move milk south when they need it, which is a good thing.

On the other hand, it means as far as a blend, a regulated blend, there will be a difference. My experience over time is, is that those blends blend out because market conditions will make up for some of that difference. They'll move milk south to get more of those dollars or they will do other things. Which is, again, just good business.

Q. So this slide, as I see there, talks about USDA's criteria for setting Class I differentials.

And I draw from that blend price statement, it's your opinion that blend price alignment was not a criteria at the time of reform in setting Class I differentials?

A. From my understanding, yes.

Q. Okay.

A. Sorry for the long answer when you needed a short one.

Q. No, that's okay. I enjoy all the information on the record.

A. Say that in February.

Q. Or my entire next year.

A. Yeah. Well, you won't be alone, my friend.

Q. So let's see. I'm on slide 14. You are talking about some witness testimony we heard during the course of this hearing. And this first sub bullet, the "testimony did not relate to any special costs of producing milk."

And I -- I wanted to know what -- what do you mean by "special costs," or what would be an example of a special cost, that's something you would consider a special cost that wasn't considered?

A. I don't think there really are. There's balancing costs, yes. Otherwise, I don't think there really is. A lot of the costs, a lot of the talk on -- I think is trying to use the Class I market to solve regional cost problems. And this system is not designed to do that.

And you shouldn't -- for example, if you are -- your costs have gone up because your milk supply has gone up significantly in your region, and you have kind of constrained supply of your inputs, is that something the Federal Order is supposed to fix? And is that fair just because the inputs went up in one state and not in another, that they get extra money?

Again, the market will take care of that if milk gets tight. So that's -- that's kind of my view.

They talk about their costs are higher. We have a lot of water issues in the West. I just don't think it's the Federal Order's job to solve that type of problem. Yours is to keep milk flowing where it needs to go, and there will be a minimum price that reflects the real value of the milk.

Q. Okay. And in that next bullet when you are talking about general costs have not been considered by USDA, are you talking there about maintaining -- maintaining Grade A status costs, or are you talking about

feed costs there? I'm just -- want to kind of get --

A. What we're talking about -- what -- from, again, from our perspective, from my personal perspective, in this there's been some -- I think we even have --

THE COURT: Slow.

THE WITNESS: -- we may have an attachment that reflects -- talks from Richard McKee, our good Oklahoma Market Administrator from years ago. That the -- the costs, reflecting costs supply and demand is done through commodity markets, and Class I is to -- to express added cost of serving that market is how we look at it.

BY MS. TAYLOR:

Q. Okay. I get what you are saying now.

A. Okay.

Q. Thank you.

We move to slide 16. And here you are talking some testimony that was heard about maybe some contractual commitments between parties and some acknowledgement of that in the Federal Order that went into the thinking behind whatever the proposed differentials were.

And so my question then is, is it IDFA's position that federal regulation should not be written or amended to accommodate any contractual arrangements between two private parties?

A. Absolutely not. That's not your role. As long as it's legal, if they're using risk management, it follows your rules that are allowed for risk management, it is not. That is -- that's the market's job. And if -- if a

supplier overcommits to a demand for class, for a manufacturing class, I don't view that as a market issue, that's their personal -- their personal management issue.

Particularly in a lot of cases where we've had suppliers who encourage vast growth in plant capacity, and now they are concerned -- now they are concerned about that. And I think we need to be cautious of making sure the orders don't get into the middle of what I would view as negotiation issues that have nothing to do with markets and price surfaces.

Q. Okay. On the next slide 17 you talked about the discussion we have heard about moving milk, trying to discourage the movement of milk from, say, far out places like Minnesota or Maine to the southern markets.

And as I remember that discussion, the reasoning behind discouraging that, because it would be -- those would be uneconomic shipments. And in the South, in particular, that has the transportation credit provisions that we have discussed here, that would be, perhaps, a reason why that milk would be encouraged to move down there, even though it wouldn't be an economic shipment.

So is that how you are looking at that bullet here? I'm trying to just kind of get a little more information on why that shouldn't be considered.

A. Well, again, it's -- one of the -- one of the -- one of the challenges I had was understanding the logic of a lot of the regional discussion on the differential map because they use opposite reasons to come to the same

conclusion at times, and it was a bit confusing.

My view of the differential map, again, I think a great example is the new, you know, Federal Order provisions proposed for the Southeast to help move milk, encourage milk to move. But if you want milk to move, you don't flatten the differential map. You don't give more money to Minnesotans because, gosh, they are nice people. And they are wonderfully nice people, I used to live there, I love Minnesota. But is that the function of the market? Particularly in the -- in a lot of those cases fluid plants aren't necessarily very far from the -- any farther from the fluid milk supply, quite honestly, than the manufacturing plants are.

Q. Okay.

A. So keep that -- that -- that gradient to keep milk moving where it needs to move is what I view is the most important thing differentials can do. We need to make sure that that stays.

Q. As I'm going to slide 19, one of the points you make here, criticisms of maybe what you saw as inconsistent approaches to the transportation cost data or information that was provided by us.

And so is that because the model looked at -- I forget what Dr. Stephenson said yesterday -- but there was some information that came in on 2022 costs. There might have been some information on 2023 costs.

And is your issue that that's not consistent?

A. I think it's more for advice. Make sure you take

that into consideration as you compare numbers because they are from different periods. And as we all know, transportation, for the most part, thank goodness, is moderated a bit, fuel is down, labor is more available. So -- and that's always a challenge.

I know in the top past, Erin, when we have talked about energy costs of manufacturing, they balance, too. So you have to kind of take a -- try to take a little more of a trend approach.

And that would be our -- I guess, our observation here. Let's -- let's do what we can to make sure that we're -- when we look at regional differences, that we can compare apples to apples the best we can.

Q. Okay. Turning to slide 20.

And your last bullet talks about how -- and during some of the conversations, that testimony we have heard, it was highlighted that they tried to preserve existing relationships between plants.

And so is this page to -- I guess my question is, are you saying that that shouldn't be considered? Handler equity between similarly-situated plants is not a consideration for making changes?

A. It is a consideration. You have to be careful you don't make significant changes that will physically or -- I mean, financially harm certain markets if you can't make sure the justifications are there.

I think I mentioned it earlier. I bought a lot of fluid milk. Kroger doesn't buy a lot of fluid milk, but

where they do, those bids are usually within a cent and a half of each other, and the number one and number two are usually under a penny on a gallon.

So you start raising a differential, for example, $0.05 or $0.06 -- $0.05 or $0.06 -- $0.50, which would be about $0.045 per gallon, you make that plant uncompetitive and that asset and those people. So I think, to me, that's the most -- that's the biggest challenge is to make sure that what changes are made, if you necessarily decide they are necessary, how we keep them from being disruptive to the market.

It's not totally unlike the Class II conversation you heard this morning, how do we make sure that we don't -- not intentionally -- favor or disfavor folks over others. And, again, it's hard. I get that. But just make sure that it's considered.

Q. And so the USDSS model doesn't look at that factor, that's simply transportation cost, as has been discussed?

A. Yes. And it's no -- no -- it's assuming that we're starting over. There's just -- there's no regulation, what would things look like, that's correct. That's my understanding.

Q. As is mine.

So would the handler equity issue that we just discussed, would that be an appropriate possible reason for making some changes?

A. Yes, it would be.

Q. Okay.

THE COURT: I'm sure everyone knows what you mean, but I want to make it clear. When you say a $0.015 difference, what --

THE WITNESS: It's a $0.015 when you -- a lot of companies, a lot of stores will bid for milk, what you are going to charge me delivered into my store for a gallon of milk. And it's a very competitive market. And so a lot of times that difference in price can be rarely more than a cent and a half, and a lot of times it's under a penny.

Which -- and if you look at a penny, a penny on a gallon of milk is $0.086 on a hundred pounds. So if you make differential changes that are significant, you can change plants' competitive position quickly, and so it needs to be considered in a decision.

BY MS. TAYLOR:

Q. I want to turn to slide 21, and here you are talking about the depooling, and maybe we shouldn't necessarily look at the Class I differentials as the end all, be all, to end pooling?

A. And that's -- that's the point.

Q. Yeah.

A. Yeah.

Q. And I'm assuming these impacts are solely looking at the differential changes, they are not looking at any other proposal that's been heard?

A. No. As you can imagine, building this was enough work without adding 50 variables. We very simply looked

at -- and we didn't even -- we just took the utilization by class and -- and a blend, and we used the base city, where -- for example, Chicago, where prices reported out of are Boston, prices reported out of -- and we just ran the pool, came up with an average value. We didn't adjust for any fees or anything else. We didn't adjust for components even. It was just giving us a relative idea of how much -- how difficult it would be, just through differentials, to manage the depooling challenges we all see.

And it's interesting when you look at the numbers, because you know in the Northeast, Northeast Order, because of the depooling rules, you don't have a lot of fluctuation of pooling amounts, it's pretty stable. Other orders, as you know, they can be very, very wide.

And so what we looked at, based on -- based on that, how many months would -- if you based on -- just again, we're using, for example, Chicago for the Upper Midwest, which is probably -- that's not where the plants are, the manufacturing plants, or even the fluid plants anymore. When you look at that, what -- what price would it take on Class I to not incentive any class to depool? They say, I'm better off in the pool, we just use a break-even number.

So you look at what the average weighted differential would be, based on the utilization, whatever it might be, and you look at what your blend is, and you take the blend minus the highest class price, and multiply

it times utilization in Class I to come up with that Class I would have to look like to -- and the spreadsheet's in the record, the actual spreadsheet's in the record, so you can look at it, but --

Q. So --

A. -- that's what we did. So it's just get an idea relative. And as you can imagine, much less in the Southeast, a lot more in the big manufacturing markets, there's more opportunities.

Q. So I know you have highlighted the Upper Midwest here.

But did you look at other orders, I mean --

A. We looked at them all.

Q. Okay.

A. We looked at them all.

Q. And what about the time period? Because you've got -- this is primarily COVID times, which we can all, I think, agree that the markets did crazy things. And I don't -- the higher-of might have -- has been argued here in this record, had an impact on pooling decisions and blend prices, et cetera.

So is that the right time period to look at, considering those factors?

A. Well, we could look at it, I guess, how do you pick it? I could have went back to 2000 because thankfully for this -- all your wonderful exhibits, I have got data I never had back that far before. And, of course, can't do that now, unless I can come back in

January and provide something.

But the -- we picked it just because there was -- this is a very volatile time for Class III and IV differences, and so we wanted to look at a volatile time.

Q. Okay. Turning to slide 23, this is where we're talking about the transportation credits in the Southeast orders.

You have $0.07 listed for Appalachia for Federal Order 5, but that's not the maximum allowable rate?

A. No, that is correct.

Q. Okay. And so it's just currently being charged at $0.07?

A. Yes, from my understanding.

Q. And it is your opinion, I think, as I read from this, and maybe some discussions you had with your counsel, that if the Department seeks to update differentials, we need to kind of consider these increased assessments that would be charged to Class I handlers if this new decision in the Southeast is passed?

A. Yes. Because when the proposals were made, this wasn't a final decision.

Q. Okay.

A. And so, yeah. Again, we're not arguing against the final decision. We're just -- we believe it should be part of the consideration for the Southeast.

Q. Okay. On slide 32 you were talking about somatic cell count limits and the 400,000 limit that's applicable for products going into the EU.

Do you know how much milk equivalent is exported to the EU that that limit is actually subject to?

A. What -- from my own experience selling lots of cream out of lots of plants while at Kroger, it does, because whoever buys that cream wants to make sure that's met in case it ends up somewhere in a plant where it's going to be exported. That's -- you can -- you can talk to Kroger, you can talk to Publix, you can talk to Borden, they will all tell you that that has to be a consideration. And so they do. They do tend to do that.

Because in this world of ingredients, you heard a little earlier, Tim Galloway talking about ingredients, he sells them all over the place. And the EU works hard to make sure we don't sell them anything that they -- that -- they don't encourage sales from the U.S. into the EU, I think is a nice way to say that, so people are pretty cognizant of trying to meet that.

Because I was surprised, quite honestly, when I came to Kroger, it was an issue in Class I, but it is. You do cream contracts, they make sure that you are meeting that requirement.

Q. Okay. So 400,000, in your opinion, is the effective limit?

A. It is the effective limit as far as current rules, yes.

Q. Okay. And then on --

A. You have customers that may have requirements on cream loads, what they have. But as far as regulatory

limit? Yeah, it's the one that we all -- you have to at least be there.

Q. Yeah. And then the last slide, just a couple questions.

You have this data and this chart here, and you said it's from Federal Orders with SCC programs.

And I know that's somatic cell count, but what programs are you talking about?

A. I'm talking in -- when orders pay, do they have that built -- I think it's that built-in incentive on somatic cell. Well, all I did, I didn't go back and check all the regulations, I checked where you record it, where there's official USDA data. And apparently, I missed an order, and I apologize for that. Because I was curious how different it was in the Southeast, particularly, versus the Upper Midwest. Because I know in the Upper Midwest they've made remarkable improvements. But, quite honestly, the biggest improvements in Florida since 2000, I mean, it's amazing. So we can be very proud. We're making very, very good milk.

But I thought it was important that we show that it's not -- it's not as regional as some people might think. It's everywhere we're making really good quality milk.

Q. Okay. And I just want to make sure the record is clear.

In Appalachia, Florida, and the Southeast, I don't believe they have programs, but they do report estimates?

A. Yes, that would be true.
Q. But there's no actual reflection of any somatic cell count on a producer's paycheck?
A. Which means there's also no incentive, regulatory-wise, to lower it, correct? Yeah.
Q. And then just, your total milk column, is that a monthly average did you say? I just want to be clear about that.
A. It is a monthly average for those five years, yes. So it's 60 months.
Q. Okay. And with that, I think AMS has no more questions.

MS. TAYLOR: Thank you for your time this morning.

THE WITNESS: Oh, my pleasure. Thank you. Good questions.

THE COURT: Are there any other questions before I call on Mr. Rosenbaum for redirect?

Yes, you may come forward.

CROSS-EXAMINATION

BY MR. VANDENHEUVEL:

Q. Rob Vandenheuvel for California Dairies, Inc.

I apologize, I didn't think I'd be coming up, so I don't have these printed out, but I'm hoping we can rely on some official copies, because I'll be referencing only previously-entered exhibits.

So, Mr. Brown, i just had a couple of clarifying questions, and I'm specifically referring to your written testimony, 433. It was summarized in the PowerPoint, but

just to get the more detailed information on the record.

Page 16. This is a section where you are explaining regional competition in the sale of manufactured products and referencing some prior testimony given by myself on this issue.

A. Yes.

Q. In that section of testimony, in your written testimony, it says, "Witness Vandenheuvel insisted that Class I differentials need to reflect regional competition at the farm, and insisted that California needed to have Class I differentials such that the blend price in California was similar to the blend price in the Upper Midwest."

Do you see that?

A. Yes.

THE COURT: Now, you didn't read every word, but the gist is the same as what you have looked at, correct?

THE WITNESS: Yes.

MR. VANDENHEUVEL: I left out items that were in parentheses.

THE COURT: Okay. Thank you.

MR. VANDENHEUVEL: Would it be possible to get Mr. Brown a copy of Exhibit 345 --

THE COURT: Yes, it is.

MR. VANDENHEUVEL: -- which is National Milk-39?

THE COURT: Do you know now that there are other exhibits you will want to use during your questions?

MR. VANDENHEUVEL: And Exhibit 302.

THE COURT: So 345, the record copy will be borrowed, and 302.

MR. VANDENHEUVEL: 302 is National Milk-36.

THE COURT: Mr. Brown, if you and I are loaned these record copies, we have to make sure we give them back.

THE WITNESS: Will do.

MR. VANDENHEUVEL: 345 is National Milk-39.

THE COURT: We need to take about a ten-minute break. And what I propose, in ten minutes is when we would break for lunch. You will be here another hour or more in order to be able to ask these questions after lunch?

MR. VANDENHEUVEL: Yeah. Yeah.

THE WITNESS: I need to use the restroom.

MR. VANDENHEUVEL: I wouldn't want to delay. After lunch will be fine.

THE COURT: All right. Please be back and ready to go at, let's just say 1 o'clock. 1 o'clock.

(Whereupon, a lunch break was taken.)

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FRIDAY, DECEMBER 8, 2023 - - AFTERNOON SESSION

THE COURT: Let's go back on record.

We're back on record at 1:01 p.m.

Mr. Vandenheuvel, we were about to begin with Exhibit 302, Exhibit 345, and the witness's current testimony, Exhibit 433. And you may resume.

BY MR. VANDENHEUVEL:

Q. Thank you. All right. Just a couple of questions, Mr. Brown.

So I read before lunch the section of your testimony, Exhibit 433, related to -- which referenced my testimony earlier this hearing, but related to regional competition and any engagement that has with Class I differential; is that correct?

A. Yes.

Q. All right. So what I'd like to ask you to draw your attention to, is in Exhibit 345, which is National Milk Producers Federation 39, page -- page 3, the very top, there's a paragraph that starts with, "specific to regional competitiveness."

Do you see that?

A. Yes.

Q. So I'm happy to read the entire paragraph into the record, but since it's already in the record, I don't want to belabor the record.

Can you just tell me, browsing through, if you see the word "blend price" anywhere in that paragraph?

A. Not specifically, no.

Q. And, in fact, would it surprise you that the word "blend price" doesn't appear anywhere in this exhibit?

A. Not necessarily. But I'm -- I believe that it doesn't. You wrote it.

Q. Well, the record will confirm that, that when I read this testimony into the record, the word "blend price" was never spoken because it's not written anywhere in here.

In fact, wouldn't it be accurate to say that it would be unreasonable to expect the blend price in California to mimic or even trend along the same line as the blend price in the Upper Midwest, given differences in utilization between those two regions?

A. Because of class utilization, the odds of that are fairly low.

Q. So is it possible that perhaps your reference to and your testimony stating that in my testimony I insisted that California needed to have Class I differentials such that the blend price in California was similar to the blend price in the Upper Midwest, that that was perhaps referencing other National Milk witnesses talking about blend prices within regions and not specific to my testimony in my regional competition?

A. Others talked about it, but in cross-ex- -- your cross-examination, which unfortunately isn't posted yet, my recollection -- and I was watching it on my tablet, so I can't say that -- I mean, I'm pretty confident that there was a -- that competitiveness difference, blend or

not, between regions was very evident in testimony. There wasn't talk about class from my recollection, but that was my understanding, which is why I wrote this the way I wrote it.

Q. But you don't -- you are not able to cite specific comments made in the cross-examination --

A. I cannot.

Q. -- you only cited my exhibit here?

A. Yeah, because that's all I had written to look at.

Q. All right. Well, I may come back to that in a second, but let me draw your attention to Exhibit --

THE COURT: Let me interrupt.

MR. VANDENHEUVEL: Yes.

THE COURT: You are doing a very good job letting him finish his answer. He's starting his answer before you've finished your question.

MR. VANDENHEUVEL: Can the record reflect the dirty look by the Judge and a hand slap by Mike.

Bad Mike. Bad.

I will -- I will -- I will be more careful.

BY MR. VANDENHEUVEL:

Q. All right. I'd like to draw your attention to Exhibit 302, which is National Milk Exhibit 36.

You got it?

A. Yes.

Q. Okay. If you could scroll to page 13 --

A. Okay.

Q. -- there is a graphic labeled Figure 5.

A. Yes.
Q. Is this the first time you are seeing this graphic?
A. No. But this is probably going to be more time than I have spent on it so far, in my testimony.
Q. So at the bottom of page 12 there's a paragraph that explains what the different lines mean on Figure 5.
And so in the middle of that bottom paragraph on page 12, it says, "Green lines represent milk assembly flows from farms to plants, whereas orange lines represent the distribution of finished properties from plants to demand locations."
Do you see that?
A. Yes.
Q. So if you scroll down to Figure 5, what this -- what this appears to try to demonstrate, in a simplistic form, is a map with various assemblies -- various bottling -- Class I bottling operations represented around the country. The green lines would be where they're getting their milk from, the farm to the plant, and the yellow lines would be their outgoing distribution of finished goods.
Would you agree with that assessment?
A. Yes.
Q. So when you look at the right side of that map, there's a lot of green lines, largely all pointing down to the Southeast United States.
Would you -- would you agree?

A. For the most part, yes.
Q. But as you get further away from the Southeast to the Northwest and to the West, you see a lot less green lines, really until you get to California, where you got some -- some green lines, for instance?
A. You have a lot of people, so you will have some green lines, yes.
Q. A lot of people.
I'd like to draw your attention to kind of the middle of the country, South Dakota. South Dakota doesn't have a lot of people, less than a million people, if -- if my numbers are accurate on the latest census, but they do have quite a few cows, a growing number of cows. You can see there, that really -- the milk appears to be not needed in South Dakota, though, to meet demands in various urban areas, whether that be Chicago or cities into the Southeast.
Would you agree with that depiction of the map?
A. For South Dakota, yes, I would agree.
Q. So I don't want you to have to strain your eyes on -- on Exhibit 301, so I'm going to --
A. Thank you.
Q. -- I'm going to ask that you trust what I'm going to tell you as fact and -- and understand it will -- it will be reflected in the record.
Would it -- would it surprise you if you were told that the model, the USDSS model, generated an average between those two months, May and October, and their model

runs, an average spatial value, or recommended Class I differential, for Fresno County in California at $1.90?

A. I -- I believe that could be true, yes.

Q. And are you generally familiar with Fresno County?

A. A bit.

Q. And that's in the Central Valley --

A. Yes.

Q. -- a lot of cows, maybe not as many people as the more urban areas of California?

A. No, it's cow country through that part of the valley.

Q. Very rural?

A. Yes.

Q. And would it surprise you if the Tulare County, just below Fresno County, was $2.10, that was the number generated by the USDSS model?

A. Okay. I believe that's the case if that's what you tell me.

Q. For South Dakota, the state we just looked at, a lot of cows, very rural, in some ways similar to the Central Valley, but maybe even a few more people in the Central Valley.

Would you be surprised to hear that the USDSS differentials range from $2.50 to $2.70?

A. If they do, that is remarkable. I would not expect that.

Q. Is there any economic justification that you can think of as to why those two regions that have very

similar dynamics, lots of cows, and not very many people, would have a recommended regulated Class I price that is as low as 40, but as much as $0.80 difference?

A. My observation would be, I am surprised. Which one seems out of line may be up for discussion. But I am surprised of that difference.

Q. Is it possible that my testimony on Exhibit 345 was referencing that fact and why a bottler located in either location, whether or not there are bottlers there, but if a bottler sited in the state of South Dakota would have a regulated price, as little as $0.40, but as much as $0.80 higher than the Central Valley of California, that that could have been what I was referencing? Is that possible?

A. It's possible, yes.

Q. I think that's all I have.

MR. VANDENHEUVEL: Thank you so much.

THE WITNESS: Thank you.

THE COURT: And the witness and the Judge will return the record copies.

Who next has questions for Mr. Brown?

Mr. Rosenbaum, you may return for any redirect.

REDIRECT EXAMINATION

BY MR. ROSENBAUM:

Q. Mr. Brown, just to follow up. Steve Rosenbaum with the International Dairy Foods Association. Just to follow up very briefly to make sure there's no ambiguity in the record.

Your testimony in Hearing Exhibit 433 regarding the testimony as you understood it that had been given by Mr. Vandenheuvel reflects the combination of what he had said in his written testimony and what you understood him to have said orally; is that right?

A. That is correct, yes.

Q. The transcript of which has not yet been posted?

A. That is also correct, I believe, unless it showed up recently.

Q. And to the extent that -- well, did you -- let me start that question again.

I mean, on page 2 of Mr. Vandenheuvel's testimony, which is Hearing Exhibit 345, he expressed the view that the U.S. Dairy Sector Simulator, which is also referred to as the University of Wisconsin model, does not reflect regional competitiveness at the farm level.

Do you see that?

A. Yes. I -- it was taken away, but I recollect it, yes.

Q. And do you see that as an appropriate criteria for setting Class I differentials?

A. Not really. I mean, it's the cost of moving milk to market, is -- and you -- and you are -- you are in a big -- Central Valley has a lot more milk than it has market. And I think one thing that's important is that if there's -- there's other opportunities to review the model of Wisconsin. We talked about California, but there's other examples as well that are a bit of a head scratcher,

hard for me to understand the logic, I guess, is what I would say, and that would include South Dakota.

Q. And are you aware that the proposal from National Milk raises the Class I differentials in California materially higher than the University of Wisconsin model indicated?

A. From what I remember, yes.

Q. Okay.

MR. ROSENBAUM: Your Honor, at this point I would move into evidence Hearing Exhibit 433, which is Mr. Brown's written testimony; Hearing Exhibit 434, which is his PowerPoint presentation; and also both the original version of Hearing Exhibit 423, which is the spreadsheet for which we put in a corrected version; and I would also move into evidence corrected Hearing Exhibit 423A, which is the document we marked this morning.

THE COURT: Is there any objection to the admission into evidence of Exhibit 433, also marked IDFA Exhibit 57?

There is none. Exhibit 433 is admitted into evidence.

(Thereafter, Exhibit Number 433 was received into evidence.)

THE COURT: Is there any objection to the admission into evidence of Exhibit 434, marked IDFA Exhibit 58?

There is none. Exhibit 434 is admitted into evidence.

(Thereafter, Exhibit Number 434 was received into evidence.)

THE COURT: Is there any objection to the admission into evidence of Exhibit 423, also marked IDFA Exhibit 59?

There is none. Exhibit 423 is admitted into evidence.

(Thereafter, Exhibit Number 423 was received into evidence.)

THE COURT: Is there any objection to the admission into evidence of Exhibit 423A, also marked IDFA Exhibit 59A?

There is none. Exhibit 423A is admitted into evidence.

(Thereafter, Exhibit Number 423A was received into evidence.)

MR. ROSENBAUM: Thank you, Your Honor.

THE COURT: Thank you, sir. You did well.

THE WITNESS: Thank you. At least I still have my voice. Some may not think that's good.

THE COURT: We thank you, and we appreciate your wisdom, and we look forward to seeing you again.

THE WITNESS: You will. See you in January.

THE COURT: Ms. Vulin, what is next?

MS. VULIN: Ashley Vulin for the Milk Innovation Group.

The Milk Innovation Group calls Sally Keefe to the stand.

Your Honor, we have already distributed copies of her exhibit.

THE COURT: And have we given the next exhibit a number?

MS. VULIN: Not yet, Your Honor.

THE COURT: 440.

(Thereafter, Exhibit Number 440 was marked for identification.)

THE COURT: Let's go off record for just a minute to we make sure the laptop connection is as we want it. We're off the record at 1:18 p.m.

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

THE COURT: Let's go back on record.

We're back on record at 1:20.

I have four exhibits, and I'd like to identify what I'm looking at. The first is labeled Exhibit 440, also Exhibit MIG-64. That is the testimony of Sally Keefe.

The next exhibit is labeled 441, also MIG-64A.

(Thereafter, Exhibit Number 441 was marked for identification.)

THE COURT: The next exhibit is 442, also MIG-64B, as in boy.

(Thereafter, Exhibit Number 442 was marked for identification.)

THE COURT: And the fourth one is Exhibit 443, also MIG-64C, like cat.

(Thereafter, Exhibit Number 443 was marked

for identification.)

THE COURT: And I'd like the witness to state and spell your name, please.

THE WITNESS: My name is Sally Keefe, S-A-L-L-Y, K-E-E-F-E.

THE COURT: All right. And one of the things we need to do at the beginning is make sure that you like where the microphone is relative to where your mouth is going to be as you are looking at both your laptop and the paper.

THE WITNESS: Apparently I'm the first left-handed witness today.

THE COURT: And there are two ways that we can get more volume. One is for us to just ask for more volume on your mic, but sometimes then we get feedback. And the other is for you just to move it.

THE WITNESS: I think we're okay.

THE COURT: Okay. That does sound good.

All right. You have previously testified in this proceeding; is that correct?

THE WITNESS: Yes, ma'am.

THE COURT: You remain sworn.

THE WITNESS: Thank you.

SALLY KEEFE,

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

THE COURT: Ms. Vulin again identify yourself, and then you may proceed.

MS. VULIN: Ashley Vulin for the Milk Innovation Group.

DIRECT EXAMINATION

BY MS. VULIN:

Q. Good afternoon, Ms. Keefe.

You have four documents in front of you.

A. Indeed.

Q. Exhibit 440 is your written testimony for this portion of the hearing, correct?

A. That's correct.

Q. And Exhibit 441 is a series of tables, charts, and maps that you created in support of your testimony, correct?

A. Uh-huh. Yes. Correct.

Q. Exhibit 442 is a table of anchor city/county comparisons that you created, correct?

A. Yes, that's correct.

Q. And then Exhibit 443 is a fluid plant county list and comparison of differentials that you created as well, correct?

A. Yes, that's correct.

Q. So I would like to start, before we get into the documents, just going through the process you used to evaluate this data.

So what's the source of the data that you utilized in your analysis in Exhibits 440 and 441?

A. So my primary data source for my analysis were the two spreadsheets that USDA posted for NMPF's proposals,

and so one was posted in May, and then a follow-up after the information session later in the summer.

Q. And Exhibit 442 is the anchor cities.

I know the list of anchor cities came from the testimony at the hearing, but where did you get the data for the differentials in that table?

A. Again, from Exhibits 300 and 301.

Q. And then finally, the fluid plant county comparison spreadsheet that you created in Exhibit 443, where did you get the data for that spreadsheet?

A. So the -- most of the data there, all of it except for the list of plants, is from Exhibits 300 and 301, just like all the other ones that we have been looking at.

The plant list is -- the vast majority of it is from Exhibit 52, which was a USDA exhibit that -- of plants. I only included fluid plants on this list, and so -- and I also relied on information from the Market Administrator website. Each Market Administrator has a website that has a plant and handler list, and there were -- you know, things change, and so the most up-to-date information is available from the Market Administrators. So that was where I got it.

Q. And I note on page 8 of Exhibit 443, and also then also at the bottom of 442, you include your sources for your data?

A. Yes.

Q. So let's go back to the differential data, since that's what we're mostly focused on here.

When did you first download the differential data that you used in your analysis?

A. I downloaded that right at the end of May. It was posted on either the 30th or the 31st, right before the request for additional proposals came out. And -- and I don't know, I might have had the first download of the file. I was -- I was very excited to finally have it, because prior to that list being available, NMPF's petition regarding Proposal 5 had summary information available and summary maps, but it -- it -- you know, you couldn't see it at the county level.

Q. And then there was also a spreadsheet that you obtained that had the June proposal data, correct?

A. Uh-huh. Yes. And so I downloaded that one later in the summer, late June, July, after the information session.

And at the information session, I remember someone on the NMPF team advising that, like, they had -- you know, there were a few counties that were going to be changing and, you know, you know, keep your eyes open kind of thing.

Q. And how do you manage -- for those of us who aren't Excel wizards -- what's just a high-level summary of how you manage and process all of this data?

A. So it's just a big spreadsheet. Thanks to printing out Exhibits 300 and 301, you guys have all had a little view into spreadsheet world. And, you know, mostly, you download it. These files, much like all the

files that we have been using in the hearing, are locked, so you have to copy the data off. You can't, like, really use it in its locked form.

And so then once you have the data, like, my personal process is, I tend to keep all the data on one tab of the workbook. And so I have -- in my workbook I have May on one tab, I have June on another tab, and then I have tabs with lots of analyses after that.

Q. And is this the type of analysis or approach that you have done before?

A. Yes. I have -- I have not done this sort of analysis of all of the Class I differentials before, but as far as managing a great deal of data and going through the sort of very detail-oriented, meticulous review, that's -- that's fun. So --

Q. No one objected to that, but we'll take your answer.

And how did you generate the maps?

A. So for the maps, I hired an analyst who helped me with the mapping, because while Excel is very much in my wheelhouse, ArcGIS is not. And so I provided the data files to an analyst to make the maps, and then, you know, worked to validate to make sure that it was the right data and all of that kind of thing.

Q. What does GIS stand for?

A. Geographic Information Systems. And I have actually done projects in the past where working with folks that have that kind of specialty, it's a different

part of, like, data analytics and statistics and things like that, when you are really getting into the spatial type of modeling and software.

And so back when I testified in August, I talked about a project that I did a long time ago looking at the interconnection of rural water systems. And that was, again, one where it was very spatially-related, and I was doing a lot of the data work alongside a GIS person, who was helping with visualizing it and, like, making it easier to understand than Exhibits 300 and 301, which are humongous tables of data.

Q. And I know some others have asked if experts testifying are being paid.

Are you?

A. I am being paid. This is definitely not volunteer work.

Q. So let's get into the maps, because they are quite interesting. If you could pull up Map 1, please. And this is page 2 of Exhibit 441.

We can't see it yet, sorry, on the screen, so I'll just give that a moment.

There we are.

A. Great. So Map 1 shows the current FMMO Class I differentials. The buckets here are in $0.25 increments. The lowest bucket starts at $1.60. It does go down to $1.50, because $1.60 is the base differential today.

And then the buckets go up from a light creamy yellow color, and increase through the country until you

get to that nice purply color down in Florida.

Q. And do you have any observations about kind of the spread of differentials across the country that you would like to share?

A. You know, it's relatively gradual. There are definitely, you know, large areas of the country that are pretty similar to one another. Like, on the lower end of the scale you have, it does increase as you move down into the Southeast, which one would expect. And it does have some ridges along boundaries between FMMOs. Like, you can see one in the center of the map.

And when I use my mouse, can people see the mouse?

Q. A little bit, yeah.

A. A little bit?

THE COURT: It's a white color.

THE WITNESS: Yeah. It's -- yeah.

THE COURT: It's easier to see while it is moving. When it stops, it's a little hard to find it again.

THE WITNESS: Yeah. Like, right here, this is the northern edge of Order 7, and the southern edge of Order 32 there. And, like, that's an area where you see, like, it's kind of distinct there between those two orders.

And then, obviously, like I just discussed, like, the differentials, as we all are well aware are, the highest in the Southeast, and they are also higher generally throughout the Eastern seaboard.

BY MS. VULIN:

Q. And if we could go to Map 2, please, which is page 3. Those are the NMPF proposed differentials.

A. So these are NMPF's Proposal 19 Class I differentials. The color gradients are the same on the maps. And so the lowest color bucket is, again, the creamy yellow, the $1.60 to $1.75, and then it increases all the way up to the top end of the proposal, which gets up to $7.90 down in Southern Florida.

And, you know, the biggest thing that you notice visually here is, frankly, that it's a lot higher than it was, and some of the patterns that have -- like, that you would see in the previous map are -- have increased over time. Like, there's -- the Southeast, what I -- the Southeast seems to be larger now than maybe what you would see in existing differentials.

Q. And is it fair to say you see more ridges here? Can you tell us what you see there?

A. Yeah. There's also definitely more ridges and different ridges. And it's not to say that, like, we don't have ridges today, but there are some very distinct unusual patterns. I mean, this -- this ridge that runs across from Missouri, Kansas, and into Colorado, is very distinct and very different than the current situation.

The other thing that I noticed, which I thought was interesting, and -- and frankly, unsurprising, is that today, some of the areas that we think of as the low points are in Order 51, in California. And very much, the proposal, you know, acknowledges that where -- that some

of that distri- -- some of, like, what would drive the base or the minimum areas has moved over time, and like, now you see that the minimum is up here in Idaho in the proposal, as opposed to further west.

Q. And I know in your testimony you have testified that you don't believe there should be any increase in Class I differentials.

Why not?

A. So the -- I think there's a bunch of them. There are many reasons why not. Today I'm focused on reasons related to Proposal 19.

And I think the most important thing to bear in mind is that there are -- there's ample supply of milk for fluid use today. There is plenty of milk to meet our consumer needs, and the -- and that is what we're trying to do here, is to meet the public interest for fluid milk.

Q. And if we could go to Map 9, please.

Map 9 is the difference by dollar amount from NMPF Proposal 19 versus the current differentials. And this is on page 10 of Exhibit 441.

So I know the maps, in a nice way, kind of speak for themself, right, with the colors. But anything you want us to pay attention to in this map here?

A. I would say the main thing to pay attention to in this map is this is why this proposal is receiving a lot of attention. I mean, it's a big change from where we are today. And the changes are not necessarily the same everywhere. And so it is -- for some regions of the

country, for some particular operators, it is very, very meaningful and impactful to their business. And, you know -- and these are substantial increases in the areas that are showing, you know, as orange to maroon on the map. We're talking about increases of over $1 per hundredweight.

And just bear in mind that $1 per hundredweight is in the neighborhood of $0.09 a gallon. And so when you are talking about stuff that gets, you know, up towards, you know, well over $2, we're talking about changes that are more than $0.20 a gallon. Like, this is -- this -- that's meaningful amounts of money.

Q. And if we could go to Map 10, please.

Now, this is the difference or change by percent from current to NMPF Proposal 19. And my question here is, the degree of change doesn't necessarily overlap with the dollar amount.

And so is there anything about areas that are experiencing more significant percent changes that you would like us to pay attention to?

A. Yes. So -- so change -- considering the absolute change, like what we were looking at on Map 9, is important. But also thinking about change in relative terms is important, too.

And here it's very apparent that some of the changes relatively that are very large are happening where Order 33, Order 1, and Order 5 all meet, and in an area that also has non-regulated counties sprinkled in. So

it's just got so much FMMO geographic fun right there.

And the -- the thing to know is that a 120, -25% increase in the Class I differential is very, very large, obviously. Like -- and when -- when I asked the analyst to map this, my analyst actually thought that I had my decimal places wrong when I sent the file and -- because they didn't expect that I would be sending changes of this magnitude. Like, typically people are talking about smaller relative changes. And so it's -- I think that it's a reminder of how much change.

And then the other thing to bear in mind is that it's also a reminder of there are other places where, on a relative basis, the change is not as big, but it doesn't mean that it's not necessarily unimportant.

Q. And if we could go to Chart 1, please.

A. Uh-huh.

Q. This is the current and the Proposal 19 Class I differentials. And this, I have been told, is a box-and-whisker plot.

And so my question here -- and it's on page 15 of Exhibit 441. So my question is, why do a box-and-whisker plot to evaluate this data?

A. So one of the things that's really hard about the Class I differentials and the price surface is that we have a national price surface. And so we have Class I differentials for all 3,108 counties in the U.S. Actually, that's only the continental 48 states.

And the thing is, is that while the price surface

is national, the FMMOs are not national. We don't have one FMMO that covers the whole continental 48 states. We actually have 11 of them. And they don't cover even all of the 48 -- the states. Like, it's -- there are areas that are not regulated.

And so it's important to understand both the forest and the trees. And in this case, if you only think about what's happening in total and you don't look at the different FMMOs, you -- you risk, frankly, not understanding what's happening in the trees, because all you are looking at is the forest.

And, ultimately, in this case, the individual orders are the trees, and they -- that's where this change is actually implemented. Like, that's where anything -- if -- if a change is recommended and adopted, it's going to happen at the FMMO level. It's not going to happen on the "all" area.

Q. And just briefly give us a high-level overview of what -- what are the lines, the boxes, the Xs and the dots. Can you just tell us what those mean.

A. Sure thing. So, basically, a box-and-whisker plot is a way to look at the distribution of a dataset, and it tells you -- so the Xs show you the average, the bar shows you the median, and the dots are outliers. And the whiskers go off of -- between the core tiles.

And so if you -- the data is summarized in tabular form in Table 2. And so if you're curious about like, what is a particular X, or a particular outlier or

something like that, you can see that in Table 2.

Q. So just to summarize to make sure I have this right, the lower bar is the bottom 25%, the box is the middle 50%, so from 25% to 75%, and the top line is 75 to 100%?

A. That's correct. And the -- and the bar in the middle of the box is the middle of the dataset, it's the median.

Q. So let's start with the "all."

I see that there's both a shift up overall of the differentials there, but also a lot of elongation at the top end; is that right?

A. Yes, that's right. And, you know, a shift up is definitely what has been proposed. And then, also, the distribution getting wider, I think, is to be expected given the passage of time, frankly. So --

Q. And then if we look at -- let's look at Order 1.

So I see down there -- any observations about the fact that there's no overlap in the distance between those two plots?

A. Yes. So that's a good example of what I was talking about with, like, what's happening in the distribution for all of -- for all 3,000 odd counties. You know, there you see that the plots, you know, have overlapping area. But when you look at Order 1, you see that the current, and then what's being proposed, like, it's a -- it's a jump up. Like, those distributions don't even overlap one another at all.

Q. And if we could look at Order 30, please.

A. Yeah, Order 30 is unique. Order 30 today is a -- it's a very flat box. It's a line practically. And -- and then, again, like, it moves up dramatically, but it also continues to show a very, very flat distribution. Like, it is not -- there's a not a lot of range in Order 30 compared to what you see in many other places.

Q. And not a lot of range in the current differentials, but the new differentials build in more range; is that right?

A. Yes. The new differentials do build in more range than what is currently in Order 30. And when I say "new differentials," I should have stated Proposal 19.

Q. As should I. So thanks for catching us.

And then if you could look at Order 33.

Is there somewhat of a similar observation there?

A. Absolutely. 33 is doing the same kind of thing, where there's no overlap between the current and the Proposal 19. Whereas Order 126 is very much, you know, what you see going on in 126 is very similar to what's happening with the distribution as a whole.

Q. And we heard discussion during the Make Allowance portion of the hearing about, if there are jarring impacts, how phasing in changes could be important.

But we haven't heard any discussion of that in terms of the Class I differentials, and I was just curious if you had any thoughts there.

A. When I look at the magnitude of the changes being

proposed here with Proposal 19, I certainly think that something that -- that phases in change over time is a very reasonable discussion to have and consider, because we're -- it's been a very, very long time since the differentials have been updated in anywhere outside of the Southeast. And because of that, there are some places that are going to experience very large changes. So --

Q. Could experience.

A. Could experience very large changes.

Q. And so if we could then turn to Map 3.

And -- and when we say "could experience large changes," that's if they are updated according to NMPF 19, correct?

A. Yes, that's correct.

Q. Certainly they could be updated in a way that there are not such significant changes to the differentials?

A. There are other proposals that will -- I believe we'll be taking about in January, not today.

Q. Okay. So Map 3, can you just tell us what you see here.

A. Sure. So Map 3 is the model minimum, and so this is calculated -- it's the minimum between the spring and fall model estimates. And Ms. Hancock's favorite county, Ada, is front and center here with the minimum, so...

Q. And tell us why is Ada County unique in the minimum map.

A. Ada County is unique in the minimum map because

Ada County is the one county that has a fall minimum. There are a number of counties where fall and spring are equal. And then the -- in the other counties, in the rest of the country, then you have spring being lower than fall.

Q. And if we could go to Map 4, please.

A. So this is spring. As you might expect based on what I just said, spring and the minimum are very visually similar.

Q. And then if we could go to Map 6, please.

A. Sure. So Map 6 is going to be the fall. And so this is going to -- when you watch these move from one to the next, bear in mind that the color gradient is the same. And so darker purple going all the way to black are the highest numbers. And so --

Q. And I have done this a few times with the paper, kind of flipping them back and forth almost like an animation, to see where I'm seeing the changes between the spring and the fall.

So when you do that, where -- can you explain to us where you're observing changes when you go from spring to fall.

A. Sure. So when you go from spring to fall, what you really see is that the biggest impacts between spring and fall are happening in sort of a diagonal line, running from Texas up to Wisconsin, and then, you know, continuing that diagonal movement down across the country to Florida. So I'll just go back and forth a couple of times so people

can see.

And so you can see that in the fall, like, across a large portion of the Great Plains and Missouri, here in Indiana, that the fall is higher than the spring, as well as very much so in the Southeast.

Q. And then if we could go to NMPF's proposal from here, Map 2.

A. Uh-huh.

Q. Now, as I do that same exercise between the two, I notice that we kind of get even more saturation or color or darkness in the maps.

And so can you tell me any observations you have between the fall, which is the high estimate of the model, and NMPF's proposal.

A. Yeah. So here's fall for the model, and then here is NMPF's proposal. And so you can see that the NMPF's Proposal 19 is higher than the fall, and you can also see that some of -- that the model is what I would describe as a bit more vertical than the proposal. And then the proposal is significantly more zoned than the model. I mean, the model is a model, so --

Q. And so we talked a little bit earlier about some of these ridges you observed in NMPF's Proposal 19. And I just want to ask, let's talk about Colorado, because I know it's near and dear to your heart.

What do you observe happening, especially the difference between what the model's producing and what NMPF Proposal 19 is doing with that region?

A. So what I see with NMPF's Proposal 19 with respect to Colorado is that they have -- the proposal deviates substantially from the model results. And it's very clear to the naked eye. It's one of the easiest things to see on the map.

Q. And you said earlier, we even see some ridges today, but they certainly are much more pronounced in NMPF's Proposal 19.

Can you tell us why that might be concerning?

A. Well, so there's other areas with ridges. Like, you can see a ridge here between Oklahoma and the Texas panhandle. There is an odd ridge down here where we have got Alabama and Mississippi. There's just -- there's some places where it, when you -- that it appears to be very -- sort of like gerrymandered, or even you could say "dairymandered." Like, it's -- you know, it's been --

Q. But there's going to be a stark contrast between counties that are even side by side.

A. There's a stark contrast between side-by-side counties. And there's a difference here. There's a difference between a computer and between people.

Proposal 2 [sic] is a lot of people. The model is an algorithm. The model is a model. Like, it's sort of pretty with this color gradient, you know, and this is pleasing to the eye, but it is definitely people when you look at it. You are like, you know, this isn't -- a computer's not going to come up with this one.

Q. And you said "Proposal 2." You mean Map 2, which

is Proposal 19?

A. Map 2 is Proposal 19, yes.

Q. So then if we could go to Map 5, this is the average from the model of the Class I differentials. And we have seen a lot of similarity, right? With the other maps we looked at with the fall and the spring.

But can you just tell us, why does -- why do you recommend that we not adopt the average as opposed to the minimum?

A. So I think it's important that -- I think it's important that the Class I price formula and the Class I differentials there within it are not price-enhancing, and using the minimum helps achieve that goal, whereas using the average is going to pull the numbers up in the areas where the difference between spring and fall is the widest.

And if you pull those numbers up in places, especially going across the Great Plains, going into Texas, Oklahoma, Kansas, Missouri, Iowa, Minnesota, Wisconsin, so these sorts of places that you -- you risk, with price enhancement, you risk incenting too much milk production, that then can drive prices down on the other side, on the commodity side of things, with -- on Class III and IV.

Q. Can we go to Map 7, please.

A. Sure.

Q. So this map is the difference in dollars between NMPF's Proposal 19 and the model average.

So previously we were talking about a comparison between NMPF and the current differentials, right, and the impact that has. And now we're looking a bit more at how NMPF approached their differentials vis-à-vis the USDSS.

So let's start with at least the -- or at the beginning, the legend at the bottom with the colors and the ranges. Can you just walk us through really briefly what those colors indicate.

A. Yeah. So the colors take us from -- all the way from negative. The buckets are in $0.25 increments. They're minus $1 to minus $0.75, up to $1.01 to $1.25, and they move up by $0.25 at a time. And so like the first bucket -- like, I kind of think of the buckets a little bit by the number on the right. So like, negative 75, negative 50, negative 25, on up like that.

Q. Slow it down.

(Court Reporter clarification.)

THE WITNESS: Negative 75, negative 50, negative 25, zero, positive 25, and so on.

And so one of the things to point out, because Proposal 19 is people and the model is a computer, you know, there are places where the proposal is below the model, there are places where the proposal is above the model. And the thing that was most interesting to me here is just the number of places that are so very different than the model.

BY MS. VULIN:

Q. So let's start with that. Let's start with the

white or light gray.

Because anything that is white or light gray deviates negative from the model by at least a quarter or more, correct?

A. Yes. That's right. So where --

Q. Where do you see that?

A. So you can see white and light gray here in Michigan. You can see it here in North Carolina. You can see some pockets up here in the Northeast. This area over here in Wisconsin and Illinois. And so those areas are significantly below the model. They are more than $0.25 below the model.

Q. And then we get to -- let's go the flip side. $0.25 or more above the model.

And those are going to be that darker orange all the way to maroon, correct?

A. Right. So --

Q. Where do we see that?

A. Yeah. Orange to maroon, flowing through red. You see most of those places in the western half of the country, like west of the Mississippi. But it's not to say that they are not sprinkled throughout. Like, you know, there will be onesie/twosies of significant changes where you can see a pop of color on a county that is east of the Mississippi. And it's not necessarily universal in the west, either. Like, you can see that there are places in the west that are, you know, down or have a more modest increase.

Q. And then in the extreme Northeast, right? We see some dark red there as well.

A. Uh-huh. Yeah. The state of Maine is also significantly increased relative to the model.

Q. And yesterday we heard some testimony from Dr. Stephenson that he might be able to understand differences of nickels or dimes, possibly quarters, but that he would want to talk about differences that were a quarter or larger.

And so did you -- I know it's not in your written testimony, but after that, did you calculate the total number of counties with a $0.25 or greater difference from the USDSS average results?

A. Yes, I did. So the Proposal 19 has 1,818 counties that vary by more than plus or minus $0.25. So that is more than $0.25 below the model or more than $0.25 above.

Q. Would that include counties that have an exact $0.25 difference?

A. Yes, it would.

Q. Okay. And do you know the percentage of total counties that have an equal to or greater than $0.25 difference from the USDSS average?

A. Pardon me? I just said that backwards.

Q. Oh, okay.

A. So the number of -- the number of counties that vary by more than $0.25 above and below the model is 1,290. That is 42% of the 3,108 counties.

Q. So I'll -- just to be clear, 42% have -- of the

counties in NMPF's proposal --

A. More than $0.25, and it does not include $0.25.

Q. Thank you. So then let's add in that quarter right on the line.

How many counties have a $0.25 or greater variation from the USDSS in NMPF's Proposal 19?

A. So I'm not -- the -- there are 1,818 counties that are within the band, so that they stay within plus or minus $0.25.

Q. Okay. Understood. Thank you.

And this calculation is fairly simple math based on the model results in the proposal, correct?

A. It is. And maybe not the easiest math to do sitting right here.

Q. That's fair.

But just so we're clear, so 42% of the counties fall into some range that is either higher than $0.25 or lower than $0.25 from the model results?

A. Yeah. So what I think might be helpful for folks to understand is that the dark gray bucket, so minus $1 to minus $0.75, that is three counties; then there are 95 counties in the light gray bucket; there are 325 counties in the white bucket; there are 1,000 counties in the yellow bucket; there are 734 in the orange; there are 509 in the dark orange, so 26 to $0.50; 339 in the red, 51 to $0.75; 91 counties that are $0.76 to $1; and 12 counties that are $1.01 to $1.25.

Q. And I might suggest during the break we could

possibly put that in a written document for ease of the record and circulate that when we return, but I'll just make a note of that for that point in time.

So let's look at Map 8, if we could, please.

A. So Map 8 is the relative change. This is looking at Proposal 19 compared to the model average on a percentage basis.

And so, again, gray is going to be negative, and the maroon is going to be positive on the other end of the gradient.

And what you see here is that there are areas that are -- have relatively -- it's the -- how closely the proposal tracks to the model varies substantially across the country. It's not the same everywhere. And you wouldn't expect it to necessarily be exactly the same everywhere, but I was candidly quite surprised to see how distinct it was as far as the West versus the East, particularly the Mideast and Order 5 relative to the rest of the country there.

And this also provides an indication of areas where the proposal is very -- where it deviates from the theoretically, most efficient, you know, computer-driven algorithm solution, which, of course, is not the real world. I mean, if the computers could move the milk, none of us would be sitting here today. So that's not how -- like, the model is obviously a model.

But it's -- it -- I'm concerned when I see changes where the way in which the model isn't being followed

seems to be very -- seems to be quite variable.

Q. And on that point, if we could go to Table 1, please, which is page 12 of Exhibit 441.

A. Yeah. So Table 1 compares Proposal 19 to the current differentials, as well as the model average by FMMO.

And so here, you know, what we see is that, you know, like those first few maps that we looked at, Proposal 19, relative to the current differentials, is a substantial increase. And these are all on the average, so we're just talking about that center X on the box-and-whisker plots.

The -- and so, you know, but some are higher, some are lower. Like, in Florida, the increase relative to the Proposal 19 relative to the current differentials is 35%, whereas you're looking at, you know, just over 60% in the Northeast, Appalachian, the non-regulated areas. And then you have got the Mideast looking at an 86% change, and so that's like a very large increase relative to the current. And then it's a region where actually, when you look at a relative to the model average, it's below.

And the main thing that I note here is that in the Mideast, in the Northeast, in the Appalachian, if you are just comparing the averages, so the average of Proposal 19 versus the average of the model, you are going to see, you know, not a lot of change relative to the model here in Orders -- in Orders 1, 5, 33, Florida, the Southeast, but then you see very large changes relative to the model in

California, the Pacific Northwest, the Southwest, Arizona.

I will say that in my opinion, this is not the best way to consider the non-regulated areas. The non-regulated areas are geographically disparate, and lumping them all together is a -- like this, as one --as a 12th bucket, is perhaps not the most rigorous way to do it.

Q. And just so I'm clear on what data we're looking at, under the column that says "Current," that's the average of every differential within, for example, the Northeast order?

A. Yep. And so that's looking at the average of all 171 counties in the Northeast. And then we look at the average of all of the counties in the Appalachian Order, Florida. And I have a new favorite FMMO, it is Arizona, because it only has 15 counties, so...

Q. And so this is kind of, as you described earlier with the box-and-whisker plots, there's going to be a lot of ways to kind of slice and dice and look at this data. Right?

And here the average is not going to show us the same thing as the box-and-whisker plots, because it's all bundled together.

But when we look at differences from the model, we also here see different patterns from what we have seen previously; is that fair?

A. Yeah. I mean, it's -- this is a different way to look at the information. So we have looked -- you know,

looking at the information in a box-and-whisker plot, looking at the information in a table like this, looking at it on a map, you know, this is a lot of information and a tremendously large dataset to get your brain around. And so looking at it in a variety of different ways is important in order to be able to develop sound recommendations and thoughts for potential policy change.

Q. And in your testimony, which we're not going to read into the record here just because there's a lot to cover, I know you discuss the process by which NMPF comes to their differentials.

But looking in these maps and tables and charts, we're really just grappling with the final number, correct?

A. Yes. These -- these -- all of these are about the proposal. They are about the process.

Q. And so when I am thinking about what we are gathering from all these different ways to approach it, including the 42% of the counties in Proposal 19 differ by more than $0.25 from the USDSS, were you able to pull out any kind of overarching principles or coherent approach from Proposal 19?

A. My perspective on Proposal 19 is that it is very disjointed, that there -- that it's an amalgamation of a lot of different people's approaches, a lot of effort by different groups, and that it doesn't necessarily hang together very well in total. Like, it's -- it's got a lot of internal contradictions, by my assessment.

Q. So we have been talking about the geographic portion of the Class I differential that varies by county, but I'd like to talk briefly about the base Class I differential.

And so what is your understanding of what the amount of the base Class I differential is today?

A. So today, the base Class I differential is $1.60. And, you know, we actually see it, you know, in like, California, for example.

Q. And if we go to Map 2 with Proposal 19, what, if anything, about the base differential in Proposal 19 concerns you or do you want to discuss?

A. It's interesting, because Proposal 19's -- the lowest differential in Proposal 19 is $2.20, you know, up here in Idaho. But there are other places in the country that are actually very, very close to the model. And in the model, the base differential was run at $1.60. And so it's very hard to understand what is the base. Like, what -- where is the starting point? Where are you building up from?

Q. We have also heard testimony about over-order premiums.

Do you have any thoughts on why or why that doesn't support raising Class I differentials? Because we have heard testimony that maybe they're less than they historically were, or they are more difficult to obtain when they are obtained.

And so why, in your opinion, does that not support

raising Class I minimum prices?

A. I believe that when you don't see over-order premiums, that's actually a sign that the regulated minimum price really is hitting a floor, and a price floor is price-enhancing, and that's a problem for the market as a whole.

And so over-order premiums are an important part of keeping market forces in our highly-regulated dairy markets. Like, our prices are complex, formula-driven, and highly-regulated, and the over-order premium is where you see the impact of the market.

Q. What role do you think the market should play in USDA's consideration of FMMO price formulas?

A. I think that USDA should be mindful of the market and continue setting minimum prices. The -- that minimum price regulation is what is asked for. It's like -- it's what is asked for to promote an orderly market and to serve the public interest of meeting adequate supply of milk for consumers.

Q. And what are the harms that can result if we do have regulated prices that are price-enhancing or that are above what the market can sustain?

A. Well, the primary one is a situation where you have -- where the higher prices then incent more production, and more production then winds up in products that are lower priced than Class I. And you wind up with, you know, situations where you have surpluses of commodity products or surpluses of milk on the farm. And it -- it

is not orderly in any stretch of the imagination.

Q. What's the impact on Class I processors when minimum prices or prices that are supposed to be minimum are, in fact, above the minimum in price-enhancing?

A. So there we run into issues with -- for Class I, you know, we have heard a lot about how Class I sales have been declining for quite some time. And, you know, when -- when -- when a Class I fluid processor is squeezed by raw material costs that are higher than the market would bear, that directly impacts their profitability and ability to invest and to grow and to thrive and to continue buying milk over the long-term.

Q. And we have talked a lot about processors, about producers, but I know that consumers are a big part of this, especially for you.

So what role do you think consumers should play in USDA's consideration of FMMO price formulas?

A. I think that it is very important that we all remember that without consumers, we don't sell anything, and that we need to make sure that we're providing consumers with a product that they want, and that -- and with -- at a price that the market can bear, and that the -- and that, fundamentally, that we keep the interest of the consumer central to what we're doing so that they also have fair prices.

Q. And I have four minutes -- five minutes left, but that's it for now, other than perhaps providing those numbers in a more easily digestible form when you return.

But that's all I have.

Oh, was there anything else, Ms. Keefe, that you would like to -- oh, thank you -- share?

A. Yes. I would like to, in my remaining four minutes, authenticate a series of documents that have been used.

Q. By counsel? Co-counsel just reminded me of that as well.

A. So on pages 16 and 17 of Exhibit 440, you will find a list of documents that have been introduced in this proceeding over the last few weeks. And so I'm just going to run through the list without speaking too fast.

So Exhibit 300 is MIG-28. That spreadsheet is entitled NMPF_final_class_1_differentials.XLSX.

Exhibit 301 is --

Q. And, Ms. Keefe, sorry, if you just say the MIG exhibit number, that should give sufficient information to the record without the name, because I know that's a little laborious.

A. Thank you.

Q. You're welcome.

A. Okay. So Exhibit 301 is MIG-229; Exhibit 322 is MIG-30; Exhibit 323 is MIG-31; Exhibit 344 is MIG-33; Exhibit 350 is MIG-34; Exhibit 353 is MIG-31; Exhibit 354 is MIG-36; Exhibit 355 is MIG-35; Exhibit 358 is MIG-54; Exhibit 369 is MIG-55; Exhibit 374 is MIG-57; Exhibit 402 is MIG-58; Exhibit 396 is MIG-61; Exhibit 405 is MIG-60; Exhibit 417 is MIG-38; and Exhibit 419 is MIG-42. And I

am indeed the person that prepared all of those spreadsheets.

MS. VULIN: To the extent, Your Honor, any were not introduced into the record at the time they were utilized -- and I apologize, I'm not sure which, if any, have been held back -- but from that list we would ask that they be considered introduced and admitted now.

THE COURT: I think all of these -- I think all of these happened on my watch, and I admitted all of them because I found sufficient reliability subject to verification. And obviously, we don't have any time today for the cross-examination about that, those preparations, but nevertheless, this does properly authenticate as promised.

MS. VULIN: Thank you, Your Honor.

THE COURT: How many minutes does she have left?

THE WITNESS: I did better, I have got a minute 13.

MS. VULIN: Going down by the moment.

So Ms. Keefe is available for cross-examination for the remaining 25 minutes that we have? 18 minutes.

THE COURT: Let me go off record for just a moment while we discuss how to use our last moments here.

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

THE COURT: Let's go back on record.

All right. It's now 2:25. I think while off record we agreed that we won't begin cross-examination of Ms. Keefe today. We will begin cross-examination of

Ms. Keefe when we return.

I think we also agreed that there will be an exhibit MIG-64D, like David, that will recap the evidence that was given about which things deviate -- which counties or areas deviate from the model by less than $0.25, more than $0.25, or perhaps equal to $0.25, and the like. And we'll deal with that exhibit also when we get back. All right.

And did we agree to anything else? I think not.

All right. Then, Ms. Vulin, I thank you both for all of this work. It's obviously a lot of information to go through. I'm glad you gave it to everybody before the break. It's very useful.

So, Ms. Keefe, you may step down, and we'll deal with moving these exhibits into evidence after cross.

MS. VULIN: I will make many notes of that. Thank you, Your Honor.

THE COURT: Thank you, Ms. Vulin.

MS. HANCOCK: Your Honor, just one proposal, and I think everybody's motivated to use the time that we have when we reconvene in January to be as efficient as possible. It might be helpful just if people know kind of a range of rebuttal witnesses that -- we know that the MIG witnesses will be in support of Proposal 20, but if people can give kind of a rough range of how many witnesses, just for our planning purposes, to see if there's a chance we can actually finish the hearing.

MR. ENGLISH: Well, I think we sent an e-mail back

on November 17th -- we sent an e-mail in mid-November responding to an inquiry from USDA --

THE COURT: You are --

MR. ENGLISH: -- and that has not changed.

THE COURT: And you are -- I can't distinguish one word from another. Just slow your --

MR. ENGLISH: All right. We're all eager to get out of here. I'm sorry, Your Honor.

We sent an e-mail, I believe on November 17th, that answered this question, but for the record we'll answer it again.

Obviously we have Ms. Keefe to be finished on her testimony.

We pre-submitted testimony for 12 witnesses, including two experts, Ms. Keefe and Dr. Stephenson, for MIG 20, which included ten industry representatives, the members of MIG. Each of those persons will then combine testimony, give their opposition to 19 and their affirmative testimony for 20. So that means we will have 12 witnesses for MIG.

THE COURT: 12.

MR. ENGLISH: 12 total for MIG.

I have heard people have been following the internet. Now that people have seen Proposal 19, there are people who are not members of MIG, maybe even not members of IDFA, who have said, I may have an interest. But none of them so far have said so other than MIG. They have --

THE COURT: "None of them" --

MR. ENGLISH: None of them have said that they are actually going to appear. So I can't predict on that. I'm not going to go out and encourage people, but I can't prevent people if they wish to come.

MR. ROSENBAUM: Steve Rosenbaum for the International Dairy Foods Association.

We will have, I would expect, three to five witnesses in opposition to Proposal 21.

MS. HANCOCK: And thank you, appreciate that.

National Milk will likely have between two to five witnesses in opposition to 20 and 21.

MR. MILTNER: Ryan Miltner for Select Milk Producers. Select has not yet determined, but we may have one or two, which is addressing all proposals other than those offered by Select.

THE COURT: Thank you Mr. Miltner.

MR. SMITH: Dan Smith on behalf Maine Dairy Industry Association. Keith Miller will be testifying on behalf of MDIA during that time period. As far as I know that's the only witness.

THE COURT: On what proposal?

MR. SMITH: He'll be speaking in general about the package of proposals. He's a dairy farmer.

THE COURT: All right. Now, let me ask for Agricultural Marketing Service to talk to us about what happens after we recess today.

MS. COALE: Thank you, Your Honor.

For rescheduling purposes, to reconvene, we will begin at 8:00 a.m. on Tuesday, January 16th, at the 502 Event Centre, which is the place we have been at in Carmel, Indiana. We will meet through 5:00 p.m. on January 19th, which is that Friday.

Provided there is a budget that has been approved for USDA, we will then reconvene at 8:00 a.m. on Monday, January 29th, if needed, if we haven't concluded on the 19th, and we will conclude this hearing on Friday -- no later than Friday, February 2nd -- we hope.

So any questions on that?

MS. HANCOCK: January 29th will be at the 502 Event Centre in Carmel, Indiana, as well?

MS. COALE: Yes. January 29th will be at the 502 Event Centre as well.

THE COURT: And we would go, if needed, until 5 o'clock on that very final day?

MS. COALE: Yes. And then we will have a big ice cream cake to celebrate the conclusion.

THE COURT: Sounds wonderful.

What do we get if we finish by the end of January 31?

MS. COALE: Oh, we'll get two cakes and five gallons of chocolate milk, and it gets even better as it gets shorter.

THE COURT: That sounds great.

Does anyone have any questions?

None. All right. We will reconvene on

January 16th, 2024, which is a Tuesday, at 8:00 a.m.

Meanwhile, this 43rd day of the hearing is in recess.

We go off record at 2:34 p.m.

(Whereupon, the proceedings 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 29, 2024

FRESNO, CALIFORNIA

MYRA A. PISH, RPR CSR
Certificate No. 11613