

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:

Milk in the Northeast and Other
Marketing Areas

AO Docket No. 23-J-0067;
AMS-DA-23-0031

REC'D - USDA/OALJ/HCO
2024 MAR 20 11:17 AM

Ruling: Official Notice Taken

This “Ruling: Official Notice Taken” concerns the Hearing on proposed amendments to pricing formulas in all 11 Federal Milk Marketing Orders (“FMMOs”), filed as Docket No. 23-J-0067; AMS-DA-23-0031, In re: Milk in the Northeast and Other Marketing Areas.

This Ruling will be incorporated by reference into the Certification of Transcript. Following this Ruling will be another ruling regarding Record Exhibits that will also be incorporated by reference into the Certification of Transcript.

Exhibits 506 through 511 were ADMITTED into evidence for a special purpose—to request that official notice be taken, avoiding reading into the record all the titles and URLs. Official notice is described in Title 7 of the Code of Federal Regulations Section 900.8(d)(5). 7 C.F.R. § 900.8(d)(5). At times during the Hearing official notice was taken by the judge. The Transcript and judges’ orders show those occasions and such official notice remains valid, whether or not mentioned in Exhibits 506 through 511. Many official publications are properly utilized in Rulemaking with or without official notice having been taken. The special helpfulness of Exhibits 506 through 511 is that the titles specify the pertinent part of the publication, and the information is readily located by the link to the webpage (URL).

We now rule on the requests that official notice be taken, found in Exhibits 506 through 511. These are the last six (6) exhibits of the Hearing, and we take them in order, beginning with Exhibit 506.

- Exhibit 506 (also NMPF 114). In the heading, we insert “BEFORE THE SECRETARY OF AGRICULTURE” as the 2nd line of the heading. We strike the docket number shown and insert instead Docket No. 23-J-0067. We take official notice of all documents identified in Exhibit 506, EXCEPT:
 - We do NOT take official notice of the subject matter suggested by the 2nd webpage listed in No. 3 of page 1 under the title USDA Dairy Margin Coverage Program—as we prepared this Ruling the 2nd webpage link leads to the error message “Page or Content Not Found”; and
 - We do NOT take official notice of the subject matter suggested by the webpage listed in No. 15 on page 3 under the title Retail Milk Prices Reports, USDA AMS Dairy Programs, Market Information Branch (2023)—as we prepared this Ruling the link leads to a webpage displaying the message “404-Not Found”. The information may be brought to the Secretary’s attention another way; and
 - We are persuaded to take official notice of No. 6 on page 2 mindful of

- Tr.11,669:6 through 11,670:5; and
- We are persuaded to take official notice of No. 7 on page 2 mindful of Tr 11,668:14 through 11,669:6; and Tr 11,670:6 through 11,671:4.
- Exhibit 507 (also IDFA 69). We take official notice of all documents identified in Exhibit 507, EXCEPT:
 - We take official notice of the title of No. 12 on page 2 and invite updated identification, if any is needed and available, of the webpage(s) (URL(s)) identified in the title—as we prepared this Ruling No. 12 on page 2 links to a FRED webpage with the message “We’re sorry, the page you were looking for cannot be found.”
 - Exhibit 508 (also MIG 68). We take official notice of all documents identified in Exhibit 508; and
 - We take official notice of the title of the 1st entry on page 2, and ask for updated identification, if any is needed and available, of the webpage(s) (URL(s)) identified in the title—as we prepared this Ruling, the first entry on page 2 links to a webpage that displays the message “404-Not Found”; and
 - We take official notice of the title of the 2nd entry of page 2 and ask for additional identification, if any is needed and available, of the webpages (URL(s)) identified in the title—we observe that the title does not match the webpage (URL) for the 2nd entry on page 2. The webpage leads to “General Provisions and Definitions.” Searching for the title provided in Exhibit 508, 2nd entry on page 2, shows another possibility, which may include a part of the title:
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=34001.&lawCode=FAC
 - Exhibit 509 (also Select 10). We take official notice of all documents identified in Exhibit 509, EXCEPT:
 - We take official notice of the document found at the webpage (URL) in the 4th entry on page 1, titled “Milk in the Northeast and Other Marketing Areas; Interim Order Amending the Orders, 73 Fed. Reg. 44,617 (July 31, 2008)” but note that the title provided in Exhibit 509, in the 4th entry on page 1, does not match the webpage (URL) for the 4th entry on page 1.
 - Exhibit 510 (also MDIA 3). We take official notice of all documents identified in Exhibit 510.
 - Exhibit 511 (also NAJ 10). We take official notice of all documents identified in Exhibit 511; and
 - We take official notice of the title in No. 1 on page 1 and ask for updated identification, if any is needed and available, of a webpage (URL) that will lead to the document identified in the title—we observe that as we prepared this Ruling, in No. 1 on page 1 the link leads to a webpage (URL) displaying the message “page not found”; and
 - We take official notice of the title reference in No. 16 on page 2 “Final Class

Prices by Order, Dairy Program, AMS, monthly release, 2022 – Jan. 2024, and future releases through March 2024”—we observe that as we prepared this Ruling, in No. 16 on page 2 the link leads to a webpage displaying the message “404-Not Found”. Caution: the publication’s recent releases are likely not evidence in a Hearing that ended January 30, 2024. We ask for updated identification, if any is needed and available, of a webpage (URL) that will lead to the releases identified in the title; and

- We observe the mistake in footnote 1 on page 1: the decade the “1040’s” is not correct, and that the webpage, the URL in footnote 1, is useful; and

If we have erred in this Ruling, which will be incorporated by reference in the Certification of Transcript (which we expect to issue promptly following 2024 March 22), please apprise the Secretary by filing with the Hearing Clerk by the briefing deadline, either within a brief or by separate document, notice of our error(s) or additional guidance to the information officially noticed.

We commend for your use the USDA / Agricultural Marketing Service (“AMS”) Hearing webpage at:

<https://www.ams.usda.gov/rules-regulations/moa/dairy/hearings/national-fmmo-pricing-hearing/transcripts>

and, to scroll down to “Exhibits”, the USDA / AMS webpage at

<https://www.ams.usda.gov/rules-regulations/moa/dairy/hearings/national-fmmo-pricing-hearing>

The most efficient way to file with the Hearing Clerk is to attach a document to an email and send to SM.OHA.HearingClerks@usda.gov, or to FAX the document to 1-844-325-6940 if you prefer. The Hearing Clerk’s information can also be found on the USDA / AMS webpage and on the last page of this order. If emailing or FAXing to the Hearing Clerk, submit once (NOT in quadruplicate). To meet deadlines, filings must be RECEIVED by the Hearing Clerk by 4:30 pm Eastern on the due date.

Copies of this “Ruling: Official Notice Taken” shall be sent by the Hearing Clerk to each of the parties.

Issued at Washington, D.C., this 20th day of March 2024

**CHANNING
STROTHER**

Digitally signed by
CHANNING STROTHER
Date: 2024.03.20 09:03:32
-04'00'

Channing D. Strother
Chief Administrative Law Judge

Digitally signed by Jill S Clifton
Date: 2024.03.20 08:34:53 -04'00'

Jill S. Clifton
Administrative Law Judge

Hearing Clerk
United States Department of Agriculture
Stop 9203, South Building, Room 1031-S
1400 Independence Ave SW
Washington, DC 20250-9203
Phone: 1-202-720-4443
Fax: 1-844-325-6940
sm.oha.HearingClerks@usda.gov

CERTIFICATE OF SERVICE

Milk in the Northeast and Other Marketing Areas

Docket No.: 23-J-0067

Having personal knowledge of the foregoing, I declare under penalty of perjury that the information herein is true and correct, and this is to certify that a copy of the RULING: OFFICIAL NOTICE TAKEN has been furnished and was served by electronic mail upon the following parties on March 20, 2024 by the following:

USDA (OGC)

Brian Hill, OGC

Brian.Hill1@usda.gov

Michelle McMurtray, OGC

Michelle.McMurtray@usda.gov

Donna Erwin, OGC

Donna.Erwin@usda.gov

Carla Wagner, OGC

Carla.Wagner@usda.gov

USDA (AMS) Dairy Programs

Dana H. Coale, Deputy Administrator

Dana.Coale@usda.gov

Erin Taylor, Director Order Formulation and Enforcement Division

Erin.Taylor@usda.gov

AMS - FMMO Hearing

FMMOHearing@usda.gov

USDA (OSEC)

Katharine Ferguson

Katharine.Ferguson@usda.gov

Lucas S. Sjostrom, Executive Director
Minnesota Milk Producers Association
P.O. Box 65

Brooten, MN 56316

E-mail: lucas@mnmilk.org

Mike Stranz, Vice President of Advocacy
National Farmers Union

20 F Street NW, Suite 300

Washington, DC 20001

E-mail: mstranz@nfudc.org

Erick Metzger, General Manager
National All-Jersey, Inc.

6486 East Main Street

Reynoldsburg, OH 43068

E-mail: emetzger@usjersey.com

Mike Brown, Chief Economist
International Dairy Foods Association

1250 H Street, NW, Suite 900

Washington, DC 20005

E-mail: mbrown@idfa.org

Counsel for National All-Jersey, Inc.

John H. Vetne

E-mail: johnvetne@gmail.com

Wendy M. Yoviene

Baker, Donelson, Berman, Caldwell,
& Berkowitz PC

901 K Street, NW, Suite 900

Washington, DC 20001

E-mail: wyoviene@bakerdonelson.com

Counsel for National Milk Producers Federation

Stoel Rives LLP

101 S. Capitol Blvd., Suite 1900

Boise, ID 83702

Bradley R. Prowant

E-mail: bradley.prowant@stoel.com

Nicole C. Hancock

E-mail: nicole.hancock@stoel.com

CERTIFICATE OF SERVICE (cont'd)
Milk in the Northeast and Other Marketing Areas
Docket No.: 23-J-0067

Counsel for International Dairy Foods Association

Steven J. Rosenbaum
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004
E-mail: srosenbaum@cov.com

American Farm Bureau Federation
600 Maryland Avenue SW, Suite 1000W
Washington, DC 20024
Sam Kieffer
E-mail: sk@fb.org
Roger Cryan
E-mail: rogerc@fb.org
Danny Munch
E-mail: dmunch@fb.org
Erin M. Anthony
E-mail: erin@fb.org
Mike Tomko
E-mail: miket@fb.org

Marin Bozic
E-mail: marin@bozic.io

Mark Lamers
Lamers Dairy, Inc.
N410 Speel School Rd.
Appleton, WI 54915
E-mail: mark.lamers@lamersdairyinc.com

Counsel for Select Milk Producers, Inc.

Ryan K. Miltner
The Miltner Law Firm, LLC
100 North Main Street
P.O. Box 477
New Knoxville, OH 45871
E-mail: ryan@miltnerlawfirm.com
ryan@miltner-reed.com

Counsel for Milk Innovations Group

Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300
Seattle, WA 98104
Charles M. English, Jr.
E-mail: chipenglish@dwt.com
Ashley L. Vulin
E-mail: ashleyvulin@dwt.com
Grace Bulger
E-mail: gracebulger@dwt.com

Daniel Smith
E-mail: dsmith@gmavt.net
dsmith@dairycompact.org

E-mail: sleperjp@gmail.com

Respectfully Submitted,

Wanda Mosby, Legal Assistant
USDA/Office of Administrative Law Judges
Hearing Clerk's Office, Room 1031-S
1400 Independence Ave., SW
Washington, DC 20250-9203