

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE SECRETARY OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

IN RE: MILK IN THE NORTHEAST AND		Docket No. 23-J-0067
OTHER MARKETING AREAS		AMS-DA-23-0031
National Pricing Hearing		88 FR 47396 (July 24, 2023)

National All-Jersey
Response to ALJ Requests in 3-20-24 Ruling on Official Notice

REC'D- USDA/OALJ/HCO
2024 MAR 22 12:49 PM

On March 20, 2024, the presiding ALJs took official notice of documents requested by NAJ in Hearing Ex. 511 (NAJ-10).

The ALJ Ruling requested clarification and internet access assistance for some requests. The following responds to ALJ requests concerning NAJ's documents (Ex. 511).

No. 1, page 1. The link provided to the FR of 10-8-71 mistakenly includes a space after "10- ". The correct url, without the space, is:

<https://www.govinfo.gov/content/pkg/FR-1971-10-08/pdf/FR-1971-10-08.pdf>

Alternatively use <https://www.govinfo.gov/app/collection/fr/1971/10/08> for access on the collection page.

No. 16, page 2. The link provided by NAJ in January to the USDA AMA publication "Final Class Prices by Order" worked at that time. The link was:

<https://www.ams.usda.gov/resources/marketing-order-statistics/final-class-and-component-prices-order>

Since then, USDA's I.T. people apparently changed organization, storage or access for the publication. It is now in the Dairy Market News Collection. The new link is:

https://mymarketnews.ams.usda.gov/filerepo/reports?field_slug_id_value=3355&name=&field_slug_title_value=&field_published_date_value=&field_report_date_end_value=&field_api_market_types_target_id=All . All recent Milk Order statistical information and publications can eventually be accessed with patience and persistence through: <https://www.ams.usda.gov/resources/marketing-order-statistics>

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The Ruling correctly observes that footnote 1 in the NAJ requests (Ex 511) erroneously refers to the year/decade “1040s”. It should be “1940s.”

The Ruling also contains the following note for data published after the close of the oral hearing: “Caution: the publication’s recent releases are likely not evidence in a Hearing that ended January 30, 2024.” The closing of oral hearing precludes new evidence that requires a sponsoring witness. Data subject to official notice in agency proceedings, like judicial notice in court proceedings, uniquely requires no sponsoring witness or trial-like setting. All that is required is evidentiary reliability and an opportunity to show why official/judicial notice should not be taken or was erroneously taken. 7 CFR 900.8(d)(5) (notice may be made “at the hearing or subsequent thereto”). Consistently, USDA has frequently noticed data for the first time in a Recommended Decision, for which opportunity to oppose is provided by comments and exceptions to that decision.

NAJ is grateful for the attention to detail and thoroughness of the ALJs’ review of the parties’ official notice requests and of ALJs’ professionalism exhibited throughout the conduct of this exhausting proceeding.

Respectfully submitted,
National All-Jersey
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March 22, 2024

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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 NATIONAL ALL-JERSEY RESPONSE TO ALJ REQUESTS IN 3-20-24 RULING ON OFFICIAL NOTICE has been furnished and was served by electronic mail upon the following parties on March 22, 2024 by the following:

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Docket No.: 23-J-0067

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Respectfully Submitted,

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