

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)

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

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

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](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>

.

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  
By:  
John H. Vetne, Regulatory Consultant  
Phone: 207-265-6197  
Email: johnvetne@gmail.com

March 22, 2024

Email Service Distribution List: to [SM.OHA.HearingClerks@usda.gov](mailto:SM.OHA.HearingClerks@usda.gov) Copy to

"Hill, Brian - OGC, DC"  
<Brian.Hill1@usda.gov>,  
"McMurtray, Michelle - OGC, DC"  
<Michelle.McMurtray@usda.gov>,  
"chipenglish@dwt.com"  
<chipenglish@dwt.com>,  
"ashleyvulin@dwt.com"  
<ashleyvulin@dwt.com>,  
"gracebulger@dwt.com"  
<gracebulger@dwt.com>,  
"emetzger@usjersey.com"  
<emetzger@usjersey.com>,  
"johnvetne@gmail.com"  
<johnvetne@gmail.com>,  
"bradley.prowant@stoel.com"  
<bradley.prowant@stoel.com>,  
"nicole.hancock@stoel.com"  
<nicole.hancock@stoel.com>,  
"srosenbaum@cov.com"  
<srosenbaum@cov.com>,  
"ryan@miltnerlawfirm.com"  
<ryan@miltnerlawfirm.com>,  
"wyoviene@bakerdonelson.com"  
<wyoviene@bakerdonelson.com>,  
"ryan@miltner-reed.com"  
<ryan@miltner-reed.com>,  
"sk@fb.org" <sk@fb.org>,  
"rogerc@fb.org" <rogerc@fb.org>,  
"erin@fb.org" <erin@fb.org>,  
"dmunch@fb.org" <dmunch@fb.org>,  
"miket@fb.org" <miket@fb.org>,  
"lucas@mnmilk.org"  
<lucas@mnmilk.org>,  
"mstranz@nfudc.org"  
<mstranz@nfudc.org>,  
"sleperjp@gmail.com"  
<sleperjp@gmail.com>,  
"marin@bozic.io" <marin@bozic.io>,  
"mbrown@idfa.org"  
<mbrown@idfa.org>,

"dsmith@gmavt.net"  
<dsmith@gmavt.net>,  
"dsmith@dairycompact.org"  
<dsmith@dairycompact.org>,  
"mark.lamers@lamersdairyinc.com"  
<mark.lamers@lamersdairyinc.com>  
"Wagner, Carla - OGC, DC"  
<Carla.Wagner@usda.gov>,  
"Erwin, Donna - OGC, DC"  
<donna.erwin@usda.gov>,  
"Coale, Dana - MRP-AMS"  
<Dana.Coale@usda.gov>,  
"Taylor, Erin - MRP-AMS"  
<Erin.Taylor@usda.gov>,  
AMS - FMMO Hearing  
<FMMOHearing@usda.gov>,  
"Ferguson, Katharine - OSEC, DC"  
<Katharine.Ferguson@usda.gov>,  
"Hoagland, Erin - OHA-OALJ, DC"  
<Erin.Hoagland@usda.gov>,  
"Santana, Marisa - OHA-OALJ, DC"  
<marisa.santana@usda.gov>,  
"Kennedy, Marilyn - OHA-OALJ,  
DC" <marilyn.kennedy@usda.gov>,  
"Hill, Caroline - OHA-OALJ, DC"  
<caroline.hill@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 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:

#### USDA (OGC)

Brian Hill, OGC

[Brian.Hill1@usda.gov](mailto:Brian.Hill1@usda.gov)

Michelle McMurtray, OGC

[Michelle.McMurtray@usda.gov](mailto:Michelle.McMurtray@usda.gov)

Donna Erwin, OGC

[Donna.Erwin@usda.gov](mailto:Donna.Erwin@usda.gov)

Carla Wagner, OGC

[Carla.Wagner@usda.gov](mailto:Carla.Wagner@usda.gov)

#### USDA (OSEC)

Katharine Ferguson

[Katharine.Ferguson@usda.gov](mailto: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](mailto:lucas@mnmilk.org)

Erick Metzger, General Manager

National All-Jersey, Inc.

6486 East Main Street

Reynoldsburg, OH 43068

E-mail: [emetzger@usjersey.com](mailto:emetzger@usjersey.com)

#### Counsel for National All-Jersey, Inc.

John H. Vetne

E-mail: [johnvetne@gmail.com](mailto: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](mailto:wyoviene@bakerdonelson.com)

#### USDA (AMS) Dairy Programs

Dana H. Coale, Deputy Administrator

[Dana.Coale@usda.gov](mailto:Dana.Coale@usda.gov)

Erin Taylor, Director Order Formulation and  
Enforcement Division

[Erin.Taylor@usda.gov](mailto:Erin.Taylor@usda.gov)

#### AMS - FMMO Hearing

[FMMOHearing@usda.gov](mailto:FMMOHearing@usda.gov)

Mike Stranz, Vice President of Advocacy

National Farmers Union

20 F Street NW, Suite 300

Washington, DC 20001

E-mail: [mstranz@nfdc.org](mailto:mstranz@nfdc.org)

Peter Vitaliano

National Milk Producers Federation

2107 Wilson Blvd., Suite 600

Arlington, VA 22201

E-mail: [pvitaliano@nmpf.org](mailto:pvitaliano@nmpf.org)

#### 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](mailto:bradley.prowant@stoel.com)

Nicole C. Hancock

E-mail: [nicole.hancock@stoel.com](mailto:nicole.hancock@stoel.com)

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

Mike Brown, Chief Economist  
International Dairy Foods Association  
1250 H Street, NW, Suite 900  
Washington, DC 20005  
E-mail: [mbrown@idfa.org](mailto:mbrown@idfa.org)

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

**Counsel for International Dairy Foods Association**

Steven J. Rosenbaum  
Covington & Burling LLP  
1201 Pennsylvania Avenue, NW  
Washington, DC 20004  
E-mail: [srosenbaum@cov.com](mailto:srosenbaum@cov.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](mailto:ryan@miltnerlawfirm.com)  
[ryan@miltner-reed.com](mailto:ryan@miltner-reed.com)

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

**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](mailto:chipenglish@dwt.com)  
Ashley L. Vulin  
E-mail: [ashleyvulin@dwt.com](mailto:ashleyvulin@dwt.com)  
Grace Bulger  
E-mail: [gracebulger@dwt.com](mailto:gracebulger@dwt.com)

Marin Bozic  
E-mail: [marin@bozic.io](mailto:marin@bozic.io)

Daniel Smith  
E-mail: [dsmith@gmavt.net](mailto:dsmith@gmavt.net)  
[dsmith@dairycompact.org](mailto:dsmith@dairycompact.org)

Jim Sleper  
Sleper Consulting, LLC  
E-mail: [sleperjp@gmail.com](mailto:sleperjp@gmail.com)

Respectfully Submitted,

**WANDA  
MOSBY**

Digitally signed by  
WANDA MOSBY  
Date: 2024.03.22  
14:48:09 -04'00'

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