

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 APR 1 4:15 PM

CERTIFICATION OF TRANSCRIPT

Appearances:¹

For the U.S. Department of Agriculture:

Brian Hill, Esq., and Michelle McMurtray, Esq., Office of the General Counsel; and Erin Taylor, Director, Order Formulation and Enforcement Division, Dairy Programs, Agricultural Marketing Service (“AMS”), United States Department of Agriculture, Washington, DC

For International Dairy Foods Association:

Steven J. Rosenbaum, Esq., Covington & Burling LLP, Washington, DC

For Milk Innovation Group:

Chip M. English, Esq., and Ashley L. Vulin, Esq., Davis Wright Tremaine LLP, Washington, DC

For National All-Jersey Inc.:

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

For National Milk Producers Federation:

Nicole C. Hancock, Esq., and Bradley R. Prowant, Esq., Stoel Rives LLP, Boise, ID

For Select Milk Producers, Inc.:

Ryan K. Miltner, Esq., The Miltner Law Firm, LLC, Wapakoneta, OH

Pursuant to 7 C.F.R. § 900.10 and notice published in the Federal Register,² a hearing on

¹ This appearances list comprises only the representatives for participants who filed proposed transcript corrections. It is not a list of representatives who have appeared in the proceeding.

² Milk in the Northeast and Other Marketing Areas; Notice of Hearing on Proposed Amendments to Marketing Agreements and Orders, 88 Fed. Reg. 47396 (July 24, 2023).

proposed amendments to the marketing order that regulates the pricing formulas in the 11 Federal Milk Marketing Orders (“FMMOs”) was held in Carmel, Indiana, over a total of 49 days, commencing August 23, 2023 and concluding January 30, 2024. In total six proposals for transcript corrections were filed with the Hearing Clerk’s Office. Each proposal is addressed below.³

1. On March 7, 2024, National All-Jersey Inc. filed proposed transcript corrections to the record transcript of the hearing. Upon our review of those proposed corrections, those corrections are hereby **ADOPTED** by reference without correction or rejection.
2. On March 21, 2024, National Milk Producers Federation filed proposed corrections to the record transcript of the hearing. Upon our review of those proposed corrections, those corrections are hereby **ADOPTED** by reference, **EXCEPT** where adopted with changes to the proposed corrections noted in brackets (“AwC”) or are **REJECTED** (“R”) in the following list:

Date	Page	Line	Incorrect	Correct	AwC / R
8/24/23	409	15	on pounds of milk	pounds of milk	R
9/8/23	2860	13	following Make Allowance increases,	following Make Allowance increases: 1) an increase of \$0.0385 per pound in the butter make allowance and 2) an increase of \$0.0422	R

³ Where duplicate corrections were found amongst adopted corrections, we have considered that correction to be adopted without need for rejection due to duplication.

				per pound in the nonfat dry milk make allowance,	
9/11/23	3132	21-22	that are causing -- that where there are discrepancies	where there are discrepancies	R
9/12/23	3249	23	FarmFirst	Family Dairies	R
9/12/23	3251	17	much in that, tightened	much in over supply but its tightened	R
9/12/23	3256	19	uh-huh	yes	R
9/12/23	3258	8	our --- we're	we're used to demand being slower during	R
9/12/23	3266	25-27		[delete line]	R
9/12/23	3276	2	forth from lots of different people, you know, who needs	forth from lots of different people, who need	R
9/12/23	3284	3		[delete line]	R
9/12/23	3284	4		[delete line]	R
10/5/23	7251	22	pulled	Pooled	R
10/11/23	[7998]	10-11	\$7.30 per hundredweight in Miami and \$7.90 per hundredweight in the Interstate 4 corridor	\$7.90 per hundredweight in Miami and \$7.30 per hundredweight in the Interstate 4 corridor	AwC

3. On March 22, 2024, the Agricultural Marketing Service (“AMS”) filed proposed corrections to the record transcript of the hearing. Upon our review of those proposed corrections, those corrections are hereby **ADOPTED** by reference, **EXCEPT** where adopted with changes to

the proposed corrections noted in brackets (“AwC”) or are **REJECTED** (“R”) in the following list:⁴

Date	Page	Line	Incorrect	Correct	AwC / R
8/23/23	9	5	local time set	local time set – Is this an error?	R
8/23/23	12	[5]	Lauren Decker, L-A-U-R-E-N, D-E-C-K-E-R	Lauren Becker, L-A-U-R-E-N, B-E-C-K-E-R	AwC
8/23/23	12	[4]	[Ms.] Decker: Good Morning[,] Lauren Decker,	Ms. Becker: Good Morning[,] Lauren Becker,	AwC
8/23/23	44	[1, 8]	Section 608(c)(5)	Section 608c(5)	AwC
8/23/23	44	[16]	orders, Southwest	orders in the Southwest	AwC
8/23/23	48	[25]	Irvine & Company	Herbein and Company	AwC
8/23/23	49	[1]	Jeff Davis	Jed Davis	AwC
8/23/23	58	[28]	were not	we were not	AwC
8/23/23	60	[13]	“fulfill, either for the data is not available or”	[“fulfill, either because the data is not available or”]	AwC
8/23/23	66	[21]	weekending	week-ending	AwC
8/23/23	84	28	“to one that has numbers - - of moderate.	moderate” should be deleted	R
8/23/23	85	4	“anywhere from 4 to \$1 below the Class III	add the dollar sign to \$4 should	R

⁴ AMS’s proposed corrections to the record transcripts contained formatting issues that caused line shifting, which are corrected in the following table. However, where the language of proposed corrections was unclear on the face of the submitted corrections, the correction was rejected and corrections to the pages/lines are taken into consideration in our *sua sponte* corrections.

			price. And the”		
8/23/23	85	16	“website. So this is U.S. Mozzarella Production in	be and not in”	R
9/1/23	1930	16	Questioner refers to Lorie Cashman as “Ms. Warren”	Should say Ms. Cashman should	R
9/6/23	2382	3	A. The vast majority of our bulk unsalted brother	be butter not brother should be	R
9/14/23	3823	25	...if it costed,...	“...if it cost...” should be “fail”	R
9/18/23	4453	8	failed	should be “and”	R
9/18/23	4453	26	in	69.6	R
9/18/23	4469	27	59.6	54.8	R
9/18/23	4469	27	64.8	...various competing uses.”	R
9/19/23	4625	21	add an end quote after “uses”	adopted	R
9/19/23	4625	22	remove end quote after “adopted”	...various competing uses.”	R
9/19/23	4625	21	add an end quote after “uses”	adopted	R
9/19/23	4625	22	remove end quote after “adopted”	should be”, that the first point”	R
9/19/23	4654	15	, hat the first point	should be “directly”	R
9/20/23	4827	26	correctly	should be “losses”	R
9/20/23	4829	16	loss		R
9/20/23	4833	28	nonfat	should be	R

				“non fat”	
9/20/23	4834	4	nonfat	should be “non fat”	R
9/20/23	4836	25	nonfat	should be “non fat”	R
9/20/23	4839	16	nonfat	should be “non fat”	R
9/20/23	4839	21	nonfat	should be “non fat” after the word solids	R
9/20/23	4839	24	nonfat	should be “non fat” after the word solids	R
9/20/23	4839	26	nonfat	should be “non fat”	R
9/20/23	4840	4	nonfat	should be “non fat”	R
[9/25/23]	5006	25	untended	unintended	AwC
10/4/23	6823	13	Remove “by this mostly virtual”		R
10/4/23	6823	14	meetings” Remove “federal”		R
10/4/23	6824	2	mandatory reporting program movement	Mandatory Reporting Program	R
10/4/23	6830	13	relative	movements	R
10/4/23	6836	18	retail prices, price inflation	relative steady pace	R
10/4/23	6837	23		retail price inflation	R

4. On March 22, 2024, International Dairy Foods Association filed proposed corrections to the record transcript of the hearing. Upon our review of those proposed corrections, those corrections are hereby **ADOPTED** by reference, **EXCEPT** where adopted with changes to

the proposed corrections noted in brackets (“AwC”) or are **REJECTED** (“R”) in the following list:

Date	Page	Line	Incorrect	Correct	AwC / R
8/29/23	1004	[14]	“, one”	“, from one”	AwC
9/5/23	2022	1	“[short] hole”	“short-hold”	AwC
9/5/23	2184	12[-13]	“National Cattle and Beef”	“National Cattlemen’s Beef”	AwC
9/5/23	2216	8[-9]	“sufficient or the opportunity”	“sufficient for the opportunity”	AwC
9/14/23	[3838]	9	“1 to”	“”	AwC
9/14/23	3963	22	“we trying”	“retrying”	R
9/18/23	4286	[18]	“mark”	“Mark”	AwC
[9/18/23]	4231	2	“simply”	“multiply”	AwC
9/19/23	4286	10	“mark”	“Mark”	R
[10/2/23]	6343	10	“seven-hour”	“seminar”	AwC
[10/2/23]	6343	14	“legally”	“legality”	AwC

5. On March 22, 2024, Select Milk Producers, Inc. filed proposed corrections to the record transcript of the hearing. Upon our review of those proposed corrections, those corrections are hereby **ADOPTED** by reference without correction or rejection.
6. On March 22, 2024, Milk Innovation Group filed proposed corrections to the record transcript of the hearing. Upon our review of those proposed corrections, those corrections are hereby **ADOPTED** by reference, **EXCEPT** where adopted with changes to the proposed corrections noted in brackets (“AwC”) or are **REJECTED** (“R”) in the following list:

Date	Page	Line	Incorrect	Correct	AwC / R
8/29/23	1147	[10]	If we were <u>garnering</u> fortification, yes.	Delete “garnering” and replace with “marketing.”	AwC
9/28/23	5971	4		“they” refers to the retailer	R
12/6/23	9932	24-25	Correction	The dairy	R

				business address is just across the road at 714 Crooked Run Road, Ravenswood, West Virginia	
1/16/24	10499	27		Insert “ ” after consumer	R
1/16/24	10580	[14]	“and if”	Delete “and if” replace with “end of”	AwC
1/18/24	10983	14	“Armstrong County”	Armstrong is incorrect. I should have said Clarion County.	R
1/18/24	11151	9 & 10	“that farmers face pay price pressure”	Delete “the farmers face pay price pressure” and replace with “that farmers face pay price pressure”	R
1/18/24	11167	[25]	“agricultural”	Delete “agricultural” and replace with “Agricultural”	AwC
1/18/24	11167	[26]	“marketing system”	Delete “marketing system” and replace with “Marketing Service”	AwC
1/19/24	11315	[4]	“be”	Delete “be” and replace with “being”	AwC
1/19/24	[11316]	8	“competitors”	Delete “competitors” and replace with “cooperatives”	AwC

In addition, we have, *sua sponte*, identified corrections to be made to the record

transcript, which are hereby **ADOPTED** as follows:

Date	Page	Line	Incorrect	Correct
8/23/23	9	5	local time set.	local time.
8/23/23	84	28	to one that has numbers - - or moderate.	to one that has numbers.
8/23/23	85	4	anywhere from 4 to \$1 below	anywhere from \$4 to \$1 below
8/23/23	85	16	So this is U.S. Mozzarella Production in	So this is U.S. Mozzarella Production and
8/24/23	409	15	on pounds of milk	pounds of producer milk
9/1/23	1930	16	Ms. Warren	Ms. Cashman
9/6/23	2382	3	The vast majority of our bulk unsalted brother	The vast majority of our bulk unsalted butter
9/11/23	3132	21-22	multiple areas of the orders that are causing -- that where there are discrepancies and there are causing	Delete “that are causing -- that” from line 21; delete “and there are” from line 22.
9/12/23	3251	17	much in that, tightened	much in oversupply but it’s tightened
9/12/23	3256	19	uh-huh	Yes
9/12/24	3258	8	our --- we’re	We’re used to demand being slower during
9/12/24	3276	2	forth from lots of different people, you know, who needs	forth from lots of different people: who needs milk, who has milk.
9/14/23	3823	25	if it costed	if it cost
9/14/23	3963	22	what are retrying	what we are trying
9/18/23	4453	8	failed	fail

9/18/23	4453	26	methods in technology	methods and technology
9/18/23	4469	27	59.6	69.6
9/18/23	4469	27	64.8	54.8
9/19/23	4625	21	various competing uses.	various competing uses.”
9/19/23	4625	22	proposed to be adopted.”	proposed to be adopted.
9/19/23	4654	15	hat	that
9/19/23	4827	26	correctly	directly
9/20/23	4829	16	loss	losses
9/28/23	5971	4	they	the retailer
10/4/23	6823	13	meetings by this mostly virtual meetings, this team	meetings by this team
10/4/23	6824	2	mandatory reporting program	Mandatory Reporting Program
10/4/23	6830	13	movement	movements
10/4/23	6836	18	relative	relative steady pace
10/4/23	6837	22-23	retail prices, price inflation	retail price inflation
10/5/23	7251	22	pulled	pooled
12/6/23	9932	25	Yeah.	The dairy business is just across the road at 714 Crooked Run Road, Ravenswood, West Virginia.
12/6/23	9979	19	[sic]	Delete “[sic]”
12/7/23	10191	16	another	other
1/16/24	10499	27	consumers	consumers’
1/16/24	10558	20	fa!rlife	fairlife
1/17/24	10782	26	co-ops	co-op’s
1/18/24	10983	14	Armstrong	Clarion
1/18/24	11151	9-10	that farmers pay -- face pressure	that farmers face pay pressure
1/19/24	11260	17	(sic)	Delete “(sic)”
1/30/24	11615	20	SM.OHA.HearingClerk@USDA.gov	SM.OHA.HearingClerks@USDA.gov

We hereby certify that to the best of our knowledge and belief, the transcript of the testimony given during the hearing is a true rendition of the testimony, except for any remaining obvious or immaterial spelling and any typographical or grammatical errors, and with the corrections as adopted hereinabove.⁵

⁵ Given the circumstances of this proceeding, we find that it would be counterproductive for the Hearing Clerk to note the corrections on the “hard copy” of the transcript; therefore, we find the Hearing Clerk need not follow the specifications set forth to that effect in 7 C.F.R. § 900.10. The

We incorporate by reference the March 22, 2024 “Ruling: Record Exhibits.” We also incorporate by reference the March 20, 2024 “Ruling: Official Notice Taken.”

Copies of this Certification of Transcript shall be sent by the Hearing Clerk to each of the parties. The Hearing Clerk shall also email copies to the following persons:

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Done at Washington, D.C., this 1st day of April 2024

**CHANNING
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Date: 2024.04.01
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Channing D. Strother
Chief Administrative Law Judge

Digitally signed by Jill S Clifton
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-04'00'

Jill S. Clifton
Administrative Law Judge

above-referenced corrections that are adopted herein are deemed to be a part of the transcript as if the Hearing Clerk had physically noted those corrections on a hard copy, and a copy of this Order Certifying Transcript shall accompany any and all official copies of the transcript in this matter.

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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 CERTIFICATION OF TRANSCRIPT has been furnished and was served by electronic mail upon the following parties on April 3, 2024 by the following:

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