

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D- USDA/OALJ/HCO
2024 MAR 22 2:15 PM

In re:

Milk in the Northeast and Other
Marketing Areas

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

Ruling: Record Exhibits

This “Ruling: Record Exhibits” 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. The previous “Ruling: Official Notice Taken” issued 2024 March 20 will also be incorporated by reference into the Certification of Transcript.

Exhibits 1 through 511 were IDENTIFIED.

(Electronic versions of exhibits are ADMITTED into evidence simultaneously with “hard” copy (paper copy) versions. The value and utility of electronic versions is evident throughout this Hearing. Excel spreadsheets submitted electronically are 508 compliant and USDA asks that they be submitted password protected so that they cannot be changed. Tr.6,304:4 through Tr. 6,305:11.)¹

ADMITTED EXHIBITS

The following exhibits are RECORD Exhibits that were ADMITTED INTO EVIDENCE.

The first 99: Exhibit 1 through Exhibit 99

- Exhibits 1 through 74 were ADMITTED into evidence.
- Exhibit 75 is ADMITTED into evidence. *See* Tr 699 (Ex 75 on hold awaiting Ex 76); Tr 2,298 (Ex 76 admitted).
- Exhibits 76 through 99 were ADMITTED into evidence.

¹ *See also* 7 C.F.R. § 900.31 (“To the extent practicable, all documents filed with the hearing clerk in a proceeding to amend a Federal milk marketing agreement or order shall also be submitted electronically to the Dairy Programs, Agricultural Marketing Service, USDA. All documents should reference the docket number of the proceeding. Instructions for electronic filing will be provided in the notice of action plan referred to in § 900.23 of this subpart, at the amendatory hearing, and in each Federal Register publication regarding the amendatory proceeding.”).

The 100s: Exhibit 100 through Exhibit 199

- Exhibits 100 through 199 were ADMITTED into evidence.

The 200s: Exhibits 200 through 299

- Exhibits 200 through 212 were ADMITTED into evidence.
- Exhibit 213 was ADMITTED into evidence. *See* Tr 4212:15-20.
- Exhibits 214 through 294 were ADMITTED into evidence.
- Exhibits 296 through 299 were ADMITTED into evidence. *See* Tr 9,669:27 (regarding Exhibit 299, also named NMPF 35).

The 300s: Exhibit 300 through 399

- Exhibits 300 through 301 were ADMITTED into evidence. *See* Tr 6,900: 18, 24.
- Exhibits 302 through 326 were ADMITTED into evidence. (Exhibit 305 admitted over objection).
- Exhibits 327 through 378 were ADMITTED into evidence. *See* Tr 8,237:17-8,238:3 (Exhibit 353 is the same as Exhibit 323 with some replacement).
- Exhibits 380 through 399 were admitted into evidence.

The 400s: Exhibit 400 through Exhibit 499

- Exhibits 400 through 422 were admitted into evidence. (Exhibits 404, 412, and 413 were admitted over Objection).
- Exhibits 423 and 423A were ADMITTED into evidence.
- Exhibits 424 through 436 were ADMITTED into evidence.
- Exhibits 438 through 460 were ADMITTED into evidence.
- Exhibits 462 through 499 were ADMITTED into evidence.

The 500s: Exhibit 500 through Exhibit 511

- Exhibits 500 through 505 were ADMITTED into evidence. (Exhibit 505 admitted over Objection).
- 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). *See* March 20, 2024 “Ruling: Official Notice Taken”.

Rejected Exhibits

The following exhibits are RECORD Exhibits that were REJECTED. REJECTED exhibits are NOT evidence but are Record Exhibits.

- Exhibit 295 was REJECTED. *See* Tr 6,768.

- Exhibit 379 was REJECTED. *See* Tr 8,768:9 - 8,769:3.
- Exhibit 461 was REJECTED. *See* Tr 10,879:8 - 10,883:26.

Noted Exhibits

The following exhibit was NOTED (NOT moved into evidence):

- Exhibit 437 was NOTED.

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).

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: Record Exhibits” shall be sent by the Hearing Clerk to each of the parties.

Issued at Washington, D.C.,
this 22nd day of March 2024

**CHANNING
STROTHER**

Digitally signed by
CHANNING STROTHER
Date: 2024.03.22 13:48:26
-04'00'

Channing D. Strother
Chief Administrative Law Judge

Digitally signed by Jill S Clifton
Date: 2024.03.22 13:05:12 -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: RECORD EXHIBITS 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

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

Peter Vitaliano

National Milk Producers Federation

2107 Wilson Blvd., Suite 600

Arlington, VA 22201

E-mail: pvitaliano@nmpf.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

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

Mark Lamers
Lamers Dairy, Inc.
N410 Speel School Rd.
Appleton, WI 54915
E-mail: 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

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

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

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

Marin Bozic
E-mail: marin@bozic.io

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

Jim Sleper
Sleper Consulting, LLC
E-mail: sleperjp@gmail.com

Respectfully Submitted,

 Digitally signed by
WANDA MOSBY
Date: 2024.03.22
15:50:23 -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