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§ 1170.4 Dairy products.

Dairy Products means:

(a) Manufactured dairy products that are used by the Secretary to establish minimum prices for Class III and Class IV milk under a Federal milk marketing order issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937; and

(b) Substantially identical products designated by the Secretary in this part.

§ 1170.5 Manufacturer.

Manufacturer means any person engaged in the business of buying milk in commerce for the purpose of manufacturing dairy products in one or more locations.

§ 1170.6 Store.

(a) *Store* means to place cheese or butter in a warehouse or facility which is artificially cooled to a temperature of 50 degrees Fahrenheit or lower and hold these dairy products for 30 days or more; or

(b) *Store* means to place nonfat dry milk or dry whey in a manufacturing plant, packaging plant, distribution point, or shipment in transit.

DAIRY PRODUCT REPORTING PROGRAMS

§ 1170.7 Reporting requirements.

(a) All dairy product manufacturers, with the exception of those who are exempt as described in § 1170.9, shall submit a report to National Agricultural Statistics Service (NASS) by noon on Wednesday of all products sold as specified in § 1170.8 during the seven days ending with the previous Saturday. If a Federal holiday falls on a Tuesday or Wednesday, NASS will contact manufacturers via e-mail or phone concerning the applicable report deadline. The report is to be submitted on the appropriate forms supplied by NASS and shall indicate the name, address, plant location(s), quantities sold, total sales dollars or dollars per pound for the applicable products, and the moisture content where applicable. Each sale shall be reported for the time period when the transaction is completed, i.e. the product is “shipped out”

and title transfer occurs. Each sale shall be reported either f.o.b. plant if the product is “shipped out” from the plant or f.o.b. storage facility location if the product is “shipped out” from a storage facility. In calculating the total dollars received or dollars per pound, the reporting entity shall neither add transportation charges incurred at the time the product is “shipped out” or after the product is “shipped out” nor deduct transportation charges incurred before the product is “shipped out.” In calculating the total dollars received or dollars per pound, the reporting entity shall not deduct brokerage fees or clearing charges paid by the manufacturer.

(b) Manufacturers or other persons storing dairy products are required to report, on a monthly basis, stocks of dairy products (as defined in § 1170.4) on hand, on the appropriate forms supplied by the NASS. The report shall indicate the name, address, and stocks on hand at the end of the month for each storage location.

§ 1170.8 Price reporting specifications.

The following are the reporting specifications for each dairy product:

(a) Specifications for Cheddar Cheese Prices:

(1) Variety: Cheddar cheese.

(2) Style: 40-pound blocks or 500-pound barrels.

(3) Moisture Content:

(i) 40-pound blocks: Moisture content is not reported. Exclude cheese that will be aged.

(ii) 500-pound barrels: Report weighted average moisture content of cheese sold. NASS will adjust price to a benchmark of 38.0 percent based on standard moisture adjustment formulas. Exclude cheese with moisture content exceeding 37.7 percent.

(4) Age: Not less than 4 days or more than 30 days on date of sale.

(5) Grade:

(i) 40-pound blocks: Product meets Wisconsin State Brand or USDA Grade A or better standards.

(ii) 500-pound barrels: Product meets Wisconsin State Brand or USDA Extra Grade or better standards.

(6) Color:

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(i) 40-pound blocks: colored and within the color range of 6-8 on the National Cheese Institute color chart.

(ii) 500-pound barrels: white.

(7) Packaging:

(i) 40-pound blocks: Price should reflect cheese wrapped in a sealed, airtight package in corrugated or solid fiberboard containers with a reinforcing inner liner or sleeve. Exclude all other packaging costs from the reported price.

(ii) 500-pound barrels: Exclude all packaging costs from the reported price.

(8) Exclude: Intra-company sales, resales of purchased cheese, forward pricing sales (sales in which the selling price was set [not adjusted] 30 or more days before the transaction was completed), cheese produced under faith-based close supervision and marketed at a higher price than the manufacturer's wholesale market price for the basic commodity (for example, kosher cheese produced with a rabbi on site who is actively involved in supervision of the production process), sales under the Dairy Export Incentive Program or other premium-assisted sales (for example, export assistance sales through the Cooperatives Working Together program), and cheese certified as organic by a USDA-accredited certifying agent.

(b) Specifications for Butter Prices:

(1) Variety: 80 percent butterfat, salted, fresh or storage.

(2) Grade: Product meets USDA Grade AA standards.

(3) Packaging: 25-kilogram and 68-pound box sales.

(4) Exclude: Unsalted and Grade A butter, intra-company sales, resales of purchased butter, forward pricing sales (sales in which the selling price was set [not adjusted] 30 or more days before the transaction was completed), butter produced under faith-based close supervision and marketed at a higher price than the manufacturer's wholesale market price for the basic commodity (for example, kosher butter produced with a rabbi on site who is actively involved in supervision of the production process), sales under the Dairy Export Incentive Program or other premium-assisted sales (for example, export assistance sales through the CWT pro-

gram), and butter certified as organic by a USDA-accredited certifying agent.

(c) Specifications for Dry Whey Prices:

(1) Variety: Edible nonhygroscopic.

(2) Age: No more than 180 days.

(3) Grade: Product meets USDA Extra Grade standards.

(4) Packaging or container: 25-kilogram bag, 50-pound bag, tote, or tanker.

(5) Exclude: Sales of Grade A dry whey, intra-company sales, resales of purchased dry whey, forward pricing sales (sales in which the selling price was set [not adjusted] 30 or more days before the transaction was completed), dry whey produced under faith-based close supervision and marketed at a higher price than the manufacturer's wholesale market price for the basic commodity (for example, kosher dry whey produced with a rabbi on site who is actively involved in supervision of the production process), premium-assisted sales, and dry whey certified as organic by a USDA-accredited certifying agent.

(d) Specifications for the Nonfat Dry Milk Prices:

(1) Variety: Non-fortified.

(2) Age: No more than 180 days.

(3) Grade: Product meets USDA Extra Grade or USPH² Grade A standards.

(4) Packaging or container: 25-kilogram bag, 50-pound bag, tote, or tanker.

(5) Exclude: Nonfat dry milk manufactured using high heat process, sales of instant nonfat dry milk, sales of dry buttermilk products, intra-company sales, resales of purchased nonfat dry milk, forward pricing sales (sales in which the selling price was set [not adjusted] 30 or more days before the transaction was completed), nonfat dry milk produced under faith-based close supervision and marketed at a higher price than the manufacturer's wholesale market price for the basic commodity (for example, kosher nonfat dry milk produced with a rabbi on site who is actively involved in supervision of the production process), sales under

²USPH refers to the US Department of Health and Human Services—Public Health Service/Food and Drug Administration.

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the Dairy Export Incentive Program or other premium-assisted sales, and nonfat dry milk certified as organic by a USDA-accredited certifying agent.

§ 1170.9 Price reporting exemptions.

(a) Any manufacturer that processes and markets less than 1 million pounds of cheddar cheese per calendar year is exempt from reporting cheddar cheese sales as specified in § 1170.8(a).

(b) Any manufacturer that processes and markets less than 1 million pounds of butter per calendar year is exempt from reporting butter sales as specified in § 1170.8(b).

(c) Any manufacturer that processes and markets less than 1 million pounds of dry whey per calendar year is exempt from reporting dry whey sales as specified in § 1170.8(c).

(d) Any manufacturer that processes and markets less than 1 million pounds of nonfat dry milk per calendar year is exempt from reporting nonfat dry milk sales as specified in § 1170.8(d).

§ 1170.10 Storage reporting specifications.

(a) Cold Storage Report:

(1) Reporting universe: All warehouses or facilities, artificially cooled to a temperature of 50 degrees Fahrenheit or lower, where dairy products generally are placed and held for 30 days or more. Excluded are stocks in refrigerated space maintained by wholesalers, jobbers, distributors, and chain stores; locker plants containing individual lockers; and frozen food processors whose inventories are turned over more than once a month.

(2) Products required to be reported:

(i) Natural cheese, domestic and foreign made, including barrel and cheese to be processed; American type cheeses, (cheddar, Monterey, Colby, etc.), including government owned stocks; Swiss; other natural cheese types (brick, mozzarella, Muenster, Parmesan, etc.). Exclude processed cheese.

(ii) Salted and unsalted butter, anhydrous milkfat (AMF), butter oil, including government owned stocks.

(b) Dairy Products Report:

(1) Reporting universe: All manufacturing plants.

(2) Products required to be reported:

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(i) Nonfat dry milk.

(ii) Dry whey.

§ 1170.11 Records.

Each person required to report information to the Secretary shall maintain, and make available to the Secretary, on request, original contracts, agreements, receipts, and other records associated with the sale or storage of any dairy products during the 2-year period beginning on the date of the creation of the records.

§ 1170.12 Confidential information.

Except as otherwise directed by the Secretary or the Attorney General for enforcement purposes, no officer, employee, or agent of the United States shall make available to the public information, statistics, or documents obtained from or submitted by any person in compliance with the Dairy Product Mandatory Reporting program other than in a manner that ensures that confidentiality is preserved regarding the identity of person, including parties to a contract, and proprietary business information.

VERIFICATION AND ENFORCEMENT

§ 1170.13 Verification of reports.

For the purpose of assuring compliance and verification, records and reports required to be filed by manufacturers or other persons pursuant to section 273(b)(1)(A)(i) of the Act, the Agricultural Marketing Service, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where dairy products are produced or stored, and at any time during reasonable business hours shall be permitted to inspect such manufacturer or person, and any original contracts, agreements, receipts, and other records associated with the sale of any dairy products.

§ 1170.14 Noncompliance procedures.

(a) When the Secretary becomes aware that a manufacturer or person may have willfully delayed reporting of, or failed or refused to provide, accurate information pursuant to section 273(b)(1)(A)(i) of the Act, the Secretary may issue a cease and desist order.