§ 1160.609 Supplementary instructions.

The Administrator is authorized to issue instructions and to prescribe forms and ballots, not inconsistent with the provisions of this subpart, to govern the conduct of referenda by referendum agents.

PARTS 1161–1169 [RESERVED]

PART 1170—DAIRY PRODUCT MANDATORY REPORTING

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SOURCE: 73 FR 34181, June 17, 2008, unless otherwise noted.

§ 1170.1 Secretary.

Secretary means the Secretary of Agriculture of the United States or any other officer or employee of USDA to whom authority has been delegated.

§ 1170.2 Act.


[77 FR 8721, Feb. 15, 2012]
are required to report, the times and dates that reports are due. For the applicable products, the report shall be submitted by electronic means specified by AMS and shall indicate the name, address, plant location(s), quantities sold, total sales dollars, dollars per pound, 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 and 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 and 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 National Agricultural Statistical Service. The report shall indicate the name, address, and stocks on hand at the end of the month for each storage location.

[77 FR 8721, Feb. 15, 2012]

§ 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 weight-ed average moisture content of cheese sold. AMS 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:
      (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, resale 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
§ 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 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:

(1) Natural cheese, domestic and foreign made, including barrel and cheese

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

(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.

(b) Prior to the issuance of a cease and desist order, the Secretary shall provide notice and an opportunity for an informal hearing regarding the matter to the manufacturer or person involved.

(c) The notice shall contain the following information:

(1) That the issuance of a cease and desist order is being considered;

(2) That the reasons for the proposed cease and desist order in terms sufficient to put the person on notice of the conduct or lack thereof upon which the notice is based;

(3) That within 30 days after receipt of the notice, the manufacturer or person may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed cease and desist order; and

(4) That if no response to the notice is received within the 30 days after receipt of the notice, that a cease and desist order may be issued immediately.

(d) If a manufacturer or person requests a hearing, the hearing should be held at a location and time that is convenient to the parties concerned, if possible. The hearing will be held before the Deputy Administrator, Dairy Programs, Agricultural Marketing Service, or a designee. The manufacturer or person may be represented. Witnesses may be called by either party.

(e) The Deputy Administrator, Dairy Programs, Agricultural Marketing Service, or a designee will make a decision on the basis of all the information in the administrative record, including any submission made by the manufacturer or person. The decision of whether a cease and desist order should be issued shall be made within 30 days
§ 1170.15 Appeals.

If the cease and desist order is confirmed by the Administrator, Agricultural Marketing Service, the manufacturer or person may appeal the order in the appropriate United States District Court not later than 30 days after the date of the confirmation of the order.

§ 1170.16 Enforcement.

(a) If a person subject to the Dairy Product Mandatory Reporting program fails to obey a cease and desist order after the order has become final and unappealable, or after the appropriate United States district court has entered a final judgment in favor of the Administrator, Agricultural Marketing Service, the United States may apply to the appropriate United States district court for enforcement of the order.

(b) If the court determines that the cease and desist order was lawfully made and duly served and that the manufacturer or person violated the order, the court shall enforce the order.

(c) If the court finds that the manufacturer or person violated the cease and desist order, the manufacturer or person shall be subject to a civil penalty of not more than the amount specified at §3.91(b)(1)(iv) of this title for each offense.

[73 FR 34181, June 17, 2008, as amended at 75 FR 17561, Apr. 7, 2010]

§ 1170.17 Publication of statistical information.

Not later than 3 p.m. Eastern Time on the Wednesday of each week, AMS shall publish aggregated information obtained from manufacturers or other persons of all products sold as specified in §1170.8. If a Federal holiday falls on Monday through Wednesday of a particular week, the due date for report publication may be adjusted. The public shall be notified of report times prior to the beginning of the calendar year.

[77 FR 8721, Feb. 15, 2012]

PARTS 1171–1199 [RESERVED]