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Mr. John R. Mengel, Chief Economist
USDA/AMS/Dairy Programs
Office of the Chief Economist
STOP 0229-Room 2753
1400 Independence Avenue, S.W.
Washington, D.C. 20250-0229

RE: **Doc. # AMS-07-0047; DA-06-07**
Federal Register Vol. 72, No. 127, Tuesday, July 3, 2007
Page # 36341
Comments on Dairy Product Mandatory Reporting

Dear Mr. Mengel:

These comments are submitted on behalf of Nestlé USA and Dreyer's Grand Ice Cream, major manufacturers and consumers of dairy products in the United States. Nestlé USA and Dreyer's provide quality brands and products that bring flavor to life every day. Named one of "America's Most Admired Food Companies" in Fortune magazine for the tenth consecutive year, Nestlé USA makes delicious, convenient, and nutritious food and beverage products, and has 15,500 employees and 2006 sales of \$8.5 billion. Dreyer's Grand Ice Cream Holdings, Inc., and its subsidiaries manufacture and distribute a full spectrum of ice cream and frozen dessert products. The company's premium products are marketed under the Dreyer's brand name throughout the Western states and Texas, and under the Edy's® brand name throughout the remainder of the United States. Dreyer's has 7,000 employees and operates six manufacturing facilities in Texas, Indiana, Maryland, Utah and California. Both companies are part of Nestlé S.A. in Vevey, Switzerland — the world's largest food company — with sales of \$79 billion.

We commend the Agricultural Marketing Service (AMS) for publishing an interim final rule to implement dairy product mandatory reporting. Although reporting has been required by statute for some years, and the National Agricultural Statistics Service (NASS) has collected and disseminated price data, the lack of a regulatory framework has left enforcement of the law ambiguous. Recently, errors in reporting by a major nonfat dry milk exporter over an extended period of time raised serious questions about the integrity of data used by AMS to establish Class IV and Class II prices in the federal milk marketing order (FMMO) system. In the absence of regulations, it is unclear how much power either NASS or AMS has to achieve compliance with its reporting procedures.

The primary focus of our comments is the treatment of long-term contracts for price reporting purposes. It was the confusion over how to report these sales that led to significant problems in the Class IV and Class II price series.

The interim final rule instructs reporting firms to exclude several types of sales when they report prices to NASS. Among these excluded categories are “forward pricing sales (sales in which the selling price was set (not adjusted) 30 or more days before the transaction was completed).”

Under this rule, a forward sale under a contract entered into less than 30 days prior to the reporting date would be reported. A forward sale under a contract entered into 30 days or more prior to the reporting date would not be reported, unless the terms of the contract called for sales prices to be periodically adjusted on the basis of market conditions, and such an adjustment occurred within the past 30 days. (The interim final rule also provides that all sales under the Dairy Export Incentive Program (DEIP) must be reported.)

Nestlé USA and Dreyer’s Grand Ice Cream support the use of a 30-day period to include or exclude sales from being reported.

- A relatively short period such as 30 days permits supply and demand signals to be transmitted efficiently and rapidly: Price series adjust more quickly, and therefore supply and demand can also adjust smoothly in response to these price signals. For example, in times of extremely short supply, the function of prices is to ration demand. This demand-rationing function cannot operate if prices are slow to reflect current conditions.
- The 30-day time period is consistent with the important goal of price transparency. Ultimately, prices are means of conveying information about the value of a product. The inclusion of long-term contracts where delivery prices reflect supply and demand conditions during past periods would markedly reduce price transparency. Indeed, the recent controversy over nonfat dry milk prices is an example of just such a lack of transparency. Market participants will find it difficult to interpret prices if the time period they represent cannot be known: The market will be unable to discern whether prices are reflecting current or past market conditions.
- Use of a 30-day period allows consistency within the FMMO system. Currently, NASS cheese, butter and whey price series are designed to represent a spot (current) market price. It is logical for nonfat dry milk prices to be established in a parallel fashion.
- A 30-day reporting standard may encourage more efficient use of the dairy futures markets. Some hedging and trading strategies rely on the convergence of the nearby futures month and the spot or cash market near the expiration of the nearby contract. To the extent that AMS regulations cause the NASS price series to

more fully reflect a true spot price, these business strategies may prove easier to execute, in turn encouraging greater liquidity in dairy futures markets.

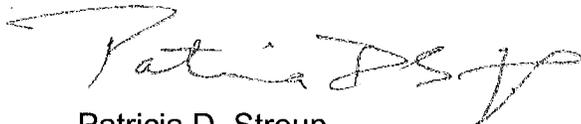
Our view that NASS prices should reflect current, not past market conditions underlies our support for AMS's proposed rule. We hope that the agency will receive broad support from all segments of the dairy industry.

However, should AMS decide to use a period longer than 30 days, the agency would have an obligation to compensate for the resulting lack of market transparency by taking other steps to supply information to the marketplace. In particular, AMS would in our view have a responsibility to provide more information about the volume of sales under such long-term contracts. In addition, AMS should provide information about product volumes delivered under prices set at various intervals – e.g., sales volumes where the price was set less than 30 days ago; between 30 and 60 days; between 60 and 90 days; and more than 90 days ago. Finally, AMS should include information on average expiration dates for long-term contracts that enter into reported prices.

We are aware that such reporting could cause some difficulties involving the identification of individual firms. But we would point out that all such difficulties would be avoided by simply leaving the interim final rule unchanged, and not including longer time periods. We would strongly object to any price reporting regime that left the marketplace in the dark about whether price series were reflecting current market conditions or the supply-demand fundamentals of an earlier period. Such a reporting regime would raise troubling questions about whether some market participants – e.g., those in dominant selling positions for particular market segments – might enjoy an unfair advantage over others because of conscious government action. We feel certain AMS would not wish to countenance the potential for abuses that such a situation would create.

Nestlé USA appreciates the opportunity to submit these comments, and thanks AMS for its consideration of our views.

Sincerely,



Patricia D. Stroup
Group Manager – Dairy
Nestlé Business Services