

**BEFORE THE AGRICULTURAL MARKETING SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE**

DAIRY PRODUCT MANDATORY REPORTING)
Interim Final Rule and Opportunity for) Doc. AMS-07-0047
Submitting Comments)
Federal Register - Volume 72, Number 127) DA-06-07
Pages 36341-36345)

COMMENTS SUBMITTED ON BEHALF OF CALIFORNIA DAIRIES, INC.

September 4, 2007

These comments are submitted by California Dairies, Inc. in response to the July 3, 2007 Federal Register publication by the Agricultural Marketing Service (“AMS”), an agency of the United States Department of Agriculture (“USDA”), of an Interim Final Rule regarding Dairy Product Mandatory Reporting regulations.

California Dairies, Inc.

California Dairies, Inc. is a full-service milk processing cooperative owned by approximately 600 California dairy farmers who collectively produce over 17 billion pounds of milk per year. Our producer–members have invested over \$300 million in 5 large milk processing plants that produce butter, cheese, bulk processed fluid products and powdered milk products. In 2006, California Dairies produced over 500 million pounds of dry milk products. California Dairies continues to invest in its future by providing outlets for milk produced by its member-owners; by the end of 2007, we expect to be operating our sixth processing plant.

Summary of Position

California Dairies is the largest producer of powdered milk products in the United States. Accordingly, we are concerned about regulations that might restrict or impede the development or sustainability of our business. Therefore, the primary focus of these comments is on those sections of the Interim Final

Rule that address the reporting of nonfat dry milk. California Dairies disagrees with the provision that limits the reporting of fixed-price contract sales of nonfat dry milk. The Interim Final Rule specifies as reportable to the National Agricultural Statistics Service (“NASS”) only those sales in which the price is fixed (and not adjusted) 30 days before the product is shipped and title transfers to the buyer. The effect of such a provision is to greatly reduce if not entirely eliminate the reporting of nonfat dry milk sales stemming from export contracts, as those contracts require far more time to establish and execute than allowed under the 30-day limit. As such, California Dairies requests that no time limitations be placed on the length of contracts under which nonfat dry milk sales can be reported. Furthermore, based on California Dairies’ affiliation as a member-owner with DairyAmerica, a federated cooperative that markets powdered milk products domestically and internationally, we fully support the justifications and comments submitted by DairyAmerica on the Dairy Product Mandatory Reporting regulations.

NASS and CWAP

California Dairies and the companies that merged to form California Dairies have a long history with the nonfat dry milk sales reporting requirements of the California Weighted Average Price (“CWAP”), as well as with the NASS reporting requirements since they were introduced in 1998. While there are obvious differences in the details of the two price reporting systems, we note that there are also significant differences from a more macro view. For example, the CWAP reporting instructions are fairly broad and easy for the industry to understand (a copy of the CWAP reporting instructions for the monthly sales of nonfat dry milk are provided on the pages immediately following these comments). Basically, all sales of Grade A and Extra Grade nonfat dry milk are reported. Consequently, there are rarely any questions about the specifics of the contracts under which sales are made. The guidelines contained in the Interim Final Rule, in contrast, are much more specific, and that level of specificity invites subjective interpretations as to what each rule means vis-à-vis every potential sale of nonfat dry milk.

The inflexibility embodied by the Interim Final Rule exemplifies the type of regulation that should not be adopted. Plainly said, regulations should reflect characteristics of the market, not dictate them. An appropriate regulation should be flexible enough to allow nonfat dry milk processors to engage in business transactions that will enhance the U.S.'s position as a predictable, reliable and sustainable exporter of nonfat dry milk. We believe that the CWAP reporting rules fit that description, while the guidelines for reporting nonfat dry milk sales found in the Interim Final Rule do not.

Encouraging Exports, Not Discouraging Exports

Any dairy processing company that wishes to be involved in the export market must be committed to that venture. Simply put, relationships with export customers take time to develop. Also, long-term contracts are the norm in export markets, and any company that wishes to be involved must be prepared to operate under those rules. A newcomer to export markets cannot simply develop its own terms of trade and expect that the customers will materialize. We believe that regulations should not restrict the U.S. dairy industry's ability to serve these vital export markets, but rather should encourage development of these markets.

To that end, we find one provision contained in the Interim Final Rule particularly disconcerting — a restriction on reporting of nonfat dry milk sales to those in which the price is fixed (and not adjusted) 30 days before the product is shipped and title transfers to the buyer. We have provided a table below that demonstrates and verifies that the vast majority of export contracts in which California Dairies is involved indirectly (through its affiliation with DairyAmerica) extend well beyond 30 days. It is equally evident that the seemingly less restrictive implementation of a 90-day limit that has been championed by many dairy industry groups hardly improves that situation and would not afford near enough flexibility to a company that was keenly interested in serving the international market. Veritably, 78% of volume exported under contracts to which DairyAmerica was a party from January 2006 to July 2007

extended beyond the 90-day timeframe. Bear in mind that contracts are established on a volume basis to be delivered during a time period. Depending on the availability of the product, the expected duration of the contract may or may not be realized, i.e., if less product is available for export than expected, the contract may take longer to fulfill than anticipated.

Table 1. Percent of Export Contract Volume by Length of Contract.

	<u>0 - 59 days</u>	<u>60 -89 days</u>	<u>90-119 days</u>	<u>120-149 days</u>	<u>150+ days</u>
Percent	10.4%	11.6%	16.6%	18.2%	43.2%

Data are taken from contracts that cover 362 million pounds or 60% of the export volume handled by DairyAmerica from January 2006 to July 2007 (the records for the remaining volume were stored off-site and were not accessible at the time of this analysis) . For those contracts that have not yet been fulfilled, the length of the contract represents the expected time needed to complete the contract.

With the near collapse of the reign of traditional world dairy product suppliers over the last year, the U.S. has the fleeting opportunity to establish itself as a reliable supplier of exportable dairy products. However, should the Interim Final Rule be adopted without change, particularly the provision that restricts the reporting of sales based on the duration of a fixed price contract, U.S. dairy processors will be forced to walk away from this opportunity. Adopting rules that severely restrict or totally exclude sales from the price reporting process will alter significantly how much risk is born by the parties participating in the sale. As the risk is shifted more toward dairy processors, a disincentive is created that will discourage them from committing to any meaningful participation in export markets.

The U.S. dairy industry is becoming more reliant on export markets to balance the growing milk supply, and severe consequences loom for shutting off vital outlets for dairy products. We suggest axiomatically that eliminating these

export markets would backup tremendous volumes of product onto the domestic market. It should be just as clear that this would have the effect of lowering domestic product prices, and, consequently, prices paid to dairy producers. Again, regulations should reflect characteristics of the market, not dictate them.

Summary

The results of the activity of U.S. dairy processing firms in export markets has been very encouraging, and, as an ardent supplier of dairy products to those markets, we can see great potential in the future. Future successes in international markets depend on sustained commitments from dairy processors. What is needed are regulations that support and encourage development of these markets. To that end, California Dairies requests that no time limitations be placed on the length of contracts under which nonfat dry milk sales can be reported.

Thank you for the opportunity to comment on the Interim Final Rule regarding Dairy Product Mandatory Reporting regulations.



Dr. Eric M. Erba

VP Government Relations

California Dairies, Inc.

**To: California Department of Food & Agriculture
 Attn: Dairy Marketing Branch - Statistics Unit
 Fax Number: (916) 341-6697**

**MONTHLY NONFAT DRY
 MILK SALES REPORT**

The prices received by your plant from wholesale customers for sales of Extra Grade and Grade A Nonfat Dry Milk (NFDM) for human consumption are used by this office, together with those received by several other plants, in computing minimum prices to be paid for Class 1, 2, 3, and 4a solids-not-fat in California.

Your sales to wholesale customers (excluding sales or transfers to other plants in your organization) should be reported to the Dairy Marketing Branch no later than 10:00 a.m. on the last business day of the month.

Period Covered

1.	Through
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**Volume and Dollar Value of Extra Grade and Grade A Nonfat Dry Milk
 Sold FOB Processing Plant During the Period Above**

2A. Commodity Credit Corporation Sales: (All approved Containers)	Volume in Pounds:
2B. Total Dollars Received for the Sales Above:	Dollars \$
2C. Less Broker Fees and Hauling Costs:	(\$)
2D. Total Dollars Received for NFDM Only	\$

3A. All Other Sales: (All Types of Containers)	Volume in Pounds:
3B. Total Dollars Received for the Sales Above:	Dollars \$
3C. Less Broker Fees and Hauling Costs:	(\$)
3D. Total Dollars Received for NFDM Only:	\$

Instructions for completing this Report are on the reverse side. Should you have any questions, please contact the Statistics Unit at (916) 341-5988. Your timely cooperation in supplying this information is greatly appreciated.

I hereby certify that the foregoing report, to the best of my knowledge and belief is correct.

Signed:	Please Print Name:
Title:	Phone Number:
Company Name:	Date:

REPORTING INSTRUCTIONS
(Monthly Report)

This report is for disclosing sales of Extra Grade and Grade A Nonfat Dry Milk (NFDM) only, sold for human consumption, regardless of length of storage, container size or sales volume. Do not include any other type of powdered milk, such as instant NFDM or whole milk powder. The selling price of NFDM will include any bag costs. No reduction in price is allowed when a more expensive bag is used.

Period Covered: The monthly time frame beginning on the 26th of one month and concluding on the 25th of the next month will be the basis for determining the amounts of reported nonfat dry milk product and sales. Include only the sales involved for that specific time frame in the pounds and sales lines.

1. Commodity Credit Corporation Sales: Total of the Commodity Credit Corporation (CCC) sales under the support purchase price program for the month in question and place on this line. This is reported in pounds.

2.(b) Total Dollars Received: Total the dollars of sales for the week in question and place on this line. Credits for sales fare to be included in the monthly report only if the original sale was in the same month as the credit month. Other credits for prior month sales are not to be included. Please note that sales of NFDM should be reported at the price sold without regard to whether the price is lower than any existing support purchase price.

2.(c) Broker Fees and Hauling Costs: Total all broker fees and letters of credit costs accrued by your company for any sale for the month in question, if any, on this line. If total dollar sales exclude broker fees and letters of credit costs, disregard this line. If the processing plant delivers product in their own trucks and the plant cannot separate their delivery cost from their delivered price to achieve an f.o.b. plant price, then this sale shall not be reported.

2.(d) Charges for Powder Only: This line represents total dollars received less broker fees and hauling costs.

3.(a) Total Other Sales: Total All Other Sales for the month in question and place on this line. Do not include sales or transfers to other plants in your organization, or products delivered by the company's own trucks unless the company can separate delivery expenses from the delivered price. This is reported in pounds.

3.(b) Total Dollars Received- All Other Sales: Same as 2.(b).

3.(c) Broker Fees and Hauling Costs: Same as 2.(c).

3. (d) Charges for Powder Only: This line represents total dollars received less broker fees and hauling costs.

This report is to be faxed to the Statistics Unit by 10:00 a.m. of the last working day of the month.