National Milk Producers Federation

National Milk Producers Federation • 2101 Wilson Blvd., Arlington, VA 22201 • 703-243-6111 • FAX 703-841-9328

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Associated Milk Producers, Inc.
Cass-Clay Creamery, Inc.
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Dairy Farmers of America, Inc.
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Dairylea Cooperative Inc.
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Farmers Cooperative Creamery
First District Association
Foremost Farms USA
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Mid-West Dairymen's Company
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Prairie Farms Dairy, Inc.
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Southeast Milk, Inc.
Swiss Valley Farms, Co.
Tillamook County Creamery Assn.
United Dairymen of Arizona
Upstate Niagara Cooperative, Inc.
Zia Milk Producers

September 4, 2007

Sent by FAX: (202) 690-0552

John R. Mengel, Chief Economist
USDA/AMS/Dairy Programs
STOP 0229 – Room 2753
1400 Independence Avenue, SW
Washington, DC 20250-0229

RE: Dairy Product Mandatory Reporting [Doc. # AMS-07-0047; DA-06-07]

Dear John,

The National Milk Producers Federation (NMPF) consists of 33 member dairy farmer cooperative associations, representing two-thirds of the nation's 60,000 commercial dairy farmers. As the voice of America's dairy producers in Washington, NMPF pursues action that advances the well-being of dairy producers and the cooperatives they own, including the operators of many of the manufacturing plants that would be responsible for reporting under the interim final rule referenced above and the final rule resulting from the present request for comments.

In 2000, NMPF worked with Congress and processor groups to pass legislation directing USDA to establish mandatory dairy product price and inventory reporting. This is a crucial response to USDA's adoption of Federal order class prices formulas using USDA survey prices. Mandatory inventory reporting is an important measure against undue manipulation of markets through misleading signals; but mandatory price reporting absolutely must be effective to ensure the integrity of the Federal order price formulas. And verifying the accuracy of that reporting is just as important to the integrity of Federal orders as verifying the accuracy of pooling handler data.

NMPF has called repeatedly for this legislation to be made effective by such means including a regular audit program. USDA has recently documented inequities caused by the lack of such a program. (See the report by USDA/AMS, Dairy Programs, entitled *Impacts of NASS Nonfat Dry Milk Price and Sales Volume Revisions on Federal Order Prices*, issued June 28, 2007.)

NMPF has been disappointed, and our members disadvantaged, by long delays in putting mandatory dairy product reporting into effect. Therefore, NMPF is strongly encouraged that USDA has now put an interim rule into effect, and supports the interim rule as a important first step toward effective mandatory price reporting. NMPF urges USDA to move quickly to ensure that all reporting parties are accurately reporting price and inventory data, and that all eligible parties are participating in the survey.

NMPF also urges USDA to establish a final rule before the interim rule expires on July 3, 2008. We trust that that this expiration date was placed upon the interim rule simply to

establish a clear target for completion of the final rule. However, we insist that there be **no gap in enforcement of mandatory reporting**, and that USDA take steps to avoid such a gap.

NMPF also makes the following specific recommendations relating to the final rule and its administration.

NMPF recognizes the importance of maintaining the currency of Federal order prices, and supports excluding sales priced more than 30 days earlier, with a single exception. Ideally, effective and liquid futures contracts, such as now exist for Class III milk (and by extension, cheese) and NASS butter (and by extension Federal order butterfat), would allow market-based forward pricing of all Federal order prices without compromising the currency of Class pricing. However, such an effective contract does not now exist for nonfat dry milk or Class IV skim milk. Therefore, NMPF believes that fixed prices for contracted **export sales that are shipped within 90 days of contract execution should be included** in the nonfat dry milk price survey. This recognizes exports' growing share of nonfat dry milk sales, and the requirements of those sales. Paperwork and regulatory approvals may add several weeks to the time between manufacture and shipment. Overseas shipments are inherently more complicated for both the buyer and the seller. As a result, export customers typically prefer (or in the case of many state trading agencies, are required) to negotiate contracts for several months at fixed prices. U.S. exporters would be disadvantaged if their average costs were based on rising domestic prices, after they had made pricing commitments necessary for exporting. Conversely, if prices were falling, producers would capture the benefits of this higher average price. Finally, placing a limit of 90 days on this exception ensures that it does not have a disproportionate effect on current Federal order pricing. We have made the same recommendation to the California Department of Food and Agriculture regarding reporting in the California Weighted Average Price series, which is use to price Class 1, 2, 3, and 4a milk in California's pricing and pooling system. (See attached NMPF comment to CDFA.)

NMPF believes that **organic products** should be excluded from all four price surveys. Organic products do compete with conventional products and are fundamentally a part of the same market. However, they are products with a perceived added value, which imposes real costs on producers, and so their price would not be representative of the product characterized in the milk price formulas. For the same reason that instant nonfat dry milk is excluded from the survey (7 CFR 1170.8 (d)(4)), organic products should be excluded for all four products. On this issue, also, we have submitted comments to CDFA. (See attached.)

NMPF urges **USDA and CDFA to work together toward effective alignment of their class prices**, including data sources, methodology, and timing. The Agricultural Marketing Agreement Act aims at "orderly marketing" in all U.S. milk markets, not only in those regulated by Federal milk marketing orders. California is the source of 22% of U.S. milk production, 23% of cheese production, 31% of butter production, and 42% of nonfat dry milk production. When California and Federal order milk prices do not dovetail, they can produce very substantial dislocation in milk markets. Differences in timing can produce flip-flopping geographic price relationships. Differences in price data sources can lead to similarly uncertain price bases between California and Federal order markets. In the context of this rule, we strongly encourage USDA and CDFA to consider adopting conforming definitions for their price surveys.

NMPF also believes that it may be reasonable to establish **transaction size thresholds** for reporting sales. For example, if the standard sales unit is a 40,000 pound carload, it may be appropriate to exclude distribution of 400-pound lots to retailers and food service establishments. Again following the logic applied to instant nonfat dry milk, products that have been distributed in smaller lots to multiple customers have added value at added

cost. USDA should consider such a threshold carefully, based on its experience with the interim rule, to ensure that it does not exclude any important part of the surveyed volumes and to avoid any implicit invitation to reorganize distribution to evade reporting.

NMPF believes, for numerous reasons outlined below, that **AMS should be given full responsibility for mandatory dairy product reporting**, with such assistance as needed from NASS during the transition. We urge USDA to make this change.

First, AMS is better suited for regulatory enforcement. As noted above, substantial delays have attended efforts to establish this rule – first by the National Agricultural Statistics Service (NASS) alone, then by NASS and AMS together. NASS has expressed its reluctance to be seen as regulating survey participants through a meaningful audit program. AMS, in contrast, is a regulatory agency as well as a market information agency; and its extensive mandatory livestock reporting program could serve as an effective regulatory model for mandatory dairy product reporting.

Second, AMS staff is better equipped to collect and verify consistent data from milk plants. The NASS dairy products price survey is currently collected by NASS field office employees who often have very limited dairy expertise and very limited supervision by the headquarters staff responsible for the survey. NASS employees are regularly rotated among offices and responsibilities, so institutional memory regarding complex dairy statistics is regularly lost, both in the field offices and in Washington. By contrast, AMS Dairy Programs employees are consistently involved with, and have a deeper understanding of, the dairy industry; AMS dairy employees are generally longer-tenured both within the Federal market administrator offices and in branches at Washington. This gives them a much better understanding of the facts underlying their statistics, and institutional memory is better maintained.

Third, it makes sense that AMS should conduct the survey that their staff will later audit. NASS has generally defined the dairy products price survey according to AMS' specifications. If the survey were administered directly by AMS, it could better coordinate the two functions and more quickly put lessons learned in audit into practice in the survey.

Fourth, NMPF believes that AMS is better suited to implement a system of electronic reporting (discussed in more detail below) that would make the survey more timely and Federal order pricing more effective.

For all of these reasons, NMPF believes that AMS should take full responsibility for the mandatory dairy product reporting program.

Further, given AMS' success with rapid electronic reporting under the mandatory livestock reporting program, NMPF urges USDA to **establish electronic reporting for dairy products**, especially for prices. Electronic reporting would allow the release of the previous week's average prices to be moved from Friday morning to Monday afternoon, making these prices nearly 4 days more current. An accelerated announcement date would, in turn, make Federal order minimum prices more current, providing timelier price signals to regulated milk markets. Weekly electronic reporting of dairy product prices and inventories would not increase the reporting burden of plants. USDA has developed software and established audit procedures for electronic livestock reporting. USDA could apply many of the same practices developed for mandatory livestock reporting to dairy product reporting.

Many plants participating in the dairy product prices survey are regulated under Federal milk marketing orders. As such, the **dairy product price survey audit should be combined with the Federal order audit of the handler report**, to achieve cost savings and more effective audits. Federal order auditors are professionals trained to tie together

production, sales, and financial records, in order to verify handlers' reports. This broadening of their regular responsibility will achieve obvious savings relative to separate audits, and will also improve both audits.

NMPF encourages the Secretary to recognize that, in addition to the authority to enforce mandatory dairy product reporting under the Dairy Market Enhancement Act of 2000 (7 USC 1621 *et seq.*, as amended), the Department also has broad authority under the Section 8(d) of the Agricultural Marketing Agreement Act of 1937 (7 USC 608 (d), as amended) to collect such information and examine such records as are necessary for the administration of Federal milk marketing orders, as manifested in Section 32(b) of each such order.

Now that the interim final rule has been published, NMPF again expresses its support for a speedy start to verification and audit of the dairy product price and inventory surveys, and looks forward to a further improved final rule.

We thank USDA and the Secretary for the opportunity to comment on this rule, and would be happy to offer any desired assistance in its prompt and effective completion.

Sincerely,

Jerry Kozak

Jerry Kozak
President and CEO

cc: David Ikari, Dairy Marketing Branch, CDFA

Attachments