

§ 1160.606 Notice of referendum.

The referendum agent shall provide at least 30 days' notice of any referendum authorized by the Act by:

(a) Mailing to each known person processing fluid milk products a notice of referendum, which shall include:

(1) An advance registration form to be filed with the referendum agent prior to the voting period by any person choosing to vote in the referendum, with a statement as to the time within which the registration form must be mailed to the referendum agent;

(2) A copy of the final rule, when applicable;

(3) A sample ballot containing a description of the question(s) upon which the referendum is being held; and

(4) Rules for participating in the referendum, including a statement as to the time within which the ballot must be mailed to the referendum agent; and

(b) Giving public notice of the referendum:

(1) By furnishing press releases and other information to available media of public information (including but not limited to press, radio, and television facilities) announcing the time within which ballots must be completed and mailed to the referendum agent, eligibility requirements, required certifications to cast a valid ballot, where additional information, ballots and instructions may be obtained, and other pertinent information; and

(2) By such other means as the referendum agent may deem advisable.

§ 1160.607 Tabulation of ballots.

(a) The referendum agent shall verify the validity of all ballots cast in accordance with the instructions and requirements specified in §§1160.602 through 1160.606. Ballots that are not valid shall be marked "disqualified" with a notation on the ballot as to the reason for the disqualification.

(b) The total number of ballots cast, including the disqualified ballots, shall be ascertained. The number of ballots cast approving, the number of ballots cast disapproving, and the pounds of fluid milk products distributed during the representative period by the processors represented in each grouping of ballots, shall also be ascertained. The

ballots marked "disqualified" shall not be considered as approving or disapproving, and the persons who cast such ballots shall not be regarded as participating in the referendum.

(c) The referendum agent shall notify the Administrator of the number of ballots cast, the count of the votes, the number of disqualified ballots, and the volume of fluid milk products associated with the ballots cast as prescribed in §1160.607(b). The referendum agent shall seal the ballots and transmit to the Administrator a complete detailed report of all actions taken in connection with the referendum and all other information furnished to or compiled by the referendum agent.

(d) Announcement of the results of the referendum will be made only at the direction of the Secretary. The referendum agent or others who assist in the referendum shall not disclose the results of the referendum or the total number of ballots and votes cast.

§ 1160.608 Confidential information.

The ballots cast, the identity of any person who voted, or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the referendum agent, except the list of eligible voters, shall be regarded as confidential.

§ 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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AUTHORITY: 7 U.S.C. 1637-1637b, as amended by Pub. L. 106-532, 114 Stat. 2541 and Pub. L. 107-171, 116 Stat. 207.

SOURCE: 72 FR 36343, July 3, 2007, unless otherwise noted.

§ 1170.1 Secretary.

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

§ 1170.2 Act.

Act means the Agricultural Marketing Act of 1946, 7 U.S.C. 1621 *et seq.*, as amended by the Dairy Market Enhancement Act of 2000, Pub. L. No. 106-532, 114 Stat. 2541, and the Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 207.

§ 1170.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 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.

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§ 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 PROGRAM

§ 1170.7 Reporting requirements.

(a) Manufacturers of dairy products shall report on a weekly basis all sales transactions for the previous week, on the appropriate forms supplied by the National Agricultural Statistics Service. The report shall indicate the name, address, plant location, quantities sold, and dollars received or the prices of dairy products as defined in § 1170.4.

(b) Manufacturers or other persons storing dairy products shall 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 Statistics Service. 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) Sale: When a transaction is completed (for example: cheese is “shipped out” and title transfer occurs.)

(2) Variety: Cheddar Cheese.

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

(4) Moisture Content: 40-pound blocks, exclude cheese that will be aged. Barrels Report—moisture content of cheese sold, not to exceed 37.7 percent.

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

(6) Grade: Barrels—Wisconsin State Brand or USDA Extra Grade or better. 40-pound blocks—Wisconsin State Brand or USDA Grade A or better.

(7) Color: Barrels—White, 40-pound blocks—colored between 6-8 on the National Cheese Institute color chart.

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(8) Packaging: 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. Barrels—Exclude all packaging costs from the reported price.

(9) Price: Price should be reported as price per pound or total dollars received. Price is f.o.b. processing plant/storage center.

(10) Include: CCC purchases under the Dairy Price Support and related programs, and CME sales by initial manufacturer.

(11) Exclude: Block cheese that will be aged, transportation and clearing charges from price, intra-company sales, resales of purchased cheese and forward pricing sales (sales in which the selling prices was set (not adjusted) 30 or more days before the transaction was completed).

(b) Specifications for Butter Prices:

(1) Sale: When a transaction is completed (for example: Butter is “shipped out” and title transfer occurs.) Report sales of butter that meets USDA Grade AA standards, 80 percent butterfat, salted—fresh or storage.

(2) Price: Price is f.o.b. processing plant/storage center. Prices and quantities are for all 25 kilogram and 68 pound box sales.

(3) Include: CCC purchases under the Dairy Price Support and related programs, and CME sales by initial manufacturer.

(4) Exclude: Unsalted and Grade A butter, transportation and clearing charges from price, intra-company sales, resales of purchased butter and forward pricing sales (sales in which the selling prices was set (not adjusted) 30 or more days before the transaction was completed). This exclusion does not include sales through the Dairy Export Incentive Program (DEIP).

(c) Specifications for Dry Whey Prices:

(1) Sale: When a transaction is completed (for example: dry whey is “shipped out” and title transfer occurs.) Sales are for USDA Extra Grade edible nonhygroscopic dry whey.

(2) Price: Prices is f.o.b. processing plant/storage center. Prices and quan-

ties are for all 25 kilogram bag, 50 pound bag, tote and tanker sales.

(3) Exclude: Sales of Grade A dry whey, sales of dry whey more than 180 days old, transportation charges from price, intra-company sales, resales of purchased dry whey and forward pricing sales (sales in which the selling prices was set (not adjusted) 30 or more days before the transaction was completed.)

(d) Specifications for the Nonfat Dry Milk Prices:

(1) Sale: When a transaction is completed (for example: nonfat dry milk is “shipped out” and title transfer occurs.) Sales are for USDA Extra Grade and USPH Grade A, non-fortified, non-fat dry milk.

(2) Price: Price is f.o.b. processing plant/storage center. Prices and quantities are for all 25 kilogram bag, 50 pound bag, tote and tanker sales.

(3) Include: Nonfat dry milk manufactured using low or medium heat process, CCC purchases under the Dairy Price Support and related programs, and CME sales by initial manufacturer.

(4) Exclude: Sales of nonfat dry milk more than 180 days old, nonfat dry milk manufactured using high heat process, sales of instant nonfat dry milk, sales of dry buttermilk products, transportation and clearing charges, intra-company sales, resales of purchased nonfat dry milk and forward pricing sales (sales in which the selling prices was set (not adjusted) 30 or more days before the transaction was completed). This exclusion does not include sales through the Dairy Export Incentive Program (DEIP).

§ 1170.9 Storage reporting specifications.

(a) Reporting universe: (1) Cold Storage Report: All warehouses or facilities, except those described in §1170.16, 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.

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(2) Dairy Products Report: All manufacturing plants, packaging plants, distribution points or shipments in transit.

(b) Products required: (1) 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;

(2) Butter, anhydrous milkfat (AMF), butter oil, and unsalted butter, including government owned stocks;

(3) Nonfat dry milk; and

(4) Dry whey.

§ 1170.10 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 two-year period beginning on the date of the creation of the records.

§ 1170.11 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

§ 1170.12 Verification of reports.

For the purpose of assuring compliance and auditing records and reports required to be filed by manufacturers or other persons, 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

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be permitted to inspect such manufacturer or person, and any original contracts, agreements, receipts, and other records associated with the sale or storage of any dairy products.

§ 1170.13 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 this part, 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) 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 submits information or 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

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after receipt of any information and argument submitted by the manufacturer or person. The cease and desist order shall be final unless the affected manufacturer or person requests a reconsideration of the order to the Administrator, Agricultural Marketing Service, within 30 days after the date of the issuance of the order.

§ 1170.14 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.

§ 1170.15 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 \$10,000 for each offense.

EXEMPTIONS

§ 1170.16 Exemptions.

Any manufacturer that processes and markets less than 1 million pounds of dairy products per calendar year is exempt from these regulations.

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