

## Agricultural Marketing Service, USDA

## § 1170.9

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 the transaction was completed), butter 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 butter 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 CWT program), and butter certified as organic by a USDA-accredited certifying agent.

(c) Specifications for Dry Whey Prices:

(1) Variety: Edible nonhygroscopic.

(2) Age: No more than 180 days.

(3) Grade: Product meets USDA Extra Grade standards.

(4) Packaging or container: 25-kilogram bag, 50-pound bag, tote, or tanker.

(5) Exclude: Sales of Grade A dry whey, intra-company sales, resales of purchased dry whey, forward pricing sales (sales in which the selling price was set [not adjusted] 30 or more days before the transaction was completed), dry whey 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 dry whey produced with a rabbi on site who is actively involved in supervision of the production process), premium-assisted sales, and dry whey certified as

organic by a USDA-accredited certifying agent.

(d) Specifications for the Nonfat Dry Milk Prices:

(1) Variety: Non-fortified.

(2) Age: No more than 180 days.

(3) Grade: Product meets USDA Extra Grade or USPH<sup>2</sup> Grade A standards.

(4) Packaging or container: 25-kilogram bag, 50-pound bag, tote, or tanker.

(5) Exclude: Nonfat dry milk manufactured using high heat process, sales of instant nonfat dry milk, sales of dry buttermilk products, intra-company sales, resales of purchased nonfat dry milk, forward pricing sales (sales in which the selling price was set [not adjusted] 30 or more days before the transaction was completed), nonfat dry milk 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 nonfat dry milk 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, and nonfat dry milk certified as organic by a USDA-accredited certifying agent.

[73 FR 34181, June 17, 2008, as amended at 77 FR 8721, Feb. 15, 2012]

### § 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

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

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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 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.

(2) Products required to be reported:

(i) 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.

(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

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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.