

DETERMINATIONS, FINDINGS, CONCLUSIONS AND ORDER OF THE SECRETARY OF FOOD AND AGRICULTURE

In Regard to the Public Hearing Held on August 28, 2007

PROCEDURAL HISTORY

On August 28, 2007, pursuant to Food and Agricultural Code sections 62031 through 62079, and 3 CCR 2080.2 the Department of Food and Agriculture conducted a public hearing duly noticed on June 29, 2007 for the purpose of considering revisions to the Weekly and Monthly Nonfat Dry Milk (NFDM) Sales Reports and reporting procedures; and adjustments to the Stabilization and Marketing Plans for Market Milk for the Northern California and Southern California Marketing Areas (Plans), namely changes to the NFDM pricing series used in the Class 4a and Class 1 pricing formulas. The Department called the hearing pursuant to the cited code sections after receiving petitions on June 15, 2007, and June 18, 2007, from Western United Dairymen and Milk Producers Council respectively.

In accordance with procedures established for the conduct of such hearings and noticed to the regulated community on June 29, 2007, the Department subsequently received and accepted an alternative proposal from the Dairy Institute of California on July 31, 2007 and Alliance of Western Milk Producers on July 31, 2007.

At hearing on August 28, 2007, following procedures established for the conduct of the hearing and noticed to the regulated community on June 29, 2007, the Department, Mike Cleary, presiding, opened the Official Hearing Record with the introduction of the jurisdictional documents (Notice, Petition, and the Alternative Proposal and exhibits). The Department then received and entered into the record testimony and documentary evidence pertinent to the matters presented. Subsequent to the close of testimony, the Department further received and entered into the record additional documentation by means of post-hearing briefs, holding the records open for six additional days until September 4, 2007, for that purpose.

The hearing record closed on September 4, 2007 and no further supplementation of the Record is permitted under procedures established for the conduct of the hearings and noticed to the regulated community on June 29, 2007. Ex parte communication between Department staff and the public is prohibited during the rulemaking process as referenced in the Hearing Notice.

Pursuant to Food and Agricultural Code sections 62031 through 62079, the Secretary has broad discretion in deciding these issues. By custom and practice, the Secretary's decision is based on the hearing record and on the Panel Report to the Secretary of Food and Agriculture. The Secretary may adopt, deny, or alter the Panel's recommendations based upon the Secretary's independent assessment of the testimony and documentations entered into the record.

DETERMINATIONS

In weighing all available information, the Department has determined that changes to the current Stabilization and Marketing Plans for Market Milk are not warranted to continue to effectuate the declared purposes of the Food and Agricultural Code. Based on the hearing record and Panel Report, the Secretary accepts the Panel's recommendation in its entirety, including the recommended administrative changes to the Weekly and Monthly Nonfat Dry Milk Sales Reports and procedures as follows:

- Reported sales should include:
All sales regardless of volume or length of storage, vitamin-fortified NFDM, rBST-free NFDM, high heat NFDM, indexed price contracts, CCC purchases under dairy support program and DEIP sales, energy surcharges, and fixed price long-term contracts within 150 days of the first shipment
- Reported sales should not include:
Organic NFDM, instant NFDM, other types of powder (skim milk, whole milk, dry buttermilk, dry whey products), intra-company sales, re-sales, and transportation, clearing charges and broker fees

It is hereby ordered that all recommended revisions to the Weekly and Monthly Nonfat Dry Milk Sales Reports and reporting procedures become effective on October 26, 2007.

CONCLUSIONS

The Department has considered all relevant information, including, but not limited to, testimony and items of evidence submitted by all parties to these proceedings, whether specifically mentioned herein, in rendering these findings. The Department has considered all provisions set forth in Chapter 2, of the Food and Agricultural Code, whether specifically mentioned herein, in rendering these findings. These include, without exception, all provisions and declarations regarding public interest considerations.

It is hereby found and concluded that:

- The current Stabilization and Marketing Plans for Market Milk now in effect conform to the standards prescribed in and tend to effectuate the purposes of said Chapter 2 of the Food and Agricultural Code.
- The recommended revisions to the administrative procedures to the Weekly and Monthly Nonfat Dry Milk Sales Reports and the recommended changes to the report forms shall be adopted.

ORDER

It is hereby ordered that the Stabilization and Marketing Plans for Market Milk for Northern California (Order Number 50) and for Southern California (Order Number 65) shall remain in effect.

It is hereby ordered that all recommended revisions to the Weekly and Monthly Nonfat Dry Milk Sales Reports and reporting procedures become effective on October 26, 2007 (see attached).

Original Signed by:

George Gomes, Undersecretary
California Department of Food and Agriculture

Signed and entered in
the Office of the Secretary
of Food and Agriculture at
Sacramento, California,
On October 17, 2007



Weekly Nonfat Dry Milk Sales Report

The Dairy Marketing Branch collects weekly information on nonfat dry milk (NFDM) sales and prices in order to compute the weekly “sales quantity” weighted average NFDM price for California. Prices are collected for the seven-day period Saturday through Friday of each week. This calculated price, as well as the weekly total NFDM sales volume will be forwarded to the Federal Market News Service for publication in the *Dairy Market News*.

Report Due Date: The Weekly Nonfat Dry Milk Sales Reports and detailed summary sheet (see back page) are due to the Dairy Marketing Branch no later than 10:00 a.m. on the Tuesday following the seven-day (Saturday-Friday) period of this Report.

Instructions: Please note the following instructions (and those on the reverse side) for completing this sales report. Should you have any questions, please contact the Dairy Marketing Branch at (916) 341-5988. Your timely cooperation in supplying this information is greatly appreciated.

Reporting of NFDM:

- Report all sales of USDA Extra Grade, Grade A, vitamin-fortified, and rBST-free nonfat dry milk (exclusions noted below)
- Reported sales shall include all container sizes and all sales regardless of volume or length of storage
- The sales transaction is considered completed when the nonfat dry milk is “shipped” and title transfer occurs
- Prices are F.O.B. processing plant/storage center

Included in the Sales Report:

- Nonfat dry milk for human consumption, using low, medium, and high heat
- CCC purchases under the Dairy Price Support, DEIP sales, and related federal programs
- Total volume sold, total dollars received, and price per pound
- Fixed price contract sales within 150 days from first “shipment” date
- All indexed contract sales
- Energy surcharges

Excluded in the Sales Report:

- Sales of Organic nonfat dry milk
- Sales of skim milk, whole milk, dry buttermilk, instant nonfat dry milk powders, and dry whey products
- Intra-company sales and re-sales of purchased nonfat dry milk
- Transportation charges, clearing charges and broker fees

Sales Period Covered: Saturday _____ through Friday _____			
Commodity Credit Corporation Sales			
Company Name	Pounds of NFDM	Total Dollars Received	Dollars Per Pound
	Lbs.	\$	\$ /per pound
All Other NFDM Sales			
Company Name	Pounds of NFDM	Total Dollars Received	Dollars Per Pound
	Lbs.	\$	\$ /per pound
Total All Sales			
	Lbs.	\$	\$ /per pound

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

Signature _____ Print Name _____

Title _____ Phone _____ Email _____

REPORTING INSTRUCTIONS **(Weekly Report)**

This report is for disclosing sales of Extra Grade, Grade A, vitamin-fortified, and rBST-free nonfat dry milk 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 organic, instant NFDM, skim and whole milk powders, and dry whey products. The selling price of NFDM will include any container costs.

Period Covered: The weekly time frame of Saturday through Friday of any given week will be the basis for determining the amounts of reported nonfat dry milk product and sales. Include only the sales shipped during that specific time frame when reporting.

Completing the Volume/Sales Section:

Company Name: Indicate company name.

Commodity Credit Corporation Sales: Total the Commodity Credit Corporation (CCC) sales under the support purchase price program for the week in question - this is reported in pounds sold and total dollars received.

- 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.

All Other Sales:

Pounds of NFDM: Total the pounds of NFDM sold. Do not include:

- Sales or transfers to other plants in the same company or cooperative association (intra-company sales);
- Sales of organic, skim and whole milk powder, dry buttermilk powder, instant NFDM, and dry whey products;
- Re-sales of purchased NFDM.

Total Dollars Received: Total the dollars of sales for the week in question including energy surcharges (arms-length transaction).

Exclude: Transportation, clearing charges and broker fees from total dollars received. 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.

Credits: Credits for sales are to be included in the weekly report only if the original sale was in the same week as the credit week. Other credits for prior week sales are not to be included.

Total Sales: Total the CCC sales information and All Other NFDM sales information.

Detailed Summary Sheet:

Please include the following:

- Invoice Date and Invoice Number
- Shipping Date
- Customer Name
- Plant Producing the NFDM
- Product Type
- Actual Pounds/Quantity
- Unit Price
- Broker Fees
- Energy Surcharges
- Total Dollar Amount
- Identify Fixed Price and Indexed Contract Sales



Monthly Nonfat Dry Milk Sales Report

The Dairy Marketing Branch collects information on nonfat dry milk (NFDM) sales and prices in order to compute the monthly “sales quantity” weighted average NFDM price for California which is used in computing minimum prices to be paid for Class 1, 2, 3, and 4a solids not fat in California.

Report Due Date: The Monthly Nonfat Dry Milk Sales Reports and detailed summary sheet (see back page) are due to the Dairy Marketing Branch no later than 10:00 a.m. on the last business day of the month.

Instructions: Please note the following instructions (and those on the reverse side) for completing this sales report. Should you have any questions, please contact the Dairy Marketing Branch at (916) 341-5988. Your timely cooperation in supplying this information is greatly appreciated.

Reporting of NFDM:

- Report all sales of USDA Extra Grade, Grade A, vitamin-fortified, and rBST-free nonfat dry milk (exclusions noted below)
- Reported sales shall include all container sizes and all sales regardless of volume or length of storage
- The sales transaction is considered completed when the nonfat dry milk is “shipped” and title transfer occurs
- Prices are F.O.B. processing plant/storage center

Included in the Sales Report:

- Nonfat dry milk for human consumption, using low, medium, and high heat
- CCC purchases under the Dairy Price Support, DEIP sales, and related federal programs
- Total volume sold, total dollars received, and price per pound
- Fixed price contract sales within 150 days from first “shipment” date
- All indexed contract sales
- Energy surcharges

Excluded in the Sales Report:

- Sales of Organic nonfat dry milk
- Sales of skim milk, whole milk, dry buttermilk, instant nonfat dry milk powders, and dry whey products
- Intra-company sales and re-sales of purchased nonfat dry milk
- Transportation charges, clearing charges and broker fees

Sales Period Covered: _____ through _____			
Commodity Credit Corporation Sales			
Company Name	Pounds of NFDM	Total Dollars Received	Dollars Per Pound
	Lbs.	\$	\$/per pound
All Other NFDM Sales			
Company Name	Pounds of NFDM	Total Dollars Received	Dollars Per Pound
	Lbs.	\$	\$/per pound
Total All Sales			
	Lbs.	\$	\$/per pound

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

Signature _____ Print Name _____

Title _____ Phone _____ Email _____

REPORTING INSTRUCTIONS **(Monthly Report)**

This report is for disclosing sales of Extra Grade, Grade A, vitamin-fortified, and rBST-free nonfat dry milk 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 organic, instant NFDM, skim and whole milk powders, and dry whey products. The selling price of NFDM will include any container costs.

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 shipped during that specific time frame when reporting.

Completing the Volume/Sales Section:

Company Name: Indicate company name.

Commodity Credit Corporation Sales: Total the Commodity Credit Corporation (CCC) sales under the support purchase price program - this is reported in pounds sold and total dollars received.

- 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.

All Other Sales:

Pounds of NFDM: Total the pounds of NFDM sold. Do not include:

- Sales or transfers to other plants in the same company or cooperative association (intra-company sales);
- Sales of organic, skim and whole milk powder, dry buttermilk powder, instant NFDM, and dry whey products;
- Re-sales of purchased NFDM.

Total Dollars Received: Total the dollars of sales including energy surcharges (arms-length transaction).

Exclude: Transportation, clearing charges and broker fees from total dollars received. 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.

Credits: Credits for sales are to be included in the monthly report only if the original sale was in the same week as the credit week. Other credits for prior week sales are not to be included.

Total Sales: Total the CCC sales information and All Other NFDM sales information.

Detailed Summary Sheet:

Please include the following:

Invoice Date and Invoice Number
Shipping Date
Customer Name
Plant Producing the NFDM
Product Type
Actual Pounds/Quantity
Unit Price
Broker Fees
Energy Surcharges
Total Dollar Amount
Identify Fixed Price and Indexed Contract Sales