

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE

Dairy Product Mandatory Reporting )  
Proposed Rule and Request for Comments )  
AMS-DA-10-0089 )  
DA-11-01 )

COMMENTS SUBMITTED ON BEHALF OF DAIRYAMERICA, INC.

These Comments regarding the Proposed Rule for Dairy Product Mandatory Reporting are submitted on behalf of DairyAmerica, Inc., a Capper-Volstead cooperative and national multi-plant dairy product reporting business entity located in Fresno, California acting on behalf of its member owners all of whom are also Capper-Volstead cooperatives. In general, DairyAmerica supports the new electronic reporting requirements especially the provisions transferring the entire process to AMS; however these Comments also provide specific support for flexibility in reporting dates based at least upon federal holiday schedules, provide real world cost estimates regarding the regulatory costs that this new regulation or any additional industry suggested regulation imposes on industry, and draw attention to the very real risk that shortening reporting date requirements may, if overly restrictive, lead to less accurate and less transparent dairy product price reporting.

To those who do not manufacture and sell dairy products subject to mandatory dairy product reporting requirements, the concept of mandatory reporting on a weekly (or more often) basis is deceptively simple. The reality is that the sales mechanisms and contract execution process, especially as to the burgeoning export market, is complex and subject to reliance on voluntary third-party participation that is not subject to the

reporting rules. The supply chain for the manufacture, storage, transportation and delivery of dairy products is actually quite extended and can, and often does, involve multiple parties, many of whom are not part of the reporting process. One critical element is the fact that significant volumes of dairy products are stored at third-party warehouses which are not subject to mandatory reporting requirements and over which private industry parties can only exert so much practical control and at ever greater cost to industry. The department's mandatory reporting rules require reporting of product only when title transfers *and* the product ships out. As a practical matter, many manufacturers are not privy the same day (or even the next day) to specific and reliable information as to when the dairy products actually shipped out because that action occurs at a distant third-party location.

Regardless, unlike our understanding of how the process works for reporting by Packers who appear to have control of the product at their own locations, DairyAmerica is simply not in possession nor in a position to be in possession of all of the information needed on a daily basis to report more often than weekly.<sup>1</sup> The dairy products reporting entity must rely on actual warehouse bills of lading delivered to the reporting entity in order to know if the product actually shipped out during a given week. In DairyAmerica's experience, approximately 20% of the previous week's bills of lading will be received sometime on the first day of the next business week (e.g. Monday when there is no holiday). Indeed, the reporting period ends on a Saturday so if product is shipped out on that day, the earliest day DairyAmerica can know about the product for reporting purposes is the following Monday – and that is as a business matter optimistic.

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<sup>1</sup> Perhaps for related reasons, this is why live cattle reporting is divided into both daily and weekly reporting with weekly reporting reserved for formula based and forward contract sales of live cattle. 7 U.S.C. § 1635e(d).

Today, DairyAmerica commits significant time and resources on both Tuesday and Wednesday morning in order to be able to timely and accurately report to NASS on Wednesday at noon local time. The proposed new mandatory reporting requirement that the report be submitted 24 hours earlier than presently will most certainly impose greater regulatory costs on DairyAmerica and industry. It will also most likely increase the number of required after the fact revisions (notwithstanding industry best efforts and increased expenses) that will be submitted as a result of late (or Saturday bills of lading received on Tuesday) bills of lading received by members of industry. If the number of revisions by members of industry increases, the goal of daily reporting of increased accuracy and transparency will be inevitably undermined, if not inverted.

DairyAmerica will of course comply with any new regulations, but at significant cost and regulatory burden. However, the discussion above is critical for AMS analysis both of this proposal and future proposals. AMS has proposed some flexibility in the Tuesday reporting date for the prior week when a Monday, Tuesday or Wednesday is an intervening holiday. DairyAmerica supports and urges adoption of this provision although in fact the provision should be a regulatory fact rather than merely a potential for change when AMS so determines. For instance, in 2012, December 25 will fall on a Tuesday. An inflexible rule would require industry reporting on that day meaning employees would have to report for work on Christmas Day and inevitably require AMS to also work on Christmas. Without permitting later reporting when there is a holiday, AMS would necessarily require dairy product reporters (and everyone in the supply chain including third-party warehouses) to commit personnel to working on the holiday at

double-time. This tax on industry is unjustified and not designed to improve actual accurate and timely reporting.

The secondary, but just as important, point is that those who advocate mandatory daily reporting of the previous day's sales must not be involved in the dairy product price reporting business at all. Their laudable goal is ever quicker and thus "more transparent" reporting of dairy product pricing. Unfortunately the reality is that daily reporting would without doubt lead to daily revisions and thus less accurate and transparent pricing. Instead of filing one weekly report which fortunately results in few revisions today, reporters would be filing most likely up to 29 reports daily – that day's report and potential revisions dating back four weeks on a daily basis. And simply telling industry to amend its business practices with respect to the existing long-supply chain over which manufacturers can exert little real world control would force industry to undertake expensive and burdensome action with no real benefit to industry.

Finally, DairyAmerica notes that AMS' estimates of the cost of the new regulation while accurate, should increase as reporting obligations are pushed up or made more frequent. Leaving aside the increased costs for overtime and for pursuing bills of lading in order to report on Tuesday rather than Wednesday, DairyAmerica as a long-time weekly reporter of dairy product prices estimates that today the annual cost of timely and accurate reporting to NASS on a per plant basis is indeed \$511. The new requirements, just moving up reporting one day from Wednesday to Tuesday, will be undoubtedly more expensive. Daily reporting with its inevitable attendant revisions would be too expensive to estimate at this point, but it is fair to say that the increase would be exponential and not linear.

In conclusion, DairyAmerica urges speedy adoption of the Proposed Rule with a clear recognition of reporting flexibility for at least federal holidays. DairyAmerica opposes ever earlier or reporting that is mandated to be more often than weekly for the prior week as being too expensive, burdensome and counter-productive.

Respectfully submitted,

A handwritten signature in dark ink, reading "Charles M. English, Jr." in a cursive script.

Charles M. English, Jr.