

# DAIRY PRODUCTS PRICES QUESTIONS AND ANSWERS

Updated 08/14/09

## What's New

**Question:** If a member of such a federation sells to the federation, should that volume be included?

**Answer:** *Member sales to a federation should not be reported if the sale occurred after August 15, 2009.*

**Question:** There is another type of transaction in the marketplace. Sometimes (this is not the norm) a member of the federation with product available for sale by the federation will sell the product to the federation usually because no immediate federation customer is available for that sale. An invoice will be generated, title passes to the federation and the federation will pay the federation member at the contract price for the product usually at a market clearing price. Later the product will be resold by the federation at whatever price it can obtain for the product and the profit or loss on that sale will be shared through the federation itself and not paid or charged to the member making the sale to the federation, Please confirm that in this instance, the only reportable sale, if any, is the sale from the member of the federation to the federation.

**Answer:** *Member sales to a federation should not be reported if the sale occurred after August 15, 2009. Sales of product purchased from a member by the Federation are not reportable.*

## Issue – Product Specifications

Question: Should organic dairy products be included in the weekly report submitted to NASS?

Answer: *No. Products certified as organic by a USDA-accredited certifying agent should not be reported.*

Question: Should products labeled or contracted as sourced from cows not treated with recombinant bovine somatotropin (rBST) be included in the weekly report submitted to NASS?

Answer: *Yes. If the products meet all other reporting specifications.*

Question: Should dairy products enhanced with flavorings (i.e. jalapenos added to cheese) be included in the weekly report submitted to NASS?

Answer: *No. Only products meeting the specifications described in the final rule should be reported to NASS.*

Question: Should “Hi acid” cheddar cheese be included in the weekly report submitted to NASS?

Answer: *No. USDA Grade A and Wisconsin State Brand Cheddar standards permit only a slight acid flavor.*

Question: Should “Hi Color” salted butter be included in the weekly report submitted to NASS?

Answer: *Yes. Follow USDA Grade AA butter standards in determining whether to report or not butter sales. Butter may be disqualified from a Grade AA for an inconsistency in color (wavy, mottled, streaks, or color specks) but not the degree of color. Even Grade AA butter with a color rating of very high should be reported as long as other reporting criteria are met.*

Question: The Dairy Products Prices Cheddar Cheese survey form specifies to exclude 40 pound blocks of cheddar cheese to be aged. Should 500 pound barrels sold for aging be excluded as well?

Answer: *No. The Final Rule does not exclude 500 pound barrels to be aged.*

Question: Should reduced or low fat cheddar cheese products be included in the weekly report submitted to NASS?

Answer: *No. Only products meeting the specifications described in the final rule should be reported to NASS.*

Question: Why exclude NFDM that is more than 180 days old?

Answer: *Prices reported to NASS should be for the basic commodity NFDM. NFDM that is more than 180 days old may be sold at a lower price than NFDM that is not old.*

Question: How should industry maintain records on the NFDM 180-day issue?

Answer: *How records are maintained is an individual company decision.*

Question: If the product is not graded, how do firms know to include/exclude on the weekly Dairy Products Prices Survey?

Answer: *The individual in the plant responsible for plant production (i.e. cheese maker) should be consulted to determine the quality of the product being produced. If the product quality is equal or equivalent to grades specified on the Dairy Products Price questionnaires, the product should be included.*

Question: How do firms determine if 40 pound blocks of cheddar meet the color specifications?

Answer: *The color reporting specifications for 40 pound blocks of cheddar cheese is “within the color range of 6-8 on the National Cheese Institute color chart.” The individual in the plant responsible for plant production (i.e. cheese maker) should be consulted to determine if the color of the product being produced meets specifications.*

Question: The reporting specifications state that instant nonfat dry milk should not be reported. Should semi-instant non-fat dry milk that has no added lactose be reported? At what point in the spectrum should a product be excluded?

Answer: *The report form specifies that sales of non-fortified, nonfat dry milk meeting USDA Extra Grade and/or USPH Grade A standards should be reported as long as other reporting criteria are met.*

Question: Should unsalted butter be reported?

Answer: *No. Only products meeting the specifications described in the final rule should be reported to NASS.*

Question: Should Grade A butter be reported?

Answer: *No. Only products meeting the specifications described in the final rule should be reported to NASS.*

Question: Should nonfat dry milk manufactured using a high heat process be reported?

Answer: *No. Only products meeting the specifications described in the final rule should be reported to NASS.*

Question: Should skim milk powder be included in the report for NASS?

Answer: *Skim milk powder is similar to nonfat dry milk with one major distinction; the skim milk powder has been standardized for protein content. Nonfat dry milk is made from drying skim milk, but the resulting product's protein level varies between 34 and 37 percent. Nonfat dry milk is then mixed with another dry dairy product such as lactose powder to standardize the protein level at 34 percent creating skim milk powder which is typically traded in international markets. In parts of the U.S., skim milk powder is also considered a broad term including other dry products as well as nonfat dry milk. If a specific situation arises where the inclusion of data is questionable, the plant or its agent should contact NASS for further instructions.*

Question: Should sales of dry buttermilk products be reported?

Answer: *No. Only products meeting the specifications described in the final rule should be reported to NASS.*

Question: Should all 'kosher' products be included in Dairy Product Price surveys?

Answer: *No. Products made under close faith-based supervision throughout processing that carry a premium price for example Cholov Yisroel or Islamic Hahal should be excluded. If a specific situation arises where the inclusion of data is questionable, the plant or its agent should contact NASS for further instructions.*

Question: Should all 'kosher' products be excluded from Dairy Product Price survey?

Answer: *No. Most dairy products meet the definition of kosher on some level, only products carrying a premium and having been closely monitored by and actively involved faith-based supervisor throughout the production process should be excluded. If a specific situation arises where the inclusion of data is questionable, the plant or its agent should contact NASS for further instruction.*

Question: Should pallet charges be included in sales data reported to NASS?

Answer: *The charges for pallets should not be included in prices reported for any of the commodities.*

Question: Should all packaging costs for 40 pounds blocks be excluded from Dairy Product Price survey?

Answer: *No. The Final Rule states "a price reflecting packaging costs for cheese wrapped in a sealed, airtight package in corrugated or solid fiberboard container with a reinforcing inner liner or sleeve (excluding all other packaging costs from the reported price)."*

Question: Should all packaging costs for 500 pounds barrels be excluded from Dairy Product

Price survey?

Answer: *Yes. The Final Rule excludes all packaging costs for 500 pound barrels.*

Question: Should a sale of cheddar cheese containing multiple vats with weighted average moisture content below 37.7% be included or excluded if an individual vat exceeds 37.7% moisture content?

Answer: *The sales price reported should reflect the moisture content for which the price was determined. If a lot of barrel cheese is made up of 6 vats and one of them is over the 37.7 percent threshold, but the entire lot had one price and the average content for the lot was under the 37.7 percent threshold, the entire lot is reportable. If each vat was priced separately, the vat with moisture of over 37.7 percent would be excluded. If a specific situation arises where the inclusion/exclusion of data is questionable, the plant or its agent should contact NASS for further instructions.*

Question: Should sales of cheddar cheese in 500 pounds barrels with moisture content more than 37.7% to be excluded from Dairy Product Price survey?

Answer: *Yes. The Final Rule excludes all cheddar cheese with moisture content above 37.7% and that reported moisture content is to be weighted by volume.*

### **Issue – Intra-Company Sales and Re-sales**

Question: A dairy product sale, meeting all reporting specifications, was completed and reported to NASS in the previous week, but the buyer rejected and returned the product, how should this returned sale be reflected in this week's report and is the product eligible to be included in future sales?

Answer: *The current week would not be effected by the rejected product, but the previous week is to be revised. The product is eligible to be included in future reports only if the product continues to meet all specifications, the product was not sold and is not be considered as a resale. If a specific situation arises where the inclusion/exclusion of data is questionable, the plant or its agent should contact NASS for further instructions.*

Question: What is the definition of "intra-company" sales that are to be excluded?

Answer: *Intra-company sales are transfers from one division or subsidiary of a company to another division or subsidiary, generally for further manufacture.*

Question: For instance, if the division of a company transfers product to another division is that volume to be excluded?

Answer: *Yes. Product transferred from one division to another division.*

Question: If a company sells product to a wholly owned subsidiary that maintains separate books and records, is that volume to be included?

Answer: *No. Product sold to subsidiary.*

Question: If there is a federation of cooperatives and one member of the federation sells product to another member, is that volume to be included?

Answer: *Yes, unless one of the members is a subsidiary of the other.*

**Question: If a member of such a federation sells to the federation, should that volume be included?**

**Answer: *Member sales to a federation should not be reported if the sale occurred after August 15, 2009.***

Question: If the federation makes the first sale of product to a member, should that volume be included?

Answer: *Yes.*

Question: Assume that a federation of cooperatives normally markets its members' product to customers. Some of those customers will be the members or subsidiaries of members of the federation. The federation's job is to maximize the price for which product is sold and thus will charge all customers a market price. We would like to confirm that since title will only pass with the sale to the federation customer (that is the federation under this circumstance does not take title to the product from its member) that the first sale is to that federation customer, not to the federation. The federation collects that market price from its customer and pays its member pursuant to the federation agreement after subtracting its agency fee.

Answer: *Confirmed, assuming that the subsidiary purchasing the product is not a subsidiary of the member making the sale.*

Question: As a follow-up to the previous question. Under those circumstances since the assumed sale is made by the federation, we would like to confirm that the volumes sold to a member or a subsidiary of a member should be included. That means that the volume will not be excluded even if the product is produced by the federation's customer's parent company so long as the federation actually negotiates the sale?

Answer: *The sale would not be included if the sale were made to a subsidiary of the member who is the seller.*

**Question: There is another type of transaction in the marketplace. Sometimes (this is not the norm) a member of the federation with product available for sale by the federation will sell the product to the federation usually because no immediate**

**federation customer is available for that sale. An invoice will be generated, title passes to the federation and the federation will pay the federation member at the contract price for the product usually at a market clearing price. Later the product will be resold by the federation at whatever price it can obtain for the product and the profit or loss on that sale will be shared through the federation itself and not paid or charged to the member making the sale to the federation, Please confirm that in this instance, the only reportable sale, if any, is the sale from the member of the federation to the federation.**

**Answer:** *Member sales to a federation should not be reported if the sale occurred after August 15, 2009. Sales of product purchased from a member by the Federation are not reportable.*

Question: If a company sells product to a wholly owned subsidiary that maintains separate books and records and the subsidiary must competitively bid for the product, is that volume to be included?

Answer: *No. Product sold to subsidiary.*

### **Issue – Complete Transaction**

Question: When is a transaction complete – “shipped out’ and title transfer” – or is there some other factor such as possession?

Answer: *No, there is no other condition.*

Question: Is the transaction completed if you only have one of these factors?

Answer: *No.*

Question: If a purchase order calls for multiple shipments, is the transaction only completed when the last shipment is made and title transferred?

Answer: *This question is very general and only a general answer can be given. Sales should be reported as the date product is shipped out and the title transferred. If a specific situation arises where the inclusion of data is questionable, the plant or its agent should contact NASS.*

Question: When is a transaction completed if a shipment is delayed and title is not transferred because of actions outside the control of the parties?

Answer: *If the title is not transferred, the sale is not complete.*

Question: If an entity sells product to a customer and after the sale the customer requests that the seller keep the product available at the seller’s warehouse for up to 6 months should that product be included?

Answer: *No. Product has not ‘shipped out.’*

Question: Please confirm that a sale to a customer where the product by contract is stored in the original warehouse and later shipped (although title passes immediately); the only reportable transactions would be for those weeks when shipment occurs within 30 days of the sales contract.

Answer: *If by contract the product remains in the original warehouse and a storage cost is applied from that date, the product is considered “shipped” and the sale should be reported. Storage costs should not be included as part of the sales price.*

Question: If a sale is made and product is shipped FOB but delivery of the product to the customer does not happen because of an Act of God and a dispute arises over the payment, should the sale be included when it is shipped?

Answer: *Yes, if the title also transferred. If a specific situation arises where the inclusion of data is questionable, the plant or its agent should contact NASS.*

Question: Should a revised payment agreement result in restatement of the past report? If so, how long after the original transaction should a revised report be made?

Answer: *Yes. Revisions should be made to the four weeks of data prior to the week being reported. If a specific situation arises where the revision of data is questionable, the plant or its agent should contact NASS for further instructions.*

Question: What about other price adjustments common in the marketplace arising from a price dispute, product dispute or otherwise a private party disagreement that results in an adjusted price? Should a revised payment agreement result in a restatement of a past report? Again if so, for how far back should a revised report be made?

Answer: *Revisions should be made to the four weeks of data prior to the week being reported. If a specific situation arises where the revision of data is questionable, the plant or its agent should contact NASS for further instructions.*

### **Issue – Forward Contracts**

Question: When does the 30-day exclusion period commence?

Answer: *The 30 days refers to when the selling price was set. Meaning, the selling price was set (and not adjusted) 30 or more days before the transaction was completed.*

Question: If a sale is set and then the price adjusted within 30 days which price is reported and within what time period?

Answer: *Sales should be reported as the date product is shipped out and the title transferred.*

*If a specific situation arises where the inclusion of data is questionable, the plant or its agent should contact NASS for further instructions. You should report the price when the transaction is completed and if needed submit revisions (up to four weeks).*

Question: A sales contract is entered into on May 1 at \$1.00 per pound of product specifying five shipments of 1 million total product pounds divided equally (200,000 pounds each) on May 10, May 20, June 1, July 1, and August 1. Title passes on the date of shipment. But the contract is not deemed to be fulfilled unless all the shipments are made and the price while fixed in the contract may turn out to be disputed. None the less, there are five separate shipments. All shipments are made on the specified date. There is no dispute as to the May 10 and July 1 shipments and the price paid is the price in the contract for those two shipments. However, a dispute arises as to the May 20, June 1 and August 1 shipments. Each dispute is resolved within 10 days of shipment (May 30, June 10 and August 10) at a price of \$0.95 for May 20 and June 1 shipments and of \$1.05 for the August 1 shipment. Which of these five shipments included in this one contract are reported (if any), when, at what price and with what adjustments (if any). Is the answer different in any way if there is no dispute as to any transaction?

Answer: *Absent a contract for storage, only shipments made on May 10 and May 20 should be reported at the contract price. Price adjustments occurring within the NASS's four-week revision period should be reported.*

Question: An export contract is entered into for sales for the next three months. The volumes to be shipped (total) for duration are fixed but the price is not fixed until under 30 days before shipment. However, the parties set a floor price, below which the price cannot fall, and a ceiling price, which the price cannot go above.

Answer: *The plant should report sales prices and volumes for the first 30 days of the contract period. After the first 30 days, sales prices and volumes should be reported as long as the sales price is not one of the boundary prices. Boundary prices were established at the beginning of the contract period and therefore are not necessarily representative of current market conditions.*

Question: An export contract is entered into for sales through January. The volumes to be shipped (total) for duration are fixed but the price is not fixed until under 30 days before shipment except that the parties set a floor price below which the price cannot fall. The floor is below current prices. There is no ceiling price and no range as in the last question.

Answer: *The plant should report sales prices and volumes for the first 30 days of the contract period. After the first 30 days, Sales prices and volumes should be reported as long as the sales price is not the boundary price. The boundary price was established at the beginning of the contract period and therefore is not necessarily representative of current market conditions.*

Question: A plant has a long-term contract to sell dairy products at a price that varies with market supply and demand conditions. Prices change at least every 30 days reflecting current conditions. The contract, however, contains an upper boundary price level and/or a lower boundary price level. Should the plant report sales made under this contract?

Answer: *The plant should report sales prices and volumes for the first 30 days of the contract period. After the first 30 days, sales prices and volumes should be reported as long as the sales price is not one of the boundary prices. Boundary prices were established at the beginning of the contract period and therefore are not necessarily representative of current market conditions.*

Question: Please confirm that if the member sells the product to the federation, the product remains in the member's warehouse and the federation does not ship the product to its customer within 30 days of that sale, NASS does not want any reporting of that transaction.

Answer: *Confirmed.*

Question: If the product in the previous question is shipped within 30 days, please confirm that the transaction should be reported and reported at the price agreed upon between the member and the federation.

Answer: Confirmed.

### **Issue – Dairy Export Incentive Program (DEIP) and Premium Assisted Sales (such as CWT Sales)**

Question: Why are DEIP sales and premium assisted sales, such as CWT export assistance sales, excluded in the reporting specifications?

Answer: *DEIP contracts entered into more than 30 days before date of shipment may not be reflective of current market conditions. Furthermore, DEIP sales or other premium-assisted sales include bonuses paid by third parties. Export bonuses are frequently based upon market averages of domestic and international commodity prices that may or may not be reflective of the actual needs of the two parties to reach a sales agreement.*

### **Issue – Other Miscellaneous**

Question: Should manufacturer sales to the Commodity Credit Corporation (CCC) be included in prices and volumes reported to NASS?

Answer: *Yes, as long as the other reporting criteria are met.*

Question: CME spot cheese includes a 3-cent per pound discount for cheese delivered in steel barrels. How does this impact the prices submitted to NASS?

Answer: *It has no impact. The price reported to NASS should be the value received by the firm. For barrel cheese, any packaging costs should not be included in the reported price.*

Question: Should energy surcharges be included in the price reported to NASS?

Answer: *Yes.*

Question: Should commissions be included in the price reported to NASS?

Answer: *Do not deduct commissions from the price received.*

Question: Should brokerage fees be included in the price reported to NASS?

Answer: *Do not deduct brokerage fees from the price received.*

Question: Should charges, for example the \$25 transaction fee paid to the CME, be included in the price reported to NASS?

Answer: *Do not deduct charges from the price received.*

Question: Explain the instructions to report f.o.b. plant if the product is “shipped out” from the plant or f.o.b. storage facility if the product is “shipped out” from the storage facility.

Answer: *For some transactions, products are shipped to the buyer, or under the buyer’s direction, directly from the plant. For other transactions, products are shipped to the buyer, or under the buyer’s direction, from a storage facility that is separate from the plant. In both cases, transportation costs associated with shipping the product to the buyer, or under the buyer’s direction, should not be added to the reported price. In the case of products that are sold from a storage facility, do not deduct transportation costs associated with transporting the products from the plant to the storage facility.*

Question: A dairy manufacturer producing dairy products in the U.S. ships their dairy products to a wholly owned storage location outside the U.S., should these sales be included in the Dairy Product Prices Report?

Answer: *Do not include the sale of dairy products from storage locations outside the U.S.*

Question: A west coast dairy manufacturer ships finished dairy products to an east coast storage location, should the transportation cost be deducted from the price?

Answer: *Do not deduct transportation cost associated with shipping products to storage locations. Transporting a product to a storage facility is a marketing cost and is*

*reflected in the make allowance. The make allowance in the AMS pricing formula includes a marketing cost factor which reflects this cost among other marketing costs. Thus, to subtract the cost of transporting products to a storage facility from the price received would be deducting that cost twice.*

Question: Company A owns and ships condensed milk to Company B. Company B processes the condensed milk into dairy products under a tolling agreement (Company B receives only a fee to make the dairy products never owning the raw materials or finished products). Company B transfers the finished product to Company A. Who should report the sale of dairy products made under tolling agreements? Who should report production under tolling agreements?

Answer: *Company A is responsible for reporting any qualifying sales under tolling agreements. Company B is responsible for reporting production.*