

2012 Supporting Statement - Part A

(Final Rule)

Dairy Products Mandatory Sales Reporting

OMB No. 0581-NEW (0274)

NOTE TO REVIEWER: This collection is currently being collected by NASS until the electronic database is activated, at which time NASS will submit to OMB a Justification for Change to discontinue collecting this data through their current information collection package 0535-0020.

JUSTIFICATION

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

The Dairy Product Mandatory Reporting Program was established on August 2, 2007, on an interim final basis (72 FR 36341). A final rule (73 FR 34175) became effective June 22, 2008. The National Agricultural Statistics Service (NASS) currently collects information for the program as part of the information collection package OMB 0535-0020. NASS collects the information in accordance with a Memorandum of Understanding with Agricultural Marketing Service (AMS). Agricultural Marketing Service (AMS) provides verification and enforcement functions for the program.

The Mandatory Price Reporting Act of 2010 amended the Agricultural Marketing Act of 1946 (the Act), requiring the Secretary of Agriculture (Secretary) to establish an electronic reporting system for certain manufacturers of dairy products to report sales information for the Dairy Product Mandatory Reporting Program. The Act further states that the Secretary shall publish the information obtained for the preceding week not later than 3:00 p.m. Eastern Time on Wednesday of each week.

Due to the Mandatory Price Reporting Act of 2010 (P.L. 111-239, signed September 27, 2010), these surveys are now required to be submitted electronically. A proposed rule for implementing the amendments was published in the Federal Register on June 10, 2011 (76 FR 112), which included a request for public comments on the proposed amendments and the information collection burden. The proposed rule stated that the data collection responsibilities will be transferred from NASS to AMS.

AMS administers programs that facilitate the efficient, fair marketing of U.S. agricultural products, including food, fiber, and specialty crops. The data that is collected on these

surveys will enable AMS to report information in a timely manner and promote competition in the dairy industry. Additionally, the sales information reported are used by USDA to calculate minimum prices paid to dairy farmers or their cooperative associations for milk marketed through the Federal milk marketing order system.

The survey respondents will be required to submit information through a secure Internet connection using a username and password to report prices. AMS will provide training to the respondents for the procedures to be followed using the secure website. There will be a voluntarily test period to allow respondents time to verify the submission of surveys and overall accuracy. Any feedback received during this outreach and testing period will be used to correct technical problems.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The survey respondents will be required to submit information through a secure Internet connection using a username and password to report prices. After the respondent has logged onto the web-based software, they will be prompted to the appropriate electronic product forms to be completed. Copies of screenshots of the electronic forms are being submitted to OMB for approval.

Data received from these surveys are used by the USDA to calculate minimum prices for raw milk marketed through the Federal milk marketing order system. The forms being submitted for approval list the questions that the respondents will complete; total pounds sold, total dollars, price per pound, and moisture content (if applicable).

The following is a listing of the electronic forms that respondents will complete, listing the form number, form name and a brief description. Respondents can access the electronic forms at: <https://mpr2.ams.usda.gov/mpr/>.

The proposed rule contained draft survey forms. This final rule establishes a permanent electronic reporting system. In doing so, these forms were renamed and are permanent.

Electronic forms:

DY-201; Weekly Butter Report; Respondents report butter sales as total pounds sold, total dollars, and price per pound.

DY-202; Weekly Cheddar Cheese (40 lb. blocks) Report; Respondents report 40 lb. block cheddar cheese sales as total pounds sold, total dollars, and price per pound.

DY-203; Weekly Cheddar Cheese (500 lb. barrels) Report; Respondents report 500 lb. barrel cheddar cheese sales as total pounds sold, total dollars, price per pound, and weighted moisture content. _

DY-204; Weekly Dry Whey Report; Respondents report dry whey sales as total pounds sold, total dollars, and price per pound.

DY-205; Weekly Nonfat Dry Milk Report; Respondents report nonfat dry milk sales as total pounds sold, total dollars, and price per pound.

A survey follow-up verification is only necessary when a problem is identified with data that a respondent reported. If necessary, AMS personnel will place a call to the respondent to verify information.

While the weekly submissions will be made through electronic means, the annual validation survey will be handled using paper forms.

Paper forms:

DA-230; Dairy Product Sales Survey Annual Validation Worksheet; Annual validation to determine if the plant is required to report, instruct respondents on the process of completing surveys and answer any questions respondents may have. This form will be used by an AMS employee in conjunction with respondents and potential respondents as an interview survey. This form will not be completed electronically.

DA-230-S; Supplement-Multiple Plants Screening Table; List all plants affiliated that produce any dairy products. This supplement is only required if answering “YES” to question 1 in section 1 of DA-230. The burden is included as part of form DA-230.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

The Mandatory Price Reporting Act of 2010 requires the Secretary to establish an electronic reporting system. This final rule requires the collection of information would be required to be submitted electronically via a secure Internet connection with a user name and a password. The survey application will be hosted by AMS and will be accessible through the AMS website (<https://mpr2.ams.usda.gov/mpr/>).

Dairy product price information is currently collected by NASS. NASS currently allows manufacturers to submit information via the Internet, by email, or by fax. Under the AMS administered information collection, all reporting entities will be required to submit

information through a secure web-based application. NASS has indicated that plants participating in their surveys have the necessary computer technology to complete the surveys. AMS does not anticipate participating plants having inadequate computer processing equipment to complete the surveys. Therefore, there would be no significant start-up costs or additional burden anticipated for the reporting entities as a result of implementing this rule as proposed.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The information to be collected through these surveys is currently collected by NASS. As of the effective date of implementation, the data collection responsibilities will be transferred to AMS. There are no other sources available to collect this information.

For up to six weeks prior to the full implementation of the electronic reporting platform, AMS plans to beta test the electronic-submission technology, and all reporting entities will be encouraged to voluntarily participate in the beta-testing program. Any feedback received during this outreach and testing period will be used to correct technical problems.

During the time period of beta-testing, there will be voluntary duplication of reporting. However, this will only be from the respondents that voluntarily choose to participate in the beta-testing. The purpose of this temporary duplication will be to ensure that the secure web based application is in full working order and all data is captured properly as reported. The beta-testing will stop at a set effective date that will be published in the final rule and there will be no mandatory duplication of reporting. At that time, NASS will cease collecting this data and submit a justification for change for OMB information collection package 0535-0020.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

As required by law, AMS is required to collect price information from dairy manufacturers producing and selling one million pounds or more of specific dairy products (cheddar cheese, butter, nonfat dry milk and/or dry whey) per calendar year. The surveys specifically exclude entities with annual production of less than 1 million pounds of a specified product. AMS will require the same information that is currently reported to NASS and the same reporting entities would be required to report. Therefore, this information collection request does not add any significant burden to small businesses.

Small businesses in the dairy product manufacturing industry have been defined by the Small Business Administration (SBA) as those processors employing not more than 500 employees. For purposes of determining a processor's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. Based upon company profile information available on the Internet, of the 51 respondents, AMS estimates that almost half of the reporting entities are considered small businesses under the criteria established by the SBA.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The Mandatory Price Reporting Act of 2010 amended the Agricultural Marketing Act of 1946, requiring the Secretary to establish an electronic reporting system for certain manufacturers of dairy products to report sales information for the Dairy Product Mandatory Reporting Program. The Act further states that the Secretary shall publish the information obtained for the preceding week not later than 3:00 p.m. Eastern Time on Wednesday of each week.

The sales information reported are used by USDA to calculate minimum prices paid to dairy farmers or their cooperative associations for milk marketed through the Federal milk marketing order system. Federal milk marketing order regulations specify formulas based upon weekly reported prices for dairy products included in this survey.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- REQUIRING RESPONDENTS TO REPORT INFORMATION TO THE AGENCY MORE OFTEN THAN QUARTERLY;

Dairy products sales data are collected weekly to meet the requirements of the Dairy Product Mandatory Price Reporting Program. The price data are used in the determination of monthly minimum raw milk prices under the Federal Milk Marketing Order Program.

- REQUIRING RESPONDENTS TO PREPARE A WRITTEN RESPONSE TO A COLLECTION OF INFORMATION IN FEWER THAN 30 DAYS AFTER RECEIPT OF IT;

There are no special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

- **REQUIRING RESPONDENTS TO SUBMIT MORE THAN AN ORIGINAL AND TWO COPIES OF ANY DOCUMENT;**

There are no special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

- **REQUIRING RESPONDENTS TO RETAIN RECORDS, OTHER THAN HEALTH, MEDICAL, GOVERNMENT CONTRACT, GRANT-IN-AID, OR TAX RECORDS FOR MORE THAN 3 YEARS;**

There are no special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

- **IN CONNECTION WITH A STATISTICAL SURVEY, THAT IS NOT DESIGNED TO PRODUCE VALID AND RELIABLE RESULTS THAT CAN BE GENERALIZED TO THE UNIVERSE OF STUDY;**

There are no special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

- **REQUIRING THE USE OF A STATISTICAL DATA CLASSIFICATION THAT HAS NOT BEEN REVIEWED AND APPROVED BY OMB;**

There are no special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

- **THAT INCLUDES A PLEDGE OF CONFIDENTIALITY THAT IS NOT SUPPORTED BY AUTHORITY ESTABLISHED IN STATUE OR REGULATION, THAT IS NOT SUPPORTED BY DISCLOSURE AND DATA SECURITY POLICIES THAT ARE CONSISTENT WITH THE PLEDGE, OR WHICH UNNECESSARILY IMPEDES SHARING OF DATA WITH OTHER AGENCIES FOR COMPATIBLE CONFIDENTIAL USE;**

There are no special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

- **REQUIRING RESPONDENTS TO SUBMIT PROPRIETARY TRADE SECRET, OR OTHER CONFIDENTIAL INFORMATION UNLESS THE AGENCY CAN DEMONSTRATE THAT IT HAS INSTITUTED PROCEDURES TO PROTECT THE INFORMATION'S CONFIDENTIALITY TO THE EXTENT PERMITTED BY LAW.**

There are no special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

8. Provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments.

The 60-day notice for this information collection was embedded into the Proposed Rule and Opportunity to File Comments, published in the *Federal Register* on June 10, 2011, Vol. 76, No. 112 on page 34004 and invited comments through August 9, 2011. A total of seven comments were received during the 60-day comment period. Of those, six supported the proposed rule and one was neutral.

Two commenters asked that AMS initiate a second rule and comment period so that the industry can address issues on product specifications, data collection, and publication. AMS is planning to consider a second rule in the future.

One commenter requested daily reporting, two commenters requested that reporting requirements be expanded to include additional dairy products, and another commenter requested to expand the number of required reporting plants by reducing the 1 million pounds per year threshold to 500,000 pounds per year. AMS has no authority to change reporting frequency, expand the reporting of additional products, or to change the 1 million pound threshold.

Three commenters expressed concern about the reporting deadline being moved to one day earlier in the week. AMS responded that the weekly reporting deadline was changed in order to allow AMS to complete validation checks and data analysis before the weekly publication by 3:00 p.m. Eastern Time on Wednesday of each week.

Three commenters expressed concern about increased burdens and revisions for weeks that included an intervening holiday. AMS responded that it plans to allow reporting later in the week than Tuesdays in these cases.

One commenter asked AMS to provide weekly notices of reporting deadlines for each week. AMS does not plan to send weekly reminders. AMS will provide a reporting schedule prior to the beginning of each year.

One commenter requested that cheese committed for sale, but not yet sold (delivered), be designated as such for mandatory storage reporting. Storage reporting is the responsibility of NASS and is outside of the scope of the rule.

There were no changes made to the final rule due to any of the comments received.

- **DESCRIBE EFFORTS TO CONSULT WITH PERSONS OUTSIDE THE AGENCY TO OBTAIN THEIR VIEWS ON THE AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, THE CLARITY OF INSTRUCTIONS AND RECORDKEEPING, DISCLOSURE, OR REPORTING FORMAT (IF ANY), AND ON THE DATA ELEMENTS TO BE RECORDED, DISCLOSED, OR REPORTED.**
- **CONSULTATION WITH REPRESENTATIVES OF THOSE FROM WHOM INFORMATION IS TO BE OBTAINED OR THOSE WHO MUST COMPILE RECORDS SHOULD OCCUR AT LEAST ONCE EVERY 3 YEARS -- EVEN IF THE COLLECTION OF INFORMATION ACTIVITY IS THE SAME AS IN PRIOR PERIODS. THERE MAY BE CIRCUMSTANCES THAT MAY PRECLUDE CONSULTATION IN A SPECIFIC SITUATION. THESE CIRCUMSTANCES SHOULD BE EXPLAINED.**

The data to be collected through this information collection is currently being collected by NASS. NASS collects the information in accordance with a Memorandum of Understanding with Agricultural Marketing Service (AMS). AMS meets regularly with NASS to discuss the implementation, administration and the transfer of data collection responsibility to AMS. The data collected will be almost identical to what is currently collected by NASS. While NASS has required either the total sales dollars or the dollars per pound in addition to the total pounds of products sold to be reported, AMS will require both the total sales dollars and the dollars per pound to be reported along with the total pounds of products sold in order to provide an additional validation check. Since this is a de minimus change in reporting burden, it has no effect on the estimated reporting burden for each survey.

Due to the use of statistical methods for this collection, The Survey Administration Branch of NASS examined a draft of the Supporting Statement B. All comments have been incorporated in this submission. Contact: David Hancock, 202-690-2388.

Before the proposed rule was published, AMS met with numerous industry stakeholders on the necessity of implementing weekly electronic reporting of dairy product prices. The following individuals have been consulted at various times for their respective views:

- Elvin Hollon, Dairy Farmers of America (DFA), 888-332-6455
- Richard Lewis, Dairy America, 559-251-0992

- Thomas Wegner, Land O'Lakes, 800-328-9680

As described in number 7 above, comments in response to the proposed rule were considered for the final rule and this information collection package.

9. Explain any decision to provide any payment or gift to respondents.

There are no payments or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

All surveys include a statement that individual reports are kept confidential. U.S. Code Title 18, Section 1905 and U.S. Code Title 7, Section 2276 provide for the confidentiality of reported information. All employees of AMS must read the regulations and sign a statement of compliance.

Only aggregated data from dairy plants will be released. Individual plant data will not be released.

11. Provide additional justification for any questions of a sensitive nature.

There are no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I. Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories.

Summary of the information collection is detailed on the AMS-71 form. The time required to complete the survey information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. AMS believes the records that would be required to be maintained are already being maintained for at least 2 years as part of the normal course of business.

Costs to the respondents of completing the surveys are assumed to be comparable to the hourly rate of first-line supervisors/managers of office and administrative support workers. Reporting time of 1,806 hours is multiplied by \$26.83 per hour (hourly mean earnings for supervisor) for a total annual cost to the respondents of \$48,455.

Data for computation of this hourly rate was obtained from the U.S. Bureau of Labor Statistics printed in July of 2009.

13. Provide an estimate of the total annual cost burden to respondents or record-keepers resulting from the collection of information.

There is no significant capital/start-up or ongoing operation/maintenance costs associated with this information collection. All dairy product manufactures are believed to already have the computer processing capability needed to complete the surveys. Computer software will be provided to respondents and AMS believes that all respondents currently have internet connections.

14. Provide estimates of annualized cost to the Federal government; provide a description of the method used to estimate cost which should include quantification of hours, operational expenses, and any other expense that would not have been incurred without this collection of information.

The estimated total cost to the Federal government for the Dairy Products Mandatory Sales Reporting Surveys consists of three categories. The total estimated start-up costs is \$558,000, and the estimated total annual costs for fiscal year 2012 and 2013 are \$583,000 and \$567,000, respectively. The estimated average annual cost to the Federal government is \$575,000. The following is a breakdown of the estimated costs:

Start-up costs:

- Software Development, Implementation, and Publications \$558,000

Annual Operation:

	<u>FY 2012</u>	<u>FY 2013</u>
• Salary and Benefits	\$243,000	\$250,000
• Travel	\$50,000	\$51,000
• Training	\$25,000	\$25,000
• Overhead	\$40,000	\$41,000
• Software Maintenance	\$150,000	\$150,000
• Software Enhancement	\$75,000	\$50,000

15. Explain the reasons for any program changes or adjustments (reasons for changes in burden).

Since the development of the software there has been a change to modify the cheddar cheese reporting procedure from what was presented in the proposed rule. On the paper forms submitted with the proposed rule as well as the current forms used by NASS,

respondents report cheddar cheese by using one form. In the proposed rule our estimated per response burden of 20 minutes was understated because we previously did not account for the extra time it took plants to report sales information for both the 40-pound blocks and 500-pound barrel cheddar cheese on DA-232 form. The information collected is the same, but during the software development of the electronic forms, the 40-pound block and 500-pound barrel have now been separated into two individual electronic forms (DY-202 and DY-203), each with a per response time of 20 minutes. Also for the final rule, numbers of the respondents have been updated to reflect the number of respondents reporting to NASS in 2011. The combination of these changes between the proposed and final rule have resulted in an increase of 209 burden hours and 69 responses.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

The dairy products sales surveys for cheddar cheese, butter, dry whey and nonfat dry milk will be provided to the respondents through a secured Internet connection. The surveys will be collected weekly, by Tuesday, noon local time. A weighted average of the dairy product price data will be computed by AMS based on total dollars and total volume (cheddar cheese, butter, nonfat dry milk and/or dry whey), along with the weighted average moisture content (cheddar cheese) of the previous week's qualifying sales, ending on Saturday. This data will be reviewed, averaged and published on Wednesday by 3:00 p.m. Eastern Time. Reporting prices for these commodities is mandatory.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Since the forms are electronic, there is no need to have an expiration date.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions" of OMB Form 83-I.

There are no exceptions to the certification statement.