

Dockets: AO-14-A77

DA-07-02

MILK IN THE NORTHEAST AND OTHER MARKETING AREAS

Class III/IV Milk Price Formulas

Additional Statement of National All-Jersey Inc.

My name is Erick Metzger, and I serve as General Manager of National All-Jersey Inc. I have provided previous testimony at this hearing.

National All-Jersey Inc (NAJ) seeks to expand Proposal 2 submitted by Agri-Mark to include the products of whey protein concentrate and lactose in the annual manufacturing cost surveys should Proposal 2 be enacted by the Secretary.

Several witnesses at the two previous session of this hearing have testified to the profitability challenges being experienced by cheese plants given the extraordinary increase in dry whey prices since last fall combined with the fact that dry whey prices no longer serve as an equitable proxy for whey protein concentrate values. Many of these same witnesses have requested that “something” be done about the whey valuations in the Class III price formula. Yet no proposals to value whey solids on any products other than dry whey were received in advance of the September 30, 2006 deadline for submitting proposals for this hearing.

Subsequent conversations among industry personnel have included the concepts of incorporating whey protein concentrate and/or lactose prices into product price formulas. However, no data exist from the current manufacturing plant cost surveys on which to base a manufacturing allowance for either product. NAJ offers this amendment to Proposal 2 in order to begin to build a dataset of manufacturing costs for WPCs and lactose that might be used at a future Dairy Programs hearing.

In the same vein, NAJ further proposes that the weekly National Agricultural Statistics Service (NASS) dairy product price surveys be expanded to include whey protein concentrates and lactose. Dairy Market News, published by the USDA using data collected by Dairy Programs, reports prices for a variety of products, including WPCs and lactose. However, the Dairy Market News reports a price range for these products, and industry personnel typically use the midpoint of the range as that week's price. By building a dataset of NASS prices for WPCs and lactose, the industry will be better equipped in the future to submit and debate proposals on how to include these products in price formulas to value whey solids other than only using dry whey.

WPC34 serves as an industry standard product for whey protein concentrate. Table 18 in the Dairy Market Statistics 2006 Annual Summary (appended to this statement) provides a commonly recognized product definition and price reporting format for WPC34. NAJ proposes that the parameters used by Dairy Market News when gathering and reporting WPC34 prices for Table 18 also be used to determine manufacturing plant eligibility for the annual cost survey, if adopted from this hearing, and by the NASS to survey prices for WPC34.

Likewise, Table 23 in the Dairy Market Statistics 2006 Annual Summary (appended to this statement) provides a commonly recognized product definition and price reporting format for lactose. NAJ proposes that the parameters used by Dairy Market News when gathering and reporting lactose prices for Table 23 also be used to determine manufacturing plant eligibility for the annual cost survey, if adopted from this hearing, and by the NASS to survey prices for lactose.

The entire Dairy Market Statistics 2006 Annual Summary is published at <http://www.ams.usda.gov/dairy/mncs/dy20070525Annualsummary.pdf>.

If Code of Federal Regulation definitions are needed for whey protein concentrate and lactose, NAJ proposes to use the definition for lactose given in 21 CFR Ch. 1 Sec.

168.122 (appended to this statement) to determine both the plants eligible to be included in the manufacturing cost surveys and the NASS price surveys. While many versions of WPCs are produced, WPC-34 serves as an industry standard. 21 CFR Ch. 1 Sec.

184.1979c (appended to this statement) gives a broad definition for whey protein concentrate products. NAJ proposes that the subset of WPCs testing a minimum of 34% protein be used to determine both the plants eligible to be included in the manufacturing cost surveys and the NASS price surveys.

2006 MONTHLY AVERAGES

AREA & PRODUCT : JAN : FEB : MAR : APR : MAY : JUN : JUL : AUG : SEP : OCT : NOV : DEC : AVERAGE*

 Dollars per pound

DRY PRODUCTS - continued

Table 18--Whey protein concentrate, edible 34% protein, 2006 (Carlot or Trucklot quantities in totes, 50 lb and 25 kg bags) 1/, F.O.B.

CENTRAL AND WEST	08004	07524	06825	06144	05990	05800	05935	06209	06703	0746	8	08295	08869	06981
-- Mostly	07943	07482	06864	06200	05953	05800	05858	06100	06626	0745	3	08182	08698	06930

1/Wheyprotein onentrate that meets a minimum of34 percent protein.

Table 19--Whey powder, used for animal feed, 2006 (Carlot or Trucklot quantities in totes, 50 lb and 25 kg bags), F.O.B.

CENTRAL MILKREPLACER	03201	03274	03029	02600	02523	02545	02677	02960	03234	0371	0	04008	04140	03158
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Table 20--Buttermilk powder (Min. 30% protein) 2006 (Carlot or Trucklot quantities in totes, 50 lb and 25 kg bags), F.O.B.

FOB.CENTRAL	08835	08568	08121	07475	07257	07342	08584	09911	10408	1093	8	12117	13445	09417
FOB.NORTHEAST	09473	08945	08267	07388	06914	06845	08063	08785	09499	0987	0	10379	11024	08788
DELVD SOUTHEAST	09386	08939	08422	07700	07252	07070	08251	08985	09709	1007	0	10579	11224	08966
FOB.WEST	08784	08209	07470	06606	06459	06357	07319	08024	08899	0919	4	09972	10315	08134
-- Mostly	08573	08111	07485	06600	06452	06407	07293	08107	08825	0916	7	09660	10058	08062

*Annual averages are a simple average ofthe twlv monthlyaverages.

AREA & PRODUCT : JAN : FEB : MAR : APR : MAY : JUN : JUL : AUG : SEP : OCT : NOV : DEC : AVERAGE*

 2006 MONTHLY AVERAGES

 Dollars per pound

DRY PRODUCTS - continued

Table 21--National Evaporated milk, 2006 (Dollars per case, Carlot or Trucklot quantities) 1/ Delivered Major U.S. Cities

EVAPORATED MILK-NATIONAL	247500	247500	264239	286000	286000	286000	286000	286000	286000	000	286000	286000	277770
1/Case =48 12-fluid ounce cans. Prices exclude promotional and other sales allowances.													

Table 22--National whole milk powder, 2006 (Carlot or Trucklot quantities in totes, 50 lb and 25 kg bags), F.O.B.

FOB.PRODUCING PLANT	13441	13206	12299	11988	11786	11703	11608	12402	12633	12	876	13117	13250	12526
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Table 23--Lactose, edible, 2006 1/ (Carlot or Trucklot quantities in totes, 50 lb and 25 kg bags), F.O.B.

CENTRAL AND WEST	02427	02492	02500	02678	02816	02873	03328	03438	03628	04	139	04392	05288	03333
-- Mostly	02363	02425	02430	02600	02705	02847	03290	03389	03620	04	188	04295	04350	03209

1/Including spot sales and up to three-month contracts.

Table 24--National casein, edible nonrestricted, 2006 1/, F.O.B. US Warehouse

RENNET	32100	32100	32100	30625	30500	30500	30500	30207	29750	30	036	30250	30250	30743
ACID	31750	31750	31750	31200	31000	31000	31000	30707	30250	30	536	30750	30750	31037
1/Including spot sales and up to three-month contracts. Mesh size 30 - 100.														

*Annual averages are a simple average of the twelve monthly averages.

Product Definitions

[Code of Federal Regulations]
[Title 21, Volume 3]
[Revised as of April 1, 2006]
[CITE: 21CFR184.1979c]

TITLE 21--FOOD AND DRUGS CHAPTER I--FOOD AND DRUG ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES SUBCHAPTER B--FOOD FOR HUMAN CONSUMPTION (CONTINUED)

PART 184 -- DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

Subpart B--Listing of Specific Substances Affirmed as GRAS

Sec. 184.1979c Whey protein concentrate.

(a) Whey protein concentrate is the substance obtained by the removal of sufficient nonprotein constituents from whey so that the finished dry product contains not less than 25 percent protein. Whey protein concentrate is produced by physical separation techniques such as precipitation, filtration, or dialysis. As with whey, whey protein concentrate can be used as a fluid, concentrate, or dry product form. The acidity of whey protein concentrate may be adjusted by the addition of safe and suitable pH-adjusting ingredients.

(b) The whey protein concentrate meets the following specifications:

(1) The analysis of whey protein concentrate, on a dry product basis, based on analytical methods in the referenced sections of "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th ed. (1980), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, is given in paragraphs (b)(1)(i) through (b)(1)(vii) of this section. Copies may be obtained from the AOAC INTERNATIONAL, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877, or may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(i) Protein content, minimum 25 percent--as determined by the methods prescribed in section 16.036 (liquid sample), entitled "Total Nitrogen--Officials Final Action" under the heading "Total Solids," or in section 16.193 (dry sample), entitled "Kjeldahl Method" under the

heading "Protein--Official Final Action."

(ii) Fat content, 1 to 10 percent--as determined by the methods prescribed in section 16.059 (liquid sample), "Reese-Gottlieb Method [Reference Method] (11)--Official Final Action" under the heading "Fat," or in section 16.199 (dry sample), entitled "Fat in Dried Milk (45)--Official Final Action."

(iii) Ash content, 2 to 15 percent--as determined by the methods prescribed in section 16.035 (liquid sample), entitled "Ash (5)--Official Final Action" under the heading "Total Solids," or in section 16.196 (dry sample), entitled "Ash--Official Final Action" under the heading "Dried Milk, Nonfat Dry Milk, and Malted Milk."

(iv) Lactose content, maximum 60 percent--as determined by the methods prescribed in section 16.057 (liquid sample), entitled "Gravimetric Method--Official Final Action" under the heading "Lactose," or in section 31.061 (dry sample), entitled "Lane-Eynon General Volumetric Method" under the heading "Lactose--Chemical Methods--Official Final Action."

(v) Moisture content, 1 to 6 percent--as determined by the methods prescribed in section 16.192, entitled "Moisture (41)--Official Final Action" under the heading "Dried Milk, Nonfat Dry Milk, and Malted Milk."

(vi) Solids content, variable--as determined by the methods prescribed in section 16.032, entitled "Method I--Official Final Action" under the heading "Total Solids."

(vii) Titratable Acidity, variable--as determined by the methods prescribed in section 16.023, entitled "Acidity (2)--Official Final Action" under the heading "Milk," or by an equivalent potentiometric method.

(2) Limits of impurities are: Heavy metals (as lead). Not more than 10 parts per million (0.001 percent), as determined by the method described in the "Food Chemicals Codex," 4th ed. (1996), pp. 760-761, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, Box 285, 2101 Constitution Ave. NW., Washington, DC 20055 (Internet address <http://www.nap.edu>), or may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(3) The whey protein concentrate shall be derived from milk that has been pasteurized, or the whey protein concentrate shall be subjected to pasteurization techniques or its equivalent before use in food.

(c) The whey protein concentrate may be used in food in accordance with good manufacturing practice as indicated in 184.1(b)(1).

(d) The percent of protein present on a dry product basis, i.e., "whey protein concentrate (___% protein)," shall be declared on the label of the package sold to food manufacturers. The percent of protein may be declared in 5-percent increments, expressed as a multiple of 5, not greater than the actual percentage of protein in the product, or as an actual percentage provided that an analysis of the product on which the actual percentage is based is supplied to the food manufacturer.

(e) The presence of whey protein concentrate in a finished food product shall be listed as "whey protein concentrate".

[46 FR 44441, Sept. 4, 1981, as amended at 54 FR 24899, June 12, 1989;
64 FR 1761, Jan. 12, 1999]

[Code of Federal Regulations]
[Title 21, Volume 2]
[Revised as of April 1, 2003]
From the U.S. Government Printing Office via GPO Access
[CITE: 21CFR168.122]

[Page 543-544]

TITLE 21--FOOD AND DRUGS

CHAPTER I--FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN
SERVICES (CONTINUED)

PART 168--SWEETENERS AND TABLE SIRUPS--Table of Contents

Subpart B--Requirements for Specific Standardized Sweeteners and Table
Sirups

Sec. 168.122 Lactose.

(a) Lactose is the carbohydrate normally obtained from whey. It may be anhydrous or contain one molecule of water of crystallization or be a mixture of both forms.

(b) The food shall meet the following specifications:

(1) The lactose content is not less than 98.0 percent, mass over mass (m/m), calculated on a dry basis.

(2) The sulfated ash content is not more than 0.3 percent, m/m, calculated on a dry basis.

(3) The pH of a 10.0-percent m/m solution is not less than 4.5 nor more than 7.5.

(4) The loss on drying for 16 hours at 120 deg.C is not more than 6.0 percent, m/m.

(c) The name of the food is "Lactose" or, alternatively, "Milk sugar".

(d) The methods of analysis in paragraphs (d)(1), (d)(2), (d)(3), (d)(4), and

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(d)(5) of this section are to be used to determine whether the food meets the requirements of paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this section. The methods are contained in "Official Methods of Analysis of the Association of Official Analytical Chemists", 14th Ed. (1984), including the 4th Supp. (1988), which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies of the material incorporated by reference may be obtained from the Association of Official Analytical Chemists International, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877-2504, or may be examined at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(1) Lactose content, sections 31.064 to 31.071, "Purity of Lactose, Liquid Chromatographic Method," First Action, 14th Ed. (1984), pp. 583 and 584.

(2) Lactose content, sections 31.064 to 31.071, "Purity of Lactose, Liquid Chromatographic Method," "Changes in Official Methods of

Analysis," 14th Ed., 4th Supp. (1988), p. 212. This reference recognizes the change in status of the method from first action to final action.

(3) Sulfated ash content, section 31.014, "Ash of Sugars and Sirups," Final Action, Sulfated Ash, 14th Ed. (1984), p. 575.

(4) pH, section 14.022, "pH of Flour, Potentiometric Method," Final Action, except that a 10-percent m/m solution of lactose in water is used for the determination, 14th Ed. (1984), p. 252.

(5) Loss on drying at 120 deg.C, section 31.070, 14th Ed. (1984), p. 584.

[42 FR 14479, Mar. 15, 1977, as amended at 47 FR 11834, Mar. 19, 1982; 49 FR 10103, Mar. 19, 1984; 54 FR 24896, June 12, 1989; 55 FR 8459, Mar. 8, 1990; 63 FR 14035, Mar. 24, 1998]