

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

In Regard to the Public Hearing Held on October 10 and 11, 2007

PROCEDURAL HISTORY

On October 10 and 11, 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 noticed on August 23, 2007 and expanded by a second Notice on September 24, 2007 for the purpose of considering adjustments to the Stabilization and Marketing Plans for Market Milk for the Northern California and Southern California Marketing Areas and the Pooling Plan for Market Milk (Plans). The Department called the hearing pursuant to the cited code sections after receiving a petition on August 15, 2007, from F & A Dairy of California, Inc. and a group of other California cheese processors. The Department issued an updated notice on September 24, 2007 after receiving a petition from the Alliance of Western Milk Producers to consider further amendments to the Plans. Four alternative proposals were also submitted to the Department.

At hearing on October 10 and 11, 2007 following procedures established for the conduct of the hearing and noticed on the dates referenced above to the regulated community, the Department 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 18 documents by means of post-hearing briefs, holding the record open for six additional days until October 17, 2007 for that purpose. Ex parte communication between Department staff and the public has been 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

CDFA remains committed to the long-term viability of the producer, producer-cooperative and the processor sectors of the California dairy industry and to the consumption of healthy dairy products by California consumers at reasonable prices. The Department invests considerable resources in conducting annual cost studies to use as a guide in determining reasonable dairy manufactured cost allowances. This annual study was released and available in September to assist all interested parties and the Department in the Class 4 Hearing process.

In weighing all available information, the Department has determined that changes are warranted to the current Stabilization and Marketing Plans for Market Milk but not to the Pooling Plan for Market Milk. The Department Cost Survey data and hearing record testimony provided significant evidence that amendments are necessary to the Class 4 formulas. The Hearing Panel Report provided helpful analysis for the determinations to be made based on the hearing record.

The Secretary agrees with and adopts the following Hearing Panel recommendation for amendment to the Stabilization Plans:

- Changing the Class 4a f.o.b. Adjuster for butter from \$0.0168 to \$0.0309 per pound;

However, the Secretary modifies the Hearing Panel recommendations for amendment to the Stabilization Plans as follows:

1. Establishes the Class 4a nonfat dry milk manufactured cost allowance at \$0.1698 not \$0.1750 per pound;
2. Establishes the Class 4b cheese manufactured cost allowance at \$0.1988 not \$0.2150 per pound;
3. Replaces the current Class 4b whey make allowance with a fixed whey factor of \$0.25 per hundredweight not \$0.10 per hundredweight;

Modifications 1 and 2 are made to keep manufactured cost allowances within close alignment with the range of testimony submitted at the hearing. Adoption of the fixed whey factor at \$0.25 per hundredweight is more representative of the current values of whey when transacted as a salvage product, primarily for use as animal feed.

The Department supports the industry discussions mentioned at the hearing between California producer and processor interests to address supply/demand imbalance issues. The Department stands ready to assist the groups in this process.

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 issuing these findings. The Department has considered all provisions set forth in Chapter 2 and 3 of the Food and Agricultural Code, whether specifically mentioned herein, including, without exception, all provisions and declarations regarding public interest considerations.

It is hereby found and concluded that:

- The current Pool Plan does conform to the standards prescribed to effectuate the purposes of said Chapters 2 and 3.
- The current Stabilization and Marketing Plans for Market Milk now in effect no longer conform to the standards prescribed in nor tend to effectuate the purposes of said Chapters 2 and 3.
- The proposed changes in the Panel Report (Attachment A) to the Class 4a f.o.b. adjuster for butter (set to \$0.0168 per pound) AND modifications referenced above to:
 1. Establish the Class 4a nonfat dry milk manufactured cost allowance at \$0.1698;
 2. Establish the Class 4b cheese manufactured cost allowance at \$0.1988, and;
 3. Replace the current Class 4b whey make allowance with a fixed whey factor of \$0.25 per hundredweight;

will tend to effectuate the purposes of said Chapters 2 and 3.

- The new Stabilization and Marketing Plans for Market Milk for Northern California (Attachment B) and Southern California (Attachment C) conform to the standards prescribed in and tend to effectuate the purposes of said Chapters 2 and 3.

ORDER

It is hereby ordered that the revised Stabilization and Marketing Plans for Market Milk for Northern California (Order Number 51) and for Southern California (Order Number 66) shall become effective on and after December 1, 2007.

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 November 20, 2007