

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

In Regard to the Public Hearing Held on October 30-31, 2008

PROCEDURAL HISTORY

On October 30-31, 2008, 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 duly noticed on August 19, 2008 for the purpose of considering amendments to the minimum Class 1, 2 and 3 farm price formulas and corresponding adjustments to the Stabilization and Marketing Plans for Market Milk for the Northern California and Southern California Marketing Areas (Plans). The Department called the hearing pursuant to the cited code sections after receiving a joint petition on August 4, 2008 from the Alliance of Western Milk Producers, Western United Dairymen and the California Dairy Women Association.

In accordance with procedures established for the conduct of such hearings and noticed to the regulated community on August 19, 2008 the Department subsequently received and accepted two alternative proposals from the Dairy Institute of California and Milk Producers Council on September 25, 2008.

At hearing on October 30-31, 2008, following procedures established for the conduct of the hearing and noticed to the regulated community on August 19, 2008, the Department, Hearing Officer Mike Cleary, presiding, opened the Official Hearing Record with the introduction of the jurisdictional documents (Notice, Petition, and Alternative Proposals and exhibits). The Department then 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 additional documentation by means of post-hearing briefs, holding the records open 7 additional days until November 7, 2008, for that purpose.

The hearing record closed on November 7, 2008 and no further supplementation of the Record is permitted under procedures established for the conduct of the hearings and noticed to the regulated community on August 19, 2008. Ex parte communication between Department staff and the public is 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

In weighing all available information, the Department has determined that changes to the current Stabilization and Marketing Plans for Market Milk are warranted to continue to effectuate the declared purposes of the Food and Agricultural Code. Based on the hearing record and Panel Report, the Secretary accepts the Panel's recommendation, with one modification as follows:

- The Class 1 formula CRP Adjuster will change from its current level of \$0.147 to \$-0.2030;

The impact of the modification will reduce the minimum farm formula price for Class 1 milk by approximately 3 cents per gallon (2 percent) beginning January 1, 2009 which is about \$0.35 per hundredweight. This reduction is more modest than the cut recommended by some hearing witnesses and CDFA Staff. This more modest reduction is supported by the ten months of comparable surrounding state farm price data in the hearing record (Food & Agr. Code, § 62062.1) and is consistent with the USDA make allowance adjustments implemented on October 1, 2008. Section 62062.1 requires the Department to review California Class 1 prices compared to prices paid to producers in contiguous states. "If the statewide weighted average Class 1 prices...are not in a reasonable relationship with the Class 1 prices paid to producers in contiguous states, the Secretary shall immediately hold a hearing to consider adjustments to the Class 1 prices."

A decrease in the minimum farm price of approximately two percent is also supported by a similar adjustment that was made in other states governed by federal regulation that became effective on October 1, 2008. California dairy products are marketed in nearly every state and need to be competitively priced. Matching the reductions made in most other states will help keep California dairy products more competitive.

This action is also supported by Food and Agricultural Code § 61802, subdivision (h), which states: ". . . in order to accomplish the purposes of this chapter and to promote the public health and welfare, it is essential to establish minimum producer prices at fair and reasonable levels so as to generate reasonable producer incomes that will promote the intelligent and orderly marketing of market milk in the various classes, and that minimum producer prices established under this chapter should not be unreasonably depressed because other factors have affected the levels of retail process paid by consumers." Staff collects cost information each quarter on a representative sample of California dairy producers. Producer representatives commented at the hearing about the high level of milk production costs. The more modest Class 1 price reductions could help lessen financial hardships to producers while balancing the need for California prices to remain competitive.

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

It is hereby found and concluded that:

- The proposed changes in the Panel Report (Attachment A) to the formulas for Class 1, 2, and 3 plus the one Class 1 formula modification referenced above 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 Chapters 2 and 3.

ORDER

It is hereby ordered that the revised Stabilization and Marketing Plans for Market Milk for Northern California (Order Number 53) and for Southern California (Order Number 68) shall become effective on and after January 1, 2009.

Signed By:

//s//

A.G. Kawamura, Secretary
California Department of Food and Agriculture

Signed and entered in
the Office of the Secretary
of Food and Agriculture at
Sacramento, California,
On December 17, 2008