

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

In Regard to the Public Hearing Held on June 30 and July 1, 2011

PROCEDURAL HISTORY

On June 30 and July 1, 2011, pursuant to Food and Agricultural Code (Code) Sections 62031 through 62079, and 3 CCR 2080.2, the Department of Food and Agriculture (Department) conducted a public hearing for the purpose of considering 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 petition on May 11, 2011, from California Dairies, Inc., and a petition on May 24, 2011, from Land O'Lakes, Inc. Two alternative proposals were also submitted to the Department.

At the hearing on June 30 and July 1, 2011, following procedures established for the conduct of the hearing and noticed on May 25, 2011 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 10 documents by means of post-hearing briefs, holding the record open for 10 additional days until July 11, 2011 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 Code Sections 62031 through 62079, the Secretary of Agriculture has broad discretion in deciding these issues. By custom and practice, the Secretary's decision is based on the hearing record and on the Hearing Panel Report. 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 Plans are warranted and necessary to continue to effectuate the declared purposes of the Code. The Secretary agrees with and adopts the Hearing Panel recommendations in their entirety regarding amendments to the Plans:

- Implementing the Department's administrative changes to the Class 4a and 4b formulas by including language to implement the collection of security charges provided by the Milk Producers Security Trust Fund as found in Code Section 62561.
- Increasing the f.o.b. California Price Adjuster for Grade AA butter from \$0.0309 to \$0.0485 per pound.

- Increasing the manufacturing cost allowance for Grade AA butter from \$0.1560 to \$0.1635.
- Increasing the manufacturing cost allowance for nonfat dry milk from \$0.1698 to \$0.1763.
- Replacing the \$0.25 fixed whey factor in the Class 4b formula with a sliding scale with five cent 'steps' that floors the whey factor at \$0.25/cwt. and caps the whey factor at \$0.65/cwt., using the Dairy Market News (DMN) Dry Whey-West Mostly commodity price series.

FINDINGS AND 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 Chapters 2 and 3, Part 3, Division 21 of the Code, whether specifically mentioned herein, including, 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 Classes 4a and 4b 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 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 55) and for Southern California (Order Number 70) shall become effective on and after September 1, 2011.

Original Signed by

Karen Ross, Secretary
California Department of Food and Agriculture

Signed and entered in
the Office of the Secretary
of Food and Agriculture at
Sacramento, California,
On August 22, 2011