



CALIFORNIA DEPARTMENT OF  
FOOD & AGRICULTURE

Karen Ross, Secretary

**NOTICE OF A CONSOLIDATED PUBLIC HEARING**  
**TO CONSIDER AMENDMENTS TO THE STABILIZATION AND MARKETING PLANS FOR**  
**MARKET MILK FOR THE NORTHERN AND SOUTHERN CALIFORNIA MARKETING AREAS**

Notice is hereby given that the California Department of Food and Agriculture (Department) is calling a consolidated public hearing to consider amendments to the Stabilization and Marketing Plans for Market Milk for the Northern California and Southern California Marketing Areas (Plans).

**Hearing Date, Place and Time** - The hearing will be held on September 12, 2013 in the Department Auditorium, 1220 N Street, Sacramento, California 95814. Beginning at 8:00 a.m. the hearing will remain open until all testimony has been received. If necessary, the hearing will be continued the following day starting at 8:00 a.m. at the same location.

The hearing is called pursuant to Articles 4 through 9, Chapter 2, Part 3, Division 21 of the Food and Agricultural Code (FAC), as implemented by Title 3, Section 2080.2 of the California Code of Regulations (3 CCR 2080.2). The hearing noticed herein will be conducted in accordance with the procedures prescribed in 3 CCR 2080.4.

**Petition Received by the Department** – On July 22, 2013, the Department received a petition requesting a public hearing to consider amendments to the Plans. A group of producer organizations, California Dairies, Inc., Milk Producers Council, California Dairy Campaign, and Western United Dairymen, submitted the petition. Petitioners propose a modification to the sliding scale that determines a dry whey factor in the Class 4b formula and to replace the temporary price adjustment currently in place with another.

The Department is considering the petition pursuant to FAC Sections 62031 through 62079, and 3 CCR 2080.2. A copy of the petition can be obtained by accessing the Department's web site at [www.cdffa.ca.gov/dairy](http://www.cdffa.ca.gov/dairy) or by contacting the Dairy Marketing Branch at (916) 900-5014. The web site information can be accessed from the dairy home page, by clicking on *Hearing Matrix*, then go to *Current Hearings*.

All interested parties may present data or information that is relevant to the consideration of the issues raised in the call of the hearing.

**Call of Hearing** – The hearing will consider three amendments to the Plans:

Temporary Price Adjustment

Specific proposals that would amend or change the provisions contained in Article III, Section 300, paragraph (H) of the Plans will be open for consideration at the hearing. Proponents of the



petition and any alternative proposal shall address, at a minimum, the economic conditions that have changed that would warrant adjustments to the current temporary price established as a result of the May 20, 2013 hearing. Proposed temporary amendments or changes to the Class 4b price may only increase or decrease the per pound component prices of the class prices after all the computations found in Article III, Section 300, Paragraphs (A), (B), (C), (D), and (E) have been completed. Proposed amendments shall follow the same format as currently found in Article III, Section 300, paragraph (H):

- (H) The minimum prices for components used for Class 1, Class 2, Class 3, Class 4a, and Class 4b, as set forth respectively in Paragraphs (A), (B), (C), (D), and (E) of this Section, shall be increased only for the period July 1, 2013 to December 31, 2013 as described below:
- (1) For Class 1 milk fat, three-tenths mils (\$0.0003) per pound.
  - (2) For Class 1 milk solids-not-fat, two and three-tenths mils (\$0.0023) per pound.
  - (3) For Class 1 milk fluid carrier, one-tenth mils (\$0.0001) per pound.
  - (4) For Class 2 and 3 milk fat and milk solids-not-fat, four and one-tenth mils (\$0.0041) per pound.
  - (5) For Class 4a and 4b milk fat and milk solids-not-fat, one and twenty-three hundredths cents (\$0.0123) per pound.
  - (6) Any modifications to the Class 1 fat price resulting from this Paragraph shall not be included in the calculation of the Class 1 solids-not-fat and fluid carrier prices, as set forth in Paragraph (A) of this Section.
  - (7) Any modifications to the Class 4a component prices resulting from this Paragraph shall not be included in the calculation of the Class 2 and 3 component prices, as set forth, respectively, in Paragraphs (B) and (C) of this Section.
  - (8) Any modifications to the Class 4b fat price resulting from this Paragraph shall not be included in the calculation of the Class 4b solids-not-fat price, as set forth in Paragraph (E) of this Section.

#### Whey Valuation

The hearing will also consider proposed changes to the whey factor in the Class 4b pricing formula and any other whey valuation changes that are raised by alternative proposals received in the time and format specified below. Proponents of the petition and any alternative proposals shall address the sufficiency of the calculation of the whey factor by reference to quantifiable economic data and methodologies; such as but not limited to: manufacturing cost data, marketing and sales data, and whey stream valuation directly applicable to California plants. Specific proposals that would amend or change the provisions contained in Article III, Section 300, Paragraphs (E)(1)(c), (E)(6) and (E)(9) of the Plans, as well as the economic substantiation of the implementation of these provisions, will be open for consideration at the hearing.

Since 2011 the Department has received seven petitions and held four hearings to consider either temporary or permanent adjustments to whey valuation in the Class 4b formula. The Department has highlighted the issues and concerns with the serviceability of end product pricing components including whey valuation as outlined in the written results from previous hearings, industry letters from the Secretary and responses to hearing petitions. Specifically, these issues and concerns are the lack of transparent data that are readily available, data that cannot be published due to confidentiality, and data that are directly related to the manufacturing and marketing of California whey products.

#### Evidentiary Support and Legal Compliance

Proponents and opponents of the petition and alternative proposals shall include the factual basis, economic and other evidence and legal authority in support of the whey factor, any temporary price adjustment and any proposed amendments to the Plans. In relation to the whey factor, they shall address the extent to which the factor can be transparently calculated as a component of the Class 4b price and fairly imposed upon processors. The Department will consider this information as well as evidence presented at previous hearings referenced above, when making any amendments to the Plans, including any necessary to bring the calculation of market milk prices into legal compliance.

Interested parties are encouraged to refer to the pricing criteria established in FAC Article 9, Chapter 2, of Part 3, Division 21 and the declarations, purposes, goals and requirements of the Milk Stabilization Program as codified in FAC Chapter 2 and FAC Sections 62062 and 62076.

**Alternative Proposals** – All interested parties are entitled to submit alternative proposals detailing temporary price adjustments and adjustments in the whey valuation of the Class 4b pricing formula. Alternative proposals must be signed by a responsible party and received by the Department's Dairy Marketing Branch no later than 4:00 p.m. on August 20, 2013. The Dairy Marketing Branch's office location is the 2800 Gateway Oaks Drive, Sacramento, California 95833. The Department strongly encourages all alternative proposals to be sent electronically via email to [dairy@cdfa.ca.gov](mailto:dairy@cdfa.ca.gov) or faxed to (916) 900-5341. Alternative proposals may be mailed to Hearing Officer, c/o CDFA Dairy Marketing Branch, 1220 N Street, Sacramento, California 95814. Please allow five (5) business days in addition to normal mailing times if mailed USPS.

At the hearing, the Department will receive testimony and evidence, both oral and documentary. Interested parties who wish to introduce testimony and/or exhibits shall provide the Hearing Officer at the hearing six (6) copies of such documents for the official record.

Copies of the transcripts of testimony received at the hearing will not be available for distribution via the Department, but are available for inspection at the Dairy Marketing Branch. If interested parties wish to purchase copies, arrangements may be made with the reporting service at the hearing.

**Final Decisions Resulting from the Hearing** - The final decisions resulting from this hearing will be issued in accordance with the procedures and criteria contained in Chapter 2 and 2.5 of Division 21 of the FAC, as necessary.

The Department's decision will include consideration of all relevant legal and economic factors including, but not limited to, the following:

- The reasonableness and economic soundness of market milk prices for all classes, giving consideration to combined income from those classes, in relation to cost of production and marketing for all purposes including manufacturing;
- Whether prices will insure an adequate and continuous supply, in relation to demand, of pure, fresh, wholesome market milk for all purposes, including manufacturing purposes, at prices to consumers which, when considered with relevant economic criteria, are fair and reasonable;
- Whether prices, including the prices of components of milk, established by the Secretary for the various classes of market milk bear a reasonable and sound economic relationship to each other; and
- Whether the amendments would be in accord with all the purposes, policies, and standards contained in Sections 61801, 61802, 61805, 61806, 61807, 62062, 62063, 62074.5, 62076 and 62077.

**Ex Parte Communications Prohibited** - From the time this Notice is issued until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing substantive hearing issues with any person having an interest in the proceeding. Procedural matters are not subject to the above prohibition and may be discussed at any time.

The Department's entire hearing exhibit for this hearing will be available for public inspection at the Dairy Marketing Branch office on September 5, 2013.

Questions regarding the call of this hearing should be addressed to Hyrum Eastman or Candace Gates at (916) 900-5014.

Media contacts and publication staff are asked to contact the Department's Public Affairs Office by e-mail at [cdfapublicaffairs@cdfa.ca.gov](mailto:cdfapublicaffairs@cdfa.ca.gov) or by phone at (916) 654-0462.

**Persons with Disabilities** - The Department of Food and Agriculture wishes to ensure that all members of the public have access to all public meetings. If you require a special accommodation, please contact Erica Sanko at (916) 900-5014 or TDD (800) 735-0193 at least five days before the workshop or hearing date.



Kevin Masuhara, Director  
Division of Marketing Services

8-5-13

Date