The Public Hearing Process

A Basis for Establishing the Milk Price Formulas

Many people are mystified by the process that establishes minimum milk prices and their corresponding pool quota and overbase prices. Some assume that each month the Department of Food and Agriculture (Department) assesses the conditions faced by the dairy industry in California and sets the minimum farm prices accordingly. However, this is an inaccurate depiction of how milk prices are established.

Minimum farm prices are determined according to mathematical formulas that are based on market prices for manufactured dairy products. These formulas were established through a public hearing process in which interested parties offered testimony and evidence relating to the proposed formulas. Revisions to these pricing formulas, other provisions of the Stabilization and Marketing Plans for Market Milk, and provisions of the Pooling Plan for Market Milk are made only after a public hearing has been held. Most hearings are initiated by entities representing milk producers, cooperatives, or milk processors; and require formal submission of a hearing petition. Occasionally, the Department will call a hearing on its own motion.

Petition

The petition submission process is formal, and a valid petition must contain:

- Specification as to which plan(s) to change. The plans are:
  - Northern California Milk Stabilization and Marketing Plan for Market Milk, and
  - Southern California Milk Stabilization and Marketing Plan for Market Milk
    - The Stabilization plans specify the pricing formulas the Department uses to establish minimum prices.
  - Pooling Plan for Market Milk
    - The Milk Pooling Plan specifies how the revenues generated from milk sales are distributed to producers.
- A brief written description of the requested changes.
- An explanation of why the petitioner recommends the proposed change, including relevant analysis and data.
- A specification of what code sections are relevant to the call of the hearing.
- A revised plan with implementation language.
- A specified implementation date.
- The signature and printed name of the petitioner, the date the proposal was signed, the mailing address, phone number, and if available, the fax number and e-mail address of the petitioner.

Prehearing

The Department must accept or deny a request hearing to amend the stabilization and marketing plans within 15 days after receiving a petition from an interested party. A

petition that represents the sentiments of 55 percent of all producers and not less than 55 percent of the total production of the marketing area results in a mandatory hearing. For the termination of the Milk Pooling Plan however, a petition needs only 25 percent of all producers with not less than 25 percent of total production.

There is no typical time span that separates the notice of the hearing and the hearing itself. (The attached timeline is typical.) During this time however, a sequential series of events crucial to the process occur:

- First, alternative proposals to the petition are accepted.
- Second, the Department holds a pre-hearing workshop to review its analysis of the original petition and any other proposals received.
- Third, the Department may make revisions to the analysis of the proposals and makes the analysis and data available to the public based on discussions at the pre–hearing workshop.

Hearing

At the hearing, all interested parties may offer testimony to a hearing panel to present their views. Proposals not covered by the hearing notice, however, may not be implemented as a result of the hearing. Those presenting testimony are allotted a specific amount of time:

- 60 minutes for the original petitioner,
- 30 minutes for those who submitted alternative proposals, and
- 20 minutes for all others.

Cross–examination of those presenting testimony is not allowed by any interested party. The hearing panel, however, is allowed to question the witness to clarify points in the testimony.

Posthearing

At the conclusion of the hearing, there is no comment period. Any person providing testimony, however, may be allowed to submit a post–hearing brief that explains, amplifies, or withdraws that person's testimony within a period of time not to exceed 10 days from the close of the public hearing. Once the hearing record is closed, the hearing panel analyzes testimony and data, and prepares a recommendation for the Secretary.

If the Department determines that the proposed plan will tend to accomplish the purposes of the Marketing and Stabilization Plan, a Plan will be issued to all producers and handlers effective within 62 days of the date of the hearing. The final decision must be announced publicly 10 days prior to its implementation, making the effective announcement date 52 days following the close of the hearing.

Producer referendums are generally not required to institute amendments to the Stabilization and Marketing Plans. The amendments to the Milk Pooling Plans may require producer approval depending on the extent of the changes to the plans. A vote to reject amendments to the Milk Pooling Plan does not lead to elimination of the entire marketing order; the current Milk Pooling Plan remains in place. If there is a referendum pooling hearings may require additional time for implementation beyond the normal 62 days.