CALIFORNIA DEPARTMENT OF AGRICULTURE
BUREAU OF MILK POOLING

FINDINGS RELATIVE TO NONSUBSTANTIVE AMENDMENTS TO THE POOLING PLAN FOR FLUID MILK

Pursuant to the provisions of the Gonsalves Milk Pooling Act, the Director of Agriculture called a duly noticed public hearing which was held in the Assembly Room of the Department of Agriculture Building, 1220 N Street, Sacramento, California on June 23, 1969, beginning at 9:30 a.m.

At this hearing, all persons affected by the Milk Pooling Plan were given the opportunity to be heard and testimony and evidence, both oral and documentary, were offered and received.

Nature of the Hearing

The purpose of this hearing was to consider nonsubstantive amendments to the Pooling Plan for Fluid Milk which had previously been approved by a vote of the market milk producers.

The hearing was prompted by the passage of Assembly Bill No. 1086, which amended the Gonsalves Milk Pooling Act to provide for an additional option for certain eligible producer-distributors. This was declared to be a nonsubstantive amendment by the Legislature.

A second principal issue was the proposal to remove Paragraph 200(c) of the Pooling Plan in total. The Department had received a written opinion of the Legislative Counsel stating, in effect, that Paragraph 200(c) was beyond the authority contained in the Act.

The remaining proposed amendments were suggested by the Department and by the handlers prior to the hearing for improving the operation of the Milk Pooling Plan. These were mailed to the industry. Witnesses also proposed other amendments at the hearing. In addition to the two principal issues listed above, amendments which were proposed and considered include:

1. Inclusion of the provisions of Assembly Bill No. 1086.
2. Removal of Paragraph 200(c).
3. Direct diversion accountability.
4. Handler report by individual producer.
5. Pro rata diversions and transfers.
6. Option for plants of governmental agencies.
7. Add and amend various definitions.
8. Amend "holding in trust" concept.
9. Producer change from nonpool to pool plant.
10. Manufacturing grade milk accountability.

11. Predetermined usage for pro rata purposes.

12. Solids price announcement.

13. Reporting dates.

14. Intermediaries.

15. Various clarification changes.

16. Correct previous typographical errors.

17. Fat in fortification.

18. Name change.

Hearing Panel

Chester D. Schiveley was the hearing officer. The panel consisted of Louis C. Schafer, Chief, Bureau of Milk Stabilization; LeRoy R. Walker, Senior Economist, Bureau of Milk Stabilization; Jed A. Adams, Chief, Bureau of Milk Pooling; Eugene A. Carpenter, Acting Program Supervisor, Bureau of Milk Pooling; and Glenn T. Gleason, Jr., Supervising Auditor, Bureau of Milk Pooling.

Basis of Findings

Testimony and evidence, both oral and documentary, presented at said hearing; briefs filed with the Department no later than June 25, 1969; impressions the author received at the hearing; and subsequent discussions with the hearing panel constitute the basis upon which these findings are made.

FINDINGS

1. Inclusion of the Provisions of Assembly Bill No. 1086.

Assembly Bill No. 1086 was passed by the Legislature and became Section 62708.5 of the Agricultural Code on May 7, 1969.

Testimony concerning Article 6.5, Paragraph 800(e), and Subparagraph 802(a)(2), which would add the provisions of Assembly Bill No. 1086 to the Pooling Plan, was almost nonexistent. Most of the comments made concerning this issue were in the form of questions directed toward panel members to clarify the intent of the provisions.

Perhaps this lack of testimony was due to the inherent directive of Assembly Bill No. 1086 itself. The Legislature stated that this was a nonsubstantive amendment to the Pooling Plan and the Bill carried a statement of urgency so this option would be available to producer-distributors prior to the effective date of the Pooling Plan. This could be considered a "mandate" from the Legislature to amend the Plan accordingly.

This amendment establishes an additional option for producer-distributors meeting prescribed eligibility requirements, the principal one being 95 percent identical ownership for each person on the producing side and on the distributing side. There is an additional limitation that the ownership of such a producer-distributor shall not exceed ten individual persons with persons being defined in the Act. This option permits an eligible producer-distributor to deduct his original pool quota from his own in-plant Class 1

usage before accounting to the pool. If his quota exceeds his Class 1 sales, his excess quota may not participate in the quota pool but may participate in the base pool or overbase pool depending on his particular situation. An eligible producer-distributor must elect this option within 90 days of the date of enactment by the Legislature. This date is August 5, 1969.

As there was no testimony or evidence in opposition to this amendment, it is recommended that the provisions of Assembly Bill No. 1086 or Section 62708.5 of the Agricultural Code be added to the Pooling Plan for Fluid Milk.

A brief was submitted by a distributor who also owns production facilities. In previous discussions with Department personnel, it was pointed out that this distributor could not qualify for the option provided in Assembly Bill No. 1086 because ownership exceeded ten persons. In essence, the brief requested the Director of Agriculture to use his broad authority and waive the ten-person ownership requirement so the distributor could qualify for this option.

This request was considered. However, the legislation is most explicit on this point and even though the Director is granted broad authority, he may not use this authority in a capricious manner or knowingly reverse the intent of the Legislature.

This request was judged to be beyond the purview of the authority granted to the Director and on this basis it is recommended that the request be denied.

2. Removal of Paragraph 200(c).

The provisions of the original Paragraph 200(c) specified that a producer be in continuous production from the base period he selected until the effective date of the Plan. His production could not fall to unreasonably low levels and in no event less than 50 percent of what he produced during the base period. Any producer failing to meet these requirements was declared to be ineligible to receive any production base and pool quota. Such a producer could appeal his case to the Producer Review Board.

Several discussions concerning this provision took place prior to the hearing. Producers were most adamant that this Paragraph of the Plan should be retained. A member of the Legislature was equally adamant that it should be withdrawn. While the discussions continued, the issue was virtually culminated with a written opinion from the Legislative Counsel stating that the provisions of Paragraph 200(c) were beyond the intent of the basic legislation. With this written opinion, the Department scheduled this issue for consideration at the hearing as a minor amendment.

Two witnesses testified concerning the removal of Paragraph 200(c). One supported removing it in its entirety. The other stated that producers supported eliminating that portion requiring production to be at least 50

percent of the amount produced during the base period. He objected to withdrawing the continuous production requirement stating that this was the intention and logical interpretation of the Act. He further requested the right to file a brief on this matter suggesting that such a brief might be filed at the request of legislative personnel.

The hearing officer granted the filing of briefs by Wednesday night, June 25, 1969. No brief has been filed with the Department on this subject either before or after the date mentioned above.

Although this witness did register some convincing arguments and sentiments as to why the continuous production requirements should be retained, in light of the Legislative Counsel's written opinion, there is no basis on which these requirements can logically be retained. Therefore, it is recommended that Paragraph 200(c) of the Pooling Plan for Fluid Milk be removed.

3. Direct Diversion Accountability.

The original Plan required that the pool handler receiving diversions directly from the ranches of producers under contract to another pool handler should account to the pool for that milk and pay those producers.

Testimony, presented at the hearing, strongly supported revising this concept to permit the contracting handler to account to the pool for the diverted milk and to pay his producers. Testimony demonstrated that the original method of handling direct diversions to pool handlers could result in considerable confusion for producers and place handlers in an untenable position. Of the several advantages given at the hearing, the following two were considered to be of prime importance: (1) The number of statements and settlement checks received by the producer would be minimized by having the contract handler responsible. This would also permit more orderly handling of producer authorized assignments. (2) This would permit a cooperative pool plant to receive diverted milk from nonmember producers under contract to another handler as inter-handler purchases.

There was no testimony in opposition to this proposal.

It is acknowledged and recognized that the proposed method of handling direct diversions to other pool plants would not change the net accountability to the pool. It would change the obligation from one handler to another. This obligation would be transferred to the contract handler on the basis of a pro rata amount of the receiving plant's in-plant usage. The contract handler would account to the pool at the class prices and location differential in effect at the receiving plant.

It is also recognized that treating direct diversions in this manner would facilitate their use by handlers. There is still some question whether or not the proposed change should be accepted because of this. Since the accountability to the pool is unchanged and since, in the final analysis, the producer would have to give either his overt or tacit approval to such a direct diversion, it is recommended that the proposed change for handling direct diversions be accepted.

4. Handler Report by Individual Producer.

While the Pooling Plan can be interpreted both ways, it was the intent of the Formulating Committee to have handlers report receipts each month by individual producers. The pooling unit, in discussions with handlers, departed from this intent and were moving toward a summary reporting system. In fact, the computer program was designed with summary reporting in mind. As the value of individual reporting became apparent, there was a move back toward the original intent.

In order to make it absolutely clear to all handlers, it was proposed that the pooling unit adhere to the original intent of the Plan. With handlers reporting in this manner, it will eventually be possible for the Department to issue a "gross" producer statement for each handler's producers. This will assist in the overall operation of the pool from producer and handler standpoints, as well as that of the Department.

Testimony at the hearing from both handlers and producers supported this proposition. It is recommended that this concept be approved.

5. Pro rata Diversions and Transfers.

The current Pooling Plan permits three alternatives for diversions and transfers. One is to receive the pro rata in-plant usage of the receiving plant. Second, it permits 100 percent Class 1 usage on inter-handler transfers moving to plants having or exceeding 90 percent Class 1 usage.

Third, it permits an agreed upon classification if it does not injure the pool. The implicit criteria for injury is departure from the results if the transfer or diversion had been prorated.

Testimony on this proposed change was virtually nonexistent. Therefore, it is assumed that the industry does not object to this change in concept.

The computations of the pool will be done by computer. The system designed to handle proration is a most complex one. This system will prorate everything and will not recognize a plant having 90 percent Class 1 usage as being different from one having less than 90 percent.

In discussing this proposition, it was the author's understanding that this 90 percent provision was included to make determination of some shipments easier. As stated above, it is easier for the system to prorate all shipments than it is to do a portion. Therefore, it is recommended that the 90 percent provision be removed from the Pooling Plan.

The second part of this concept,"agreed classification if it does not injure the pool", has many apparent advantages. It could reduce handler record keeping and could reduce certain complications in computing the pool. However, it is inherent in the proposition that the pool would have to compute the pro rata amounts and compare this with the agreed classification of all handlers choosing to do this before the pool could enter into the final computations. The current system cannot handle this. It would create a real bottleneck if it were done manually. While this portion of the concept should

not be discounted forever, it should be withdrawn until such time when it can be handled. It is recommended that the Pooling Plan be amended accordingly.

6. Option for Plants of Governmental Agencies.

This was another proposed change that did not receive comment from witnesses. The initiators of this change were two State colleges who have plants. They desired to be a participating handler in the pool, but were prevented from it by the current Plan.

These State colleges requested the Director of Agriculture to grant a variance in some manner so the respective colleges could participate in the Pooling Plan.

The participation of these schools and any other governmental institution who might elect to join the pool would have only a trace effect to the operation of the pool. It is recommended that plants of governmental agencies be given the option of participating in the pool or remaining exempt. It is further recommended that the time for electing this option be limited to 30 days from the effective date of the Plan or 30 days from the date such a plant becomes operative. Once such a plant has elected to be in the pool, it may not subsequently withdraw.

7. Add and Amend Various Definitions.

It became apparent that several definitions needed to be clarified to bring them into sharper focus. Two new definitions were proposed to assist in clarifying the Plan. Both of these propositions were in keeping with the original intent of the Plan.

Testimony, though brief, supported these changes. It is recommended that the additions and the clarifications be approved.

8. Concept of "Holding in Trust".

Testimony supported the change in this concept. It originally was holding the production base and pool quota in trust as collateral. The proposal changes that to being pledged as collateral. In the proposal, the title definitely remains with the producer unless he defaults. In the event of a default, the obligee's ownership is limited to the transfer to a qualified producer and it must be made within 60 days of the time he obtains ownership.

This concept further carries out the original intent of the Act and Plan. It is recommended that this concept be approved.

9. Producer changes from Nonpool to Pool Plants.

The current Plan states that a producer shipping to a nonpool plant for any reason has 60 days to sell his production base and pool quota or suffer forfeiture. The Plan does not state when the 60-day period starts.

It was proposed that this concept be amended to clarify the fact that a producer could satisfy this provision by changing to a pool plant himself as well as transferring to another eligible producer. The proposed change also

explicitly identifies the beginning of the 60-day period as the time when such producer is notified by the Director that the plant to which he ships is not a pool plant.

Testimony at the hearing supported this proposition. It is recommended that the amendments clarifying this concept be approved.

10. Manufacturing Grade Milk Accountability.

Witnesses testified that they felt the Pooling Plan had gone beyond the purview of the Act when it requires accounting of manufacturing milk and a proration of manufacturing milk to Classes 2, 3, and 4. It was also pointed out that the current system could allocate manufacturing milk loss to Class 1 usage. This particular subject received rather extensive comment.

The first portion of the proposal would remove the report of receips and usage of manufacturing milk from the Plan and the Bureau of Milk Pooling's Report Form 800. By so doing, market and manufacturing grade milk would not be prorated under Classes 2, 3, and 4 usage. By not reporting manufacturing grade milk at all, a handler would be able to indicate or select to which classes his "surplus" market milk would be assigned. In essence, a handler could claim all Class 2 usage for his manufacturing milk and all Class 4 for his "surplus" market grade milk.

At the hearing discussion, this concept was further refined to the point where any manufacturing milk that was commingled with market milk would have to be prorated and only that manufacturing milk kept entirely separate with a known use could be excluded from proration. It was further pointed out that if this were not done, a handler's obligation to the pool would be magnified.

This issue certainly has merit from the handler viewpoint. However, it must also be considered that such a change would enable handlers to use lower priced manufacturing milk for Class 2 usage. This could prevent market milk producers from sharing in this market and reducing the net proceeds into the pool. By having market milk participate on a pro rata basis in Classes 2, 3, and 4 does not technically compete with or displace the manufacturing milk producer because his price is constant, regardless of ultimate usage. It is recommended that this proposal be denied.

The second portion of the proposal, concerning manufacturing milk loss being assigned to Class 1 usage, is a different matter. Manufacturing milk, by its very nature, is not eligible to participate in Class 1 usage and the fact that it could be done is not in keeping with the intent of the Act or Plan. Therefore, it is recommended that the intent of the Plan reflect the policy that manufacturing grade milk loss shall not be charged to Class 1 usage.

11. Predetermined Usage for Pro rata Purposes.

During the hearing, it was proposed that there should be some predetermined usage so handlers could settle between themselves at an early date on diversions and handler transfers. The current Plan contemplates that this usage shall be the pro rata in-plant usage of the receiving plant for that month. This means that the handlers will not know the basis for settlement with each other until the month is over.

One of the suggestions made was to use the receiving plant's previous month's in-plant usage, rather than the current month's in-plant usage, as the basis for proration. The in-plant usage for any given month could be calculated by the end of the month and would be used by the receiving plant as a basis for settling with the shipping handler.

While the Pooling Plan does not need to be amended per se to permit this, it is recommended that the Department's policy be to prorate on the basis of the receiving handler's previous month's in-plant usage for diversions and inter-handler transfers between pool plants.

12. Solids Price Announcement.

It was proposed that the announced price of solids be changed from rounding to the nearest half cent to the nearest third decimal or one-tenth cent. The purpose of this proposed change was to have the Plan conform to the capability of the computer.

Testimony from witnesses supported this proposition. This is more like the current practice and is more precise. It is recommended that this amendment be approved.

13. Reporting Dates.

In the various discussions between the Department and the industry, it became apparent that the reporting dates were too early for most handlers to report accurately and on time. The Department made a rather informal suggestion in the form of an exhibit to stimulate discussion on this issue.

Witnesses presented their own proposal with respect to reporting dates. All witnesses who testified on this subject supported the industry proposal. Only one witness supported the Department's suggestion.

The actual proposal was to change the dates that Report Form 800 was to be mailed and received from the 8th and 10th to the 12th and 14th, respectively. Pool price announcements and handler settlements would also be delayed from the 20th and 25th to the 24th and 28th, respectively. Witnesses also proposed that an extra day be given to handlers when a holiday occurred during the first twelve days of the month.

During the discussion, it was brought out that it would be most advantageous if handlers reported by their individual producers before the 12th so the Department could get this data ready for processing before Report Form 800 arrived. Witnesses stated this could be done depending upon the information requested. It was suggested that this producer listing be mailed on the 8th and received in the Department by the 10th.

It is recommended that we accept the proposed change in dates to the 12th and 14th for Report Form 800 and 24th and 28th for announcement of pool prices and handler obligation, plus the mailing of producer listings by the 8th to be received in the Department by the 10th. These dates will not necessitate a change in the advance dates or final settlement dates by the handler from those contained in the existing Plan.

The second phase of the proposition concerning the extra day in the event of a holiday occurring during the first 12 days of a month would reduce the pool computation time by one day which could be disastrous. The Department's computing time is at its absolute minimum and further reduction would jeopardize the operation of the pool.

14. Intermediaries.

One witness thoroughly explained the situation surrounding intermediaries. For the purpose of these findings, an intermediary is an agent or broker who at times might even own the milk but who does not have in-plant usage either because he does not have a plant or because his plant is used only for collection, assembly, and reshipment.

This witness rightfully pointed out that the Pooling Plan did not have a place for his type of operation. His request was for the Department to create such a place so he could continue providing the services he had in the past to the milk industry. These services were generally in two areas. The first is serving producers so they could obtain Class 1 usage which they otherwise could not have obtained. The second area is handling distressed market milk and satisfying the needs of others with that distressed milk. In short, he performed a clearinghouse function.

It is believed that the Pooling Plan eliminates most of the need for producers to utilize the services of intermediaries. An intermediary cannot enhance the return of any market milk producer over what the producer could receive from a regular handler. It is expected that the producer attachment to an intermediary will come to a gradual halt because of the economics involved. However, this should come naturally and not through the implementation of a program. It is entirely possible that the intermediary will continue to provide service in the distressed milk area.

It is recommended that no addition to the Plan need be made to accommodate this proposal. However, it is recommended that such distributors be permitted to function within the Pooling Plan framework.

15. Various Clarification Changes.

It was proposed that various clarification changes be made to the current program. Most of these are located in Article 8 with a very few in Articles 9 and 10. The nature of these changes was the deletion of a word or two plus the additional clarifying language. Other changes were conforming changes to points previously discussed and recommended for approval. Except for these latter-type changes, it was not the intent to alter the meaning of the current Pooling Plan.

These suggestions were favorably supported by witnesses. It is recommended that these multiple minor changes be made in these Articles.

16. Correct Previous Typographical Errors.

There are three subparagraphs of the current Plan which refer to incorrect sections of the Act and Plan. It was proposed that the proper section notations be added to the Plan. Fortunately no one objected. It is recommended that these changes be made.

17. Fat in Fortification.

A witness proposed that the fat component also be accounted for when fortifying with solids and condensed skim. Testimony demonstrated there was a trace of fat in these fortifying agents. However, it is a minute amount and would not have much influence on the total obligation of a handler. It is recommended that this proposal be denied.

18. Name Change.

The title of the current Plan is the Pooling Plan for Fluid Milk and Fluid Cream. While it is not an amendment of any type, the title has been shortened to the Pooling Plan for Fluid Milk. Of course, after it has been amended, the title will be Pooling Plan for Fluid Milk, as Amended.

All of the testimony and evidence, both oral and documentary, submitted in connection with this hearing, whether or not specifically mentioned herein, have been considered in making these findings. It is recommended that all issues raised not commented on above be denied.

The amendments recommended for approval are nonsubstantive in nature and do not require a referendum of the industry. These amendments recommended for approval are necessary to effectuate the policy and declared purposes of the Gonsalves Milk Pooling Act.

Jed A. Adams

Jed A. Adams, Chief
Bureau of Milk Pooling

Dated: June 27, 1969

FINDINGS OF THE DIRECTOR, CALIFORNIA DEPARTMENT OF AGRICULTURE
UPON THE POOLING PLAN FOR FLUID MILK AND FLUID CREAM

A public hearing to consider nonsubstantive amendments to the Pooling Plan for Fluid Milk and Fluid Cream was duly and regularly called and held in Sacramento, California, on June 23, 1969, under the provisions of Chapter 3, Part 3, Division 21 of the Agricultural Code, full and proper notice of this hearing was given to all producers, producer-distributors and distributors of record with the California Department of Agriculture, who may be subject to the provisions of the Pooling Plan by mail in accordance with the provisions of Section 62184 of said Code.

At said hearing all persons were afforded an opportunity to be heard and testimony and evidence both oral and documentary were offered and received.

After due deliberation upon and full consideration of the facts and evidence adduced, the Director, California Department of Agriculture hereby finds the following:

1. The Pooling Plan for Fluid Milk and Fluid Cream is no longer in conformity with the standards prescribed in Chapter 3, and will not tend to effectuate the purposes of Chapter 3 without amendment.

2. The amendments are necessary to effectuate the purposes of Chapter 3 and will accomplish the same within the standards prescribed in Chapter 3.

3. The amendments to the Pooling Plan for Fluid Milk and Fluid Cream are nonsubstantive.

4. The Pooling Plan for Fluid Milk and Fluid Cream, as amended, and identified as the Pooling Plan for Fluid Milk as Amended and made effective by Milk Pooling Order Number Four (4) dated July 1, 1969, is necessary to accomplish the purposes of Chapter 3 and will accomplish the purposes of Chapter 3 within the standards therein prescribed.

Jerry W. Fielder
Director of Agriculture

By L C Schafer

L. C. Schafer, Chief
Bureau of Milk Stabilization

Dated: June 27, 1969