

FINDINGS AND CONCLUSIONS
RELATIVE TO AMENDMENTS TO
THE POOLING PLAN FOR FLUID MILK, AS AMENDED

These findings and conclusions are based on material issues raised at a public hearing held on December 18, 1975, in Sacramento, California, to consider nonsubstantive amendments to the Pooling Plan for Fluid Milk, as Amended.

Nature of the Hearing

The hearing was called at the instance of the Director and provided an opportunity for all interested parties to present testimony and evidence contingent to the amendment of the Pooling Plan in the following areas:

1. Update qualifications for new producers entering the pooling system.
2. Redefine priorities for new entry producers.
3. Modify transfer regulations on production base and pool quota.

New Entry Qualification

At the inception of the milk pooling program, a determination was made that there should be provisions which would enable new producers to participate in the pool.

The current Pooling Plan provides for such entry and participation. However, some modification is necessary to assure that bona fide new producers have access to the new growth allocated for this purpose and that present quota holders cannot avail themselves of this new entry by subterfuge.

It is necessary to amend the Pooling Plan to eliminate separate production facilities established by present quota holders from qualifying for quota as a new producer. Allocation of quota to production entities which have been established in this manner restricts the availability of quota to producers who are true new entrants and is not consistent with the intent of the Pooling Act. The changes in the Pooling Plan apply to future years and would prohibit production entities established after January 1, 1976, from qualifying as a new producer if any person in the operation has ownership in quota assigned to another entity.

The new amended Plan continues to provide that all future new entries will receive an allocation of pool quota no less than 20 percent of their production base. An optional provision basing the amount of new quota on the percentage ratio of pool quota to production base represented by the lowest relative quota of all producers in the pool is eliminated. This option was placed in the initial pool plan to assure that new entry producers did not enter the pool at a more advantageous level than existing pool participants. Recent new growth allotments of quota to producers already in the pool have raised their level of quota to production base above 20 percent, making the option obsolete.

This change in new entry qualifications was supported on the hearing record by those participants who addressed their testimony to this subject.

New Entry Priorities

The priority sequence for producers wishing entry into the pool has been updated. The first two priority provisions which were in the original Plan are no longer relevant to today's situation. The two groups which were originally granted the first and second priority have either entered the pool or have had at least three opportunities to do so. The new order updates the priority sequence for new producers by establishing a single priority based on the start of commercial production or the time subsequent to a producer's sale of production base and pool quota, whichever is later.

A producer who has been in production for a number of years, but who has participated in the pool and has transferred his production base and pool quota must start his time sequence for reentry priority from the time that he transferred his base and quota. This procedure prevents a producer from using the same production history to qualify for two separate allocations of quota. The procedure also retains the provision that prevents a producer who transferred his production base and pool quota from qualifying as a new entrant for a period of five years following the transfer.

The revised priority provisions does not appreciably change the existing order of priority, but rather removes out-dated provisions and superfluous language from the Plan. The slight modification which reestablished a beginning point for long-time producers who have transferred base and quota corrects an oversight in the Plan. It was not envisioned at the outset of the Pooling Plan that any producer would sell base and quota and reenter as a new producer using his long period of production to gain priority. The intent of the original Pooling Plan was to provide base and quota to bona fide producers who intended to serve the market, not to supply producers with quota to be used for speculation.

All persons testifying at the hearing who addressed themselves to the priority issue supported the modification.

Transfer Regulations

Perhaps the most critical issue of the hearing was that of new entry transferability. Transfers of production base and pool quota are provided by statute. At the same time, the Director is required to establish conditions for transfer which will prevent abuses and avoid excessive values.

On January 1, 1976, an additional 40,000 pounds of quota solids-not-fat per day will be allocated. Of this amount, 20 percent will be allocated to new entry producers. Based on applications received by the date of the hearing, approximately 100 new producers will share this allocation. This amounts to an average of 80 pounds of solids-not-fat per new entry producer.

Experience with previous new entry producers gives reason to believe that a number of producers applying are only interested in obtaining quota for the purpose of selling it, rather than in participating in the market. An exhibit entered into the hearing record by the Department showed that of the 232 producers who received their new entry allocations in the fall of 1972, 70 (or 30 percent) had sold by December 1, 1975. Of the 102 who received their new entry allocation in January 1974, 36 producers (or 35 percent) had sold by December 1, 1975. Other exhibits indicate that, due to the growth factor, the value per pound of new quota is substantially greater than that reflected in other transactions.

The initial Pooling Plan did not anticipate this degree of speculation in the transfer of new entry quotas; consequently, the Plan did not address itself to this point. This oversight is corrected in the amended Plan by requiring new entry producers to produce for two years after receiving a base and quota allocation before it may be transferred.

The two-year time period is consistent with the time limitations on quota granted under the hardship provisions. All limitations on transfer of new entry production base and pool quota are to be applied equitably to all producers receiving such allocation. There is to be no differentiation between producers belonging to cooperatives or those who do not.

At the hearing, there was considerable difference of testimony as to the length of time that new entry quota should be held before it could be transferred. The predominant testimony by those most directly affected by the provision was for a two-year period. The range was between two years and four years.

Prior to the hearing, the Department made a proposal which would have modified the transfer regulations affecting producers holding existing quota and base. The current Plan restricts a producer who transfers his existing base and quota from acquiring additional base and quota for a period of one year, except for new base and quota for which he may be eligible. The proposal would have extended the period from one year to five years. The current period applies only to noncooperative association member producers. There is no such limitation on cooperative association members. There was some testimony at the hearing that the difference in treatment between cooperative association producer members and noncooperative association producer members should be eliminated on grounds of discrimination. The call of the hearing, however, did not address itself to making changes in those provisions governing cooperatives. It is, therefore, inappropriate to make such changes at this time. In order not to broaden this inequity, the proposal of the Department is not incorporated in the new Pooling Plan.

The current regulation limits the transfer of currently held production base and pool quota to amounts of not less than ten pounds of quota fat. Experience has shown this amount to be too low to prevent speculation in quota by frequent small sales as the value for quota fluctuates. It is necessary to increase the minimum amount from 10 pounds of quota fat to 50 pounds if speculation is to be minimized. This change will place the minimum amount that can be transferred higher than the new growth allocation that will be received on January 1, 1976, for all but four of the

present producers holding production base and pool quota. In order for producers to transfer their new allotment, they would be obliged to dip into their current base and quota which is an unlikely event for purely speculative purposes.

The minimum amount of quota fat that may be purchased will remain at 10 pounds. Historically, large sales of quota have been purchased by several buyers. This has afforded smaller producers an opportunity to grow where they may have not been able to do so had they been required to purchase in a large block.

It is essential that these minor adjustments to the Pooling Plan be made as expeditiously as possible in order to minimize the speculative affect on transfers of new quota that will be issued on January 1, 1976.

Other Issues

There are currently two time periods in the Pooling Plan which specify the time that new producers who wish to enter the pool may make application. September 30, 1972, and August 31 of each year are specified in the Plan. The September 30, 1972, date is dropped in the new Plan as it is no longer relevant, leaving August 31 of each succeeding year as the governing date of application.

All other subjects and issues testified to were considered and acted on appropriately.

L. T. Wallace
Director of Food and Agriculture

By



L. R. Walker, Chief
Bureau of Milk Stabilization



R. A. Abbott
Senior Agricultural Economist
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Dated: December 29, 1975

FINDINGS OF THE DIRECTOR OF THE CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
UPON THE POOLING PLAN FOR FLUID MILK, AS AMENDED

A public hearing to consider amendments to the Pooling Plan for Fluid Milk, as Amended, was duly and regularly called and held in Sacramento, California, on December 18, 1975, under the provisions of Chapter 3, Part 3, Division 21 of the Food and 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 Food and 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 of the California Department of Food and Agriculture hereby finds the following:

1. The Pooling Plan for Fluid Milk, as Amended, 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 Pooling Plan for Fluid Milk, as Amended, and identified as the Pooling Plan for Fluid Milk, as Amended, and made effective by Milk Pooling Order Number Twenty-Three (23) effective January 1, 1976, is necessary to accomplish the purposes of Chapter 3, and will accomplish the purposes of Chapter 3 within the standards therein prescribed.

L. T. Wallace
Director of Food and Agriculture

By 

R. A. Abbott
Senior Agricultural Economist
Bureau of Milk Stabilization

Dated: December 29, 1975