

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 public hearings held on September 23, 1976 and continued on October 1, 1976, in Sacramento, California, to consider potential 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. Changes in new quota allocation procedures to existing producers.
2. New producer entry; update qualifying requirements and changes in new quota allocation.
3. Modify transfer provisions of production base and pool quota for both existing producers and new entrants.
4. Adoption of administrative issues pertaining to interest charges, statute of limitations, and record retention.

New Quota Allocation, Existing Producers

Historically, existing producers have been allocated additional quota which is derived from increases in Class 1 sales. Eighty percent of the total new quota so determined is made available to existing producers, with the remaining 20 percent being made available to new entry. The statute does not specifically provide that such new entry quota shall come from sales growth. Since it can be interpreted that the entire growth could be made available to existing producers, it was so proposed by the department. This would accelerate the equalization process. This proposal received a preponderance of opposition, which could be expected to carry through into the referendum balloting. Therefore, the proposal should be withdrawn, retaining the 80 percent provision.

The Milk Pooling Act mandates that new quota be apportioned in a manner that allocates a larger percentage to the low quota holders. Since the inception of the original Milk Pooling Plan, allocation has been made according to a formula which

very heavily tilts the allocation to such low-quota producers. The relatively small amounts of new quota allocated to unequalized producers holding relatively high quota to production base relationships has limited the number of producers reaching equalization. The department believes there is a need to assist these unequalized producers toward equalization, and, therefore, proposed to revise the allocation formula. The department's proposal was supported by Southern California, and the principle of the formula change was supported by most other witnesses. The Federated Dairymen and the League of California Milk Producers did propose an alternative formula. See Appendix 1 showing the change in tilt accomplished by the proposed formulas. The department's formula, namely: 75 percent production base plus (production base minus quota), adjusts the tilt, giving more favorable recognition than before to those producers in closer proximity to equalization. At the same time, it continues to carry out the mandate of the statute to allocate a larger percentage to those having a low quota relationship. It, therefore, should be adopted.

The statute provides that no quota shall be allocated to a producer which would cause his quota to exceed the equalization point. In previous allocations, such excess quota has been removed with no further disposition made of it. The department's proposal to make a one-time reallocation of the quota so removed received support in hearing testimony, with no opposition. This proposal should be adopted, thus recapturing this otherwise "lost" quota.

New Producer Entry

Since the beginning of the pooling program, the Milk Pooling Plan has defined a new producer as one who does not hold production base and pool quota. The department proposed to include in this definition a producer who voluntarily surrenders his production base and pool quota to the pool, thereby making him eligible to apply for new entry. This proposal received general support in the hearing. However, this proposal was made under the premise that 6,000 pounds of fat and 15,000 pounds of solids-not-fat would be made available each year to new entry which would not come out of Class 1 sales growth.

By having new entry continue to come from the 20 percent of sales growth, this proposal must be considered in a different light. If all such potentially qualifying producers took advantage of this proposal, they could well exhaust the quota available to new producers. This would leave very little or none to those who have been in or commenced production in good faith, have met qualifying requirements, and have

anticipated entry into the pool with a quota allocation. This proposal is therefore premature and should be withdrawn to safeguard the quota available to the conventional-type new producers.

The previous new entry program has been awkward to administer in that it has compressed the time between the date a producer receives notice of his qualification and the date at which he must be in market grade production. This has come about-- first, because he can qualify to apply while still in manufacturing grade production; second, because the qualifying producers cannot be determined until considerable time following the close of the Class 1 measurement period ending August 31; and third, because allocation must be made effective January 1. The department's proposal to restrict application to those who are already in market grade production will alleviate this "time squeeze" problem. Further relief and flexibility will also be gained under the department's proposal to permit new entry applications throughout the year and allocate available quota intermittently as applicants are found to qualify. The proposed change in priority system fits well in the scheme of intermittent allocation. The date of receipt of application would determine first priority; time in production would break ties in simultaneous receipts, with further ties being broken by time in market milk production. The proposed requirement of one year's continuous production prior to application would tend to restrict new entry to those who seriously desire to produce for the market, and it would furnish the production data for the base forming period. These proposals received substantial support at the hearing and should be adopted.

The proposed increase in waiting period from five to ten years following the sale of quota should remove all incentive for capitalizing on a sale and then "waiting it out" for a free grant of quota as a new producer. This proposal received full support from the Federated Dairymen, the League, and Southern California, who are primary representatives of the type of producers who would be involved. The proposal should be adopted.

The proposal to require that at least 50 percent of the interest in a new producer operation be owned by individuals directly engaged in its operation and management should prevent a tax shelter type of conglomerate from gaining new entry quota at the expense of those producing milk for a livelihood. This proposal received full support and should be adopted.

In order to restrict new entry to a bona fide independent production entity,

the department proposed that such facility must be completely separate and apart from any other production facility and must remain so for five years subsequent to initial allocation. This proposal, as well as the one preventing the same person from applying under more than one production unit, was favored by nearly all witnesses and should be made a part of the Pooling Plan.

The proposals for amending procedures to allocate new entry quota, if available, 90 days after receipt of the application, and using September, October, and November as the base forming period, met with support and should be adopted. These changes blend in well with the overall changes in application sequence and qualifying requirements.

In all previous allocations, the available new entry quota represented 20 percent of the total new quota made available based on Class 1 sales increase. The department proposed that for each annual period, 6,000 pounds of quota fat and 15,000 pounds of quota solids-not-fat be made available to new entry, and that such amounts not be conditioned on, or come out of, Class 1 sales increase. This proposal met with unanimous opposition. The opposition termed the proposal as "blue sky" quota, and contended it would have an unjustifiable blend-down effect on the pool. In the face of such opposition, this proposal should be withdrawn, and any new entry quota should continue to depend on sales growth, with 20 percent being made available to new entrants as in the past. Any unallocated amount, however, should be "banked" and included in a following year's allocation.

The highest quota allocation made in previous years was 20 percent of production base. These producers need a larger initial percentage entry level to provide a more viable economic operation. The department's proposal was to allocate either 95 percent of their base period production or 90 pounds of fat and 225 pounds of solids-not-fat, whichever is the lesser. The latter figures represent 60 percent of the production of a unit of approximately 100 cows. Production base was to be 111 percent of the quota allocated. There was support of this concept; however, the League of California Milk Producers had some reservation on the 60 percent figure, feeling it may be excessive. It is the conclusion of the department that a 40 percent level would be a more viable economic entry level than the current provisions. Consequently, the department adopted the concepts proposed for new entry, using 40 percent rather than 60 percent of the production of approximately a 100-cow unit.

Subsequent allocation to new entrants is tied by statute to Class 1 growth. The department's proposal would have new entrants participate in succeeding allocations with the other unequalized producers in the 80 percent portion of growth. For this purpose, the proposal would use the producer's qualifying period production (up to 150 pounds of fat and 375 pounds of solids-not-fat) rather than his production base in computing the amount to be received. One hundred and eleven percent of the quota so allocated would be allocated as additional production base. These concepts for subsequent allocations received substantial support and should be adopted.

Transfer of Production Base and Pool Quota

Since the inception of the pooling program, members of cooperative associations have been exempt from the waiting period between the buy/sell and sell/buy relationship. The rationale for this favored treatment has been that a cooperative, for accounting purposes, is considered as one producer, and that such transfers are internal within the one-producer concept. The fact does remain, however, that quotas are assigned individually to each producer member, and the incentive for speculation keyed to the rise and fall of quota value could apply to this type of producer as readily as to any other. It was the department's proposal to remove these exemptions, making transfer restrictions apply to all producers alike. To permit one type of producer to capitalize on lucrative opportunities is to stockpile inequities, and tends to defeat the effort to maintain stability in the quota system. The Southern California representation supported the proposal, the League opposed it, and the Federation supported it with the exception of one of its members. The department is well justified to adopt its proposal, and it should be made a part of the Pooling Plan.

The proposal to increase the waiting period from one year to two years between the transaction and counter transaction of buy and sell received opposition from Southern California and the League, and support from the Federated Dairymen except for two of its members. To insure viability to the transfer system, all elements of speculation must be removed. Two years is not an undue length of time if a producer actually bought with the intent of producing for the market. Sales of quota should indicate a producer's intention to leave the market. The two-year provision should be no barrier to those who are properly motivated in their decisions to buy or transfer. This proposal should be adopted.

The proposal to increase from two years to five years the transfer of quota allocated under hardship relief received substantial support. This quota was granted free to the holder, and he had the opportunity to use it. If conditions force him to quit production, he should not expect to derive gain from the free grant. This proposal should be adopted.

Experience with new entry has revealed that a considerable number of producers applied to receive quota merely to sell it at a windfall profit because of the demand for its favorable growth potential. Even the two-year restriction on transfers provides opportunity for speculation. The proposal to extend this restrictive period to five years should "weed out" those applicants with speculative intentions. All witnesses concurred with this proposal, and it should be adopted.

The proposal to restrict for five years the transfer of growth allocation received by an unequalized producer on January 1, 1977 and thereafter was one of the most controversial issues of the hearing. Southern California supported it, but all others testified in strong opposition. A point advanced by one opponent was that this transfer restriction would penalize those producers who retire within the next five years. It should be reemphasized here that the primary purpose of quota, both the original and that subsequently allocated, is to provide a viable economic system to produce milk needed for the market, and is not designed or intended to be a retirement benefit. All during the time a producer holds and produces such quota, he has derived economic benefit. The subsequent allocations are not investments; they are grants. The five-year provision to be imposed on new entrants received full support. It would not be equitable to restrict one category of producers and, by countermeasure, exempt another category. Quota is for producing milk. It is not punitive to expect a producer to relinquish that free portion if he no longer wishes to use it. He is still free to transfer all that he has acquired prior to the allocation of January 1, 1977. Any amount relinquished by these producers would be available for future allocation, thereby furthering the equalization process. The department's proposal should be adopted.

Transfers by testate and intestate arrangements are by their nature free of speculative intent. The same would apply in family transfers. The department's proposal to exclude such transactions from transfer restrictions is sound, and it received full support. The restrictive provision applying to new entry would remain in family transfers. These changes should be adopted as proposed.

Administrative Issues

Delinquent pool obligations tend to suppress the quota price that can be paid to producers. In order to stimulate prompt payment and avoid excessive delinquencies, the department proposed to permit the director to impose interest on delinquent net due amounts at the rate of one percent per month. Support was given by all producer groups. The Dairy Institute also supported the concept, but testified to the need to recognize mitigating circumstances and to develop guidelines in determining the accounts to be subjected to such interest. Since the interest application would be permissive, it would be the department's intention to consider all factors. Therefore, the department's intended procedure is not in conflict with the Institute's testimony. This proposal should be adopted.

The Pooling Plan has been without clear definition as to the length of time an obligation to the pool remains active and collectable. Conversely, no time limit has been named during which a handler must press his claim for monies deemed by him to be due from the pool. The department's proposal establishes a two-year statute of limitations in both such instances. The proposal further outlines conditions under which this time limit may be extended. The producer groups gave full support. The Dairy Institute gave conceptual agreement but took some exceptions to the wording. It was claimed that the right of the department to "re-start" its time period under designated conditions in its claims against the handlers was not also extended to the handlers in their claims against the department. They proposed this right be made bilateral.

In its final brief, the Institute expresses concern about monetary offsets against claim the handler may otherwise have. They propose that collection of the disputed amounts not occur until 30 days after the handler has had a hearing on the matter. Since this is currently the department's procedure, the objection would not be applicable. The department's proposal should be adopted.

The Pooling Plan should name a time period during which a handler must maintain all records and documents that are supportive to his reports to the pool. Without such designated period, records may be discarded before audit by the department. The department proposes such backup records be maintained for a period of three years from the date the report was required. Support was received from all producer organizations. The Dairy Institute, in its final brief, registered opposition to

extending record retention requirements unless Pooling Plan provisions make the allowance for disputed amounts in line with its proposal referred to in the foregoing paragraph. It would seem the Institute has no actual opposition to the record retention period itself, but makes "lump sum" opposition to all administrative issues as a sort of negative "trade-off" if its proposal regarding disputed amounts is not adopted. This does not constitute valid opposition to the record retention proposal. This proposal is needed and should be adopted.

Other Issues

The Dairy Institute and Southern California producers also addressed testimony to movement of milk, unregulated milk, second haul consideration, and price adjustment consistent with plant of first receipt concept for Class 1 usage in areas of ultimate sales. Because these were issues not on the call of the hearing, no amendments pertaining thereto should be made at this time.

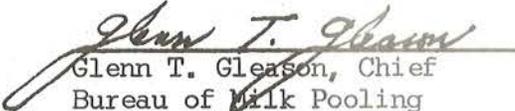
All other subjects and issues testified to were considered and acted on appropriately.

Departmental Action

The proposed changes revising the formula for allocating new quota to existing producers, the reallocation of quota in excess of equalization, and the changes applying to new entry relating to initial allocation of production base and pool quota, base production period, and subsequent allocations, are being submitted to a referendum vote of the market milk producers. The referendum period--60 days by statute--will begin on October 15, 1976 and run through December 13, 1976. All other proposals are being adopted and will become effective December 20, 1976.

L. T. Wallace
Director of Food and Agriculture

By


Glenn T. Gleason, Chief
Bureau of Milk Pooling

Dated: October 14, 1976

APPENDIX 1

PROJECTED IMPACT OF ALLOCATION OF NEW CLASS 1 USAGE PROPOSAL

Quota to Production
Base Relationship

Approximate Percentage of
Production Base Allocated to
Each Producer Within Each Group

Based on 59,200 lbs SNF Per Day

<u>Percentage</u>	<u>1/ Current Formula</u>	<u>2/ Department Proposal</u>	<u>3/ Federated Dairymen</u>
90-95	2.96	4.52	5.18
85-89	3.61	5.02	5.70
80-84	4.30	5.30	5.79
75-79	5.04	5.59	5.89
70-74	5.76	5.89	5.98
65-69	6.44	6.16	6.07
60-64	7.18	6.45	6.16
55-59	7.87	6.73	6.25
50-54	8.51	6.99	6.33
45-49	9.28	7.30	6.42
40-44	10.07	7.63	6.54
35-39	10.76	7.88	6.62
30-34	11.53	8.20	6.72
25-29	12.25	8.49	6.81
20-24	13.14	8.85	6.93

1/ $1/2$ Production Base + 4(Production Base Minus Quota)
 2/ $3/4$ Production Base + (Production Base Minus Quota)
 3/ 3 Production Base + (Production Base Minus Quota)