

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

These findings and conclusions are based on material issues raised at public hearing held on November 30, 1977, in Sacramento, California, to consider proposed amendments to the Pooling Plan for Market Milk as amended.

Nature of 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 to the Pooling Plan in the following areas:

1. Allocation of quota
2. Producer-Distributor options
3. Transfer of quota
4. Accounting and reporting procedures
5. Pooling Plan definition

FINDINGS

The following amendments pertaining to allocation of quota and to Producer-Distributor options were to conform the Pooling Plan language to the legislative changes in the statute. Since the changes in the Act were quite detailed and specific as to intent, testimony and debate on these two issues would have been redundant. No testimony was given except to concur with the amendments as made. It follows as a matter of routine order that these two amendments be made a part of the Plan.

Allocation of Quota

A number of producers hold production base and pool quota, yet unequalized, which was issued at the beginning of the pooling program. Another group holds equalized production base and pool quota, and for this reason do not participate in new quota allocation. Some in this group have been in this position since the outset of the program.

Proposed amendments would bring the unequalized group to instant equalization on July 1, 1978. The quota necessary for this purpose would be granted independent of any Class 1 sales increase. The equalized group would participate in new quota allocation beginning January 1, 1979 to the extent of forty percent of any increase in Class 1 sales, such amount being allocated pro rata according to quota held. Also, beginning January 1, 1979, forty percent of increased Class 1 sales would be allocated to producers who remain unequalized. This will primarily be those who have entered as new producers since the start of the program. The remaining twenty percent will continue to be allocated to new producers.

Producer-Distributor Options

Producer-distributors, henceforth to be known as producer-handlers, have been operating with varying degrees of exemption from the pool.

One type maintained its exempt status so long as no less than 66 2/3 percent of its Class 1 sales was in retail form, and no more than five percent of its total Class 1 sales, or fifty gallons per day if greater, is received from sources outside its own production. Should the producer-handler default in any of these requirements, it would be required to enter the pool, be assigned its production base and pool quota, and account to the pool as a pool handler. The proposed amendments would lower this minimum retail level to fifty percent, and would permit purchases from outside sources in amounts not to exceed twenty-five percent of Class 1 sales. Any purchase in excess of five percent of such sales, however, would have to come from pool sources. The fifty gallon per day alternative would no longer apply. Under the amendments, this group could elect during the months of August and September of any year to enter the pool and operate as another type of producer-handler whose exemption is limited to the qualifying deductions that may be made from Class 1 usage.

The second group of producer-handlers have been partially exempt in that their original quota has been deducted from Class 1 sales, with pool accountability applying to the balance of production and usage. Some in this group have purchased quota since the beginning of the pooling program, but such purchased quota has participated in the quota pool, along with the quota of all other producers, rather than qualifying as a deduction from Class 1. The amendments would permit quota purchased prior to January 1, 1978 to be a deductible item, along with original quota, from Class 1 usage. A further daily deduction of 150 pounds fat and 375 pounds solids-not-fat is made provided the producer-handler has not transferred production base and pool quota since February 9, 1977.

A third group of producer-handler has qualified for exemption from the pool so long as their production and their sales are less than 200 gallons per day. This is the approximate equivalent of a 40 cow dairy, and in nearly all cases are family operations. The amendments would increase the limit of production and sales to less than 500 gallons per day, approximately a 100 cow dairy.

Transfer of Production Base and Pool Quota

The current Milk Pooling Plan imposes a five-year waiting period before new quota allocated after November, 1976, pursuant to Article 3, can be transferred. The department proposed amendments would have removed this restriction.

This was a department proposal rather than a legislative change. Testimony on this issue was divided. Representatives of the League of California Milk Producers, California Farm Bureau Federation and a spokesman for three Southern California cooperatives all testified in opposition to the restriction removal. The League filed as their brief, an opinion of their attorney that continued restriction on the transferability of equalizing quota issued pursuant to legislative mandate did not violate the legislative intent. The Federated Dairymen testified in strong support of the amendment granting full transferability of all quota allocated to holders of original production base and pool quota.

While this issue was not spoken to directly in the legislative changes, the legislative intent must be a guiding factor. It is clear that the intent was to equalize all production base and pool quota held, except that acquired as a new producer entry. Legislation has granted special consideration to this segment

of pool holdings apart from all others. The special grant was not conditioned on who holds such production base and pool quota, rather it was on the type of pool holdings it is, namely: that which was of original issue, yet remaining unequalized after 8 1/2 years of pool operations. There were producers who were equalized at the beginning of the program, and others have reached this level over the years. With the exception of new quota allocated on January 1, 1977, they have been free to transfer their equalized holdings without restriction. The 1977 legislation was to sufficiently increase pool quota to bring the remaining holdings to the same position of those already equalized, and they should be granted the same transferability rights as those which have been transferred over the years.

To continue the restriction could deequalize these particular holdings if transferred after July, 1978, a penalty not imposed on the other equalized holdings. In the deliberated judgement of the department this selected production base and pool quota was to be equalized, and was to remain so. To again create an unequalized position would be to preempt the legislative mandate. It is the further belief of the department, however, that once all are equalized, the purpose of the original Statute has been fulfilled, and any quota beyond that point should be subject to restriction. It is therefore the department's conclusion that all quota needed to bring the holdings to equalization should be transferable, but any quota issued thereafter should be subject to the five-year restriction.

The prohibition against the leasing of production base and pool quota has heretofore been covered by a Policy and Procedural Letter. The proposed amendment on this item is to make this provision a part of the plan. The amendment pertaining to the buy and sell waiting period when changes occur in corporate ownership is to lend needed clarification. These two amendments should be adopted as set forth.

Amendments changing accounting and reporting procedures were necessary to implement the changes in the statute applicable to producer-handler operations. These amendments should be adopted.

Amendments changing the terms "distributor" to "handler", "fluid" to "market", as well as changes in other definitions were necessary to conform the Plan to the changed terminology of the statute. These amendments should be made a part of the Plan.

Other Issues Receiving Testimony

Testimony was given by the Dairy Institute and representatives of two handlers addressed to milk movement and modification of location differentials. Their testimony supported differential changes. The two handler representatives requested changes apply to specified regional locations, and the Institute, in hearing testimony and in final brief, requested that modified rates be applied to base and overbase as well as quota.

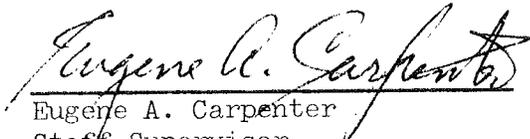
Since these items were not on the call of hearing, other parties, who no doubt would have been equally interested and affected by such changes did not give prepared testimony in support or opposition. Rebuttal testimony was, however, presented by the Federation, League of California Milk Producers and the representative of three Southern California cooperatives which were in opposition to making such changes as a result of this hearing.

To make fragmentary changes to fit singled out positions could cause distortions elsewhere and upset the balancing features of the differential concept. The department duly recognizes, however, that proper incentives to make milk move to where needed are vital to an orderly program. Therefore to give full opportunity to the industry as a whole for adequate study and preparation of testimony, these subjects should be made the call of a special hearing at later time, and no changes should be made as a result of this hearing.

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

R. E. Rominger
Director of Food and Agriculture

By


Eugene A. Carpenter
Staff Supervisor
Bureau of Milk Pooling

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