



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

A. G. Kawamura, Secretary

- Revised -

**REVISED NOTICE OF A PUBLIC HEARING
TO CONSIDER AMENDMENTS TO THE POOLING PLAN FOR MARKET MILK AND THE
STABILIZATION AND MARKETING PLANS FOR MARKET MILK FOR THE NORTHERN
CALIFORNIA AND SOUTHERN CALIFORNIA MARKETING AREAS**

Notice is hereby given that the Secretary of Food and Agriculture is expanding the call of the July 1, 2008 public hearing to consider changes in the transportation allowances as provided in the Pooling Plan for Market Milk (Pool Plan) and the changes in the transportation credits as provided in the Stabilization and Marketing Plans for Market Milk for the Northern California and Southern California Marketing Areas (Stab Plan) in addition to the technical amendments to the Pool Plan as announced in the April 25, 2008 hearing notice called on the Secretary's own motion. The expanded scope of the hearing is in response to the petition received May 2, 2008, from California Dairies, Inc. (CDI).

Hearing Date, Place and Time - The hearing will be held on Tuesday, July 1, 2008, at the California Department of Food and Agriculture's (Department) main auditorium located at 1220 N Street in Sacramento. The hearing will begin at 9:30 a.m.

The hearing is called pursuant to Section 62717, Chapter 3, Part 3, Division 21 and pursuant to Articles 7 and 8, Chapter 2, Part 3, Division 21 of the Food and Agricultural Code (FAC), as implemented by Title 3, Section 2080.2 of the California Code of Regulations (3 CCR 2080.2). The hearing noticed herein will be conducted in accordance with the procedures prescribed in 3 CCR 2080.4.

Department's Proposed Amendments – The Department's Milk Pooling Branch is proposing the following amendments (see attachments):

1. An amendment to insert a definition for the new Dairy Accounting System that will replace the program used by the Department to administer the Pooling Plan.
2. Amendments to provide for use of actual solids-not-fat (SNF) in pool reporting and pool calculations rather than relying on an Average SNF Test to convert skim milk volumes to SNF content.
3. An amendment to provide that the Department make use of the most current available version of PC Miler[®] distance measuring program released by ALK Technologies instead of the Public Utilities Commission (PUC) Mileage Tables for calculation of the distance between dairy facilities within the state.



Petition Received by the Department - On May 2, 2008, the Department received a petition dated May 1, 2008 from California Dairies, Inc. (CDI) proposing:

1. Amendments to the Pool Plan that would increase transportation allowances to qualifying plants in three receiving areas: Bay Area, San Diego, and Southern California; and
2. Amendments to the Stab Plans that would increase transportation credits from Tulare County to Los Angeles, Orange, and Ventura counties.

Call of Hearing – The hearing will consider amendments to the Pool Plan and Stab Plans in effect on July 1, 2008. In particular, the hearing will consider specific amendments to the Pool Plan regarding insertion of a definition for the new Dairy Accounting System that will replace the program used by the Department to administer the Pooling Plan (Reference new Section 134 of the Pool Plan). The hearing will also consider amendments to the Pool Plan to require reporting and use within the new Dairy Accounting System of actual solids-non-fat (SNF) content of milk received and utilized by reporting handlers (Reference Article 8, new Section 802.5 of the Pool Plan).

The hearing will also consider amendments to the Pool Plan to determine distances for Transportation Allowances using PC Miler[®] to replace the PUC Mileage Tables (Reference Article 9.2, new Sections 921.5, 922.5, and 923.5). The hearing will also consider CDI's proposal both to amend the Pool Plan regarding transportation allowances and to amend the Stab Plans regarding transportation credits. Finally, the hearing will consider all the provisions for transportation allowances (Reference Article 9.2, beginning with Section 920 of the Pool Plan) and all the provisions for transportation credits (Reference Section 300.2 of the Stab Plans).

The hearing will consider the factual basis, evidence and the legal authority upon which to make any and/or all of the proposed amendments to the Pool Plan and the Stab Plans.

Interested parties should refer to the declarations, purposes, goals and requirements of the "Equalization Pools" Program as codified in FAC Chapters 3 and 3.5, especially Sections 62700, 62701, 62702 and 62702.1. Parties should also refer to the declarations, purposes, goals and requirements of the Milk Stabilization Program as codified in FAC Chapter 2, especially making milk available to Classes 1 and 2 in Section 62074.5 and the pricing criteria in Article 9.

Alternative Proposals – All interested parties are entitled to submit proposals detailing alternatives within the call of the hearing. These proposals must be signed by a responsible party and received by the Department’s Dairy Marketing Branch no later than 4:00 pm on Tuesday, June 3, 2008. The Dairy Marketing Branch’s office location is at 560 J Street, Suite 150, Sacramento, CA 95814. Alternative proposals may also be sent electronically via email to dairy@cdfa.ca.gov, faxed to (916) 341-6697, or mailed to Hearing Officer, c/o CDFA Dairy Marketing Branch, 1220 N Street, Sacramento CA 95814.

At the hearing, the Department will receive testimony and evidence, both oral and documentary. Interested parties who wish to introduce testimony and/or exhibits shall provide the Hearing Officer at the hearing six (6) copies of such documents for the official record, as well as one copy for the court reporter, for a total of seven (7) copies. In addition, the Department encourages participants to make additional copies available for use by other hearing participants.

Copies of the hearing transcripts received at the hearing will not be available for distribution via the Department, but are available for inspection at the Dairy Marketing Branch. If interested parties wish to purchase copies, arrangements may be made with the reporting service at the hearing.

Final Decisions Resulting from the Hearing - The final decisions resulting from this hearing will be issued in accordance with the procedures and criteria contained in Chapters 2, 3, and 3.5 of Division 21 of the FAC, as necessary. The Department's decision will include consideration of any relevant economic effect of the proposed amendments on dairy producers, cooperatives, consumers, and milk handlers as introduced into the hearing record.

The Department’s decision will also include consideration of the following:

- the appropriate level of transportation allowances and credits for the various regions of the state to ensure sufficient bulk milk supplies for Class 1 usages to attract the nearest milk supplies to fulfill the Class 1 needs, and to minimize the cost to the Pool, while maintaining equity among producers in different regions of the state;
- whether the amendments would be in accord with all the purposes, policies, and standards contained in Chapter 2 of Part 3 of Division 21 of the FAC, Sections 61801, 61802, 61805, 61806, 61807, 62076, 62704.5, and 62077;
- whether amendments to the Pool Plan are necessary to effectuate the purposes of Chapters 3 and 3.5 of Part 3 of Division 21 of the FAC, Sections 62700, 62701, 62702, 62712, 62714, and 62750;

- whether proposed Pool Plan amendments are substantive in nature thereby requiring a statewide referendum in accordance with FAC Section 62717; and
- whether prices will insure an adequate and continuous supply, in relation to demand, of pure, fresh, wholesome market milk for all purposes, including manufacturing purposes, at prices to consumers which, when considered with relevant economic criteria, are fair and reasonable and whether prices, including the prices of components of milk, established by the Secretary for the various classes of market milk bear a reasonable and sound economic relationship to each other.

Ex Parte Communications Prohibited - From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues with any person having an interest in the proceeding. Procedural matters are not subject to the above prohibition and may be discussed at any time.

Public Workshop – The Department will conduct a public workshop on Tuesday, June 17, 2008 at the Department’s main auditorium located at 1220 N Street in Sacramento beginning at 10:00 a.m.

The purpose of the workshop is to provide interested persons with the opportunity to fully understand and clarify the purpose and intent of the proposed new Section 134, the proposed new Subsections 802.5, 921.5, 922.5 and 923.5 of the Pool Plan, the adjustments to the transportation allowances and transportation credits that were proposed by CDI, and any alternative proposals that may be submitted for consideration for the hearing. In preparation for the workshop, the Department is distributing with this Hearing Notice a comparison table of distances between sample points in Northern and Southern California calculated using the current PUC Tables and the PC Miler[®] program. At the workshop, the Department will supply background material and analysis of alternative proposals as time permits.

Copies of the data comparing the current PUC Tables and the PC Miler[®] program can be obtained by interested parties through the Department’s website. From the dairy home page, click on *Hearing Matrix* and then *July 1, 2008 Hearing*. Alternatively, use this link: http://www.cdfa.ca.gov/dairy/dairy_hearings_matrix.html .

The workshop will be informal and educational in nature. Discussion during the workshop will not be part of the official hearing record and will not be considered in rendering a decision.

The Department's entire hearing exhibit folder will be available for public inspection at the Dairy Marketing Branch office at the address above on June 24, 2008.

Media contacts and publication staff are asked to contact the Department's Public Affairs Office by e-mail at cdfapublicaffairs@cdfa.ca.gov or by phone at (916) 654-0462.

All interested persons are invited to attend and participate in the public workshop and the hearing. Interested parties are encouraged to present any data or information that is relevant to the consideration of the issues raised in the call of this hearing. If any interested party has questions regarding the call of this hearing he or she may contact Dave Ikari at (916) 341-5988.

Persons with Disabilities - The Department wishes to ensure that all members of the public have access to all public meetings. If you require a special accommodation, please contact Marie Caron-Lyles at (916) 341-5901 or TDD (800) 735-0193 at least five days before hearing date.

Original signed by

05-09-08

George Gomes, Undersecretary

Date _____

Enclosure

PROPOSED NEW SECTION 134 OF THE
POOLING PLAN FOR MARKET MILK

Section 134. "Dairy Accounting System" means the relational database software program utilized by the Department to administer the Pooling Plan for Market Milk. The Dairy Accounting System will replace the legacy Pool Accounting System upon full development and satisfactory verification of the functionality of the System. The Department shall provide 10-days notice to all interested parties of the implementation of the new Dairy Accounting System.

PROPOSED NEW SUBSECTION 802.5 OF THE
POOLING PLAN FOR MARKET MILK

Section 802.5. This subsection shall become effective with the implementation of the new Dairy Accounting System and shall supersede Section 802. This subsection shall remain in effect so long as the new Dairy Accounting System is utilized by the Milk Pooling Branch for administration of the Pooling Plan for Market Milk. The Department shall provide 10 days notice of the implementation of this Subsection.

Each handler required to report pursuant to Section 801 shall, on the same report, show the product pounds, milk fat content and solids-not-fat content for the following utilization or disposition:

- (a) For each processing plant, the following:*
 - (1) Class 1 products disposed of in packaged form (including dispensers) to retail outlets, wholesale outlets, and other plants;*
 - (2) Bulk market milk, restricted use market milk and manufacturing milk utilized in the manufacture of Class 2, Class 3, Class 4a, and Class 4b products;*
 - (3) Bulk market milk transferred or diverted to pool plants, each identified by destination. The classification of such items shall be based upon the receiving handler's inplant usage of each class for the previous month;*
 - (4) Bulk market milk transferred or diverted to exempt producer-handlers, each identified by destination; such items shall be classified as Class 1;*

- (5) *Bulk market milk and restricted use market milk diverted to nonpool plants or other outlets except pool plants and the claimed classification thereof, provided that if such classification is other than Class 1, the classification of such milk shall be changed to Class 1 at a later date if the secretary is unable to verify its use in lower priced classes; such items shall be identified by destination;*
 - (6) *Bulk market milk, restricted use market milk and manufacturing milk transferred to nonpool plants or other outlets except pool plants and the claimed classification thereof, provided that if such classification is other than Class 1, the classification of such milk shall be changed to Class 1 at a later date if the secretary is unable to verify its use in lower priced classes; such items shall be identified by destination;*
 - (7) *Packaged Class 1 products on hand at the end of the month which shall be classified as Class 1;*
 - (8) *Bulk market milk on hand at the end of the month which shall be unclassified but shall be priced at the Class 4a level;*
 - (9) *Bulk manufacturing milk on hand at the end of the month;*
 - (10) *For plants who have Class 1 inplant disposition, the disappearance of milk fat, solids-not-fat or fluid carrier not to exceed 3 percent of the total receipts for the reported month shall be classified on the basis of the percentage of the inplant utilization of the current month, with any excess shrinkage above 3 percent classified as Class 1; for plants having no Class 1 inplant disposition, the total disappearance shall be classified on the basis of the percentage of the inplant utilization of the current month; provided, however, if the operator of the plant does not make and retain full and complete records of the receipt, use, disposition and handling of all milk or milk products received in the plant and inventories thereof, the secretary shall classify any disappearance of milk fat, solids-not-fat or fluid carrier as Class 1.*
- (b) *For each cooperative association acting as a handler under Paragraph 105(c) the following:*
- (1) *Bulk market milk diverted to pool plants, each identified by destination; the classification of such items shall be based upon the receiving handler's inplant usage of each class for the previous month;*

- (2) *Bulk market milk diverted to nonpool plants or other outlets except pool plants and the claimed classification thereof, provided that if such classification is other than Class 1 the classification of such milk shall be changed to Class 1 at a later date if the secretary is unable to verify its use in lower priced classes; such items shall be identified by destination.*
- (3) *Bulk manufacturing milk and restricted use market milk diverted to nonpool plants or other outlets except pool plants, and the claimed classification thereof, provided that if such classification cannot be verified by the Secretary, the Secretary, in his or her discretion may reclassify such milk to an appropriate class.*

PROPOSED NEW SUBSECTION 921.5 OF
THE POOLING PLAN FOR MARKET MILK

Section 921.5 This subsection shall become effective with the implementation of the new Dairy Accounting System and shall supersede Section 921.2. This subsection shall remain in effect so long as the new Dairy Accounting System is utilized by the Milk Pooling Branch for administration of the Pooling Plan for Market Milk. The Department shall provide 10 days notice of the implementation of this Subsection.

Transportation allowances shall be calculated on the miles determined, using the PC Miler[®] program, from the dairy farm to the location of the plant of first receipt, subject to Sections 921 and 921.1, and shall apply to all pool milk. The following rates shall be utilized in calculation of the allowances:

(a) For plants located in the Bay Area receiving area, which shall consist of the counties of Alameda, Contra Costa, Santa Clara, Santa Cruz, San Francisco, and San Mateo:

<i>(1) From zero through 99 miles</i>	<i>\$0.27 per CWT</i>
<i>Over 99 miles through 199 miles</i>	<i>\$0.34 per CWT</i>
<i>Over 199 miles</i>	<i>\$0.36 per CWT</i>

(b) For plants located in the Sacramento receiving area, which shall consist of the County of Sacramento:

<i>(1) From zero through 59 miles</i>	<i>\$0.15 per CWT</i>
<i>Over 59 miles</i>	<i>\$0.20 per CWT</i>

(c) For plants located in the Shasta receiving area, which shall consist of the County of Shasta:

(1) From zero through 29 miles	\$0.13 per CWT
Over 29 miles through 49 miles	\$0.16 per CWT
Over 49 miles	\$0.19 per CWT

(d) For plants located in the North Bay receiving area, which shall consist of the counties of Marin, Solano, and Sonoma:

(1) From zero through 44 miles	\$0.19 per CWT
Over 44 miles through 99 miles	\$0.29 per CWT
Over 99 miles	\$0.34 per CWT

(e) For plants located in the Southern California receiving area, which shall consist of the counties of Los Angeles, Orange, Riverside, San Bernardino and Ventura:

(1) From the Counties of Riverside and San Bernardino:

From zero through 89 miles	\$0.11 per CWT
Over 89 miles	\$0.37 per CWT

(2) From California's 56 other counties:

From zero through 89 miles	\$0.11 per CWT
Over 89 miles through 109 miles	\$0.37 per CWT
Over 109 miles through 139	\$0.56 per CWT
Over 139 miles	\$0.70 per CWT

(f) For Plants located in the San Diego receiving area, which consist of the County of San Diego:

(1) From zero through 89 miles	\$0.11 per CWT
Over 89 miles through 139 miles	\$0.43 per CWT
Over 139 miles	\$0.70 per CWT

PROPOSED NEW SUBSECTION 922.5 OF
THE POOLING PLAN FOR MARKET MILK

Section 922.5. This subsection shall become effective with the implementation of the new Dairy Accounting System and shall supersede Section 922. This subsection shall remain in effect so long as the new Dairy Accounting System is utilized by the Milk Pooling Branch for administration of the Pooling Plan for Market Milk. The Department shall provide 10 days notice of the implementation of this Subsection.

The mileage to be used for calculating the transportation allowance for each producer's shipments shall be based on the most current version of PC Miler[®] released by ALK Technologies and tested for satisfactory functionality for use with the Dairy Accounting System utilized by the Milk Pooling Branch for administration of the Pooling Plan as follows:

- (a) The distance calculated shall be based on miles from the dairy farm's tanker loading area to the plant of first receipt's receiving dock using Global Positioning System Coordinates for each location;*
- (b) The constraints utilized with the PC Miler[®] program for determining routes from dairy farms to plants of first receipt shall be set to:*
 - 1. Use of roads and highway routes accessible to commercial trucks*
 - 2. Use of roads and highway routes within the boundaries of the state of California.*

PROPOSED NEW SUBSECTION 923.5 OF
THE POOLING PLAN FOR MARKET MILK

Section 923.5 This subsection shall become effective with the implementation of the new Dairy Accounting System and shall supersede Section 923. This subsection shall remain in effect so long as the new Dairy Accounting System is utilized by the Milk Pooling Branch for administration of the Pooling Plan for Market Milk. The Department shall provide 10 days notice of the implementation of this Subsection.

Each month the secretary shall determine for each individual producer the amount of transportation allowance in the following manner:

- (a) Determine the total pounds of milk shipped to each plant of first receipt and the miles from the producer's dairy farm to such plant;*
- (b) For the shipments that qualify for a transportation allowance, select the appropriate rate as set forth in Section 921.2, and multiply the total pounds of milk shipped by such rate;*
- (c) For each producer, except producer-members of cooperative associations, the amount calculated in Paragraph (b), hereof, shall be credited to the producer's settlement;*
- (d) For each cooperative association, the amount calculated for individual producer-members in Paragraph (b), hereof, shall be accumulated and credited to the respective cooperative association's settlement.*