

Extracts from
California Food & Agricultural Code, and
California Code of Regulations
Relating to the
Public Hearing Process for
Milk Pricing and Pooling

Table of Contents:

- Legislative Statutes Relevant to Public Hearings for both Stabilization and Pooling Plans 2
- Additional Legislative Statutes Relevant to Public Hearings for the Pooling Plan Only 5
- Administrative Law Regulations Relevant to Public Hearings 7

Legislative Statutes Relevant to Public Hearings for both Stabilization and Pooling Plans

61892. The director shall have and may exercise any or all the powers conferred by the Government Code upon the head of a department of the state with respect to hearings and investigations under this chapter.

61896. The director may formulate any stabilization and marketing plan as prescribed in this chapter and declare it effective after public hearing and reasonable notice by mail or otherwise to all producers, handlers, and consumer organizations who have filed requests with the director or the Director of Consumer Affairs.

61897. A full and accurate record of business or acts performed, or of testimony taken, by the director pursuant to this chapter shall be kept and placed on file in the office of the director.

61899. Any order of the director made pursuant to this chapter which substantially affects the rights of any interested party may be reviewed by any court of competent jurisdiction. Any such action shall be commenced within 30 days after the effective date of the order complained of, or within 30 days after the injurious effect complained of becomes reasonably apparent.

61902. If the director determines that it is probable that one or more factors or conditions which affect prices of market milk have changed on a relatively uniform basis throughout two or more marketing areas, he may consolidate the hearings on the matter of price changes for such areas. No price change shall be made as a result of such a consolidated hearing unless the amount of the change or the resulting prices are uniform throughout the areas which are affected.

61903. Any person who has testified under oath at a public hearing held by the director pursuant to this chapter may be granted, upon request prior to the close of the hearing, a period of time not to exceed 10 calendar days following the closing date of the public hearing, in which to file with the director a written posthearing brief in amplification, explanation, or withdrawal of that person's testimony. Any such posthearing brief shall be made available by the director to any interested person for inspection. Except as herein provided, the director, in formulating any stabilization and marketing plan, pursuant to this chapter, following a public hearing, shall not accept or consider any posthearing brief. Nothing in this section shall require the director to prepare, or to make available, any verbatim transcript or other record or summary of the hearing within the 10-calendar-day period referred to in this section. However, any verbatim transcript or other record or summary of the hearing prepared for or by the director shall be made available to any interested party for inspection at the office of the director

in Sacramento and, upon reasonable request, at the regional office of the director nearest the location at which the public hearing was held.

61904. Any provisions of a stabilization and marketing plan formulated, established, or rejected by the director pursuant to this chapter, shall be accompanied by written statements, which shall be made available by the director to any interested person upon request, stating in substance the considerations upon which such plan provisions and minimum prices are based, or upon which such provisions and prices were rejected.

61991. Except as otherwise provided in Section 61992, the director shall, prior to the formulation of a stabilization and marketing plan for market milk for any marketing area, conduct a public hearing in the area for the purpose of determining whether or not the formulation of a stabilization and marketing plan for market milk for such area is desired by producers whose major interest in the market milk business is in the production of market milk for the marketing area and that both:

- (a) Represent not less than 65 percent of the total number of producers whose major interest in the market milk business is in the production of market milk for the marketing area.
- (b) Produce not less than 65 percent of the total volume of the market milk produced for the marketing area by all such producers.

61992. A hearing need not, however, be held if a petition requesting a stabilization and marketing plan is presented to the director by the producers whose major interest in the market milk business is in the production of market milk for the marketing area, and that both:

- (a) Represent not less than 65 percent of the total number of producers whose major interest in the market milk business is in the production of market milk for the marketing area.
- (b) Produce not less than 65 percent of the total volume of the market milk produced for the marketing area by all such producers.

61993. If the director finds that a stabilization and marketing plan is necessary to accomplish the purposes of this chapter, he shall formulate a stabilization and marketing plan for market milk for such area and issue a notice of public hearing upon the plan which is formulated to all producers and handlers of record with the department that may be subject to the provisions of such plan.

61994. The notice of the hearing may be effected by mail, or by publication pursuant to Section 6062 of the Government Code in the area which is designated. It shall specify the time and place of such hearing, which shall not be prior to 15 days from the mailing, or from the final publication of such notice. If no daily newspaper of general circulation is published in the area which is designated, publication pursuant to Section 6066 of the Government Code shall be considered proper publication of notice.

61995. At the hearing, interested parties shall be heard and records kept of the proceedings of such hearing for determination by the director whether the plan proposed will accomplish the purposes of this chapter.

61996. If, after the public hearing, the director determines that the proposed plan will tend to accomplish the purposes of this chapter within the standards which are prescribed in it, he or she shall issue an order to all producers and handlers of record with the department and subject to the provisions of the plan, declaring the plan in effect within 62 days from the date of the hearing. The director shall announce any order under this section at least 10 calendar days prior to the effective date of the plan.

62031. The director may amend or terminate any stabilization and marketing plan, after notice and public hearing as prescribed in Article 7 (commencing with Section 61991), if he or she finds that the plan is no longer in conformity with the standards which are prescribed in, or will not tend to effectuate the purposes of, this chapter. Any order under this article amending or terminating any stabilization and marketing plan shall be subject to Section 61996.

62032. A hearing on the amendment or termination of a stabilization and marketing plan may be held upon the motion of the director and shall be held upon receipt of a petition which is signed by producers, or by the board of directors of any nonprofit agricultural cooperative marketing association which is authorized by its members to so petition. Such petition shall represent not less than 55 percent of the total number of all producers and not less than 55 percent of the total production of all producers that are eligible to petition the director for the formulation of such a plan.

Additional Legislative Statutes Relevant to Public Hearings for the Pooling Plan Only

62717. If the director finds that producers on a statewide basis have assented in writing to the proposed pooling plan submitted to them for assent, the director shall place the proposed pooling plan into effect. The director shall find that producers have assented to the plan if he finds on a statewide basis that not less than 51 percent of the total number of eligible producers in the state shall have voted in the referendum and finds one of the following:

- (a) Sixty-five percent or more of the total number of eligible producers who voted in the referendum who produced 51 percent or more of the total amount of fluid milk produced in the state during the calendar month next preceding the month of the commencement of the referendum period by all producers who voted in the referendum approve the plan.
- (b) Fifty-one percent or more of the total number of eligible producers who voted in the referendum who produced 65 percent or more of the total amount of fluid milk produced in the state during the calendar month next preceding the month of the commencement of the referendum period by all producers who voted in the referendum, approve the plan.

If the plan is not approved, the director may resubmit the plan, or submit a new plan, at any time after six months from the date the director announces the plan was not approved.

The director may amend the plan, after notice and public hearing has been given in the same manner as is provided in Chapter 2 (commencing with Section 61801) for stabilization and marketing plans, if he finds that the amendment is necessary to effectuate the purposes of this chapter. After the hearing, the director, upon his own motion, may make nonsubstantive amendments to the plan. The director may make substantive amendments to the plan only if producers assent to the proposed amendments at a referendum conducted in the same manner and in the same number as provided for the referendum approving the pooling plan.

The director may terminate the plan on a statewide basis after notice and public hearing has been given in the same manner as is provided in Chapter 2 (commencing with Section 61801) for stabilization and marketing plans, if he finds that the plan is no longer in conformity with the standards described in, or will not tend to effectuate the purposes of, this chapter. The hearing may be held upon the motion of the director, and shall be held upon receipt of a petition signed by producers representing not less than 25 percent of the total number of all producers and not less than 25 percent of the total production of all producers.

The director shall submit the termination of the plan on a statewide basis in a referendum conducted in the same manner as provided for initial approval of the plan if, after notice and public hearing has been given in the same manner as is

provided in Chapter 2 (commencing with Section 61801) for stabilization and marketing plans, he finds that a substantial question exists as to whether or not producers desire the plan to continue and shall submit the plan for termination upon receipt of a petition requesting termination signed by producers representing not less than 25 percent of the total number of all producers and not less than 25 percent of the total production of all producers. The plan shall be terminated if termination is favored by the same percentage of producers producing the same amount of fluid milk as required to initiate the plan.

Administrative Law Regulations Relevant to Public Hearings

California Code of Regulations, Section 2080.2: Petition for Adoption, Amendment or Termination of Stabilization and Marketing Plan(s) or Milk Pooling Plan.

- (a) Procedures for the adoption, amendment or termination of stabilization and marketing plans are stated in Sections 61991-62032 of the Food and Agricultural Code. Procedures for the adoption, amendment or termination of the milk pooling plan are stated in Sections 62705 and 62717 of the Food and Agricultural Code. In addition to the secretary's authority to adopt, amend or terminate stabilization and marketing plans or the milk pooling plan, any interested person may petition the secretary requesting the adoption, amendment or termination of a stabilization or marketing plan or the milk pooling plan. The petition shall be submitted using the format available from the Department. The format shall be laid out so that the petition shall clearly and concisely give:
- (1) a brief written description of the requested changes including a copy of the suggested language to amend the plan;
 - (2) specifications as to why the petitioner recommends the proposed changes including relevant analysis, comments and data supporting the request; and
 - (3) the authority of the secretary to take the action requested.
- (b) Upon receipt of such petition at the designated Departmental office, the secretary shall notify the petitioner in writing of its receipt. The secretary shall also notify all interested parties of record in writing of the receipt of the petition. Within 15 days of the petition's receipt at the designated office, the secretary shall either schedule the matter for public hearing or deny the petition in writing indicating why the secretary has reached such a decision on the merits of the petition.
- (c) The secretary may grant or deny such a petition in whole or in part, and may grant such other relief or take such other action as the secretary may determine to be warranted and shall notify the petitioner in writing of such action.
- (d) Any interested person may request reconsideration of any part or all of a decision of the secretary on any petition submitted. Any such request shall be submitted in accordance with subsection (a) of this Section and shall include the reason(s) why the secretary should reconsider the previous decision no later than 60 days after the date of the decision involved. The secretary's reconsideration of any matter relating to a petition shall be subject to the provisions of subsection (b) of this Section.

California Code of Regulations, Section 2080.3:
Mandatory Hearing to Amend or Terminate of
Stabilization and Marketing Plan(s) or Milk Pooling Plan.

- (a) Procedures for a mandated hearing to amend or terminate a stabilization and marketing plan are stated in Section 62032 of the Food and Agricultural Code. Procedures for a mandated hearing to terminate the milk pooling plan are stated in Section 62717 of the Food and Agricultural Code. In addition to the procedures laid out in Section 2080.2 to adopt, amend or terminate stabilization and marketing plans or the milk pooling plan, interested procedures may petition the secretary requesting a mandated hearing to amend or terminate a stabilization and marketing plan or to terminate the milk pooling plan. The petition shall be submitted using the format available from the Department, as specified herein. The format shall be laid out so the petition shall clearly and concisely give:
- (1) a brief description of the requested changes including a copy of the suggested language to amend the plan;
 - (2) specifications as to why the petitioner recommends the proposed changes including relevant analysis, comments and data supporting the request; and
 - (3) the authority of the secretary to take the action requested.
- (b) Upon receipt of such petition at the designated Departmental office, the secretary shall notify the petitioner in writing of its receipt. The secretary shall also notify all interested parties of record in writing of the receipt of the petition. Within 60 days of the receipt of the petition, the secretary shall notice the mandated hearing provided that:
- (1) the petition meets all the requirements of subsection (a) of this Section; and
 - (2) the petition clearly shows the number of market milk producers who have signed the petition and/or are being represented by a petitioning cooperative, including their names and producer numbers issued by the Milk Pooling Branch (or their address if they have no such number), as well as the volume of milk produced individually by such producers for the latest available month; the number of producers and volume of milk shall be tabulated by the marketing areas the producers' milk is shipped into; and
 - (3) both the number of producers and volume of milk equals or exceeds 55 percent (25 percent for a pooling hearing) of the number of producers shipping into and volume of milk being shipped into each of the marketing areas affected by the petition; and
 - (4) in addition, for any nonprofit agricultural cooperative marketing association petitioning, the petition shall be signed by the board of directors or, with proof of authority, by a person so delegated by that board and the petition shall attach proof that the board has been granted specific or general authority by its members to petition the secretary.

- (c) If the petition does not meet all the requirements of subsection (b) of this Section, then it shall be subject to the provisions of Section 2080.2, except that the secretary shall have 60 days rather than 15 days from the petition's receipt at the designated office to either schedule the matter for public hearing or deny that petition in writing indicating why the secretary has reached such a decision on the merits of the petition.

California Code of Regulations, Section 2080.4:
Conduct of Hearings for Adoption, Amendment or Termination of
Stabilization and Marketing Plan(s) or Milk Pooling Plan.

- (a) Hearing Officer and Panel. The Secretary's designee may conduct the hearing, or may select a panel to receive evidence and question witnesses. A hearing officer will preside at the hearing. No member of the panel will be a witness.
- (b) Department Exhibits. Department exhibits and Departmental proposals, if any, will be presented by a person who is not a member of the panel. Exhibits, which the Department anticipates introducing at the hearing, will be available for public inspection at the Department's Sacramento office not less than seven calendar days prior to the hearing. All exhibits will also be available for review during the hearing.
- (c) Hearing Roster. Any person desiring to testify shall sign, at the hearing, a roster prepared for such purpose. At the hearing, the hearing officer will announce the manner in which the roster will be used to determine the order of witnesses.
- (d) Testimony by Petitioners. If the hearing results from a petition, the petitioners will normally testify immediately after Department officials have introduced explanatory and statistical material, if any. Petitioners will then explain the proposal and submit supporting documents. In such cases, the petitioners, as a group, normally will be allowed up to one hour for testimony. If the hearing results from more than one petition, the multiple groups of petitioners normally will collectively be allowed up to 90 minutes for testimony. The group can (1) divide up the 90 minutes as they wish, (2) have the 90 minutes allocated to each group on a prorata basis, or (3) each have 20 minutes for testimony. In any case, if there does not appear to be large number of witnesses, the hearing officer may grant each group of petitioners up to an additional 20 minutes of time.
- (e) Testimony by Persons Submitting Alternative Proposals. Any person who has submitted an alternative proposal in response to a petition for a public hearing shall be allowed up to 30 minutes for testimony. However, if there

does not appear to be a large number of witnesses, the hearing officer may grant up to an additional 20 minutes of time for such testimony.

- (f) Other Testimony. Oral testimony shall not exceed the time limit specified by the hearing officer. However, a witness may supplement oral testimony by submitting a written statement at the time the testimony is given. Normally, each witness, or group of witnesses appearing together, will be allowed 20 minutes for direct testimony. However, if there does not appear to be a large number of witnesses, the hearing officer may grant each witness up to an additional 20 minutes of time. After all persons wishing to testify have had an opportunity to do so, not more than an additional 20 minutes of time will be provided to each witness or petitioner who desires to present further testimony.
- (g) Questioning of Witnesses. At the conclusion of their testimony, witnesses will be subject to questioning by members of the hearing panel. With respect to Departmental witnesses, the hearing officer shall permit additional questioning by members of the audience. Any member of the audience may submit questions to the hearing officer for possible use by the hearing panel. Questions of witnesses shall be related to their testimony and pertinent to the call of the hearing.
- (h) Written Statements. Any interested person may file a written statement concerning the matter at the hearing. Written statements may be of any length, but limited to relevant matters. They must be signed. Preferably, written statements should be typewritten or printed. Written statements may be delivered personally or by mail any time after the notice of hearing, and shall be received by the Department prior to the close of the hearing. Such statements should be addressed to the hearing officer at the designated Departmental office. Written statements will be available for review during the hearing.
- (i) Posthearing Briefs. With respect to posthearing briefs, the provision of Section 61903 of the Code shall be applicable.
- (j) Hearing Transcripts. The hearing shall be recorded by a reporter or recorder. Copies of the transcript may be obtained directly from the hearing reporter, or from the Department at the current rate for copies of public records. The Department will maintain and make available for public inspection a hearing transcript at its Sacramento office and, upon reasonable request, at the regional office of the Department nearest the location at which the public hearing was held.