



# DAIRY INSTITUTE OF CALIFORNIA

REPRESENTING CALIFORNIA DAIRY PROCESSORS SINCE 1939

August 30, 2017

Candace Gates, CA FMMO Coordinator  
California Department of Food and Agriculture  
1220 N Street  
Sacramento, CA 95814

Dear Ms. Gates:

Dairy Institute submitted Proposal 2 in the Department of Agriculture (USDA) “Milk in California” hearing held in the fall of 2015. As a primary participant in the USDA hearing, and as the trade association representing a majority of proprietary dairy processors in California, we submit the following comments regarding the proposed “Quota Implementation Plan.”

The Producer Review Board (PRB) has struggled to absorb the stark differences between federal order and California pooling and pricing, the limits of California Department of Food and Agriculture (CDFA) authority under a federal milk marketing order (FMMO), and the dramatic shift in now having producers directly assessed to make monthly Quota payments to Quota holders. It is important that California producers are fully informed about these differences, and that the “optics” are not used to mask them.

Should California dairy farmers decide to adopt a federal milk marketing order, USDA has decreed that only a stand-alone quota assessment/disbursement activity will remain for CDFA to administer. All other milk marketing and pooling activities in California are to be administered by USDA.

- Only Class I handlers and the milk they buy are consistently regulated by USDA.
- USDA will not allow California dairy farmers to make the decision whether their milk is priced and regulated by USDA; milk pooling decisions are made by handlers.
- Handlers that sell or receive non-Class I milk at unregulated plants determine whether or not milk is pooled. Only milk that is pooled is subject to the FMMO regulated prices, otherwise handlers can choose to pay farmers outside FMMO minimum prices.
- And though a cooperative might decide to pool their members’ milk, the actual sale of that milk to proprietary non-Class I plants is not regulated by USDA; minimum FMMO prices will not apply.

This is very different from the certainty provided by CDFA's inclusive mandatory minimum price authority. Large volumes of California milk will not be priced or regulated by USDA, so the actual prices dairy farmers will receive under a California FMMO cannot be known. As with most Western U.S. FMMOs, prices received by farmers in California are unlikely to match FMMO minimum prices.

#### **Recommended amendments to conform the Draft Quota Implementation Plan to the Proposed Federal Milk Marketing Order for California:**

If adopted, the California federal milk marketing order (CA FMMO) will wholly replace both California's marketing and stabilization and milk pooling statutes and regulations. The cessation of CDFA legal authority over these activities must be reflected in amendments to California statute and regulation to provide regulatory clarity and certainty to industry stakeholders.

#### **Article 1. Definitions**

##### *"Assessable milk" –*

The definition of "Assessable milk" should be amended to read:

"Assessable milk" means market milk producers received from California producers at a California plant pooled on the California State Order (CSO) as of 7/1/17."

The term "market milk" must be removed as it has no further applicability if a CA FMMO is adopted (further explanation below).

The term "received from California producers at a California plant" is overly broad, expanding the program beyond the current group of CSO pool participants, which currently excludes Grade A farms shipping to a CSO non-pool plant. As the Producer Review Board discussed, there are limits to who should be assessed to fund the Stand-Alone Quota Program (SAQP). To avoid legal challenge, the sole criteria for milk to be eligible for assessment under the SAQP should be whether it was pooled milk under the CSO. This maintains the status quo of producers participating. The most precise and equitable way to retain the same funding base as is currently within the CSO is to retain the same funding sources (pooled producers), use a specified retroactive effective date, and state that all producers pooled as of that specified date are to be deemed "assessable milk" under the SAQP. The specified effective date retroactive to adoption and/or implementation of a CA FMMO is important because all CDFA pooling activity ceases under a CA FMMO.

##### *"Assessment" –*

This definition should be amended as follows:

"Assessment means money collected by handlers from California producers through deductions from producers' milk checks to administer a stand-alone quota program or to fund quota premiums payments."

This definition (and all provisions where the terms "assessment," "fee," or "quota premium" are used) must be amended to clarify that the money collected by handlers to administer the SAQP and to fund quota payments, is assessed on and collected solely from California producers.

Producer assessments are used to fund the SAQP, as specifically outlined in the CA FMMO proposed rule [Fed. Reg./Vol 82, No. 29, page 10653]. The proposed rule issued by USDA provides that handlers regulated under the CA FMMO are authorized to pay less than FMMO regulated prices in order to assess California producers to fund the SAQP. CA FMMO nonpool plants are unregulated by USDA, however, CDFA is not prohibited from assessing California producers shipping “assessable milk” to nonpool plants.

All provisions where the term “premium” is used should be changed to “payment.” Under the SAQP, producers are simply being paid their portion of the quota fund to which they and other producers of assessable milk contribute. The handler is assessing them, not paying a premium. All producers of assessable milk are assessed, some producers will receive a quota payment. For some producers, their quota payment will be larger than the amount of their assessment into the SAQP. For the majority, however, their quota payment will return less than the amount of their assessment. And non-quota holders will pay an assessment but receive nothing.

*“Handler” –*

This definition should be amended as follows:

*““Handler” means any person, ~~other than~~ including a cooperative association, who operates one or more plants in California or that engages in the operation of selling, marketing, or distribution in California of Bulk Market Milk he or she has produced or purchased or acquired from a producer, or a duly incorporated cooperative association of producers which has authority from its individual producer members to market their milk and receive payment therefore.”*

It is incorrect that cooperative associations are not included in this definition. Cooperative associations are “handlers” for the purposes of the definition because if they are not included in the definition, the reporting necessary to administer the SAQP will not be legally required of these entities.

*“Manufacturing milk,” and “Market milk,”–*

Use of these terms in the SAQP has no further applicability because these terms are used exclusively in the CSO, but are never used in FMMOs. The underlying definitions of “market milk” and “manufacturing milk” are “Grade A” and “Grade B” milk, respectively. FMMOs use the terms “Grade A” and “Grade B.” Grade A standards are outlined in the Pasteurized Milk Ordinance (PMO) published by the U.S. Food and Drug Administration; Grade B standards are recommended by the Dairy Division of the Agricultural Marketing Service of USDA.

However, unlike the CSO, “Grade A” and “Grade B” in FMMOs are never synonymous with a producer’s pool or non-pool status, since producers are not the pooling entities in FMMOs. For these reasons, the terms “market milk” and “manufacturing milk” are no longer applicable to the SAQP, and should be stricken from all provisions where they have been used in the draft SAQP.

In summary, regarding the above definitions in Article 1 of the draft SAQP: 1) the determination as to whether milk is “assessable” must be precise and equitable, 2) cooperative associations are handlers as outlined above, and 3) the terms “market milk” and “manufacturing milk” used within the current CSO are no longer applicable to the operation of the SAQP, because retaining these terms when they would not be operative in a CA FMMO would be imprecise and confusing.

**Additional recommended amendments:**

***"Quota" –***

This definition should be amended as follows:

**"Quota" means a daily allocation of pounds of fat and solids not fat contained in market milk for the purposes of receiving a payout from funds collected from an a producer assessment on all market assessable milk produced and delivered in California. The quota pounds owned by each producer prior to the implementation of this Plan shall remain the same after its implementation. All quota pounds shall receive a uniform per pound payment each month the stand-alone quota program is in effect."**

The term "market" needs to be stricken as discussed earlier. The word "producer" must be inserted before the word "assessment." As noted previously, it must be clear throughout the SAQP that **producer assessments are funding the SAQP**. There is scant reference to this fact in the draft SAQP. In the sentence added in the revised draft version, the word "pounds" must be inserted after the word "quota" to be clear that the SAQP will apply a uniform value to every unit of quota. No quota pounds or units can be given additional benefits or value.

USDA's proposed rule [Fed. Reg. Vol. 82, No. 29, pg. 10654] clearly states: 1) the four producer-handlers will become fully regulated handlers, 2) continuation and compensation of exempt quota should be determined by CDFA, but 3) **such compensation cannot be made from reducing the minimum Class I obligation of FMMO fully regulated handlers without undermining the uniform handler provisions of the AMAA**. Exempt quota is used by producer-handlers to not pay the minimum Class 1 price for that amount of the milk they process that is covered by their exempt quota volume, reducing their Class 1 obligation. Therefore, if enhanced quota value is provided to the four producer-handlers in the SAQP, it will be the compensation that reduces their Class 1 obligation, and that is in violation of the proposed rule and the underlying law, the Agricultural Marketing Adjustment Act. Further, the Producer Review Board has voted that exempt quota should receive the same payout as producer quota. Board Action #2017-7.

***"Quota eligible days" –***

It is unclear why this definition is needed in the SAQP. It unnecessarily complicates the program and serves no valid purpose. Producers' quota holdings will be paid on a monthly per-unit basis. In a CA FMMO, degraded milk will be accounted for differently for pooling purposes than it would be in the CSO, and the producer quota assessment and monthly quota payment is unlikely to be impacted. For efficiency of handler reports to CDFA, the need for this definition, and how it will be used in the SAQP should be more clearly described.

***"Quota Premium Payment" –***

This definition should be amended as follows:

**"Quota Premium Payment" means money revenue that has been derived from producer assessments and paid uniformly per unit to producers based on their ownership of pounds of quota."**

As discussed previously, the term "premium" should be changed to "payment." Premium connotes added value paid by a buyer. But under the SAQP, producers are paying the assessment and then being

given a payment from those assessments for the uniform monthly value for each pound of their quota holdings.

*"Quota Revenue" –*

This definition should be amended as follows:

*""Quota Revenue" means ~~revenue-~~ money collected from producers assessments of assessable market milk, for the sole purpose of paying ~~a premium to~~ each holders of quota the uniform rate of monthly quota payment based upon the pounds of quota held."*

## **Article 6. Handler Reports**

Section 600. © -

The number of milkings degraded should not be necessary in a handler report to the SAQP. For reasons discussed earlier, degraded milk will be reported differently under a CA FMMO, and additional clarification is needed as to the need for this information and the justification for its collection for use in the SAQP.

## **Article 7. Computation of Handler Quota Settlement Fund Transfer Obligation**

The title of this article should be amended as noted above.

The SAQP places obligations upon handlers to transfer producer assessments. But the title of this article is currently unclear as to handler obligation to transfer, not pay, the quota assessment. The entire SAQP must be consistent in stating that producers are paying for this program through assessments collected by handlers.

Section 700. –

This section should be amended to read:

*"A quota settlement fund transfer ~~assessment~~ shall be due and payable as directed by this Plan. Failure to make pay any such transfer ~~assessment~~ on time may result in the ~~additional~~ assessment of penalties and fines and court action for the collection of the fund transfer ~~assessment~~.*

*Transfers ~~assessments~~ shall be collected from the handlers of assessable ~~market~~ milk. A handler that makes pay any such transfer ~~assessments~~ for and on behalf of any producer shall ~~may~~ deduct the ~~such~~ producer assessments from any money which is owed the producer by the handler."*

Section 701. –

This section should be amended to read:

*"The net obligation of each handler's transfer shall be computed by multiplying the assessable pounds of solids not fat handled by the producer assessment rate, and deducting an amount calculated by multiplying the pounds of quota solids not fat by \$0.195 reduced by the applicable regional quota adjuster."*



Section 702. –

This section should be amended to read:

“Handlers shall remit ~~transfers of producer assessments payment~~ owed to the Secretary and the Secretary shall remit payment to any Handler owed money pursuant to this plan on the 16<sup>th</sup> of each month.”

Section 703. –

This section should be amended to read:

“Funds in the Quota Implementation Plan ~~Milk Pooling Equalization~~ fund from the operation of the Quota Implementation Plan ~~The Pool Plan for Market Milk~~ shall be used to manage the cash flow needs of a stand alone quota program.”

Under a CA FMMO, the California Milk Pooling Equalization fund, and the Pool Plan for Market Milk are no longer in operation. Language related to the SAQP must recognize that change.

**Article 9. Producer Quota Revenue Assessment**

This title of Article should be amended to read:

“Producer Quota Revenue Assessment.”

The source of funding of the SAQP must be clear in all provisions of the S AQP.

Section 901. –

This section should be amended to read:

“The Secretary shall review and/or adjust the producer quota ~~premium~~ assessment rate as needed.”

The source of funding of the SAQP must be clear in all provisions of the Plan.

**Article 10. Reports and Payments to Producers**

Section 1001. –

This section should be amended to read:

“Handlers shall pay a ~~premium~~ quota payment to producers who own quota computed by multiplying the producer’s monthly pounds of quota solids not fat by \$0.195 minus any deduction for applicable regional quota adjuster.”

Section 1002. –

This section should be amended to read:

“All producer assessments shall be adjusted through the handler’s ~~obligation~~ transfer account for the month following notification by the secretary of the assessed amount.”

Section 1003. –

This section should be amended to read:

“Handlers shall deduct a fee as part of assessment ~~from~~ payments made to producers for all milk received or diverted each month, an amount calculated by multiplying the pounds of solids not fat handled for the producer by the quota assessment rate.

The amount of such fee, net of quota payment obligations, shall be paid to the Secretary of Food and Agriculture on or before the 16<sup>th</sup> day following the last day of the month in which such market milk was received or diverted. In the event the handler fails to pay this fee, the handler shall pay a penalty amount which shall be equal to 10 percent of such unpaid fee. All monies received under the provisions of this section shall be deposited in the State Treasury to the credit of the Department of Food and Agriculture Fund.”

Dairy Institute appreciates the opportunity to comment on, and recommend necessary changes to, the provisions of the Draft Quota Implementation Plan. Please direct any questions you may have to Rachel Kaldor at Dairy Institute.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Rachel Kaldor', written in black ink.

Rachel Kaldor  
Executive Director