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August 30, 2017

Producer Review Board
c/o California Department of Food and Agriculture
1220 N Street
Sacramento, CA 95814

Re: Exempt Quota Valuation and Legal Assessment

Dear Producer Review Board:

I write on behalf of the California Producer Handlers Association ("CPHA") to provide comments on the Draft Quota Implementation Plan ("Draft Plan"). CPHA provides these comments for the purposes of highlighting two main issues: (1) the Draft Plan does not explain how Producer-Distributor Quota (or Exempt Quota) will be converted to Regular Quota; and (2) CPHA members request that the Producer Review Board ("PRB") reconsider the Draft Plan approval to allow a full valuation of Exempt Quota conditioned on legislative approval to take such action.

Converting Exempt Quota to Regular Quota

During the June 15, 2017 PRB meeting, after much discussion and guidance from the California Department of Food and Agriculture ("CDFA"), the PRB voted to convert Exempt Quota to Regular Quota on a 1:1 conversion rate. At the time there was no discussion about the logistics of how such conversion would take place. The Draft Plan does not mention how the Exempt Quota will be converted to Regular Quota. CPHA requests that the Draft Plan make clear that the Exempt Quota will be converted to Regular Quota and paid as other quota shares are paid under the stand-alone program.

Conditional Full Valuation of Exempt Quota

CPHA next asks the PRB to reconsider its vote to convert Exempt Quota 1:1 to Regular Quota, and instead vote to convert it on a 1:1.96 ratio using the trailer bill authority or, alternatively, approve the full value conversion on the condition that such valuation be approved or legislatively allowed under the California Food and Agriculture Code.

In making the decision to convert Exempt Quota to Regular Quota on a 1:1 conversion rate, CDFA provided guidance to the PRB that it did not have legal authority to recognize the full value of Exempt Quota as estimated by CDFA's historical records for Exempt Quota

valuation.¹ CDFA gave guidance to the PRB that the California Food and Agriculture Code limited the amount of quota payments to \$0.195/lb. of SNF, so the payments could not be adjusted upward to compensate Exempt Quota at 1.96 times that rate. CDFA also gave guidance to the PRB that the California Food and Agriculture Code did not allow for the issuance of new quota to increase shares by 1.96 times the Exempt Quota. With these legal limitations, CDFA did not believe there was a lawful way for the PRB to fully value Exempt Quota through payment or share conversion and provided this guidance to the PRB for use in making their decision as to what to do with Exempt Quota.

Trailer Language Gave PRB Authority

But such guidance did not take into account the new statutory trailer bill language that allowed the PRB authority to create the stand-alone program. In order to hold meetings and allow the PRB to create a plan recommendation for a stand-alone quota program, the California Food and Agriculture Code had to be amended. Section 62757 added to the Food and Agriculture Code (“Trailer Language”) specifically provided for funding the quota program through an assessment on milk produced in the state, as well as allow the review board to make a recommendation as to how best to establish the stand-alone quota program. This language, at least initially, was thought to allow sufficient authority to encompass the Exempt Quota.

In its presentation to the PRB on May 30, 2017, CDFA stated that “[e]xempt quota could receive a different payout than producer quota and be funded through assessments on either the same or a different grouping of milk that would fund producer quota.” Exempt Quota, as a part of the quota program, could have been funded at its historical value through the same assessment on milk produced in the state at a rate of 1:1.96 average monthly value of Exempt Quota as found in CDFA’s June 15, 2017 Data and Information for PRB Meeting June 15, 2017 Meeting, Table 7. The Trailer Language properly allowed for such an increase to honor the historical values of Exempt Quota because the recognized historical valuation falls within the stand-alone quota program that is being established by the PRB.

Conditional Approval of Full Valuation

Even if the Exempt Quota valuation were interpreted to fall outside of the current version of the Food and Agriculture Code’s limitation on quota payments or quota shares, the PRB could make recommendations outside the Food and Agriculture Code and leave the issue open for legislative approval. This circumstance was contemplated in the proposed Trailer Language with the comment that “[a]ny recommendations from the PRB that fall outside the bounds of the

¹ CDFA provided Exempt Quota historical averages showing Exempt Quota is on average valued at 1.96 for every 1 share of Regular Quota. *See* CDFA’s June 15, 2017 Data and Information for PRB Meeting June 15, 2017 Meeting, Table 7.

statute will need legislative authority to effectuate.” In other words, the PRB can make recommendations outside the Food and Agriculture Code, conditioned on approval from the legislature.

CDFA’s guidance to the PRB that it cannot act outside the bounds of the Food and Agriculture Act heavily influenced the PRB’s decision to de-value Exempt Quota by voting on a 1:1 conversion rate, and if the PRB were given the opportunity to make a recommendation that fully values Exempt Quota conditioned on legislative approval, there would remain sufficient time prior to a Federal Milk Marketing Order commencement date to seek the proper legislative approval. With CDFA’s guidance that such conditional language could be approved by the PRB subject to legislative ratification or approval, it would satisfy the CDFA’s concerns as well as the issue CPHA members have with fully valuing their Exempt Quota.

Since the June 15, 2017 meeting, CPHA and its authorized agents met with various legislators who were involved in adopting the original Trailer Language. The senators believed that the original Trailer Language provided CDFA and the PRB with sufficient authority to properly recognize the historical value of Exempt Quota in determining how to manage the stand-alone quota program. With CDFA’s interpretation that it and the PRB did not have legal authority, the California senators (with the assistance of language crafted by the CDFA) is looking at new Trailer Language that will expressly allow Exempt Quota value to be fully recognized in a standalone quota program. CPHA is optimistic that such new Trailer Language will be approved, but because the California legislature is on recess, the approval cannot take place in advance of the next PRB meeting. The PRB, therefore, would have to leave open the door for Exempt Quota full valuation prior to the new Trailer Language being approved. Conditioning the approval will protect the PRB’s recommendation, and protect against CDFA’s concerns about the legal limitations contained in the California Food and Agriculture Code.

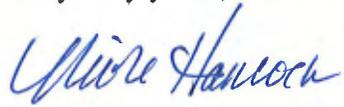
Should the PRB allow for full valuation of Exempt Quota subject to legislative approval, the legislature will be able to act in a timely manner. However, if the PRB does not fully value Exempt Quota and the PRB’s meetings and avenues to take action are closed, then CPHA members are left with a less than full valuation of their Exempt Quota without any recourse other than to pursue the loss of its value.

CPHA asks the PRB to reconsider the Exempt Quota valuation in light of the original Trailer Language guidance that allows for subsequent legislative approval, and in light of the new Trailer Language being proposed to the legislature. In the event the final draft language is presented to the Secretary and the Secretary deems it unlawful, the Secretary has ample authority to amend or modify the plan to fall within CDFA’s legal interpretation of its authority. Without recognizing the full value of the Exempt Quota, the Exempt Quota holders have had an asset taken from them without just compensation. That is unlawful under both state and federal constitutional laws, as well as the California Food and Agriculture Code.

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CPHA respectfully submits these comments for the PRB's and CDFA's consideration.

Very truly yours,



Nicole C. Hancock