Regulating Dairy Marketing Practices

Overview

The California Department of Food and Agriculture (Department) is responsible for enforcing the laws and regulations pertaining to the marketing and trade practices associated with distribution of milk and dairy products. The Food and Agricultural Code (Code) describes regulated business practices and the affected parties, which include manufacturers, distributors, producers, wholesale customers, and brokers. The California Code of Regulations (Regs) contains regulations that have been adopted both to clarify and to further the enforcement of the laws set forth in the Code.

Laws were enacted and regulations were adopted to maintain an orderly and stable market for milk and dairy products by discouraging marketing tactics that may cause sudden market price fluctuations. The laws and regulations also deter the formation of monopolies in the wholesale and retail sectors of the dairy industry, which if left unmonitored, could lead to discriminatory practices and predatory pricing designed to force competitors out of business.

The Units

The Enforcement Unit of the Department's Dairy Marketing Branch (DMB) verifies manufacture, distributor and retailer compliance with the dairy industry laws and regulations set forth in the Code and Regs. If violations are discovered, the Department may exercise its authority to take enforcement actions.

The Producer Security Assurance Team of the Department's Milk Pooling Branch (MPB) administers the Milk Producers Security Trust Fund (Fund). The Fund was created by law in 1987 to reimburse eligible producers in the event a handler (processor) defaults in payments for bulk milk purchases.

Obligations of Producers

With the large number of milk and dairy food transactions that occur every day, the Department depends on both producers and handlers to conduct their trade practices within reasonable guidelines. Although the activities of producers are not monitored by the Enforcement Unit, producers have an obligation to assist the Enforcement Unit by exercising due caution when conducting sales:

- Selling milk to licensed, bonded handlers
- Executing a milk purchase contract with a handler and filing a copy with the Department
- Notifying the Department of any late payments by handlers or payment defaults

- Accepting no less than minimum farm prices, as established by the Department, from handlers as payment for milk

Obligations of Handlers

Any manufacturer, distributor, producer or wholesale customer must adhere to the laws and regulations administered by the Department. Processing distributors are required to have a milk handlers license. Non processing distributors are also required to have a license if dairy products constitute the majority of the products they distribute. Some of the obligations of processors conducting business in California include:

- Obtain a milk handlers license prior to purchasing bulk milk
- Obtain a surety bond prior to purchasing bulk milk from producers
- Execute a milk purchase contract with the producer prior to purchasing bulk milk
- Pay producers not less than minimum class prices, as established by the Department
- Pay producers in a timely manner and in accordance with the provisions in the contract
- Collect all producer assessments and pay all handler assessments on milk purchases, including those associated with the Department's regulatory, promotional, research, and educational programs
- Maintain records for three years on milk purchases, uses, costs, and other financial transactions with producers and with wholesale customers
- Comply with report filings with the Department as required

Other laws have been established to protect the interest of consumers and prevent undermining of the system. Any manufacturer, distributor, producer or wholesale customer that deals with dairy products is prohibited from the following acts:

- The extension to any wholesale customer or consumer of any discounted price or special service which is not made available to all wholesale customers or consumers
- False or misleading advertising
- Discrimination in price between distributors or between wholesale customers or consumers
- The sale of dairy products by any wholesale customer, manufacturer, distributor (including any producer–distributor), or nonprofit cooperative at less than cost
- Solicitation by, or collusion or joint participation between or among any manufacturer, distributor, producer, wholesale customer or consumer

Enforcement Authority

Violations of California's milk marketing laws are made punishable by provisions of the Code. Violations may result in:

- Imposition of civil penalties in the form of fines in amounts of not less than $100 per violation and not exceeding $1,000 per violation
- Criminal penalties, including imprisonment, recovery of costs, action to enjoin, and collection of amounts owed

- License action, including revocation, refusal to grant or renew, suspension, or affixing conditions or probationary orders on the license
- Interest charged to handlers for late payments to producers at the rate of 12% per year (paid to producers), and penalties charged to handlers ranging from $100 to $5,000 per payment date (paid to the Department)
- Requiring a handler to obtain a new or additional bond in a higher amount
- Requiring a handler to pay producers within 24 hours after notification of a payment default; placement of handler on Ineligible List (handlers whose milk purchases are not eligible for Trust Fund coverage) if they fail to comply

Milk Producers Security Trust Fund

The Milk Producers Security Trust Fund (Fund) was created by state law in 1987 to protect producers from handler payment defaults. It is administered by a seven-member board of industry representatives appointed by the Department. Currently, the Fund contains approximately $48 million.

Under the original legislation:
- Money was collected for the Fund's from assessments on milk in Classes 1, 2 and 3, until
- The Fund contained a sufficient amount of money to cover 110% of one month's milk purchases by the milk handler with the largest monthly producer payment obligation.

The Fund was modified in 2006 by AB 2343:
- Money is now collected for the Fund's from assessments on all milk, Classes 1, 2, 3, 4a and 4b, until
- The Fund contains approximately $30 million.
- Handlers with liabilities beyond $30 million are required to submit proper financial instruments to the Department to cover these liabilities over the higher of $30 million or the amount that is in the Fund.

In the event of a payment default and a subsequent claim, $200,000 is deducted from the total amount owed all producers, and the balance is paid from the Fund to eligible producers on a *pro rata* basis. However, eligibility requirements determine which handler and what milk is covered by the Fund. The following guidelines specify the requirements for coverage:
- Milk must be produced and processed in California
- The handler must have a valid license and bond
- A valid copy of the milk purchase contract between the handler and producer must both be approved by the Department and be on file with the Department
- The handler must not appear on the Ineligible List
- Coverage is limited to shipments occurring during the first 35 days from the earliest shipment date for which the handler has not paid the producer
- The producer does not have an ownership interest in the handler's operation